Exhibit 1

Corrected Initial Reply Brief

RECEIVED
Oct 01 2025
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of General Sessions

The Honorable Clifton B. Newman, Circuit Judge
The Honorable Jean Hoefer Toal, Chief Justice (Ret.)

Appellate Case No. 2023-000392

The State of South Carolina, Respondent,

v.

Richard Alexander Murdaugh, Appellant.

INITIAL REPLY BRIEF OF APPELLANT

Richard A. Harpootlian, SC Bar No. 2725
Phillip D. Barber, SC Bar No. 103421
Andrew R. Hand, SC Bar No. 101633
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, South Carolina 29202
(803) 252-4848
rah@harpootlianlaw.com
pdb@harpootlianlaw.com
arh@harpootlianlaw.com

James M. Griffin, SC Bar No. 9995
Margaret N. Fox, SC Bar No. 76228
GRIFFIN HUMPHRIES, LLC
8906 Two Notch Road
Suite 200 (29223)
Post Office Box 999
Columbia, South Carolina 29202
(803) 744-0800
jgriffin@griffinhumphries.com
mfox@griffinhumphries.com

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

TREATISES

REPLY STATEMENT OF FACTS

The State's thirty-five (35) page factual presentation and characterization of a prosecution based upon "overwhelming evidence of guilt" cannot withstand scrutiny. In fact, this case was built on investigative failures, fabricated evidence, and jury tampering. The State ignored exonerating evidence, misrepresented forensic findings, and relied on inflammatory but irrelevant financial evidence to distract from the absence of proof that Alex committed these murders.

The evidence actually shows:

- A contaminated crime scene with ignored alternative suspect evidence;
- Fabricated blood spatter testimony that the State abandoned when exposed;
- Cell phone evidence that supports Alex's innocence;
- No credible motive for such extreme action;
- Systematic jury tampering to ensure conviction;
- Critical forensic evidence lost through investigative malpractice.

I. THE STATE'S MISCHARACTERIZATION OF A FLAWED INVESTIGATION

A. The Investigation Was Fundamentally Compromised from the Beginning

Contrary to the State's assertion of a thorough investigation, the evidence demonstrates critical investigative failures that tainted the entire case:

1. **Crime Scene Contamination**: First responders trampled through the crime scene and feed room, destroying potential evidence

including bloody footprints that may have belonged to the actual perpetrator(s). Trial Tr. 486, 500, 510–29, 843–44.

2. **Failure to Collect Basic Evidence**: SLED crime scene forensic agents did not attempt to lift fingerprints from the feed room doors, doorknobs, or entrance area where Paul was murdered—a fundamental failure in any homicide investigation. Trial Tr. 1866–72.

3. **Ignored Alternative Suspects**: Noticeable tire tracks in wet grass that did not match any Murdaugh vehicles were never followed or investigated, demonstrating investigative tunnel vision from the outset. Trial Tr. 486, 500, 510–29, 843–44.

4. **Predetermined Conclusion**: SLED's chief investigator testified they conduct investigations "concentrically" but admitted they never eliminated Appellant from their investigative circle and never included anyone else within it. This reveals investigative bias rather than objective inquiry. Trial Tr. 1022–24, 3662–70.

B. Critical Forensic Evidence Was Lost or Ignored

1. **DNA Evidence**: SLED identified DNA from an unknown male under Maggie's fingertips but never submitted this potentially exonerating evidence to CODIS for comparison—a basic investigative

protocol that could have identified the real perpetrator. Trial Tr. 3286–89.

2. Cell Phone Location Data: SLED's mishandling of Maggie's phone resulted in the overwriting and permanent loss of location data from the night of the murders. This data could have definitively shown that Maggie's and Alex's phones were not traveling together, supporting his innocence. SLED's failure to use a basic Faraday bag or simply turn off the phone displays investigative malpractice. Trial Tr. 751–55, 1361–65, 4613–15, 4755–57.

II. THE STATE'S FABRICATION AND MISREPRESENTATION OF EVIDENCE

A. The Blood Spatter Fabrication

The State's case was built on fabricated forensic evidence:

1. False Grand Jury Testimony: The lead case agent made materially false statements to the grand jury, incorrectly testifying that SLED found loaded shotguns with buckshot/birdshot combinations at Murdaugh's residence that matched the combination that shot and killed Paul, and that Alex's clothes contained high-velocity blood spatter indicating that he was in close proximity to Paul's murder. Trial Tr. 3694–96, 3684–89.

2. **Manufactured "Expert" Opinion**: SLED flew to Oklahoma to pressure their "blood spatter expert" into changing his initial report that found no blood spatter evidence. When SLED's own lab report definitively determined there was no human blood on Alex's shirt, the State abandoned this fabricated evidence rather than acknowledge their misconduct. (Mot. to Exclude.)

3. **Changed Theory Mid-Trial**: Rather than admit the fabrication, the State simply shifted to arguing that Murdaugh changed his clothes after the murders—a theory unsupported by any evidence. Trial Tr. 5817–51.

B. Questionable Ballistics Testimony

The State's ballistics evidence lacks scientific foundation:

1. **Unsupported Assumptions**: The ballistics expert necessarily presumed, without any supporting tests, studies, or data, that every .300 Blackout manufactured in the world makes singularly unique extraction marks—a claim that defies scientific methodology. Trial Tr. 313–71, 1884–1996; State's Ex. 400.

2. **No Direct Connection**: Notably, the SLED ballistics witness did not and could not offer an opinion that any of the specific weapons

seized from Moselle were used to murder Maggie or Paul. Trial Tr. 313–71, 1884–1996.

III. THE STATE IGNORES EXONERATING EVIDENCE

A. Cell Phone Evidence Actually Supports Innocence

The State mischaracterizes the cell phone evidence, which actually supports Alex's innocence:

1. **Maggie's Phone Orientation Change**: While Alex was calling Maggie's phone, it registered an orientation change between 9:06:12 and 9:06:20 pm, but Alex's phone was recording steps while Maggie's was not. The State's own SLED cell phone forensic witness conceded he would expect to find steps on both phones if the same person possessed them. Trial Tr. 1238–39, 1324–27, 1329–30, 1356–57; Def.'s Ex. 156.

2. **Phone Screen Evidence**: The defense expert testified that iPhones have a "Raise to Wake" feature that would illuminate the screen when picked up or thrown from a moving vehicle at 42 mph. Trial Tr. 1349–52, 4049–53, 4307–08, 4621–32; Def.'s Ex. 158.

3. **Timing Evidence**: On-Star data shows Alex passed the location where Maggie's phone was found at 9:08:36 pm, traveling at 42 mph, approximately two minutes after the last orientation change on her

phone, making it impossible for him to have thrown it there. Trial Tr. 1349–57, 4049, 4051–4053; 4058, 4307–08, 4621, 4623–32; State's Ex. 519 at p. 21–22, Def.'s Ex. 158.

4. Unscientific Rebuttal: The State's rebuttal "evidence" consisted of a deputy spending a weekend in his office tossing an iPhone of a different model than Maggie's iPhone to see if it would illuminate—an unscientific and unreliable experiment that contradicted the defense's qualified expert's testimony about the "Raise to Wake" feature, and the likelihood that an orientation change would register on an iPhone when picked up or thrown from a vehicle traveling at 42 mph. Trial Tr. 5397–5415.

B. The Kennel Video Does Not Prove Guilt

The State overstates the significance of the kennel video:

1. Normal Family Interaction: The video shows a normal family going about their routine without any sign of trouble or hostility—hardly evidence of impending murder. Trial Tr. 1318–21; State's Ex. 297.

2. Limited Timeframe: The video only places Alex at the kennels from 8:44:49 to 8:45:47 pm, but both Paul's and Maggie's phones

remained active and responsive until 8:49 pm, indicating they were alive and unharmed after Alex left. Trial Tr. 4015–17; State's Ex. 297.

3. **Acoustic Evidence**: Defense acoustic testing proved that a person inside the residence with the television on could not hear gunshots from the kennels, supporting Alex's account of not hearing shots while inside. Trial Tr. 4284–97; Def.'s Ex. 140.

C. The State's Mischaracterization of Alex's Drive to Almeda

The State mischaracterizes Alex's drive to Almeda, falsely claiming that his speed of travel, and where he parked when visiting his mother, was suspicious.

1. **Speed of Travel**: The On-Star data shows that Alex does not stop enroute to Almeda, his mother's residence, or on the return trip to Moselle. While at times his speeds exceeded the limit going to and from Almeda, there was nothing to suggest that Alex's speed was unusual for him. State's Ex. 519. In addition, the occasions when he increased speed were consistent with over-taking slower traffic on the two-lane country road. One could argue that speeding away from a murder scene is common. However, there would be no reason for someone who sped away from a murder scene to then race back to the same scene, as the State insinuates.

2. **Parking Spot at Almeda**: The State also asserts that Alex parked in an unusual spot, in the back yard of the residence, suggesting that he perhaps was hiding the murder weapons at the rear of the property.[1] However, the uncontradicted testimony from all witnesses was that Alex parked in a customary location for family members who were visiting Almeda at night. He parked near the back porch, and entrance to the kitchen, where Mrs. Murdaugh's bedroom was located. Alex's son Buster, and brother John Marvin, both testified that this is the preferred location when visiting at night, after Mrs. Murdaugh had gone into her bedroom with a sitter. Tr. 4160–63, 5269–7272, Def.'s Exs. 130–136.

IV. THE STATE'S MOTIVE THEORY IS UNSUPPORTED SPECULATION

A. The Financial "Motive" Lacks Credibility

The State's theory that Alex would murder his wife and son to distract from financial inquiries is implausible:

1. **Routine Legal Matter**: Alex's attorney in the boat case, Dawes Cooke, testified that the upcoming motion hearing was routine and not especially concerning. Plaintiff's counsel Mark Tinsley conceded

[1] There was no forensic evidence located in Alex's Suburban to indicate that he transported the murder weapons in his vehicle.

nothing explosive was expected at the June 10 hearing. Trial Tr. 2053–54, 2951–52, 4496–4500.

2. No Immediate Threat: The confrontation with Jeannie Seckinger about the Faris fees occurred in the afternoon, and when Alex received the call about his father's hospitalization, Seckinger immediately ceased her inquiry and left his office sympathetically. Trial Tr. 2286–88.

3. Disproportionate Response: The suggestion that someone would commit double murder to delay routine legal proceedings defies logic and human experience.

4. Prosecutor's Admission: During closing arguments, when the defense argued the motive theory was "unbelievable," the prosecutor responded that the jury could disregard their motive theory entirely and find Murdaugh guilty because the State is not required to prove motive, only malice—an admission that even the State recognized the weakness of their theory. Trial Tr. 5823–25.

B. Extensive Financial Evidence Was Irrelevant and Prejudicial

The State presented six days of testimony about financial crimes involving 25 victims and over $9 million—none of which had been suspected at the time of the murders. This evidence served only to inflame the jury against Alex rather than prove

he committed murder. Trial Tr. 2242–2433, 2502–87, 2656–3520, 3497–3517; State's Exs. 313–335, 347, 352, 429.

V. THE ABSENCE OF PHYSICAL EVIDENCE SUPPORTING GUILT

A. Forensic Evidence Does Not Support the State's Theory

1. No Blood Evidence: Despite the State's claim that Paul's killer would have been covered in blood and brain matter from the devastating head shot that blew open his skull and caused his brain to hit the ceiling, Alex had no visible blood on his clothing or person when law enforcement arrived. His clothing appeared fresh and clean, as if it had just come from the laundry. Trial Tr. 2129–32, 3686–88, 5176–5200, 5817–51.

2. Minimal Gunshot Residue: Only two particles of gunshot residue were found on Alex's hands, three on his shirt, three on his shorts, none on his shoes, and one on his vehicle's seat buckle—consistent with handling the shotgun he retrieved for protection after discovering the bodies. Trial Tr. 2448:13–25, 2466:1–12, 2487.

3. DNA Evidence: The DNA evidence from Alex's clothes revealed no significant amount of Paul or Maggie's DNA and only trace amounts consistent with touching the bodies to check for signs of life. Trial Tr. 3686–88.

B. Missing Evidence Points to Other Perpetrators

1. Unknown DNA: The unidentified male DNA under Maggie's fingernails was never submitted to CODIS. Trial Tr. 3286–89.

2. Tire Tracks: Tire tracks at the scene did not match Murdaugh vehicles and were never investigated. Trial Tr. 486, 500, 510–12, 843–44, 866.

VI. JURY TAMPERING UNDERMINED THE VERDICT

A. Systematic Interference by Court Official

The conviction was obtained through jury tampering by then-Colleton County Clerk Rebecca Hill:

1. Financial Motive: Hill published a book about the trial titled "Behind the Doors of Justice" and repeatedly stated during proceedings that a guilty verdict would sell more books because "she needed a lake house." Evid. Hr'g Tr. 181:11–183:19, 181:20–183:1.

2. Direct Jury Interference: Multiple jurors came forward to describe Hill's efforts to influence their deliberations, including entering jury rooms after the State rested and telling them not to let the defense "throw you all off," "distract you or mislead you," and "not to be fooled" by Alex's testimony in his own defense. Evid. Hr'g Tr. 52:7–18, 203:18–25, 209:25–210:18; Mot. New Trial Ex. A (Juror 630 Aff.,

Aug. 14, 2023) & Ex. H (Juror 785 Aff., Aug. 13, 2023); Juror Z Aff., Jan. 29, 2024.

3. **Predetermined Outcome**: Hill began planning to write her book before the trial even began, demonstrating her financial interest in obtaining a conviction. Evid. Hr'g Tr. 181:11–183:19.

B. Compromised Deliberations

The jury's brief deliberation time (less than one hour according to juror interviews) suggests the systematic tampering was effective in preventing fair consideration of the evidence after six weeks of trial testimony.

VII. ADDITIONAL EVIDENCE OF INVESTIGATIVE FAILURES

A. Inadequate Search Procedures

1. **Limited Property Search**: Although Alex was at the center of the investigation, SLED did not search his mother's residence and property at Almeda for the murder weapons or any other evidence. Trial Tr. 1024, 1699, 1703–06, 3663–84.

2. **Cursory Investigation**: SLED agents only conducted a cursory search at Moselle, which did not reveal any evidence linking Alex to the murders. Trial Tr. 1024, 1699, 1703–06, 3663–84.

B. Public Safety Misrepresentation

On June 8, 2021, SLED and the Colleton County Sheriff's Department issued a joint press release stating that the public did not have any reason to be concerned

for their safety, despite having no suspect in custody and having failed to conduct a thorough investigation for alternative perpetrators. Trial Tr. 4121–27.

VIII. CONCLUSION

Alex Murdaugh's conviction resulted from a perfect storm of investigative incompetence, prosecutorial misconduct, and court official corruption—not from reliable evidence of guilt beyond a reasonable doubt. The State's characterization of overwhelming evidence of guilt is simply not credible.

ARGUMENT

I. CLERK OF COURT BECKY HILL'S DELIBERATE JURY TAMPERING DENIED MURDAUGH HIS RIGHT TO A FAIR TRIAL BEFORE AN IMPARTIAL JURY

The practice of law is a qualitative, not a quantitative, endeavor. How many cases a lawyer cites is of little importance; what matters is what the cited cases say. Likewise, the number of pages in a legal brief is of no significance compared to the quality of the arguments.

In this case, the State's brief cites 176 cases and is 163 pages long with 12-point type, or about 60,000 words—approaching the length of a Ph.D. dissertation. Despite all that makeweight, on the most important issue in this appeal—Clerk of Court Becky Hill's jury tampering—the State's brief fails at its very first sentence: "Becky Hill's improper comments did not affect the outcome of this case." (State's Br. 38.) That is a speculative answer to the wrong question. The constitutional right at issue is not any right to a correct outcome. The issue is whether Murdaugh

received a fair trial. *Lutwak v. United States*, 344 U.S. 604, 619 (1953) ("A defendant is entitled to a fair trial but not a perfect one."); *State v. Kelly*, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998) ("The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors."). "To safeguard these rights, 'it is required that the jury render its verdict free from outside influences of whatever kind and nature.'" *Kelly*, 331 S.C. at 141, 502 S.E.2d at 104 (quoting *State v. Cameron*, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct. App. 1993)).

There is no "overwhelming evidence" exception to the right to a fair trial. *See Rose v. Clark*, 478 U.S. 570, 578 (1986) ("Harmless-error analysis thus presupposes a trial, at which the defendant, represented by counsel, may present evidence and argument before an impartial judge and jury."); *United Bhd. of Carpenters & Joiners of Am. v. United States*, 330 U.S. 395, 410 (1947) (holding failure to give a reasonable doubt instruction is not harmless no matter how conclusive the evidence); *Tumey v. Ohio*, 273 U.S. 510, 535 (1927) (reversing conviction because "[n]o matter what the evidence was against him, [the accused] had the right to have an impartial judge"). If a man committed a murder at the 50-yard line during the Clemson-South Carolina football game, with 100,000 eyewitnesses and millions watching live on television, with a video recording of the crime as it happens, and with all imaginable direct forensic evidence immediately collected and preserved, that man would still

have a right to a fair trial. *Tumey*, 273 U.S. at 535. At a minimum this would require the man have a right to a trial without an elected official advocating the guilt of the accused in the jury room during trial for her own personal profit. *See Cameron*, 311 S.C. at 207–08, 428 S.E.2d at 12 (Ct. App. 1993) (Where "'[t]here was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained . . . a new trial must be granted unless it clearly appears that the subject matter of the communication was harmless and could not have affected the verdict.'" (quoting *Holmes v. United States*, 284 F.2d 716, 718 (4th Cir. 1960)). And if so, surely the same applies in a circumstantial case like this one, where there is no eyewitness, where there is no video of the crime, where no murder weapon was recovered, and where no forensic evidence directly connects the accused to the crime.

Before replying to the State's arguments regarding jury tampering, Murdaugh must correct one issue in the State's factual recitation regarding the jury tampering hearing. That recitation ends with a claim that the trial court's written order entered after the evidentiary hearing "implicitly rejected Juror Z and Juror # 741's claims that Hill said 'not to be fooled by the evidence presented by Murdaugh's attorneys' and Juror Z's claim that Hill said deliberations 'shouldn't take long.'" (State's Br. 48.) The trial court did not "implicitly" make factual findings in the State's favor in its State-drafted written order. Its order says what it says and does not say what it

does not say. It does not say that Ms. Hill never said what Juror Z and Juror #741 testified that she did, in fact, say. Juror Z testified under oath that Ms. Hill told them "not to be fooled" by the evidence presented in Murdaugh's defense and Juror #741 testified Ms. Hill said that their deliberations "shouldn't take long." (Evid Hr'g Tr. 52, 222.) The only controverting evidence in the record is Ms. Hill's denial; however, the trial court found Ms. Hill was not credible as a witness. (*Id.* at 251.) Ms. Hill has since been indicted for perjury regarding her testimony at the evidentiary hearing. Indictment, *State v. Hill*, 2025-GS-40-05080 (Richland Cnty. Gen. Sess., Aug. 5, 2025). It would be an abuse of discretion to credit the denial of a non-credible, self-interested perjurer accused of wrongdoing over the disinterested testimony of jurors with nothing to gain from this proceeding and who were only involved in it because they were randomly selected for jury service. The trial court did not so abuse its discretion because it never made any such "implicit" finding.[2]

A. Prejudice from a state official's jury tampering cannot require proof of an actual effect on deliberations.

The State's first argument is that "[t]o cause prejudice, improper communications must actually affect the jury's deliberations." (State's Br. 48.) That

[2] If the State wanted this finding, it could have proposed it in the State's proposed order. But then the trial court might not have signed the order, given the evidence in the record. So, the State instead put nothing in its proposed order about these statements and now asks this Court to make "implicit" factual findings regarding what is not in the order.

is wrong. The only possible evidence as to what "actually" affected the jury's deliberations would be the jurors' testimony about their deliberations—they are (hopefully) the only witnesses to that—and it is not permissible to ask about their deliberations. *See* Rule 606(b), SCRE ("[A] juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict . . . ."). Indeed, it would be odd for the U.S. Supreme Court to ever speak of a presumption of prejudice—or any presumptions about external influences—if one could just ask the jurors how an external influence affected their deliberations. *Cf. Remmer v. United States*, 347 U.S. 227, 229 (1954).

Rule 606(b) continues an old rule that entered our common law through a case of alleged juror misconduct which applied a now-disregarded doctrine that a witness testifying to his own turpitude should not be credited (*nemo auditur propriam turpitudinem allegans*). *See Vaise v. Belaval*, 1 T.R. 11, 99 Eng. Rep. 944 (K.B. 1785). It has been universally retained in the context of jury deliberations long after the discard of that doctrine because it serves an important purpose. We do not ask jurors to try to separate one external influence on their thoughts, months after the verdict, from everything presented to them during the trial, from what they heard from other jurors during deliberations, and from everything they heard from any source since the verdict was rendered. Instead, the inquiry is to determine what was

said, and then to apply an objective analysis regarding its probable effect on a hypothetical average jury. *E.g.*, *Fletcher v. McKee,* 355 F. App'x 935, 939 (6th Cir. 2009); *Manley v. AmBase Corp.*, 337 F.3d 237, 252 (2d Cir. 2003); *United States v. Lloyd*, 269 F.3d 228, 238 (3d Cir. 2001); *United States ex rel. Owen v. McMann*, 435 F.2d 813, 820 (2d Cir. 1970); *McQuarrie v. State*, 380 S.W.3d 145, 154 (Tex. Crim. App. 2012); *Kilgore v. Fuji Heavy Indus. Ltd.*, 240 P.3d 648, 655 (N.M. 2010); *Ex parte Arthur*, 835 So. 2d 981, 985 (Ala. 2002); *Castaneda by Correll v. Pederson*, 518 N.W.2d 246, 251 (Wis. 1994); *Wernsing v. Gen. Motors Corp.*, 470 A.2d 802, 809 (Md. 1984); *Minnesota v. Cox*, 322 N.W.2d 555, 559 (Minn. 1982); *Massachusetts v. Fidler*, 385 N.E.2d 513, 519 (Mass. 1979); *Wilson v. United States*, 380 A.2d 1001, 1004 (D.C. 1977).

This Court likewise applied an objective standard in *State v. Kelly*, where jurors in a capital case allegedly were exposed during trial to a pamphlet purporting to express God's view on capital punishment. 331 S.C. at 142, 502 S.E.2d at 104. The *Kelly* court held that when considering whether the outside influence affected the jury, a trial court should consider factors like "the number of jurors exposed, the weight of the evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice." *Id.* at 142, 502 S.E.2d at 104. *Kelly* does not suggest one could instead just ask the jurors how the external influence affected them. Moreover, these "*Kelly* factors" are not an exclusive list of

factors to consider. At a minimum, a court must also consider what was said and who said it. *See, e.g.*, *Parker v. Gladden*, 385 U.S. 363, 365 (1966) (holding that a statement from an official with authority over a jury "beyond question carries great weight with a jury").

In applying this objective standard to determine whether improper communication "affect[ed] the jury's deliberations[,] and thereby its verdict" (State's Br. 48 (quoting *United States v. Olano*, 507 U.S. 725, 739 (1993))), there is a presumption that comments by state officials to jurors on the merits of the matter before the jury are prejudicial, *Remmer*, 347 U.S. at 229. Where such comments are proven, the State must demonstrate they were harmless, which is nearly impossible. *Cameron*, 311 S.C. at 207–08, 428 S.E.2d at 12.[3] Certainly, one of the *Kelly* factors is the "weight of the evidence." 331 S.C. at 142, 502 S.E.2d at 104. Murdaugh's position, with which the State disagrees, is that the "weight of the evidence properly before the jury" cannot, as a matter of law, outweigh deliberate jury tampering by an

[3] An example of such proof might be that a comment advocated acquittal rather than conviction. Or that a comment was heard only by a single juror, who did not communicate it to any other jurors and who did not participate in deliberations. But in this case, the comments were heard by multiple deliberating jurors. (State's Br. 67–68.) Another example might be where the trial court discovers the improper communications and is able to take effective curative action before deliberations. That happened in *Kelly*, where the trial court learned of the improper pamphlet and removed the only juror who had seen it prior to deliberations. 331 S.C. at 144, 502 S.E.2d at 105. Of course, that did not happen in this case.

elected state official exercising legal authority over the jurors, who attempted to cause a guilty verdict so she could personally profit from it. *See, e.g.*, *Mattox v. United States*, 146 U.S. 140, 150 (1892) (holding "[p]rivate communications, possibly prejudicial, between jurors and . . . the officer in charge, are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear"); *Holmes*, 284 F.2d at 718 (holding "the private communication of the court official to members of the jury . . . cannot be tolerated if the sanctity of the jury system is to be maintained"). This disagreement is the crux of the issue on appeal regarding Ms. Hill's jury tampering. Murdaugh's position is that to allow the "weight of the evidence" to outweigh deliberate jury tampering by a state official would be to create an "overwhelming evidence" exception to the right to a fair trial, which is not permitted under the Constitution.

To be sure, asking whether an external influence would probably affect a hypothetical average jury is a method of determining whether improper external influences "affected" the verdict. *Cf. Olano*, 507 U.S. at 739. The State's error is slipping the adverb "actually" into that language. We can never determine what "actually" affected the verdict; instead, we determine whether some external influence "actually" happened, and then whether it would likely affect a hypothetical jury's verdict. The answer to that question is never proof of what actually happened

in the jury room. The answer is always a *presumption* about what might happen in a hypothetical jury room—a presumption of prejudice or the absence of prejudice.

B. The trial court was required to presume prejudice.

The Fourth Circuit has provided a summary of *Mattox* and *Remmer* upon which Murdaugh cannot improve:

> It is fundamental that every litigant who is entitled to trial by jury is entitled to an impartial jury, free to the furthest extent practicable from extraneous influences that may subvert the fact-finding process. Because an impartial jury is obviously the touchstone of a fair trial [footnote citing *McDonough Power Equip. v. Greenwood*, 464 U.S. 548, 554 (1984)], courts throughout modern history have labored to safeguard sitting jurors from improper contacts and advances by third parties.
>
> In an early instance of this recurring problem, the Supreme Court adopted the rule that unauthorized communications to jurors are "forbidden," and unless determined to have been harmless, require the court to order a new trial. *Mattox v. United States*, 146 U.S. 140, 150 (1892). The rule of *Mattox* was developed further in *Remmer v. United States*, 347 U.S. 227 (1954), where the Court directed that private communications to jurors during trial should be deemed "presumptively prejudicial" with the burden of rebuttal resting "heavily" on the party supporting the jury's verdict. *Id.* at 229. *Remmer* also established the requirement of a post-trial evidentiary hearing in which the prevailing party has the opportunity and burden of rebutting the presumption of juror prejudice. *Id.* at 229–30; *see also Smith v. Phillips*, 455 U.S. 209, 217 (1982).

Haley v. Blue Ridge Transfer Co., 802 F.2d 1532, 1535 (4th Cir. 1986) (parallel citations and footnotes omitted). *Remmer* is still "clearly established federal law," *Barnes v. Joyner*, 751 F.3d 229, 243 (4th Cir. 2014), and this Court lacks authority to construe later Supreme Court cases as overruling it by implication, *Bosse v.*

Oklahoma, 580 U.S. 1, 3 (2016). Later cases however have clarified that a presumption of prejudice does not apply where the communications at issue were innocuous, meaning they "did not touch the merits" of the case before the jury. *United States v. Elbaz*, 52 F.4th 593, 606 (4th Cir. 2022); *State v. Green*, 432 S.C. 97, 100–01, 851 S.E.2d 440 (2020).

Ms. Hill's comments were about the weight or meaning of the evidence presented at trial and, thus, touched the merits of the case before the jury. (*E.g.*, Evid. Hr'g Tr. 23–24, 46, 52, 77–78, 203, 209–10.) The trial court found her conduct to be intentional and motivated by personal financial gain. (Evid. Hr'g 251–52.) *Both the trial court and the State fail to cite a single reported case in any jurisdiction in which deliberate jury tampering by a state official in a criminal trial was held to be harmless or non-prejudicial*. Instead, the State attempts to open a door for this Court to be the first to ever take that extraordinary step with two arguments.

First, the State argues that *Remmer* expresses a rule of federal criminal procedure, not constitutional law. (State's Br. 53–54.) *Remmer* found the presumption of prejudice in *Mattox* and *Wheaton v. United States*, 133 F.2d 522 (8th Cir. 1943) (which, through *Chambers v. United States*, 237 F. 513 (8th Cir. 1916), found the presumption in *Mattox*). 347 U.S. at 229. *Mattox*, in turn, relied on state-court cases: *Gainey v. Illinois*, 97 Ill. 270, 273 (1881); *Michigan v. Knapp*, 3 N.W. 927 (Mich. 1879); *Kansas v. Snyder*, 20 Kan. 306 (1878). 146 U.S. at 150. Those

cases could not be based in federal procedure at all, certainly not the Federal Rules of Criminal Procedure first adopted in 1944. Rather, they express a foundational principle of law constitutionally codified through language like "due process" and "impartial jury." (*See* Appellant's Br. 52–54 (tracing the presumption of prejudice from *ex parte* communications with the jury about the merits of the case to *Lord Delamere's Case*, 4 Harg. St. T. 232 (Eng. 1685))).

Second, the State argues this Court has never applied a *Remmer* presumption. In support, it veers off point to argue that "South Carolina does not have *Remmer* hearings; we have '*Aldret* hearing[s],'" citing *Ethier v. Fairfield Mem'l Hosp.*, 429 S.C. 649, 656, 842 S.E.2d 355, 359 (2020). (State's Br. 54.) *Aldret* hearings concern premature jury deliberations. *State v. Aldret*, 333 S.C. 307, 315, 509 S.E.2d 811, 815 (1999). The issue in *Ethier* was juror misconduct in discussing her personal knowledge of certain witnesses with other jurors prior to deliberations, not the actions of an external state actor attempting to influence the jury. 429 S.C. at 653, 842 S.E.2d at 358. But the State's point is irrelevant since an evidentiary hearing was in fact held in this case, whatever the nomenclature. As to the State's argument that *Remmer* does not apply in South Carolina, Murdaugh stands on his opening brief at pages 40 to 43. *Remmer* is controlling U.S. Supreme Court authority this Court must follow and has never rejected.

C. Jury tampering by an elected state official in charge of the jury for her own personal profit is a structural error in the trial.

The State complains Murdaugh's argument that the presumption of prejudice is irrebuttable when a state official tampers with the jury during a criminal trial about the merits of the case is a "novel" claim. (State's Br. 56.) The facts of this case are admittedly novel. To undersigned counsel's knowledge, this has never happened before. In some cases, defendants have bribed or intimidated jurors. In some cases, low-level bailiffs have made off-hand comments like "guilty" or "the judge does not like a hung jury." *Parker*, 385 U.S. at 363; *Blake by Adams v. Spartanburg Gen. Hosp.*, 307 S.C. 14, 413 S.E.2d 816 (1992). In some cases, law enforcement has engaged in investigative activity that improperly influenced jurors. *State v. Bryant*, 354 S.C. 390, 581 S.E.2d 157 (2003). But Ms. Hill's deliberate tampering in favor of a guilty verdict to promote her own book sales is surely unprecedented.

The particular facts of this case make the presumption of prejudice irrebuttable. Prejudice could be rebutted by showing that the comments advocated acquittal (as the State notes at page 58 of its brief), or that no deliberating juror was exposed to Ms. Hill's tampering (as in *Kelly*, where the only juror exposed to an improper influence was removed prior to deliberations, 331 S.C. at 144, 502 S.E.2d at 105). But because Ms. Hill did in fact tamper with deliberating jurors by making comments advocating conviction, the presumption of prejudice cannot be rebutted. (*See, e.g.*, Evid. Hr'g Tr. 23–24, 46, 52, 77–78, 203, 209–10.) A hypothetical

reasonable jury hearing from the elected official who administered their oath as jurors that they should not be "fooled" by the defense likely would be prejudiced against the defendant as a result. The jury then would not be an "impartial jury." In a fair trial, the jury is impartial and elected state officials do not engage the jury in secret, *ex parte* advocacy for a guilty verdict. Where that happens, the trial is not fair, and the defendant is prejudiced. The only way to rebut that conclusion would be to create exceptions to the defendant's right to a fair trial, by saying that it does not matter whether the defendant received a fair trial because the outcome of a fair trial would have been the same. But the Constitution does not allow exceptions to the right to a fair trial before an impartial jury. *In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process.").

The State then proceeds to complain Murdaugh's reading of *Cameron* is "literalistic." (State's Br. 58.) It is. Constitutions, statutes, and cases mean what they say, and they should be interpreted based on the precise words used. Further, Murdaugh has never argued *Cameron*'s use of the phrase "subject matter" means that "the "content" of the communication to a jury does not matter—the "subject matter" is a category or description of the "content" which can be determined only by examining the "content." (*Id.* at 58.)

Finally, the State's contention that "[a]bsent a showing of actual juror bias, there is no structural error," is completely unsupported by the citation to *Smith v.*

Phillips, 455 U.S. at 217. (State's Br. 59.) *Smith* dealt with the question of whether a bias should be implied regarding a juror who had applied for a job in the prosecutor's office. The portion of *Smith* the State cites deals with implying juror bias from jurors' employment relationships with the government or from publicity surrounding the trial, not deliberate jury tampering.

The U.S. Supreme Court case with the greatest factual similarity to this case is *Parker*, in which a new trial was required because a bailiff told a deliberating juror that the defendant was "guilty." 385 U.S. at 363. As the State correctly notes, there was no mention in *Parker* of any presumption to rebut. (State's Br. 53.) Indeed, in *Parker* the state conclusively proved the bailiff's comment did not affect the actual result because the votes of the jurors who heard the bailiff's comments were not needed to convict. 385 U.S. at 365. Nevertheless, the Supreme Court reversed the Supreme Court of Oregon, which had held the comment was harmless, because "[i]n any event, petitioner was entitled to be tried by 12, not 9 or even 10, impartial and unprejudiced jurors." *Id.* at 366. The error in *Parker* was structural and the prejudice was irrebuttable, just as it is here.

D. The State did not rebut any presumption of prejudice.

1. The trial court improperly examined jurors about their deliberations in this case.

The importance of the prohibition against juror testimony about jury deliberations codified in Rule 606(b) of the South Carolina Rules of Evidence is

discussed above and in Appellant's opening brief at pages 64 to 70. In reply to the State, Murdaugh merely states that Rule 606(b) provides,

> Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror.

Yet despite this rule, the trial court asked each juror, "Was your verdict influenced in any way by the communications of the clerk of court in this case[?]" (*E.g.*, Evid. Hr'g Tr. 46, 65, 67.) The trial court later explained to Juror Z: "Juror Z, I asked you previously was your verdict on March 2, 2023, influenced in any way by communications from Becky Hill, the clerk of court. You answered that question yes." (Evid. Hr'g Tr. 55.) Obviously, the trial court asked the juror about the "effect of [Ms. Hill's] statements upon that . . . other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict" in violation of Rule 606(b). There is no colorable argument to the contrary, notwithstanding the many pages of the State's brief devoted to the issue. The State's assertion that "[t]he only time Justice Toal inquired into the deliberative process was in response to improper 606(b) material introduced by Appellant" (State's Br. 63) is mistaken because the trial court asked each juror whether Ms. Hill influenced his or her mind to assent to or dissent

from the verdict. The State's assertion that the *Green* decision allowed these improper questions is mistaken because the Rule 606(b) issue was expressly not before the Court in *Green*. *State v. Green*, 427 S.C. 223, 236 n.3, 830 S.E.2d 711, 717 n.3 (Ct. App. 2019), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020).

Having asked this inappropriate question, the trial court awkwardly found the only juror who gave an answer favorable to the defense not credible when reporting her own mental processes, even though she was not alleged to have any bias in favor of Murdaugh (she voted to convict him of murder, after all). (Order Denying New Trial 21.) To allow the prohibited question to be asked of each juror and then to disregard the answer of the only juror to give an answer favoring Murdaugh, without any evidence that juror testified dishonestly, would allow a reasonable observer to question whether justice has been done in this case. *Cf. Offutt v. United States*, 348 U.S. 11, 14 (1954) ("[J]ustice must satisfy the appearance of justice."). The trial court abused its discretion in not crediting Juror Z's account of her own mental processes because there was no evidence disputing her testimony. *See State v. Simmons*, 279 S.C. 165, 167, 303 S.E.2d 857, 859 (1983) (holding the trial court abused its discretion when denying a motion for a new trial where its decision was based on a factual finding but "the record is in all respects void of evidence to support [that] finding"). Juror Z did not contradict herself—there is no contradiction

in being both influenced by Ms. Hill's comments and pressured by other jurors in deliberations. (Juror Z Aff., Jan. 29, 2024.)

But the Court should avoid that issue and the amateur psychoanalysis the State offers for Juror Z (State's Br. 65–67). Instead, the Court should apply Rule 606(b), and simply engage in an objective analysis of whether statements that jurors should "watch his body language" when Murdaugh testified, that his testimony would be "an epic day," that jurors should watch him closely when he testified, that they should not let him "throw you all off," that they should not allow him to "distract or mislead you," and that they should "not be fooled" by his testimony, would likely affect a hypothetical reasonable jury. (Evid. Hr'g Tr. 23–24, 46, 52, 77–78, 203, 209–10.) The inevitable outcome of that analysis is that those statements would influence any reasonable jury.

2. The record in this case conclusively demonstrates Ms. Hill's comments prejudiced Murdaugh's right to a fair trial.

Nevertheless, fighting the obvious, the State dutifully argues that Murdaugh was not prejudiced by Ms. Hill's instructions to jurors to disbelieve his own testimony in his own defense. The State's argument that he was not prejudiced because nine of twelve jurors did not hear Ms. Hill's comments is foreclosed by *Parker*: "[i]n any event, petitioner was entitled to be tried by 12, not 9 or even 10, impartial and unprejudiced jurors." 385 U.S. at 366. The State argues some of her comments were not as egregious as the comments in *Mattox* or *Parker* (State's Br.

68), but some clearly were, like telling jurors not to allow Murdaugh's testimony in his own defense to "distract you or mislead you" and telling them "not to be fooled" by it. (Evid. Hr'g Tr. 52, 209–10.)

Regarding the last statement, the State argues "Justice Toal found this comment never happened," (State's Br. 72), but she made no such finding, which the State admits by earlier describing this "finding" as "implicit" (State's Br. 47). The only comment the trial court made regarding the "fooled" statement was footnote 3 of the order denying a new trial, which in a recitation of Ms. Hill's testimony states, "Clerk Hill was asked by the State if she told jurors 'not to be fooled by evidence presented by Defendant Murdaugh's attorneys.' To 'Look at his movements.' And that '[deliberations] shouldn't take long.' She denied each allegation." (Order Denying New Trial 16 n.3.) The trial court found Ms. Hill's testimony not to be credible. (Evid. Hr'g Tr. 251.) Her only comment at the conclusion of the evidentiary hearing regarding Juror Z's testimony was that her testimony about the effect of Ms. Hill's comments on her vote was "ambivalent." (Evid. Hr'g Tr. 252.) The trial court's later written order found Juror Z credible on every point addressed except for her statement that her verdict was affected by comments from Ms. Hill. (Order Denying New Trial 20–21.)

To any reasonable person, admonitions from a senior court official to disbelieve a defendant's testimony immediately before he testifies in his own

defense is *more* prejudicial than a bailiff's conclusory expression of his own personal belief in the guilt of the defendant. *Cf. Parker*, 385 U.S. at 363. And the State's advice to the Court to "not read too much into *Parker*" (State's Br. 68) is almost comical—*Parker* is the seminal case incorporating the Sixth Amendment against the states through the Fourteenth Amendment. 385 U.S. at 364 ("We believe that the statements of the bailiff to the jurors are controlled by the command of the Sixth Amendment, made applicable to the States through the Due Process Clause of the Fourteenth Amendment.").

The State then moves to again argue an "overwhelming evidence" exception to the right to a fair trial, which has been addressed thoroughly above and in Appellant's opening brief at, *inter alia*, pages 48 to 55. Jury tampering is prejudicial if it denies the accused a fair trial. As Justices Scalia and Ginsburg agreed, even if a court "certainly reached the 'right' result," the violation of the right to a fair trial, tantamount to a directed verdict of guilty, "would be *per se* reversible *no matter how overwhelming the unfavorable evidence*" because "[t]he very premise of structural-error review is that even convictions reflecting the 'right' result are reversed for the sake of protecting a basic right." *Neder v. United States*, 527 U.S. 1, 34 (1999) (Scalia, J., concurring in part, joined by Souter and Ginsburg, JJ.) (emphasis in original).

And, of course, the evidence in this circumstantial case is far from overwhelming. There are no witnesses to the murders, no murder weapons were recovered, and no DNA or blood evidence links Murdaugh to the murders. There is evidence of at least one person other than Murdaugh participating in the murders. (Trial Tr. 1349–52, 4049–53, 4307–08, 3286–89. 4621–32; Def.'s Ex. 158.) *Cf. Camm v. Indiana*, 908 N.E.2d 215 (Ind. 2009) (reversing conviction of man accused of murdering his wife and children after two trials, who was acquitted on the third trial, where the first two convictions were overturned due to the admission of prejudicial character evidence and unreliable expert testimony, the lack of forensic evidence linking the accused to the murders, and initially unidentified male DNA found on the murdered wife).

II. THE TRIAL COURT ALLOWED THE STATE TO INTRODUCE IMPROPER CHARACTER EVIDENCE AND OTHER IRRELEVANT AND UNFAIRLY PREJUDICIAL EVIDENCE THAT SO INFECTED THE TRIAL WITH UNFAIRNESS AS TO MAKE THE RESULTING CONVICTION A DENIAL OF DUE PROCESS

A. The State misapprehends Murdaugh's cumulative error argument.

The State argues that Murdaugh did not spend enough pages on the cumulative error issue presented as an issue on appeal and argued on pages 71 to 73 of his opening brief. The State again views briefing as a quantitative exercise in which the length of an argument or the number of cases cited means more than the content of the argument. Murdaugh's cumulative error argument is short because it is simple.

Murdaugh argues the aggregation of errors extensively discussed at pages 73 to 119 of Murdaugh's brief collectively violated Murdaugh's right to due process of law because they rendered his defense "far less persuasive than it might [otherwise] have been" had the trial court consistently enforced the Rules of Evidence, citing *Chambers v. Mississippi*, 410 U.S. 284 (1973) and other cases. The State attempts to distinguish *Chambers* on its facts, but Murdaugh only cites *Chambers* for the legal standard that multiple errors can combine to deny a defendant "a trial in accord with traditional and fundamental standards of due process," a rule expressly stated at the conclusion of the opinion. 410 U.S. at 302.

More importantly, the State entirely misapprehends this argument. This is not the cumulative error doctrine described in South Carolina appellate cases like *State v. Beekman*: "The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013). Murdaugh does not argue that the assigned evidentiary errors are harmless when viewed individually but reversible error only when viewed collectively—an argument which must be made in the first instance before the circuit court. *State v. Eubanks*, 437 S.C. 458, 489, 878 S.E.2d 335, 352 (Ct. App. 2022). Murdaugh argues each assigned error is reversible on its own, which is why he cites *State v. Plumer*,

433 S.C. 300, 313, 857 S.E.2d 796, 802 (Ct. App. 2021), for the proposition that "[t]hese evidentiary errors were, standing alone, reversible errors because they were substantial errors affecting the result of the trial." (Appellant's Br. 73.) Murdaugh argues that collectively the errors are reversible not only on evidentiary grounds, but also on constitutional grounds. This is an argument for possible future federal litigation.

B. Evidence of financial crimes should have been excluded under Rules 404 and 403 of the South Carolina Rules of Evidence.

1. This Issue Is Not Procedurally Barred.

The State contends that Appellant waived his objection to the financial crimes evidence by failing to appeal the trial court's alternative ruling admitting the evidence as *res gestae*. The State's assertion is incorrect. Appellant objected to the financial crimes evidence in the trial court and has appealed the trial court's decision to admit this evidence. There has not been any waiver of Appellant's objection to the admission of this evidence under any theory. *See State v. Johnson*, 439 S.C. 331, 339, 887 S.E.2d 127, 130–31 (2023) (Court held that Appellant's objection to the admissibility of evidence preserved the issue of whether the challenged evidence was *res gestae*).

In addition, Appellant appealed the trial court's decision to admit evidence of financial crimes dating back to 2015 on the grounds that such evidence is inadmissible character evidence which is precluded by Rule 404, SCRE. Rule 404(a)

provides, "evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." Rule 404(b) provides, "evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." The trial court's ruling that Rule 404 does not preclude evidence of prior financial crimes is squarely before this Court, irrespective of whether the trial judge reasoned that the financial crimes evidence was admissible as motive, *res gestae*, or both motive and *res gestae*.

Furthermore, Appellant argued in the trial court, and argues in his brief, that the financial crimes evidence should have been excluded under Rule 403, SCRE, on the grounds that even if relevant and offered for a purpose other than to prove Murdaugh's character, the financial crimes evidence was unfairly prejudicial. This argument applies equally to evidence admitted under one of the exceptions listed in Rule 404(b) or admitted under the *res gestae* theory. *State v. Dennis*, 402 S.C. 627, 636, 742 S.E.2d 21, 26 (Ct. App. 2013) ("[E]vidence considered for admission under the *res gestae* theory must satisfy the requirements of Rule 403).

Lastly, the law of the case doctrine is not absolute, and does not apply if the decision was clearly erroneous and would work a manifest injustice. *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 573, 776 S.E.2d 397, 404 (Ct. App. 2015). The lower court's *res gestae* analysis is clearly erroneous. For bad act evidence to be admitted

under the *res gestae* theory, there must be temporal proximity between the other bad acts and the charged offense. *State v. Johnson*, 439 S.C. at 342, 887 S.E.2d at 132. In *Johnson*, this Court ruled that the temporal proximity had been met where the evidence adduced at trial established an unbroken thirteen-hour timeline of violence. *Id.* Here, the lower court admitted evidence of financial crimes which took place six years prior to the charged offenses. Furthermore, during argument, the trial court reasoned that evidence of these extensive financial crimes over such long period of time was relevant to show Appellant's state of mind- that he knew the scope of his undisclosed criminal behavior and the consequences of getting caught. Trial Tr. 2074:19-25. The trial court further clarified that the *res gestae* ruling was not limited to the June 7, 2021 confrontation, but encompassed all financial crimes, "that may likely have led to a motive, or lend itself to motive for the crime committed." Trial Tr. 2079:4-10. These remote financial crimes are clearly not temporally connected to the June 7, 2021 confrontation and could not possibly be *res gestae* evidence pertaining to the murders.

2. The State's Motive Theory Remains Illogical and Unsupported by the Evidence.

The State's motive theory—that Murdaugh killed his wife and son to distract from impending financial exposure—suffers from fundamental logical flaws that the State's brief cannot cure. There is a temporal disconnect with the financial crimes

evidence and the murders, and there is no evidence that Maggie or Paul posed a threat to disclose such evidence.

The State's own evidence established that the *Faris* fee investigation being conducted by Steckinger was a "one off" transaction, totally different from the extensive scheme perpetuated by Appellant to steal client settlement funds through the fake Forge account. The *Faris* matter under investigation was limited to whether Appellant received attorney fees from the settlement personally, rather than depositing the fees into the law firm. Furthermore, the State's own evidence further established that Seckinger suspended her inquiry when she learned of Randolph Murdaugh's hospitalization. There was simply no need for Murdaugh to manufacture sympathy. His father's impending death would have been sufficient.

Moreover, Steckinger was not investigating and had absolutely no suspicions that Appellant had been stealing client funds. Steckinger stumbled across the fake Forge transactions months later, in September 2021, which led to the discovery of extensive client thefts dating back to 2015.

In addition, there was simply nothing on the horizon during the week of June 7, 2021, that remotely supports the State's manufactured motive theory of a gathering storm involving an upcoming motion's hearing in the civil boating accident case. The State's own witness, and attorney for the plaintiff suing Murdaugh, admitted that there was nothing "explosive" that was expected to occur

in the discovery motions hearing in the boating case scheduled for June 10, 2021. Trial Tr. 2053–54, 2951–52. Murdaugh's counsel in the boating case, Dawes Cooke, explained that the financial discovery being sought from Appellant in the case was fairly routine, as were Appellant's objections to the discovery. *Id.* at 4496:25-4498:25. Cooke further observed that the civil defense team did not have any concern about the upcoming hearing to compel disclosure of financial information. *Id.* at 4500:21-25. Cook also described the case as a "negligent parenting" case, premised upon an untested legal theory, and that the case was very defensible. Trial Tr. 4495:8–15.

Lastly, unlike the cases cited by the State (*Siegel*, *Rizzuto*, *Thompson*), neither Maggie nor Paul posed any threat of exposing Appellant's financial crimes. The victims were not witnesses, investigators, or obstacles to continued concealment. Instead, the murders actually increased scrutiny on Murdaugh, rather than deflecting it. The State's theory requires the jury to believe Appellant chose the most extreme and attention-generating response to relatively manageable financial pressures.

The cases relied upon by the State are factually inapposite, and involve fundamentally different circumstances:

- *United States v. Siegel*, 536 F.3d 306 (4th Cir. 2008): The victim was actively threatening to expose the defendant's crimes to law enforcement.

- *Commonwealth v. Rizzuto*, 777 A.2d 1069 (Pa. 2001): The victim was the direct source of funds being stolen and posed an immediate threat of discovery.
- *People v. Thompson*, 384 P.3d 693 (Cal. 2016): The defendant stood to gain financially through life insurance proceeds.

Here, by contrast, the murders eliminated no witnesses and removed no obstacles to discovery of Appellant's financial crimes. The State's attempt to distinguish *West Virginia v. McGinnis*, 455 S.E.2d 516 (W. Va. 1994)—which rejected an identical "sympathy and distraction" motive theory—is unconvincing.

3. The Extensive Presentation of Financial Crimes Evidence Created Substantial Undue Prejudice.

The State's true purpose, and the actual effect, of presenting ten witnesses over six days detailing financial crimes spanning nearly a decade and involving over $9 million was to persuade the jury that no one really knew the real Alex Murdaugh, that he is a person who hurts those closest to him, without remorse, and that he led a double-life for 15 or more years, lying, cheating, and stealing, and he is a person who lies to clients, lies to his law partners, has mastered the art of persuasion with juries by turning on tears when needed. The purpose and effect of this evidence was **not** to put the murders in context as required under *res gestae* or to prove motive. This is the unfair prejudice that resulted from the State's extensive presentation of financial crimes. *See State v. Gilchrist*, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct.

App. 1998) ("Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis.").

While the trial court provided limiting instructions, these cannot cure the fundamental problem: the extensive financial crimes evidence served primarily to inflame the jury rather than illuminate any genuine motive. The State's own closing argument demonstrates this point—prosecutors essentially abandoned the motive theory and told jurors it could be disregarded because the State need only prove malice.

In *State v. James*, 355 S.C. 25, 583 S.E.2d 745 (2003), this Court ruled that the probative value of admitting into evidence seven prior convictions for burglary was outweighed by the "very great potential for prejudice," regardless of the judge's limiting instructions to the contrary. Here, the State was permitted to introduce evidence of at least 38 transactions involving more than 25 victims where Appellant stole at least $9,971,072 from clients, his law firm, and others. *See* State's Exs. 313-335, 347, 352, 429, Trial Tr. 2242–33, 2502–87, 2656–3520, 3497–3517. The State also was permitted to introduce Murdaugh's confession of judgment provided to the Satterfield plaintiffs, State's Ex. 352. No limiting instruction can cure the overwhelming potential for prejudice through this avalanche of financial crimes evidence presented over six days of trial.

4. Murdaugh Did Not Waive his Objection to the Financial Crimes Evidence by Testifying.

The State incorrectly suggests that Appellant's testimony admitting to financial crimes constitutes a waiver of his evidentiary objections. This position contradicts well-established law that defendants do not waive objections when they are compelled to address improperly admitted evidence to mount an effective defense. As clearly stated in *Rogers v. State*, 853 S.W.2d 29, 35 (Tex. Crim. App. 1993): "Error is not waived when the evidence is brought in later in an effort to meet, rebut, destroy, deny or explain the improperly admitted evidence." Similarly, in *State v. Logan*, 394 Md. 378, 390, 906 A.2d 374, 381 (2006), the court held that "[t]he defendant does not waive an error by attempting to minimize or explain improperly admitted evidence. It would be unfair to permit the State to introduce evidence, albeit later found to be inadmissible, but not to permit the defendant, upon pain of waiver, to attempt to meet it, explain it, rebut it or deny it."

This principle is grounded in fundamental fairness: once a trial court erroneously admits prejudicial evidence over objection, the defendant must be free to address that evidence without forfeiting the right to challenge its admission on appeal.

The State attempts to distinguish *Rogers* and *Logan* on factual grounds, but these distinctions are immaterial to the legal principle at stake. The core holding of both cases—that defendants do not waive objections by responding defensively to

improperly admitted evidence—applies regardless of the specific factual circumstances.

The State argues that unlike in *Rogers*, Appellant here "essentially agreed with the clear and convincing nature of the evidence by his admission of guilt of the financial crimes." This argument misses the point entirely. The issue is not whether Appellant disputed the financial crimes, but whether the evidence of those crimes was properly admissible in the first place. Appellant's strategic decision to admit the crimes and explain them as products of addiction does not constitute waiver of his objection to their initial admission.

Once the trial court admitted extensive evidence of Appellant's financial crimes over objection, Appellant faced an impossible choice: remain silent and allow the State's motive theory to go unchallenged, or testify to provide context and an alternative explanation. The law does not force defendants into such Hobson's choices.

Indeed, Appellant's testimony served to:

- Rebut the State's motive theory that he committed to cover up financial crimes;
- Provide an alternative explanation for the crimes (addiction rather than greed); and
- Minimize the prejudicial impact of the extensive financial evidence.

This defensive use of the evidence falls squarely within the protective principle of *Rogers* and *Logan*.

If accepted, the State's position would create a perverse incentive structure where prosecutors could introduce prejudicial evidence over objection, knowing that defendants who attempt to address that evidence would thereby waive their right to challenge its admission. Such a rule would eviscerate the protections of Rules 403 and 404(b) and deny defendants meaningful appellate review of evidentiary rulings.

5. The Trial Court Erred by Concluding Murdaugh "Opened the Door" to the Financial Crime Evidence by Questioning a Witness about Murdaugh's Relationship with Maggie and Paul.

The State argues that Appellant's objection was procedurally deficient because it was stated as "totally improper" without specifying a legal ground. This argument fails for several reasons. Rule 103(a)(1), SCRE requires a specific ground of objection only "if the specific ground was not apparent from the context." Here, the basis for the objection is obvious. The State and Murdaugh had extensively briefed motion in limine arguments for, and against, the admission of evidence of financial crimes. Def.'s Memo in Opp. to Mot. in Limine re: Evidence of Other Crimes and Bad Acts, (12-19-2022). The witness was specifically asked, "Do you know anything about him being confronted on the morning of June 7, 2021, about $792,000 of missing fees from his law firm." Trial Tr. 1511:4–25. The grounds for Appellant's objection to questions about missing fees from the law firm were readily

apparent from the question, and previous extensive briefing and argument on the admissibility of evidence of financial crimes that were presented to the trial court prior to this question being posed in the jury's presence.

Even if the objection was technically insufficient, this does not create an insurmountable procedural bar. This Court has emphasized that "issue preservation rules should not be applied in a technical manner as if this is some sort of game of "gotcha" elevating form over substance." *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023). One primary purpose of the issue preservation rules is to "give the trial court a fair opportunity to rule." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (quoting *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). A trial court's opportunity to rule necessarily includes both parties being aware of the nature of the objection such that they may present their best arguments addressing *that* objection. Here, by thoroughly briefing the financial crimes issues in pre-trial briefing, the trial court and the State were fully award of the nature of Appellant's objection to this evidence.

6. Testimony About Family Relationships is not Character Evidence that Opens the Door to Financial Crime Evidence.

The defense's questions about Appellant's relationships with Maggie and Paul were not character evidence under Rule 404(a). Evidence of a defendant's loving relationship with family members is not character evidence in the sense

contemplated by Rule 404(a). Even if construed as character evidence relating to peacefulness or non-violence, the appropriate rebuttal would be evidence of actual violence—not evidence of financial crimes that bear no relationship to the character trait allegedly at issue.

The trial court's ruling essentially rendered meaningless the distinction between different types of character evidence and created a dangerous precedent allowing prosecutors to introduce any negative evidence about a defendant who presents evidence of positive relationships.

Even assuming arguendo that testimony about family relationships constituted character evidence, the State's response was wholly disproportionate and irrelevant. Under Rule 404(a)(1), if an accused offers evidence of a pertinent character trait, the prosecution may offer evidence to rebut "the same" character trait. Evidence that Appellant loved his family has no logical connection to whether he committed financial crimes. A person can simultaneously be a loving family member and engage in financial misconduct. If the family relationship evidence constituted character evidence at all, it would pertain to Appellant's character for non-violence or peacefulness toward his family. The proper rebuttal would be evidence of prior domestic violence or family conflict—not evidence of unrelated financial crimes.

The State argues no evidence was admitted because Loving answered that he had no knowledge. This argument ignores the prejudicial impact of the question

itself. The jury heard the specific allegation of "$792,000 of missing fees" and "being confronted on the morning of June 7, 2021"—precisely the evidence the defense sought to exclude. The State suggests any error was harmless because financial crime evidence was later admitted. This reasoning is circular and legally incorrect. If the initial admission was erroneous, it cannot be rendered harmless by subsequent erroneous admissions. Each evidentiary ruling must be evaluated independently, and cumulative errors may violate due process even when individual errors might be deemed harmless in isolation.

The State's "opening the door" theory lacks any sound legal or logical basis. Evidence of loving family relationships does not open the door to evidence of financial crimes. The defense of a criminal case should not become a minefield where any evidence favorable to the defendant automatically triggers the admission of a mountain of prejudicial evidence lacking any logical connection to the original testimony. Such a rule would effectively eviscerate the protections of Rules 404(b) and 403, forcing defendants to choose between presenting any defense at all or opening themselves to character assassination through unrelated prior bad acts.

The trial court's conclusion that testimony about Appellant's loving relationship with Maggie and Paul "opened the door" to extensive financial crimes evidence was an abuse of discretion that contributed to the denial of Appellant's right to a fair trial.

C. The State violated Murdaugh's due process rights by using his post-Miranda silence to impeach him.

Despite the State's attempts to reframe this issue, the core constitutional violation remains clear: the prosecution impermissibly used Appellant's post-Miranda silence to impeach his trial testimony, precisely the conduct that *Doyle v. Ohio* prohibits.

The State argues that Appellant "invited" the cross-examination by testifying about his attempts to meet with prosecutors regarding financial crimes. This argument fails for several reasons. First, the record is clear that when Appellant mentioned reaching out "to talk about these things," he was referring to financial crimes, not the murder charges. Appellant testified:

> Mr. Waters, you keep making the issue about the first time I—you hearing these things. When, when I got arrested and I went to jail, we began reaching out to you to talk to you about all of these things, to try to tell you everything that I had done, to give you all these details, to help y'all go through these financial things. And up until the time that y'all charged me with murdering my wife and child, you would never give Jim Griffin a response to our invitation to sit down and meet with you.

Trial Tr. 4923–24.

Furthermore, even if Appellant had broadly discussed cooperation, this does not constitute a waiver of his Fifth Amendment protections regarding post-Miranda silence. Appellant's testimony is clear. He was discussing the time period before he was charged with murder. *Id.* The State conflates Appellant's pre-arrest false

statements with his post-Miranda silence. *Doyle* specifically protects the latter, regardless of the former.

The cases cited by the State—*Fairchild*, *Vitek*, and *Stephens*—are distinguishable because they involved defendants who affirmatively claimed complete cooperation with law enforcement regarding the specific charges at issue. Here, Appellant never claimed he had been cooperative regarding the murder investigation beyond his initial false statements.

Here, the constitutional violation was clear. The prosecutor's questions were precisely what *Doyle* prohibits:

> Did you ever reach out to anyone in law enforcement or the prosecution and tell that story that you told this jury yesterday about the kennels before yesterday?

This line of questioning used Appellant's post-Miranda silence—his failure to correct his earlier false statement—to impeach his trial testimony. This is the "fundamental unfairness" that *Doyle* was designed to prevent.

The trial court's ruling demonstrates a fundamental misunderstanding of *Doyle*. The trial court stated that *Doyle* "does not allow a person, an accused or a person who's suspected to give contradictory information or to voluntarily give a statement or to voluntarily give a misstatement." This is incorrect. The Due Process

protection applies regardless of whether a defendant previously gave false statements before receiving Miranda upon arrest.[4]

1. The Error Was Not Harmless.

The State argues any error was harmless, but this ignores the prejudicial impact of the questioning. The prosecutor's repeated emphasis that this was the "first time" Appellant had told his story about the kennels directly undermined his credibility on a critical issue—his presence at the murder scene.

Under *State v. Pickens*, 320 S.C. 528, 530–31, 466 S.E.2d 364, 366 (1996), harmless error requires that the reference to silence was single and not repeated. Here, the prosecutor returned to this theme multiple times, emphasizing that Appellant had never before told his story about being at the kennels.

In *Pickens*, this Court explained,

> We have applied a harmless error analysis when a *Doyle* violation has occurred. *State v. Truesdale*, 285 S.C. 13, 328 S.E.2d 53 (1984). Further, in *Truesdale*, we stated where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed. To be harmless, the record must establish the reference to the defendant's right to silence was a single reference, which was not repeated or alluded to; the solicitor did not tie the defendant's silence directly to his exculpatory story; the exculpatory story was totally implausible; and the evidence of guilt was overwhelming. 285 S.C. at 18–19; 328 S.E.2d 53.

[4] The State's footnote argument that defense counsel's media statements constitute Appellant's post-arrest statements is legally baseless. Attorney statements to media do not transform into client admissions for purposes of *Doyle* analysis, and this theory was never presented to or ruled upon by the trial court.

> Here, the reference was a single reference. However, appellant's exculpatory story of self-defense was not totally implausible and the evidence of guilt was not overwhelming. At best, only one witness, victim Corey Jeffery, unequivocally testified appellant fired any shots. A second witness, Deborah Dimson, testified appellant may have fired his gun. Further, several witnesses testified a group of people rushed appellant and Douglas. Only Jeffery testified the group had not rushed appellant or Douglas. We hold there was not overwhelming evidence of guilt based upon the record before us. Thus, the trial judge's failure to give a curative instruction was not harmless error and we reverse on this issue.

Pickens, 320 S.C. at 530–31, 466 S.E.2d at 366.

Appellant's testimony that he was not at the kennels when his wife and son were murdered is not "totally implausible." In fact, his absence from the scene is totally plausible given there were no witnesses placing him at the murder scene, and there was not any meaningful forensic evidence tying him to the murders. In addition, there is no evidence whatsoever that he had Maggie's phone with him at any time, or that he could have tossed her phone on the side of the road, a mile from the murder scene, when Murdaugh was at the property's main residence.

The use of post-Miranda silence for impeachment purposes strikes at the heart of the Fifth Amendment protection. When the State promises a defendant that his silence will not be used against him and then breaks that promise, it violates due process in a way that cannot be deemed harmless. The timeline evidence was crucial to the State's case. By using Appellant's silence to undermine his explanation for

being at the kennels, the State improperly bolstered its theory that Appellant's trial testimony was a recent fabrication necessitated by the kennel video evidence.

The State's arguments cannot cure the fundamental constitutional violation that occurred. The prosecutor used Appellant's post-Miranda silence—his failure to tell law enforcement about being at the kennels after receiving Miranda warnings—to impeach his trial testimony. This is precisely what *Doyle* prohibits. The trial court's ruling was based on legal error and must be reversed. The State's attempts to characterize this as "invited" cross-examination or harmless error cannot overcome the basic constitutional principle that when the government advises a defendant of his right to remain silent, it cannot later use that silence against him.

D. The trial court committed reversible error by allowing the State to introduce evidence of an unscientific experiment performed by an unqualified Charleston County Deputy in its rebuttal case.

1. Defendant Raised a Contemporaneous Objection to the Admission of Sergeant McManigal's Testimony and Again Moved to Exclude it at the First Opportunity.

Sgt. McManigal was admitted without objection as an expert in "cell phone forensics," which means the recovery of evidence from cell phones. (Trial Tr. 5396–97.) He then testified beyond his expertise about an experiment he performed to determine when an iPhone's screen will or will not turn on in response to motion, the "Raise to Wake" feature. (Trial Tr. 5398.) The defense moved to strike his

testimony immediately when Sgt. McManigal admitted that he had no expertise regarding that experiment:

> Q. Have you ever done this -- anything like this before? You've mentioned testifying six times before. Did you ever -- was this your expert testimony in any other case?
>
> A. My expert testimony in other cases was always about cell phone reports and the data contained therein. I've never actually done physical experimentation and come up with a realistic result.
>
> Q. So, your previous experience was extracting data from cell phones. Is that accurate?
>
> A. Correct.
>
> Q. Is that what you're trained to?
>
> A. Yes, sir.
>
> Q. The training that was listed was to extract data from the cell phone?
>
> A. Yes, sir.
>
> Q. Are you an engineer?
>
> A. No, sir.
>
> Q. Do you have any certification in engineering?
>
> A. No, sir.
>
> Q. Do you have any degree, academic qualifications in engineering?
>
> A. No, sir.
>
> Q. Have you ever worked as an engineer?
>
> A. No, sir.
>
> Q. You're trained in extracting data from a cell phone.
>
> A. That's correct.

> Q. And when it comes to tossing it around and seeing how it moves, you don't know anything more than anyone else, do you?
>
> A. No, sir.
>
> Q. So, you have -- this –
>
> MR. BARBER: Your Honor, based on the previous answer, I would move to strike the expert opinion.
>
> THE COURT: On what basis?
>
> MR. BARBER: The witness just testified he has no expert -- expertise in this. He just said he has no more knowledge about this than anyone else in the courtroom, that his expertise is in extracting data from the cell phone, and this opinion is, therefore, outside of his expertise and this is inadmissible --
>
> THE COURT: Well, you previously stipulated that he's an expert.
>
> MR. BARBER: Yes, sir, Your Honor, in extracting data from the cell phone, which was before we got to this testimony.
>
> . . .
>
> THE COURT: Anything further?
>
> MR. BARBER: Your Honor, simply that he was proffered as an expert before this testimony. It was in extracting data from a cell phone, not in engineering – electrical engineering, which is where he's gone now.
>
> THE COURT: The objection is overruled.

(Trial Tr. 5407–09.) The Court did not state that the objection was untimely, as the State argues. The State's next witness testified immediately after Sgt. McManigal. After that testimony, at the very next time the jury was excused following Sgt. McManigal's testimony, the defense renewed its objection to his testimony as a motion citing *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). (Trial Tr.

5434.) The trial court then said "[y]our motion is late" because "you agreed that he was an expert." (Trial Tr. 5435.) The defense pointed out that he was testifying beyond the admitted scope of his expertise. (*Id.*) The trial court responded that Sgt. McManigal "did not provide scientific testimony" which was the basis for denying the motion. (Trial Tr. 5437.)

Murdaugh did everything possible to object immediately once Sgt. McManigal admitted he had no expertise for the opinion he disclosed for the very first time while testifying. The State responded to the objection by arguing Sgt. McManigal's testimony was admissible because he was merely reporting the results he observed in a "series of tests." (Trial Tr. 5409.) The Court overruled on that basis, not any untimeliness issue. The defense renewed the objection as a motion at the first opportunity. The State responded that "there's a practical experience that is acceptable for opinions to be offered" and that Sgt. McManigal "understands the Raise to Wake feature and manner in which it works, and which it doesn't work, and he offered his testimony based on his experiments in that regard." (Trial Tr. 5436.) The trial court agreed and found Sgt. McManigal's testimony was admissible because it was nonscientific. (*Id.*) It also stated Murdaugh's objections were "noted for the record." (*Id.*) The State's appellate preservation argument is without merit.

2. The Trial Court Abused its Discretion in Admitting Preposterous Testimony that an Unqualified Law Enforcement Officer Simply Invented at the State's Request to Rebut Unfavorable Evidence Unexpectedly Produced by General Motors During Trial.

The State argues that out-of-court experiments may be admissible if made under conditions substantially similar to those prevailing at the time of the occurrence at issue. (State's Br. 136.) Murdaugh agrees. The State could have offered a "substantially similar" out-of-court experiment to rebut Mr. Sturgis's testimony about the iPhone's "Raise to Wake" feature. The State could have thrown some similar phone from a moving vehicle at the location where Maggie Murdaugh's phone was thrown, and then conducted the same type of data download as was conducted on her phone to learn whether the screen came on. Conducting that sort of data download is the area in which Sgt. McManigal was offered and admitted as an expert. But for some reason, the State decided not to do that. The State could have just thrown the phone in Sgt. McManigal's office, and then conducted a download to document whether the screen came on. But for some reason, the State decided not to do that. The State could have had video recorded the phone being thrown in Sgt. McManigal's office, so we could all see what he said he saw—just as the State routinely does with any witness interview. But for some reason, the State decided not to do that. The State could have had another person witness the phone being thrown in Sgt. McManigal's office to corroborate his testimony. But for some reason,

the State decided not to do that. The State could have thrown a phone in the courtroom for the jury to see whether the screen came on—the defense, after all, demonstrated to the jury how the screen comes on with only slight movements. (Trial Tr. 4620.) But for some reason, the State decided not to do that.

With all due respect to Sgt. McManigal and the prosecution, his "evidence" has every appearance of being a fabrication. Rule 702 of the South Carolina Rules of Evidence and standards under *State v. Council* and similar cases exist precisely to keep this sort of garbage away from a jury. *State v. Phillips*, 430 S.C. 319, 334, 844 S.E.2d 651, 659 (2020) ("We have repeatedly enforced the requirement that trial courts exercise their gatekeeping responsibility in admitting expert testimony."); *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009) (holding "all expert testimony under Rule 702, SCRE, imposes on the trial courts an affirmative and meaningful gatekeeping duty"). The trial court erred in declining to follow these rules. It overruled Murdaugh's objection to Sgt. McManigal's testimony because in its view he "did not provide scientific testimony." (Trial Tr. 5437.) But an expert must be qualified to give the opinion he offers regardless of whether his testimony is scientific or not. *White*, 382 S.C. at 273, 676 S.E.2d at 688. And nonscientific expert testimony must be based in the witness's experience with the subject upon which he opines. *State v. Warner*, 430 S.C. 76, 88, 842 S.E.2d 361, 367 (Ct. App. 2020), *aff'd in part and remanded*, 436 S.C. 395, 872 S.E.2d 638 (2022) ("Indeed,

the terms 'non-scientific expert testimony' and 'experience based expert testimony' are interchangeable." (citing *White*, 382 S.C. at 270 n.4, 676 S.E.2d at 686 n.4)). "The reliability of experience-based expertise is often proven by its success." (*Id.* (citing *White*, 382 S.C. at 271, 676 S.E.2d at 687). "The foundation [for experience-based expertise] must include a showing of the results when the technique was used on prior occasions." *Id.* (citing 1 McCormick on Evidence § 13 (8th ed.) (2020)).

Because the trial court ruled Sgt. McManigal was not a "scientific" expert, he could only be an "experience-based" expert. That is exactly what the State argued in response to Murdaugh's objections. *E.g.*, Trial Tr. 5436 (arguing Sgt. McManigal offered "practical experience"). An experience-based expert must have a foundation of successfully using the techniques about which he testifies. But Sgt. McManigal testified that (1) he only had experience extracting data from cell phones, (2) he had "never actually done physical experimentation and come up with a realistic result," and (3) he did not "know anything more than anyone else" regarding the Raise to Wake feature about which he offered "expert" testimony. (Trial Tr. 5407–09.) So, he could not be an experience-based expert. The trial court therefore erred in overruling Murdaugh's objections to his qualifications.

E. The trial court erred by admitting irrelevant and unreliable firearms evidence.

1. The Trial Court Erred by Allowing SLED's Firearm Examiner to Provide Irrelevant, Unreliable, and Confusing Opinion Testimony.

The State's response fundamentally misunderstands the gatekeeping role required under Rule 702 and *State v. Council*. The State argues that because firearms identification has been "widely accepted" and used since the "early 1900s," this alone satisfies the reliability standard. This argument conflates historical acceptance with scientific validity—a distinction the Supreme Court explicitly rejected in *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), and that South Carolina adopted in *Council*.

The State's reliance on *State v. Hackett*, 215 S.C. 434 (1949), actually undermines its position. *Hackett* predates modern scientific reliability standards by decades and reflects the now-rejected "general acceptance" test that *Council* explicitly moved beyond. The fact that courts routinely admitted this evidence before *Council* is precisely why *Council* established more rigorous scientific reliability requirements.

The State's citation to various jurisdictions accepting firearms identification evidence ignores that these decisions predate or inadequately address the fundamental scientific critiques raised by the National Academy of Sciences (NAS) and President's Council of Advisors on Science and Technology (PCAST) reports.

More recent federal decisions have begun recognizing these limitations, with courts requiring modified testimony that acknowledges the subjective nature of the analysis. *See United States v. Richardson*, No. 19-20076-JAR, 2024 WL 961228 (D. Kan. Mar. 6, 2024).

The State emphasizes SLED's accreditation and verification procedures, arguing these constitute adequate "quality control" under *Council*. However, quality control procedures cannot remedy fundamental methodological invalidity. Having two examiners reach the same subjective, unvalidated conclusion does not make that conclusion scientifically reliable—it merely compounds the error.

The State's argument is analogous to claiming that having two astrologers agree on a horoscope makes astrology scientifically valid. The *Council* factors require quality control *of scientifically valid methods*, not quality control of invalid methods.

The State dismisses the NAS and PCAST reports by claiming they have been "largely rejected as undermining admissibility" and suggesting the PCAST authors lacked firearms experience. These arguments are both factually incorrect and legally irrelevant.

First, the State cites no authority for its claim that these reports have been "largely rejected." To the contrary, federal courts increasingly recognize their

significance. *See United States v. Tibbs*, 431 F. Supp. 3d 1173, 1176-77 (D. Neb. 2020) (noting PCAST report's impact on firearms evidence).

Second, the PCAST report's authors included world-renowned scientists and statisticians—exactly the type of independent experts needed to evaluate forensic methods. The State's suggestion that only firearms examiners can critique firearms examination creates a circular validation system that violates basic scientific principles.

Third, both reports identified the same fundamental problems:

- No empirical validation of the "uniqueness" assumption
- Purely subjective decision-making without objective criteria
- No established error rates
- Circular reasoning in AFTE's "sufficient agreement" standard

The State attempts to distinguish this case by noting that Agent Greer analyzed "mechanism marks" rather than barrel marks, and that he reached "inconclusive" results for some comparisons. This actually strengthens Appellant's argument. If the methodology were scientifically sound, it would either consistently produce reliable results or the examiner would be able to explain why certain comparisons were inconclusive while others were not.

Agent Greer's selective conclusions—matching some cartridges while finding others inconclusive—demonstrates the arbitrary nature of subjective pattern matching that both NAS and PCAST identified as scientifically invalid.

Agent Greer's opinion offered in this case was unique for him. Agent Greer did not have a suspected murder weapon to test fire and compare the markings of the projectile, and shell casings to the projectiles and casings found at the murder scene. Instead, he simply used extraction marks from .300 Blackout casings located at the murder scene and found on the Moselle property to conclude that the same .300 Blackout ejected the shell casings. To reach this conclusion, Agent Greer had to necessarily presume that every 300 blackout manufactured and sold in the world produces its own set of unique extraction markings. Agent Greer did not rely upon any studies, research or experiments to support his assumption. Agent Greer was unable to identify any other case where he offered such an opinion. For this reason, Agent Greer did not state that his opinions were based upon a reasonable degree of certainty, because they could not be.

The State correctly notes that South Carolina does not require "magic words" for expert opinion testimony. However, this misses Appellant's point entirely. The issue is not the specific language used, but Agent Greer's inability to express his conclusions with any meaningful degree of confidence because the underlying methodology lacks scientific foundation. During the *Council* hearing, Agent Greer

acknowledged that his analysis was "subjective in nature" and could not provide objective criteria for determining when markings constitute a "match." Trial Tr. 363:13-16. This admission reveals that his conclusions rest on personal judgment rather than scientific methodology—exactly what *Council* was designed to exclude.

The trial court's cursory analysis fell far short of the searching inquiry required under *Council*. Rather than examining the scientific foundation for Agent Greer's conclusions, the court simply noted his "years of experience and training" and found the testimony admissible. This approach directly contravenes *Council*'s requirement that trial courts act as gatekeepers to exclude unreliable scientific evidence. The court's failure to engage with the fundamental scientific critiques of toolmark analysis—critiques that were extensively briefed and argued—constitutes an abuse of discretion requiring reversal.

2. The Trial Court Erred by Allowing the State to Introduce Multiple Guns Seized from Murdaugh's Residence When No Evidence Linked the Guns to the Murders.

The State concedes that the trial court allowed the State to introduce multiple guns into evidence that had no connection whatsoever to the murders. Rather, the guns were seized from the residence. The State then argues that the admission of these irrelevant guns into evidence was harmless, because the property was a 1,700-acre hunting estate with a well-stocked gun room. Upon reviewing the State's brief,

one wonders why the State sought to introduce these multiple guns into evidence in the first place. The answer is obvious. To unfairly prejudice Appellant.

The State's attempt to distinguish *State v. McConnell*, 290 SC 278, 350 S.E.2d 179 (1986) and *Holman v. State*, 381 S.C. 491, 674 S.E.2d 171 (2009) is unavailing. Both cases involved the introduction of weapons or ammunition that were not linked to the offenses. In both cases, the convictions were reversed because of the prejudicial effect of the evidence when weighed against the probative value.

Here, there was no probative value to the weapons being admitted into evidence. The State argues that the weapons were similar to the murder weapons, "essentially sufficing as potential demonstrative aids to visualize the murder weapons." Respondent's Brief, p. 154. Demonstrative aids do not go to the jury room during deliberations. Admitted evidence does. The State's assertion that the jury could have these weapons in the jury room to "visualize the murder weapons," which were never located, proves Appellant's point. The prejudicial effect of introducing this evidence far outweighed the probative value, and the weapons should have been excluded. Introducing these irrelevant weapons into evidence, seized from Murdaugh's home, so the jury could visualize the actual murder weapons is not harmless beyond a reasonable doubt.

3. The Trial Court Erred by Allowing the State to Introduce Gunshot Residue Results of a Raincoat into Evidence When No Evidence Linked the Raincoat to Murdaugh.

The State's brief demonstrates the very problem that necessitates reversal: it asks this Court to piece together circumstantial inferences to establish a connection that the State failed to prove at trial. The State argues that Shelley Smith's testimony was "not just insufficient to tie the jacket to Appellant, but definitively of a lack of connection" can be overcome by parsing her words. This approach fundamentally misunderstands the burden of establishing admissibility.

4. The witness testimony was unambiguous.

Smith testified clearly and consistently:

- She saw Murdaugh with "a blue tarp, a blue something in his hand, something blue . . . like a tarp that they put on a car to keep your car covered up." (Trial Tr. 2109:3–21.)
- When shown an actual car tarp, she confirmed: "Is this the type of tarp that Mr. Murdaugh came into the Almeda house on the day that we're talking about?" "Yes." (Trial Tr. 2123:6–15.)
- When asked: "Any way to confuse this with a rain jacket?" She answered: "No." (Trial Tr. 2123:6-15.)

Significantly, the State never showed Smith the actual raincoat. The State only showed Smith a photograph of the raincoat "balled up in the bottom of the closet,

where no one could readily see that it was a raincoat." (Trial Tr. 2112:2-17.) Smith had never been in the upstairs closets and did not know where the photograph was taken. (Trial Tr. 2124:14-25:7.)

The State argues that any ambiguity in witness testimony creates a jury question. This fundamentally misunderstands the trial court's gatekeeping function under Rules 401 and 402. Before evidence reaches the jury, the proponent must establish a prima facie showing of relevance through proper foundation.

In *State v. McConnell*, this Court held that weapons "not properly connected with the incident" must be excluded as "irrelevant, incompetent, and rais[ing] spurious inferences." 290 S.C. at 280, 350 S.E.2d at 180. The same principle applies here with even greater force—the State introduced evidence of gunshot residue on an item that the only connecting witness definitively testified was not what she observed. In *Holman*, this Court reversed a conviction where a handgun that "was in no manner connected to the shooting incident" was admitted over objection. 381 S.C. at 493, 674 S.E.2d at 172. Here, the evidence is even more problematic because the State's own witness testified that what she observed could not be confused with the raincoat the State sought to introduce.

The State used this evidence in closing argument to argue that Murdaugh "disposed of the murder weapons by wrapping them in the blue raincoat." (Tr.

5827:18-31:3.) This inflammatory argument was based entirely on evidence that should never have reached the jury.

Gunshot residue evidence carries enormous prejudicial weight with juries. As the record reflects, gunshot residue is "inorganic, not biodegradable," meaning "there is no way to determine when gunshot residue was transferred to the raincoat—the transfer could have occurred many years ago." (Trial Tr. 2489-90.) Without proper foundation connecting the raincoat to Murdaugh, this evidence served only to inflame the jury against the accused.

The trial court's finding that Smith's testimony created a jury question is clearly erroneous. The court stated that "the witness equivocated as to whether she observed Murdaugh with a raincoat or tarp." (Trial Tr. 2236-40.) This finding is directly contradicted by the record, where Smith consistently and unequivocally testified she observed a tarp, not a raincoat.

When a trial court's factual findings are clearly erroneous—that is, when they are contradicted by undisputed record evidence—the error cannot be deemed harmless. The admission of this evidence allowed the State to argue a theory of guilt (weapon disposal) that was based entirely on improperly admitted evidence. The blue raincoat and gunshot residue evidence should never have been admitted. The State's only connecting witness unequivocally testified that what she observed was a tarp, not a raincoat, and could not be confused with a raincoat. The trial court's

contrary finding is clearly erroneous and resulted in the admission of highly prejudicial evidence that the State used to argue a key theory of guilt. The admission of this evidence was not harmless by any measure and severely prejudiced Appellant.

CONCLUSION

Alex Murdaugh's conviction represents a fundamental breakdown of the American criminal justice system's most basic protections. This case was not built on the "overwhelming evidence of guilt" the State claims, but on a foundation of investigative malpractice, prosecutorial misconduct, and corruption by an elected court official that denied Murdaugh his constitutional right to a fair trial.

The evidence reveals a perfect storm of systemic failures: SLED's contaminated crime scene investigation that ignored exculpatory evidence and failed to follow basic forensic protocols; the State's fabrication of blood spatter evidence and reliance on unscientific firearms testimony; and most egregiously, Clerk Rebecca Hill's deliberate jury tampering for personal profit. Each of these failures alone would warrant reversal. Together, they demonstrate that Murdaugh's conviction was obtained through means that cannot be tolerated in any system committed to justice and due process.

The State's response to these constitutional violations is telling. Rather than addressing the substantive evidence of misconduct, the State attempts to create an "overwhelming evidence" exception to the right to a fair trial—a doctrine that exists

nowhere in American jurisprudence. The Constitution guarantees every defendant a fair trial, not merely a correct outcome. As the Supreme Court made clear in *Parker v. Gladden*, any defendant is entitled to a new trial if a state official tampers with his jury. The strength of the evidence never justifies abandoning constitutional protections.

Here, the evidence is far from overwhelming. This circumstantial case lacks eyewitnesses, murder weapons, or forensic evidence directly connecting Murdaugh to the crimes. The cell phone evidence actually supports his innocence. Unknown male DNA under Maggie's fingernails was never submitted to CODIS. Tire tracks that didn't match Murdaugh vehicles were never investigated. The State's own motive theory was so weak that prosecutors ultimately told the jury to disregard it entirely.

The cumulative effect of these errors—jury tampering by a corrupt state official, admission of highly prejudicial irrelevant evidence, fabricated forensic testimony, constitutional violations, and fundamental investigative failures—denied Murdaugh any semblance of the fair trial guaranteed by the Sixth and Fourteenth Amendments. The conviction cannot stand.

For the foregoing reasons, Appellant respectfully requests that this Court reverse his convictions and remand this case for further proceedings.

Respectfully submitted,

s/James M. Griffin

James M. Griffin, SC Bar No. 9995
Margaret N. Fox, SC Bar No. 76228
GRIFFIN HUMPHRIES LLC
8906 Two Notch Road, Suite 200 (29223)
Post Office Box 999
Columbia, South Carolina 29202
(803) 744-0800
jgriffin@griffinhumphries.com
mfox@griffinhumphries.com

Richard A. Harpootlian, SC Bar No. 2725
Phillip D. Barber, SC Bar No. 103421
Andrew R. Hand, SC Bar No. 101633
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, SC 29202
(803) 252-4848
rah@harpootlianlaw.com
pdb@harpootlianlaw.com
arh@harpootlianlaw.com

Attorneys for Appellant Richard Alexander Murdaugh

Columbia, South Carolina
October 1, 2025

THE STATE OF SOUTH CAROLINA
In the SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of General Sessions

The Honorable Clifton B. Newman, Circuit Judge
The Honorable Jean Hoefer Toal, Chief Justice (Ret.)

Appellate Case No. 2023-000392

The State of South Carolina, Respondent,

v.

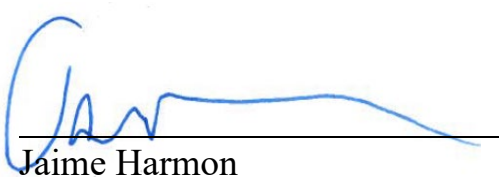
Richard Alexander Murdaugh, Appellant.

PROOF OF SERVICE

I, Jaime Harmon, legal assistant to the attorney for Appellant, Griffin Humphries LLC, with an office located at 8906 Two Notch Road, Suite 200, Columbia, South Carolina 29223, hereby certify that on October 1, 2025, I served by sending the same via electronically the following documents to the below mentioned individual:

Documents: Appellant Richard Alexander Murdaugh's Corrected Initial Reply Brief

Served: Creighton Waters
Office of The Attorney General
Rembert C. Dennis Building
Post Office Box 11549
Columbia South Carolina 29211-1549
cwaters@scag.gov



Jaime Harmon