

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM COLLETON COUNTY
Court of General Sessions

S.C. SUPREME COURT

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.

**RECORD ON APPEAL
VOL. III**

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.
Post Office Box 1090
Columbia, SC 29202

James M. Griffin, SC Bar No. 9995
Margaret N. Fox, SC Bar No. 76228
GRIFFIN HUMPHRIES, LLC
Post Office Box 999
Columbia, SC 29202

Attorneys for Appellant

Alan Wilson, Attorney General
Donald J. Zelenka, Deputy Attorney General
Creighton Waters, Senior Assistant Deputy
Attorney General
Melody J. Brown, Senior Assistant Deputy
Attorney General
Mark R. Farthing, Senior Assistant Deputy
Attorney General
Joshua A. Edwards, Assistant Attorney
General
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

Attorneys for Respondent

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Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT C

(Juror 741 Affidavit)

Jan 29 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON) AFFIDAVIT OF [REDACTED]
 JUROR #741

PERSONALLY appeared before me, [REDACTED] who being first duly sworn, deposes and states as follows:

1. I was juror #741 in the case of *State of South Carolina v. Richard Alexander Murdaugh* tried in Colleton County, South Carolina. I was an alternate juror.
2. During the trial, I witnessed the clerk of court, Becky Hill, come to the jury room and she and the forewoman went into the bathroom. After Mrs. Hill and the forewoman exited the bathroom, she told the jurors that we could not ask the forewoman questions.
3. Before the defense put up their case, Mrs. Hill told the jurors "the defense is about to do their side, they are going to say things that will try to confuse you, don't let them confuse you or convince you or throw you off."
4. Mrs. Hill made the above statement warning that the defense would try to confuse us in the presence of all of the jurors, as we had assembled in the same jury room.
5. Mrs. Hill said, "if you get emotional, we want to see your face, because that is what they want to see." All jurors were assembled in one room when she made this comment as well.
6. Mrs. Hill also informed us that Alex Murdaugh was going to testify but I don't recall exactly what she said. All jurors were assembled in one room when she made this comment as well.

7. During the visit to Moselle, Juror #826 and I walked to the scene together. Then Juror #826 began walking with the Clerk of Court, Becky Hill. I could tell they were talking, but I could not hear what was said between them.
8. I also overheard discussions in the jury room that Mrs. Hill drove a juror home. I believe it was the juror whose nickname was [REDACTED]
9. Before the jury began deliberating, I heard a member of the Court staff say that the deliberations shouldn't take long. I don't remember specifically who made this statement, but it was made in the presence of the entire jury right after closing arguments in the jury room.
10. As the jury was deliberating, I believe Judge Newman came to the room I was in and told me the jury would have to spend the night at a hotel if they did not have a vote by a certain time. I do not recall the time deadline.

FURTHER AFFIANT SAYETH NOT.

[REDACTED]
[REDACTED] Juror #741

January 29, 2024

SWORN TO before me this 29 day
of January, 2024

[Signature]
Notary Public for South Carolina
My Commission Expires: 11/24/2030

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT D

(Appellant's Brief)

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

State of South Carolina,

v.

Richard Alexander Murdaugh,

Defendant.

**COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

Indictment Nos. 2022-GS-15-00592, -593,
-594, and -595

**DEFENDANT'S PRE-HEARING BRIEF
RE: MOTION FOR A NEW TRIAL**

Defendant Richard Alexander Murdaugh, through undersigned counsel hereby submits this pre-hearing brief as the Court requested at the December 21, 2023, telephonic status conference.

I. Introduction

Mr. Murdaugh was indicted for the murder of his wife Maggie and son Paul on July 14, 2022. His murder trial began January 23, 2023. The presiding judge was the Honorable Clifton Newman. The trial ran for six weeks, ending with convictions on the evening of March 2, 2023, and sentencing on March 3, 2023.

On October 27, 2023, Mr. Murdaugh filed a motion for a new trial based on after-discovered evidence, having obtained leave from the Court of Appeals to suspend his appeal of his convictions to file the motion. His motion alleges that Rebecca Hill, the elected Clerk of Court for Colleton County, had extensive private communications with members of the jury during trial. This allegation was supported by sworn affidavits of jurors and a witness to juror interviews, testimony at *in camera* proceedings, and other evidence including Ms. Hill's own book. The subject matter of Ms. Hill's alleged communications was the evidence being presented by the defense at trial. Mr. Murdaugh alleges that an elected state official deliberately violated his constitutional right to a fair trial before an impartial jury. If that allegation is proven, the law requires a new trial.

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S.C. SUPREME COURT

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II. Argument

A. **Mr. Murdaugh does not need to show actual bias on the part of any juror to obtain a new trial.**

If Mr. Murdaugh proves his allegation that Ms. Hill communicated with the jury about the evidence presented by the defense during his murder trial, South Carolina and federal law require that Mr. Murdaugh receive a new trial, irrespective of whether the Court believes the outcome of the trial would have been the same had Ms. Hill's jury tampering not occurred. "A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influence." *State v. Johnson*, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990) (internal quotation marks omitted). 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." *State v. Cameron*, 311 S.C. 204, 207–08, 428 S.E.2d 10, 12 (Ct. App. 1993) (quoting *Holmes v. United States*, 284 F.2d 716, 718 (4th Cir. 1960)) (emphasis added). The law requires the "subject matter" of the communication to be harmless— "clearly" harmless. *Id.* Otherwise, a new trial must be granted. Asking the jury what it wants for lunch is clearly harmless. Telling it not to believe the defendant when he testifies is not.

The issue before the Court is a structural issue in Mr. Murdaugh's trial, not a failure to impanel unbiased jurors. Where a new trial is sought based on biases jurors brought with them into the trial, the required standard is to show actual bias, whether those biases were facts jurors concealed during voir dire (*e.g.*, *State v. Woods*, 345 S.C. 583, 550 S.E.2d 282 (2001)), were created by state action during voir dire (*e.g.*, *State v. Bryant*, 354 S.C. 390, 581 S.E.2d 157 (2003)),

resulted from jurors reading newspapers or other unauthorized materials during trial (*e.g.*, *State v. Stone*, 290 S.C. 380, 350 S.E.2d 517 (1986)) or from initiating inappropriate communications during trial (*e.g.*, *Smith v. Phillips*, 45 U.S. 209 (1982)), or the like. The present case is different. Here, a state official argued the merits of the evidence presented to jurors during trial outside of the presence of the Court, the Defendant, and his counsel, and in other ways deliberately and surreptitiously used her official authority to direct the verdict to her preferred outcome. This is, fortunately, a vanishingly rare event, but it is one that requires a new trial.

The *Cameron* court’s distinction between the communication being harmless and the subject matter of the communication being harmless and its requirement that a new trial be granted unless the latter is established recognizes that deliberate jury tampering by a court official cannot be cured or excused by the strength of the evidence presented at trial or jurors offering their own subjective opinions regarding their own biases. Even if every juror were to testify that he or she would have reached the same verdict regardless of Ms. Hill’s tampering, a new trial is required if it is proven that Ms. Hill communicated with jurors about the merits of the evidence presented. Sustaining a conviction based on the Court’s opinion of the strength of the evidence against the accused regardless of improper external influences on the jury from court officials about the merits of the case would effectively be a directed verdict for the prosecution—a statement that whatever happened at trial simply does not matter because the evidence can admit only one result regardless. That would constitute structural error. *Cf. Neder v. United States*, 527 U.S. 1, 34 (1999) (Scalia, J., concurring in part) (noting that even if “the judge certainly reached the ‘right’ result,” “a directed verdict against the defendant . . . 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” (emphasis in original)).

For example, in *Parker v. Gladden*, a bailiff told a juror in a murder trial “that wicked fellow, he is guilty.” 385 U.S. 363, 363 (1966). The Supreme Court of Oregon held the statement did not require a new trial because it was not shown the statement prejudiced the outcome of the trial. The U.S. Supreme Court reversed, holding “[t]he evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel,” and “[w]e have followed the undeviating rule, that the rights of confrontation and cross-examination are among the fundamental requirements of a constitutionally fair trial.” *Id.* at 364–65 (internal quotation marks and citations omitted).

In *Parker*, the state also argued that the bailiff’s statement was harmless because ten members of the jury never heard his statement and Oregon law at that time allowed a guilty verdict by ten affirmative votes of the twelve jurors. The Supreme Court rejected that reasoning, and, after questioning whether the factual record supported that argument, stated that in “any event, petitioner was entitled to be tried by 12, not 9 or even 10, impartial and unprejudiced jurors.” *Id.* at 366. That reasoning accords with the reasoning in *Cameron* 27 years later—the right being protected is not the right to a “correct” verdict but the constitutional right to trial before a fair and impartial jury free from state officials’ improper influences. What matters is what was in fact said to the jurors by the state official, not a counterfactual analysis of what probably would have happened had that not in fact been said.

Our Supreme Court more recently touched on this point in *State v. Green*, 432 S.C. 97, 851 S.E.2d 440 (2020). In *Green*, during jury deliberations a juror asked a bailiff “what would happen

in the event of a deadlock, and he responded the judge would likely give them an *Allen* charge and ask if they could stay later.” *State v. Green*, 427 S.C. 223, 229, 830 S.E.2d 711, 713 (Ct. App. 2019), *aff’d as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020) (citation omitted). The Court of Appeals held the bailiff’s comments were presumptively prejudicial because of his official position, but that the State rebutted that presumption by showing for various reasons that the remark did not in fact influence the outcome of the jury’s deliberations. *Id.* at 236, 830 S.E.2d at 717. The Supreme Court affirmed but modified the decision to correct the Court of Appeals’ reasoning. The communication was not prejudicial not because it did not in fact change the verdict, instead, it was not prejudicial because the subject matter of the communication was harmless: “The bailiff’s actions here—though improper—did not touch the merits, but dealt only with the procedural question of how the judge might handle a jury impasse that apparently never materialized.” *Green*, 432 S.C. at 100, 851 S.E.2d at 441. In other words, a bailiff presuming to tell the jury that if it is deadlocked, the judge will instruct them to keep deliberating is improper but likely harmless because the subject matter is procedural or logistical, rather than to the merits of the case.

Of course, the allegations in the instant motion—that a state official told the jury not to believe the defendant’s defense or his testimony when he testified in his own defense—indisputably regard the merits of the case. The extensive, deliberate, and self-interested jury tampering in which Ms. Hill allegedly engaged far exceeds the simple bailiff mistakes that forced a retrial in *Cameron*, where “a bailiff’s misleading response to a juror’s question about sentencing options compromised the jury’s impartiality because it left the impression that their verdict could not affect the trial court’s sentencing discretion,” or in *Blake by Adams v. Spartanburg General Hospital*, where a bailiff told a juror “that the trial judge ‘did not like a hung jury, and that a hung

jury places an extra burden on taxpayers.’” See *State v. Green*, 427 S.C. at 237, 830 S.E.2d at 717–18 (citing 311 S.C. at 208, 428 S.E.2d at 12 and quoting 307 S.C. 14, 16, 413 S.E.2d 816, 817 (1992)).

B. The State misstates the controlling legal standard and provides no authority supporting its mistaken position.

In response to Mr. Murdaugh’s motion for a new trial, the State incorrectly asserts that Murdaugh “must show both that the alleged improper communications occurred and that jurors were actually biased as a result.” Resp. Opp’n Mot. New Trial 3 n. 2. The State can cite no authority supporting that proposition. The State’s response includes citations to several cases purportedly supporting its position, but not one cited case actually supports it.

State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998): The State provides no parenthetical explanation of how *Kelly* supports its position because the case has nothing to do with the present motion. In *Kelly*, a juror was accused of misconduct, not a court official. During the guilt phase of a capital trial, a juror provided a pamphlet purportedly expressing God’s views on capital punishment to other jurors in the jury room. The trial judge dismissed the offending juror but determined that a mistrial was not warranted because it was not relevant to the issues in the guilt phase of the trial and because “no other juror had been exposed to the contents of this pamphlet.” *Id.* at 141, 502 S.E.2d at 104. The Supreme Court affirmed. Chief Justice Finney and Justice Toal dissented, arguing “the inappropriate possession and use of the extraneous pamphlet by jury members so tainted the jury that its contents affected the ability of the jury to be fair and impartial at both the guilt and penalty phases of appellant’s bifurcated trial.” *Id.* at 150, 502 S.E.2d at 109. Regardless, as in the *Holmes* case that provides the controlling legal standard quoted in *Cameron*,

Here there is more than jury misconduct in reading forbidden matter. There 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. When there has been such a communication, 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.

Holmes, 284 F.2d at 718 (emphasis added).

Smith v. Phillips, 45 U.S. 209 (1982): This case says nothing about the standard for granting a new trial when a state official tampers with the jury. In *Smith*, the prosecution failed to disclose that a juror had, during trial, applied for employment as an investigator in the prosecutor's office. The U.S. Supreme Court held "[t]his Court has long held that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias," and agreed with the state courts and federal district court that no actual bias was proven at the hearing. *Id.* 455 U.S. at 214–15. It reversed the U.S. Court of Appeals for the Second Circuit on the issue of whether the prosecution's failure to disclose the letter was misconduct necessitating a new trial. But the issue in the instant motion is not whether a particular juror had an undisclosed bias or whether the prosecution concealed any pertinent information.

State v. Green, 432 S.C. 97, 851 S.E.2d 440 (2020): As explained above, in *Green* the Court held that an improper procedural comment by a bailiff to a jury was harmless because it did not bear on the merits. There is no suggestion in *Green* that a comment by a state official that did bear on the merits of the case could also be harmless. Any such assertion would be precluded by the U.S. Supreme Court's holding *Parker v. Gladden*, discussed above but notably not mentioned at in the State's response despite also being discussed in Mr. Murdaugh's initial motion. The *Green* court did reasonably decline to extend the presumption in *Remmer v. United States* that "any private communication, contact, or tampering . . . with a juror during a trial about the matter pending before the jury is . . . deemed presumptively prejudicial" to situations where the communications at issue "did not touch the merits" of the case on trial. *Id.* at 99–100, 851 S.E.2d at 441 (quoting 347 U.S. 227 (1954)). Instead, it reversed the Court of Appeals application of

Remmer prejudice and instead followed the reasoning of *Cameron*: the inquiry should focus on the subject matter of the improper communication rather than presuming all improper communications are prejudicial and then requiring the State to rebut the presumption even where the communications did not bear on the merits of the case. *Id.* at 99–101, 851 S.E.2d at 441. This has no relevance here because Ms. Hill’s alleged statements to jurors indisputably bore on the merits.

State v. Cameron, 311 S.C. 204, 428 S.E.2d 10 (Ct. App. 1993): The State cites *Cameron* for the unremarkable proposition “[n]ot every inappropriate comment by a member of court staff to a juror rises to the level of constitutional error,” Resp. Opp’n Mot. New Trial 3, but in a footnote claims Mr. Murdaugh’s citations to *Cameron* for the controlling legal standard cite to a “portion of the opinion which does not state the legal standard, but rather quotes a portion of a 4th Circuit Court of Appeals opinion inconsistent with the standard acknowledged by *Cameron* and more subsequently clarified in *Smith* and most recently in *Green*,” *id.* at 3 n.2. That assertion only makes sense if the State did not expect the Court to read the *Cameron* opinion. The entire portion of the *Cameron* opinion that follows its factual recitation is quoted below:

The trial judge ruled that the jury properly decided that the length of sentence he might impose was not their concern. He further ruled that the short colloquy between the bailiff and the forelady could not have in any way influenced the jury to refuse to recommend mercy.

A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature. *State v. Johnson*, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990); *State v. Wasson*, 299 S.C. 508, 511, 386 S.E.2d 255, 256 (1989); *State v. Salters*, 273 S.C. 501, 504, 257 S.E.2d 502, 504 (1979). The mere fact, however, that some conversation occurred between a juror and a court official would not necessarily prejudice a defendant. *State v. Goodwin*, 250 S.C. 403, 405, 158 S.E.2d 195, 197 (1967).

In this case, “[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. When there has been such a communication, 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.” *Holmes v. United States*, 284 F.2d 716, 718 (4th Cir. 1960); see *Blake v. Spartanburg General Hospital*, 307 S.C. 14, 413 S.E.2d 816 (1992).

While the trial court adequately instructed the jury on the verdicts of guilty with and without mercy, the jury was obviously confused as to the length of the respective sentences. In this case, the right to fix punishment or make a recommendation that would place punishment in the discretion of the court rested exclusively with the jury. *State v. Brooks*, 271 S.C. 355, 359, 247 S.E.2d 436, 438 (1978); *State v. McGee*, 268 S.C. 618, 620, 235 S.E.2d 715, 716 (1977). The bailiff’s response to the forelady, that they should not worry if they were deadlocked because the judge was fair, was misleading. It tended to lessen the jury’s sense of responsibility by implying that if they rendered a verdict of guilty without mercy, the judge had some discretion in sentencing. “Jurors are simply not to consider the opinions of neighbors, officials or even other juries.” *State v. Thomas*, 287 S.C. 411, 413, 339 S.E.2d 129, 129 (1986) (quoting *State v. Smart*, 278 S.C. 515, 526, 299 S.E.2d 686, 693 (1982), *cert. denied*, 460 U.S. 1088, 103 S. Ct. 1784, 76 L. Ed.2d 353 (1983)).

The appellant’s conviction is reversed and the case is remanded for a new trial.

REVERSED AND REMANDED.

311 S.C. at 205–08, 428 S.E.2d at 11–12. There is no standard “acknowledged” or otherwise stated in the above opinion other than “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.” Mr. Murdaugh has no idea what “*Smith*” case the State believes “more subsequently clarified” the legal standard. The only “*Smith*” case cited in the State’s response is *Smith v. Phillips*, the irrelevant 1982 U.S. Supreme Court case discussed above that predated *Cameron* by eleven years. And as discussed above, *Green* reversed a Court of Appeals decision to correct its reasoning to bring it in line with *Cameron*.

C. The applicable standard of proof is a preponderance of the evidence.

As the movant, Mr. Murdaugh has the burden of proving his claim for relief. Although no South Carolina case states the standard of proof applicable in this situation, the general rule for new trial motions based on unauthorized communications with jurors is that the standard of proof

is a preponderance of the evidence. Mr. Murdaugh must make “two showings, by a preponderance of the evidence: [1] [extrajudicial] contact or communications between jurors and unauthorized persons occurred, and [2] the contact or communications pertained to the matter before the jury.” *E.g., State v. Berrios*, 129 A.3d 696, 713 (Conn. 2016) (quoting *Ramirez v. State*, 7 N.E.3d 933, 939 (Ind. 2014)). As discussed above, the burden-shifting described in *Remmer* is not relevant to this case because the alleged communications were by a court official, to at least one deliberating juror, and inarguably pertained to the merits of the case being tried. If Mr. Murdaugh proves that the Clerk of Court engaged in surreptitious advocacy on the merits during trial, there is nothing for the State to rebut. A new trial is required.

D. The Court must hold an evidentiary hearing.

The State’s response argues Mr. Murdaugh has failed to show that he is entitled to an evidentiary hearing. Resp. Opp’n Mot. New Trial 19–21. The Court appears to have rejected that argument already because it has set dates for the evidentiary hearing. Nevertheless, because the State made the argument, Mr. Murdaugh will briefly rebut it. As the State correctly argued before the Court of Appeals, the standard to suspend the direct appeal and for leave to file a motion for a new trial is a *prima facie* showing of an entitlement for relief. Return to Motion to Suspend Appeal and for Leave to File Motion for New Trial, *State v. Murdaugh*, Appellate Case No. 2023-000392 (Sept. 15, 2023) (citing *State v. Butler*, 261 S.C. 355, 358, 200 S.E.2d 70, 71 (1973)). Mr. Murdaugh agreed that is the correct standard. Reply to the State’s Return, *Murdaugh*, Appellate Case No. 2023-000392 (Sept. 21, 2023) (quoting *State v. Ford*, 301 S.C. 485, 491, 392 S.E.2d 781, 784 (1990) (“In order to obtain leave from this Court to move for a new trial based on after-discovered evidence, an appellant must make a *prima facie* showing that a new trial is warranted.”)). The Court of Appeals concluded that standard was satisfied when it granted the motion to suspend the appeal and for leave to file the instant motion. Order, *Murdaugh*, Appellate Case No. 2023-

000392 (Oct. 17, 2023). There has been no material change to the law or to the record before the Court (other than the discovery of yet more examples of Ms. Hill’s dishonesty and malfeasance in office) since the Court of Appeals’ order. It therefore is the law of the case that a prima facie case has been made. *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) (“The doctrine of the law of the case prohibits issues [that] have been decided in a prior appeal from being relitigated in the trial court in the same case.”). Where a prima facie case is made, an evidentiary hearing is required. *Barnes v. Joyner*, 751 F.3d 229, 242 (4th Cir. 2014) (“[W]hen the defendant presents a credible allegation of communications or contact between a third party and a juror concerning the matter pending before the jury” the defendant has an “entitlement to an evidentiary hearing.” (citing *Remmer*, 347 U.S. 227)). The Court therefore must hold an evidentiary hearing on the merits of the motion for a new trial.

E. The State’s motions to strike should be denied.

In its response to the motion for a new trial, the State moves to strike (1) affidavits of paralegal Holli Miller, (2) any statements regarding jury deliberations, and (3) any claims regarding Facebook posts, Ms. Hill’s book deal, or “post-trial media interactions.” It is unclear what purpose striking anything from the motion for a new trial would accomplish, given that it is the law of the case that a prima facie case has been made, that an evidentiary hearing therefore is required, that an evidentiary hearing has been scheduled, and that the motion will be decided on the evidence presented to the Court at the hearing and not on attorney argument made before the Court receives any evidence whatsoever. Nevertheless, since the State makes the argument, Mr. Murdaugh will briefly rebut it.

First, the affidavits of Holli Miller were offered only as evidence as to what certain jurors would say if called to testify at an evidentiary hearing. Of course, they are hearsay. All affidavits from persons who have not (yet) testified in court are hearsay. Rule 801(c), SCRE (“‘Hearsay’ is

a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”). Hearsay is just an objection to the admissibility of evidence; it is not a basis to strike a filing. The purpose of Ms. Miller’s affidavits was to help obtain an evidentiary hearing, which has been accomplished. Obviously, they cannot prove Mr. Murdaugh’s is entitled to a new trial. Witness testimony in a courtroom will do that.

Second, there is no basis for the State’s motion to strike references to jury deliberations. Juror 630’s affidavit was freely given to support a public filing. Other jurors have spoken about the deliberations in national television interviews. Such statements may or may not be admissible as evidence at the merits evidentiary hearing, but Rule 606 of the South Carolina Rules of Evidence in no way supports striking public statements from a motion memorandum.

Third, the State correctly notes that the only relevance of the Facebook post Ms. Hill fabricated to remove Juror 785, her book plans, or her other post-trial actions, is to impeach Ms. Hill. The State argues attacking Ms. Hill’s character is “an outlandish theory” against “a dedicated public servant” that is “Immaterial, Impertinent, and Scandalous” and so should be struck. That is incorrect. Ms. Hill likely is the only witness the State can offer who can directly contradict Juror 630’s averments of jury tampering, and Ms. Hill has offered an affidavit doing exactly that. Resp. Opp’n Mot. New Trial Ex. A. Her credibility is the crux of the matter before the Court. The purpose of the evidentiary hearing is to allow the Court to decide whether it believes the word of Ms. Hill more than it believes the sworn testimony of one or more jurors. Anything that impeaches Ms. Hill is relevant. And the State’s rhetoric about Ms. Hill being “a dedicated public servant” unfairly maligned has not aged well in the two months since the State filed its response, to put it mildly. Ms. Hill is alleged to have stolen money, illegally sold access to the courthouse, conspired

with her son to conduct illegal wiretaps, and even had her book removed from publication because of her plagiarism.

F. To prevail, Mr. Murdaugh must prove by a preponderance of the evidence that Ms. Hill made statements to at least one deliberating juror about the merits of the evidence presented at trial.

The issue presented to the Court is not what happened during jury deliberations. It is what happened during the presentation of evidence at trial. Mr. Murdaugh anticipates at least one deliberating juror will testify that Ms. Hill advocated against Mr. Murdaugh in improper communications to jurors during trial, and that at least two other persons who were part of the jury at the time will corroborate that testimony. Such communications include telling jurors not to be “misled” by evidence presented in Mr. Murdaugh’s defense and not to be “fooled by” Mr. Murdaugh’s testimony in his own defense. Based on the chart of juror interviews provided in the State’s response to the motion for a new trial (at pages 21–22), at least five jurors (including the dismissed juror and alternate) will testify that Ms. Hill told jurors to watch Mr. Murdaugh’s body language when he testified. Mr. Murdaugh also anticipates juror testimony that Ms. Hill asked jurors for their opinions about Mr. Murdaugh’s guilt or innocence, that she pressured jurors to reach a quick verdict, telling them from the outset of their deliberations that it “shouldn’t take them long,” and that she had frequent private conversations with the jury foreperson. It is likely several jurors will testify that they never heard any such jury tampering and that they do not believe it occurred. But that is not a direct contradiction of the testimony of jurors who say they saw and heard it. Mr. Murdaugh anticipates the only person who can directly contradict jurors who witnessed Ms. Hill’s jury tampering is Ms. Hill.

Mr. Murdaugh therefore must present evidence corroborating Juror 630’s testimony, including testimony from the alternate juror and Juror 785, who was dismissed on the last day of trial, and possibly testimony from court staff. He must also present evidence impeaching Ms. Hill.

Evidence impeaching Ms. Hill includes her emails, text messages, and telephone records, testimony from court staff, testimony and documentary evidence from persons involved in the production of her book, complaints against Ms. Hill and the results of investigations into Ms. Hill's wrongdoing. It includes evidence related to her involvement in the removal of Juror 785—not because the removal itself is grounds for a new trial, but because Juror 785 has averred Ms. Hill was involved with her removal in an improper and dishonest way that, if true, would serve to impeach Ms. Hill's credibility. Both witnesses and documentary evidence regarding the allegedly fabricated Facebook post, which ultimately did not cause Juror 785 to be removed, and witnesses and documentary evidence regarding Juror 785's alleged statements to her tenants during trial, which ultimately did cause Juror 785 to be removed, are relevant to Ms. Hill's credibility. Evidence impeaching Ms. Hill includes evidence demonstrating her personal interest in the outcome of the trial and willingness to engage in obviously inappropriate conduct to further that personal interest. For example, emails released to journalists in response to FOIA requests show that Ms. Hill was sending emails directly to prosecutors and law enforcement witnesses for the State during trial about the merits of testimony from defense witnesses under examination at that moment. Emails from B. Hill to C. Waters, C. Jewell, & C. Ghent (Feb. 21, 2023) (FITSNEWS_FOIA_000624 & _000861) (attached as **Exhibit A**). Evidence impeaching Ms. Hill likely also includes testimony from Judge Newman.

It is possible that Ms. Hill will respond to one or more questions at the evidentiary hearing by asserting rights under the Fifth Amendment. She should not be permitted to do so. She waived the right to assert the Fifth Amendment in this proceeding when she submitted an affidavit specifically denying each allegation against her. *See Brown v. United States*, 356 U.S. 148, 154–55 (1958) (holding that if a witness offers testimony voluntarily “his credibility may be impeached

and his testimony assailed like that of any other witness, and the breadth of his waiver is determined by the scope of relevant cross-examination”). If she asserts the Fifth Amendment in response to any question, she should be instructed to answer the question, and if she refuses, her testimony should be struck in its entirety.

There will be much evidence to present that impeaches Ms. Hill. The State may argue presenting it all would be cumulative or repetitive or otherwise unnecessary. But evidence is cumulative only when it “supports a fact established by the existing evidence.” Evidence, Black’s Law Dictionary (11th ed. 2019). So long as the Court is prepared to give Ms. Hill’s testimony any weight, her lack of credibility is not “established” and evidence impeaching her cannot be considered cumulative or repetitive.¹ Courts have underscored the noncumulative nature of additional evidence when a trial features a “swearing match” between witnesses on both sides. *See, e.g., English v. Romanowski*, 602 F.3d 714 (6th Cir. 2010) (rejecting state court’s conclusion that witness’s testimony was cumulative; the state court “failed to recognize that the trial was essentially a swearing match” between witnesses on both sides); *Montgomery v. Petersen*, 846 F.2d 407, 413, 415 (7th Cir. 1988) (holding that, given the “swearing match” between the witnesses, the uncalled witnesses were not cumulative because they would have “directly contradicted the state’s chief witness,” while providing the defense with a disinterested alibi witness who could have caused the jury to “view[] the otherwise impeachable testimony of the twelve [defense] witnesses in a different light”); *Nealy v. Cabana*, 764 F.2d 1173, 1174 (5th Cir. 1985) (holding that counsel’s failure to investigate and call alibi witnesses was prejudicial “[b]ecause the trial boiled

¹ If the Court were to decide pre-hearing that it cannot credit Ms. Hill over the sworn testimony of any juror, it is likely that the hearing would consist only of Court-conducted *in camera* examination of jurors. This would also avoid potential Fifth Amendment issues regarding Ms. Hill. It is unlikely the State would agree to that since it is likely the State can prevail **only** if the Court finds Ms. Hill to be credible.

down to a swearing match . . . and because the missing testimony might have affected the jury's appraisal of the truthfulness of the state's witness and its evaluation of the relative credibility of the conflicting witnesses").

Currently, defense counsel anticipates identifying the trial transcript and exhibits from trial for use at the evidentiary hearing. However, until such time as the State provides Mr. Murdaugh with its discovery in this matter, his counsel is unable to provide the Court with a complete list of exhibits and witnesses, or a list of subpoenas he needs. Once the State produces its discovery, defense counsel will supplement this response immediately to provide a complete list, including a list of subpoenas he needs, if any are needed. It is likely much of the information he would otherwise seek by subpoena has already been compiled by the State. To the extent more subpoenas are needed, it would expedite the process if the Court were to authorize Mr. Murdaugh's counsel to issue subpoenas duces tecum returnable before the evidentiary hearing or, depending on the recipient, to issue the requested subpoenas itself. Mr. Murdaugh at present does not anticipate requesting a subpoena for documentary discovery regarding any deliberating juror but cannot be certain before receiving discovery from the State.

The State has had months in which to use the tools available to law enforcement to conduct discovery regarding this motion as well as to investigate the numerous independent complaints of wrongdoing against Ms. Hill. It will be well prepared to bolster its witnesses and to impeach witnesses favorable to the defense. Mr. Murdaugh has been unable to conduct any discovery whatsoever. All he has are voluntary statements made by jurors and other witnesses willing to talk to his lawyers and information published by journalists. To be prepared to go forward on the January 29 date set for the evidentiary hearing, he urgently needs the State to produce its discovery and to receive authorization to issue his own subpoenas as soon as possible.

G. Jurors (and Judge Newman, if necessary) should be examined *in camera* by the Court, but other witnesses should be examined by counsel in open court.

The default method of examining witnesses at an adversarial proceeding is through questioning by counsel for the parties. See Rule 614(b), SCRE (“***When required by the interests of justice only***, the court may interrogate witnesses.” (emphasis added)). All witnesses should be so examined unless there is good cause to reserve examination to the Court. *Id.* Mr. Murdaugh believes good cause exists for the Court to conduct the examination of jurors, including the dismissed juror and alternate juror, itself, *in camera*, with a redacted transcript provided to the public. In addition to asking its own questions, the Court could accept suggested questions from the parties, in advance of the examination and during the examination, which the Court in its discretion may or may not ask. In addition to shielding jurors from appearing on television involuntarily, *in camera* examination is necessary because it will be difficult for a juror to testify without revealing personally identifying information like his or her name or the names of other jurors. By testifying *in camera*, jurors may speak freely with any personal information in their testimony redacted from the publicly available transcript. Further, jurors may be unsettled by being interrogated by the same lawyers they watched interrogate witnesses for six weeks. Examination by the Court avoids that issue.

The State agrees jurors should be examined by the Court, and has argued the Court should question them “with a mind to at least (1) whether the communication actually occurred and, if so, its context and substance; (2) the number of jurors exposed to the improper communication; (3) the weight of the evidence properly before the jury; and (4) the likelihood that curative measures were effective in reducing the prejudice.” Resp. Opp’n Mot. New Trial 6. Only the first topic is appropriate. The only relevant subject for juror examinations is whether Ms. Hill made improper communications on the merits of the case, including anything serving to corroborate or refute

testimony on that subject. The number of jurors exposed to the communications is irrelevant so long as it is at least one deliberating juror. *See Parker*, 385 U.S. at 366. The “weight of the evidence properly before the jury” and “the likelihood that curative measures were effective in reducing the prejudice” are entirely irrelevant under the controlling legal standard, *see Cameron*, 311 S.C. at 207–08, 428 S.E.2d at 12, and appear to solicit testimony inadmissible under Rule 606(b) of the South Carolina Rules of Evidence.

If testimony is needed from Judge Newman, Mr. Murdaugh believes it should also be conducted by the Court *in camera*, to preserve the dignity of his judicial office.

Mr. Murdaugh does not believe good cause exists to examine any other witness, including Ms. Hill, in any fashion other than the traditional means of attorney questioning in open court. Ms. Hill especially is an elected public official accused of malfeasance in office, whom Mr. Murdaugh has accused of violating his constitutional rights in a criminal proceeding, and who has voluntarily provided an affidavit directly contradicting Mr. Murdaugh’s claims. She does not need to be shielded from scrutiny in the same manner as anonymous jurors involuntarily summoned to serve. She is a witness against Mr. Murdaugh in a criminal case whom Mr. Murdaugh has a right to challenge in open court. *See* Rules 611(b) & 614(b), SCRE.²

² Additionally, although the Sixth Amendment Confrontation Clause does not apply to a motion for a new trial, *see, e.g., United States v. Boyd*, 131 F.3d 951, 954 (11th Cir. 1997), Article I, § 14 of the South Carolina Constitution provides that “any person charged with an offense shall enjoy the right . . . to be fully heard in his defense by himself or by his counsel.” This right would be violated if the Court were to credit Ms. Hill’s testimony against Mr. Murdaugh without allowing his counsel the opportunity to challenge her testimony through cross-examination. *Cf. State v. Hester*, 137 S.C. 145, 134 S.E. 885, 899 (1926) (observing the “right to cross-examine is one which must remain inviolate,” “[t]he power of cross-examination . . . certainly is one of the most efficacious, tests which the law has devised for the discovery of truth,” and it is “[o]ne of the most inestimable rights by which a man may maintain his defense” (internal quotation marks omitted)). However, if the Court were to decide Ms. Hill’s testimony cannot be credited, her testimony would not be relevant to any issue and Mr. Murdaugh would have no right to examine her.

H. Counsel for non-parties should not be permitted to participate in these proceedings.

Attorney Eric Bland has requested to participate in these proceedings as counsel for certain jurors who may be called to testify as witnesses. Mr. Murdaugh objects to Mr. Bland's request. This is a criminal proceeding brought by the State against the Defendant. Mr. Bland seeks a level of non-party participation (e.g., participating in status conferences) beyond even the rights afforded victims under Article I, § 24 of the South Carolina Constitution, and the jurors he represents are not crime victims. In discussing his request in the media, Mr. Bland stated on his podcast Cup of Justice, episode 61 (Dec. 26, 2023), that Justice Toal, the newly assigned presiding judge in this matter, "has friends sometimes to reward and enemies to punish" and "I worry about what procedures are going to be put in place, the fact that there was a status conference and you know I represent four jurors and I wasn't even told of that status conference, and I believe that my jurors have the right to legal representation in any type of proceeding dealing with Alex Murdaugh's verdicts where they're going to have their verdicts questioned." His stated intent is not to protect the personal interests of his clients as witnesses, but to advocate to sustain "their" verdict. To allow a publicity-seeking lawyer for non-victim private parties to intervene in this criminal case and advocate against Mr. Murdaugh as an additional opposing party would violate Mr. Murdaugh's procedural due process rights under Article I, § 3 of the South Carolina Constitution and the Fourteenth Amendment to the United States Constitution.

The jurors are simply witnesses with no more right to participate in this criminal proceeding than witnesses in any other criminal case. Unlike typical witnesses, they do have a right to a degree of anonymity so it could be appropriate to allow them to be heard through counsel if the Court were inclined to strip them of that anonymity. But neither party is asking the Court to do that, and the Court has made clear it is not inclined to do that. Mr. Murdaugh does not seek to subpoena telephone records or other personal records regarding them, and if he decided to do so

in the future, their lawyers of course could move to quash the subpoena. Otherwise, they have no cognizable interest in these proceedings, and if there is such an interest the Attorney General would be adequate to assert it.

The reason to hold an evidentiary hearing on Defendant's motion for a new trial is to protect Mr. Murdaugh's constitutional right to a fair judicial proceeding. It would defeat that purpose if the proceedings were allowed to devolve into a speaker's corner for lawyers who want to appear on television even more than they already do. Mr. Murdaugh therefore asks the Court to limit the participation of any witness-retained lawyer to the extremely limited role traditionally allowed to a lawyer representing an innocent bystander witness in a criminal case. Further, he requests that the Court order the Clerk of Court not to accept any filings in this matter from any non-parties without leave of the Court obtained prior to filing.

III. Conclusion

For the foregoing reasons, Mr. Murdaugh respectfully submits that when Ms. Hill's jury tampering is proven at the evidentiary hearing, the Court must grant the motion for a new trial.

Respectfully submitted,

s/ Richard A. Harpootlian

Richard A. Harpootlian, SC Bar No. 2725

Phillip D. Barber, SC Bar No. 103421

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

James M. Griffin, SC Bar No. 9995

Margaret N. Fox, SC Bar No. 76228

GRIFFIN HUMPHRIES LLC

4408 Forest Drive (29206)

Post Office Box 999
Columbia, South Carolina 29202
(803) 744-0800
jgriffin@griffinhumphries.com
mfox@griffinhumphries.com

Attorneys for Richard Alexander Murdaugh

January 3, 2024
Columbia, South Carolina.

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Jan 03 2024

S.C. SUPREME COURT

EXHIBIT A

(Emails from B. Hill to C. Waters, C.
Jewell, & G. Ghent, February 21, 2023)

From: "Rebecca Hill" <rhill@colletoncounty.org>
Sent date: Tue, 21 Feb 2023 13:44:25 -0500 (EST)
Subject: Fwd: Website Inquiry -Murdaugh trial
To: "Creighton Waters" <CWaters@scag.gov>, "Carly Jewell" <CarlyJewell@scag.gov>, "Ghent, Charles" <cghent@sled.sc.gov>

Rebecca "Becky" H. Hill

Clerk of Court
Colleton County
P.O. Box 620
Walterboro, SC 29488
(843) 549-5791 Ext. 1101
Cell: (843) 908-1462

----- Forwarded message -----
From: **Do Not Reply** <noreply@jotform.com>
Date: Tue, Feb 21, 2023 at 1:00 PM
Subject: Website Inquiry -Murdaugh trial
To: <clerkofcourt@colletoncounty.org>

Murdaugh trial

Name	Andy Gibbs
Email Address	andy@andygibbs.com
Callback Number	(530) 200-5511
To	Courthouse
Recipient	clerkofcourt@colletoncounty.org
Subject	Murdaugh trial
Message	For: Creighton Waters - forensic research witness is ignoring the standard crouching / stalking posture of a 6'3" person would use to quietly approach the target. His assumption assumes someone simply walking up to a target to shoot. On cross - ask what height the 300 blackout would be if stalking a target.
Embedded	Yes

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RoA_0993

From: "Rebecca Hill" <rhill@colletoncounty.org>
Sent date: Tue, 21 Feb 2023 15:44:10 -0500 (EST)
Subject: Fwd: Website Inquiry -Defense witness Mike Sutton
To: "Carly Jewell" <CarlyJewell@scag.gov>

here's another one.

Rebecca "Becky" H. Hill

Clerk of Court
Colleton County
P.O. Box 620
Walterboro, SC 29488
(843) 549-5791 Ext. 1101
Cell: (843) 908-1462

----- Forwarded message -----

From: **Do Not Reply** <noreply@jotform.com>
Date: Tue, Feb 21, 2023 at 3:25 PM
Subject: Website Inquiry -Defense witness Mike Sutton
To: <clerkofcourt@colletoncounty.org>

Defense witness Mike Sutton

Name	Mike Loughran
Email Address	loughranmike@yahoo.com
Callback Number	(206) 369-1818
To	Courthouse
Recipient	clerkofcourt@colletoncounty.org
Subject	Defense witness Mike Sutton
Message	I am a former paratrooper qualified US Army Veteran and left the service at a rank of Captain. I regularly shoot AR15 style rifles and have assembled them, built them, changed barrels & calibers, handguards and components. I am very familiar both with the weapon platform as well as ballistics as I reload my own ammunition for AR-15 calibers. This witness's testimony that the shooter had to be 5'2 - 5'4" is frankly pathetic. His projections rely solely on the assumption that the shooter was standing upright when shooting. He ignores the possibility(probability) that the shooter was either on one knee or standing but in a crouched position with his knees bent significantly. It is very likely an attacker would have been crouched low to conceal their presence at least at the start of the killings. He also ignores that the actual rifle could have anywhere from a 7" to 24" barrel and if it was outfitted with a collapsible stock all of his assumptions would have to change. I am hopeful you are ready to rebut these assertions as I find them laughable.
Embedded	Yes

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RoA_0994

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT E

(Respondent's Brief)

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)

State of South Carolina,

) Case Nos: 2022-GS-15-00592
) 2022-GS-15-00593
) 2022-GS-15-00594
) 2022-GS-15-00595

v.

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Jan 03 2024

S.C. SUPREME COURT

Richard Alexander Murdaugh,
Defendant.

) **STATE'S PRE-HEARING BRIEF IN**
) **OPPOSITION TO DEFENSE MOTION FOR A**
) **NEW TRIAL**
)
)

Many of the legal and factual issues in contention have been addressed at considerable length by the State in its Response to Defendant's Motion for a New Trial and Motions to Strike filed November 7, 2023 (hereafter "State's Response to Motion"). The following is a summary of the various issues the State contends need to be litigated for the motion for a new trial.

I. BURDEN OF PROOF: Murdaugh Must Carry the Burden of Proving Both that an Improper Contact Occurred with the Jury and that He was Actually Prejudiced Thereby.

First is the appropriate burden and standard to apply to a motion for a new trial based on allegations of improper contact with the jury by clerk of court or court official. Case law and general respect for the burdens of public service on a jury – particularly in a case as lengthy and complicated as this one – preclude jurors from being subjected to an invasive and burdensome inquiry as if they were themselves charged and on trial.

The burden rests with the movant, in this case Murdaugh, to prove that an improper contact occurred between at least one juror who deliberated and a non-juror, and further that he was actually prejudiced by that improper contact. Murdaugh must make a *prima facie* showing that he can meet that burden before an evidentiary hearing

may be granted, and as part of that showing must establish that he was not contemporaneously aware of the issue alleged and failed to raise it. **{See State's Response to Motion at 2-4}**. See also Rule 29, SCRCrimP ("Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence").

Murdaugh argues that because he alleges improper contacts by a court official, prejudice must be presumed under *Remmer v. United States*, 347 U.S. 227 (1954), and that the burden of proof thus shifts to the State to prove lack of any prejudice. However, *Remmer's* "presumption of prejudice" standard was abrogated by the standard set in *Smith v. Phillips*, 455 U.S. 209, 215-16 (1982) (the remedy is the opportunity to prove actual bias); and in any event has been also recently rejected by the Supreme Court of South Carolina in *State v. Green*, 432 S.C. 97, 100, 851 S.E.2d 440, 441 (2020). Accordingly, Murdaugh bears the burden to show prejudice. **{See State's Response to Motion at 2-4}**.

II. EVIDENTIARY HEARING IS UNNECESSARY: Because Murdaugh Has Failed to Make a *Prima Facie* Showing of Prejudice, No Evidentiary Hearing is Necessary.

Indeed, the State's next argument is that no further evidentiary inquiry is necessary as Defendant failed to make a *prima facie* showing required to necessitate an evidentiary hearing. Not a single juror who actually deliberated on the case indicates that their deliberations or verdict was in any way affected by the improper contacts alleged. The jurors were polled individually and affirmed their verdicts on the record. **{See State's Response to Motion at 21-22}**.

Murdaugh offers with his motion an affidavit from only one juror who deliberated: Juror 630. In the affidavit, Juror 630 attributes statements to Clerk Hill which resemble

arguments made by the State, but she does not claim she was influenced by Clerk Hill, but rather merely felt pressure from other jurors. Due process is not implicated by pressure upon one juror by other jurors. See, generally *State v. Franklin*, 341 S.C. 555, 534 S.E.2d 716 (Ct. App. 2000) (due process not implicated where other jurors verbally abused a holdout for at least four hours). Thus, Juror 630's affidavit is affirmatively inconsistent with a *prima facie* showing necessary for an evidentiary hearing. **{See State's Response to Motion at 19-20}.**

Juror 785 – the so-called “egg juror” and landlord to Juror 630 – did not participate in deliberations and was removed for her own violations of the court's instructions not to discuss the case with third-parties, and lack of forthcoming candor regarding those discussions. Further, when asked by Judge Newman at trial if Clerk Hill discussed anything about the case with anybody on the jury, Juror 785 replied “**not that I'm aware of.**” **{See State's Response to Motion at 10-16; 20; 23} {Trial Tr. 5553, II. 22-25}.** The affidavits in the defense motion on their own do not support a new trial and the motion should be denied on the pleadings.

Moreover, none of the other jurors who deliberated who spoke to SLED after Murdaugh filed his motion indicated their verdict was in any way based on anything but a fair consideration of the evidence, further supporting that the motion should be rejected on the pleadings. **{See State's Response to Motion at 21-22}.**

Nonetheless, Murdaugh argues that a hearing is necessary, seemingly in order to impeach Clerk Hill. That a potential witnesses may be impeachable is inconsequential to whether Defendant has made a *prima facie* showing. The jurors found Murdaugh guilty, affirmed their verdict when polled, and none have alleged Clerk

Hill influenced them. **{See State's Response to Motion at 24}**. Thus, no evidentiary hearing is necessary and the motion should be denied.

III. JUDICIALLY CONDUCTED, LIMITED QUESTIONING: Should the Court Deem an Evidentiary Hearing Necessary, the Procedure should be Judicially Guided, and the Scope of Relevant Evidence is Limited

In the event the Court deems an evidentiary hearing necessary to resolve the motion, any inquiry to jurors should be limited and judicially conducted to minimize intrusion into the lives of those who performed such public service in this case.

Assuming the Court rules as argued above that Murdaugh must show prejudice, the following questions to deliberating jurors, based in what the record on appeal reflects the trial court used in *State v. Green*, 432 S.C. 97, 851 S.E.2d 440 (2020), should be sufficient, with additional inquiry to be conducted only if necessary:

1. On March 2, 2023, did you answer when polled that your verdict was guilty on each of the charges?
2. As you were instructed to do by Judge Newman, was your verdict on March 2, 2023 based solely on the testimony, evidence, law, and arguments of counsel as presented at the trial?

This is sufficient to determine whether there was any improper effect on the verdict and minimizes intrusion on the jury, while preserving the focus of the proceedings upon the allegation actually raised by Murdaugh's motion. **{See State's Response to Motion at 5-6}**.

Rule 606(b), SCRE, also makes this principle clear:

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. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

In the event any juror's answer to the above questions raises the need for additional inquiry, then additional inquiry would be warranted with questions from the Court, questions suggested to the Court by counsel, and questioning by counsel, as well as evidence from additional relevant witnesses.

Defendant wishes to make central his focus on the credibility of Clerk Hill as a potential witness, specifically in the context of a Facebook post supposedly involving Juror 785's ex-spouse. However, Juror 785's improper contact with third parties was the catalyst of the inquiry into the juror, and the trial judge specifically stated on the record that nothing to do with the Facebook post had anything to do with excluding the juror. **{Trial Tr. 5740-43}**. Every portion of Murdaugh's motion relating to Facebook posts is a red herring, and the State has moved to strike every part of the motion related thereto. **{See State's Response to Motion at 18-19}**.

Murdaugh attempt to challenge his own valid conviction cannot be a vehicle to issue witness subpoenas to those with no testimony relevant to the underlying question of whether improper contacts occurred and whether prejudice flowed therefrom. The relevant questions are for the jurors, and their questioning must be judicially directed if it must occur at all.

IV. POTENTIAL EXHIBITS SHOULD BE LIMITED

The State proposes few exhibits are relevant in any potential evidentiary hearing. The State asks the Court consider as exhibits or otherwise part of the record the transcript of the trial, which in particular includes Judge Newman's repeated instructions

to the jury to base their decision solely on the evidence, the *in camera* hearings regarding the removal of Juror 785, and the jury's verdict and affirmation upon polling.

Depending on the Court's ruling as to the nature of the inquiry to be conducted and only if the results of any limited questioning of the jurors requires it, additional examination may be necessary from jurors and other witnesses. Exhibits could also include recorded interviews, written statements, and memoranda of interview with the jurors, as well as interviews and testimony from clerk staff, and others conducted by SLED following Murdaugh's motion for a new trial.

Finally, as the State noted during the conference call, it is prepared to share the post-trial interviews with Murdaugh's attorneys, but must request a protective order as discussed during the conference call and provided concurrently with this filing. The State also concurrently files a Motion for Reciprocal Discovery to be provided similar information gathered by the defense during the preparation of and subsequent to the filing of their motion for a new trial.

CONCLUSION

WHEREFORE, the State respectfully requests that this Court summarily deny Murdaugh's motion for a new trial or, barring that, convene an evidentiary hearing consistent with that conducted in *State v. Green* and, upon hearing the testimony of the jurors and witnesses presented, find Murdaugh's allegations to be not credible and deny his motion for a new trial.

Should the Court desire more thorough briefing on any of the issues raised herein, or in the State's Response to Motion, the State will of course oblige.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

S. CREIGHTON WATERS
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:

ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

1/3/2023

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT F

(Appellant's Second Brief)

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

State of South Carolina,

v.

Richard Alexander Murdaugh,

Defendant.

**COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

Indictment Nos. 2022-GS-15-00592, -593,
-594, and -595

**DEFENDANT'S PRE-HEARING BRIEF
RE: MOTION FOR A NEW TRIAL**

Defendant Richard Alexander Murdaugh, through undersigned counsel, pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure, hereby re-submits this pre-hearing brief as the Court directed on January 4, 2024.

I. Introduction

Mr. Murdaugh was indicted for the murder of his wife Maggie and son Paul on July 14, 2022. His murder trial began January 23, 2023. The presiding judge was the Honorable Clifton Newman. The trial ran for six weeks, ending with convictions on the evening of March 2, 2023, and sentencing on March 3, 2023.

On October 27, 2023, Mr. Murdaugh filed a motion for a new trial based on after-discovered evidence, having obtained leave from the Court of Appeals to suspend his appeal of his convictions to file the motion. His motion alleges that Rebecca Hill, the elected Clerk of Court for Colleton County, had extensive private communications with members of the jury during trial. This allegation was supported by sworn affidavits of jurors and a witness to juror interviews, testimony at *in camera* proceedings, and other evidence including Ms. Hill's own book. The subject matter of Ms. Hill's alleged communications was the evidence being presented at trial. Mr. Murdaugh alleges that an elected state official deliberately violated his constitutional right to a fair trial before an impartial jury. If that allegation is proven, the law requires a new trial.

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Jan 10 2024

S.C. SUPREME COURT

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On December 21, 2023, the Court instructed the parties to submit pre-hearing briefs by January 3, 2024. On January 4, 2024, the Court instructed the parties to resubmit their briefs answering the following questions directly:

1. List all potential witnesses you plan to call during the evidentiary hearing.
 - a. List any objections or challenges you plan to make to opposing party's witnesses. I understand you may not have an exact list but you can predict the opposing side's intentions as far as witnesses.
2. List all exhibits you plan to introduce during the evidentiary hearing.
 - a. Again, list any objection or challenges to opposing party's exhibits.
3. Clarify your argument as to whether the Defendant is entitled to new trial or not.
 - a. Specifically, clarify the argument you will make during the evidentiary hearing. I've already decided an evidentiary hearing will occur. The mere fact that I have set the matter to include an evidentiary hearing does not mean I have decided any issue in the case at the present.
4. Any procedural issues which you feel may affect the evidentiary hearing:
 - a. Issues regarding the subpoena of specific witnesses.
 - b. Your position regarding how the court should receive testimony. Whether any witness testimony should be in conducted in camera rather than in open court.
5. Any other issues regarding the conduct for the hearing of the merits of the motion.

Mr. Murdaugh submits this revised brief organized under the issues the Court identified. After his response to point number five, Mr. Murdaugh provides, for issue preservation purposes, responses to arguments the State asserted in its filed memoranda which the Court appears to have rejected or deemed moot.

II. List all potential witnesses you plan to call during the evidentiary hearing.

In a criminal proceeding, the State must produce evidence proving guilt beyond a reasonable doubt. The State has powerful investigative tools to marshal evidence against the accused. At trial, it is decided whether its evidence meets that demanding standard. Thus, the defendant typically does not need discovery beyond production by the State of the evidence against him. Similarly, in a civil proceeding, a party asserting a claim has the burden of production to produce evidence supporting its claim and the burden of persuasion to show it has met the legal standard for the relief it seeks. Thus, in civil litigation the adjudicative proceeding is preceded by a period of discovery, in which compulsory process is available to the parties to marshal the evidence they will present to the factfinder.

This is a criminal case, but the instant motion places Mr. Murdaugh in the position of a plaintiff in a civil proceeding. Mr. Murdaugh needs discovery because he has an affirmative case to prove. As the movant, Mr. Murdaugh has the burden of proving his claim for relief. Although no South Carolina case states the standard of proof applicable in this situation, the general rule for new trial motions based on unauthorized communications with jurors is that the standard of proof is a preponderance of the evidence. Mr. Murdaugh must make “two showings, by a preponderance of the evidence: [1] [extrajudicial] contact or communications between jurors and unauthorized persons occurred, and [2] the contact or communications pertained to the matter before the jury.” *E.g., State v. Berrios*, 129 A.3d 696, 713 (Conn. 2016) (quoting *Ramirez v. State*, 7 N.E.3d 933, 939 (Ind. 2014)).

Yet it is the State, and not Mr. Murdaugh, which has had the opportunity to conduct discovery for the past several months regarding Mr. Murdaugh’s claim using the tools available to law enforcement. It is well prepared to bolster its witnesses and to impeach witnesses favorable to the defense. Mr. Murdaugh has been unable to conduct any discovery whatsoever. All he has

had are voluntary statements made by jurors and other witnesses willing to talk to his lawyers and information published by journalists. He received discovery from the State less than a week ago. At present it is impossible for him to state with certainty which witnesses he will call and which documents he will introduce as exhibits during the testimony of those witnesses.

With that important caveat, at present, Mr. Murdaugh plans to call the following witnesses in his case-in-chief during the evidentiary hearing:

- Juror 254
- Juror 630
- Juror 741
- Juror 785
- Rhonda McElveen, Barnwell County Clerk of Court

The State must call Ms. Hill to deny the allegations that she tampered with the jury. Depending on Ms. Hill's testimony, Mr. Murdaugh might call some of the following witnesses as rebuttal witnesses:

- Laura Hayes, former deputy Clerk of Court in Colleton County
- Jeffrey Hill, former IT Director for the Colleton County Courthouse
- The Honorable Clifton Newman, retired Circuit Court Judge
- Tim Stone, ex-husband of Juror 785
- Timothy Stone, original poster of the FB message presented to Judge Newman during trial and included in the Court's Exhibit 4
- Lori Weiss, employee of the Clerk of Court in Colleton County

A. List any objections or challenges you plan to make to opposing party's witnesses. I understand you may not have an exact list but you can predict the opposing side's intentions as far as witnesses.

Mr. Murdaugh believes the State will call jurors, bailiffs, and court staff who were never or almost never in the jury room in which Ms. Hill made her jury-tampering statements, to present a cascade of witnesses saying they never heard Ms. Hill make inappropriate statements in the jury room, to imply by false logic that she therefore did not make such statements.

When the jurors retired from the courtroom during trial, they spread across two different rooms. Jurors 254, 572, 578, 589, 630, 741, and 785 were in the actual courthouse jury room. Jurors 193, 326, 530, 544, 729, 826, and 864 were in Judge Perry Buckner's office. Ms. Hill made her jury-tampering statements to jurors in the jury room. Mr. Murdaugh has no objection to the State calling other jurors who were in that room to testify that they never heard Ms. Hill make inappropriate statements. But Mr. Murdaugh objects to calling jurors who were in a different room to testify that they never heard Ms. Hill make inappropriate statements. There are millions of people in South Carolina who did not hear Ms. Hill say what certain jurors heard her say, because they were not in the room with them. Their testimony is not probative of whether Ms. Hill in fact said what several jurors have said she said when they were together in the same room at the same time and is therefore inadmissible. *See* Rule 401, SCRE (providing that evidence is relevant if it is probative of a material fact) & Rule 402, SCRE ("Evidence which is not relevant is not admissible."). Calling jurors who were in a separate office, or bailiffs or court staff who were stationed in different parts of the courthouse, is hardly more probative than calling jurors or court staff from other courthouses in South Carolina. Therefore, if the Court is inclined to allow the State to call jurors 193, 326, 530, 544, 729, 826, or 864, before allowing the State to ask any questions about what Ms. Hill may have said in the jury room it should require the State to lay a foundation that the juror was actually or at least usually in the jury room. *See* Rule 602, SCRE

(“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”).

Further, Mr. Murdaugh will object to any questions posed to jurors that seek to invade the province of their deliberations in violation of Rule 606(b) of the South Carolina Rules of Evidence. Specifically, he would object to questions such as, “Would your decision have been the same if you had not been exposed to improper communications from the Clerk of Court, or any third party?”

Mr. Murdaugh also plans to call Rhonda McElveen, the Barnwell County Clerk of Court who assisted at the trial. The State presumably would object to her for the same reason Mr. Murdaugh objects to calling persons who were not in the jury room to say they never heard something allegedly said in the jury room—she was not in the jury room. Mr. Murdaugh however believes, based on her SLED interview, that she will corroborate expected juror testimony about Ms. Hill’s statements because she will testify that Ms. Hill made substantively identical statements to her during trial, and because she received several complaints from court staff about Ms. Hill having inappropriate and excessive contacts with jurors. She therefore may have personal knowledge of facts probative of whether Ms. Hill made the statements jurors say she made. If the State objects to her testimony, Mr. Murdaugh would ask the Court to review her videorecorded interview with SLED and decide for itself whether her testimony would assist the Court as factfinder. If the Court does so, however, it is important to review the video recording of her entire interview and not the SLED memorandum summarizing it. As explained in the discussion of the mode of witness examination, *infra*, the State’s memoranda summarizing witness interviews are sometimes grossly inaccurate, and when they are it is always in a manner that favors the State.

III. List all exhibits you plan to introduce during the evidentiary hearing.

The caveat about not having discovery applies even more forcefully regarding exhibits since exhibits are, typically, obtained through discovery. With that important caveat, at present, Mr. Murdaugh plans to introduce the following exhibits in his case-in-chief during the evidentiary hearing:

- Affidavits of jurors 630 and 785.
- Recorded interviews with SLED of jurors 254 and 741, and Rhonda McElveen

It is impossible to specifically list all exhibits to be used in the cross-examination of Ms. Hill without knowing her testimony, but the categories of exhibits will be her emails, text messages, telephone records, her book, recordings of her public statements and media interviews, her affidavit in this matter, SLED's memorandum for her interview (her counsel would not permit SLED to record the interview), and Court's exhibit number 4 from trial regarding the Facebook post issue.

A. Again, list any objection or challenges to opposing party's exhibits.

Reserving all objections to calling particular witnesses or asking particular questions, Mr. Murdaugh does not object to the use of witnesses' affidavits, written statements, or interview recordings as exhibits when examining the witness who gave the affidavit, statement, or interview. Mr. Murdaugh does not know what other documents the State may seek to introduce as exhibits.

The State may object that exhibits used to impeach Ms. Hill are inadmissible under Rule 608(b) of the South Carolina Rules of Evidence, which allows inquiry on cross-examination into specific instances of conduct probative of truthfulness or untruthfulness but prohibits proof of such instances by extrinsic evidence. But that rule does not apply to the witness's prior statements, which if denied may be proven by extrinsic evidence. Rule 613(b), SCRE; *see State v. Fossick*, 333 S.C. 66, 69–70, 508 S.E.2d 32, 33 (1998) (“The trial judge ruled the evidence inadmissible

for impeachment under Rule 608(b). . . . Since [the witness] denied the statement, the proffered extrinsic evidence was admissible under Rule 613(b). We conclude the trial judge erred”). Ms. Hill’s emails, text messages, book, media interviews, etc., are her own statements and so if she denies them are provable by extrinsic evidence. SLED’s interview memorandum similarly is a record of her prior statement, evidence of which is not hearsay because the State is a party-opponent, Ms. Hill is an elected state official, and her statement to SLED concerns a matter within the scope of her employment as a state official and was made during the existence of that employment. *See* Rule 801(d)(2)(D), SCRE.

IV. Clarify your argument as to whether the Defendant is entitled to new trial or not.

A. Mr. Murdaugh does not need to show actual bias on the part of any juror to obtain a new trial.

If Mr. Murdaugh proves his allegation that Ms. Hill communicated with the jury about the evidence presented during his murder trial, the standard for deciding whether to grant a new trial is **not** whether the Court believes the outcome of the trial would have been the same had Ms. Hill’s jury tampering not occurred. “A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influence.” *State v. Johnson*, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990) (internal quotation marks omitted). 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.” *State v. Cameron*, 311 S.C. 204, 207–08, 428 S.E.2d 10, 12 (Ct. App. 1993) (quoting *Holmes v. United States*, 284 F.2d 716, 718 (4th Cir. 1960)) (emphasis added). The law requires the “subject matter” of the communication to be harmless— “clearly” harmless. *Id.*

Otherwise, a new trial must be granted. Asking the jury what it wants for lunch is clearly harmless. Telling it not to believe the defendant when he testifies is not.

The issue before the Court is a structural issue in Mr. Murdaugh's trial, not a failure to impanel unbiased jurors. Where a new trial is sought based on biases or partiality jurors brought with them into the trial, required standard is to show actual bias, whether those biases were facts jurors concealed during voir dire (*e.g.*, *State v. Woods*, 345 S.C. 583, 550 S.E.2d 282 (2001)), were biases created by state action during voir dire (*e.g.*, *State v. Bryant*, 354 S.C. 390, 581 S.E.2d 157 (2003)), were biases resulting from jurors reading newspapers or other unauthorized materials during trial (*e.g.*, *State v. Stone*, 290 S.C. 380, 350 S.E.2d 517 (1986)) or initiating inappropriate communications during trial (*e.g.*, *Smith v. Phillips*, 45 U.S. 209 (1982)), or the like.

The present case is different because a state official instructed jurors how to view the defense case outside the presence of the court, the Defendant, and his counsel, and in other ways deliberately and surreptitiously used her official authority to direct the verdict to her preferred outcome. This is, fortunately, a vanishingly rare event, but it is one that requires a new trial.

The *Cameron* court's distinction between the communication being harmless and the subject matter of the communication being harmless and its requirement that a new trial be granted unless the latter is established recognizes that deliberate jury tampering by a court official cannot be cured or excused by the strength of the evidence presented at trial or jurors offering their own subjective opinions regarding their own biases. Even if every juror were to testify that he or she would have reached the same verdict regardless of Ms. Hill's tampering, a new trial is required if it is proven that Ms. Hill communicated with jurors about the merits of the evidence presented. Sustaining a conviction based on the Court's opinion the strength of the evidence against the accused regardless of improper external influences on the jury from court officials about the merits

of the case would effectively be a directed verdict for the prosecution—a statement that whatever happened at trial simply does not matter because the evidence can admit only one result regardless. That would constitute structural error. *Cf. Neder v. United States*, 527 U.S. 1, 34 (1999) (Scalia, J., concurring in part) (noting that even if “the judge certainly reached the ‘right’ result,” “a directed verdict against the defendant . . . 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” (emphasis in original)).

For example, in *Parker v. Gladden*, a bailiff told a juror in a murder trial “that wicked fellow, he is guilty.” 385 U.S. 363, 363 (1966) (per curiam). The Supreme Court of Oregon held the statement did not require a new trial because it was not shown the statement prejudiced the outcome of the trial. The U.S. Supreme Court reversed, holding “[t]he evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel,” and “[w]e have followed the undeviating rule, that the rights of confrontation and cross-examination are among the fundamental requirements of a constitutionally fair trial.” *Id.* at 364–65 (internal quotation marks and citations omitted).

In *Parker*, the state also argued that the bailiff’s statement was harmless because ten members of the jury never heard his statement and Oregon law at that time allowed a guilty verdict by ten affirmative votes of the twelve jurors. The Supreme Court rejected that reasoning, and, after questioning whether the factual record supported that argument, stated that in “any event, petitioner was entitled to be tried by 12, not 9 or even 10, impartial and unprejudiced jurors.” *Id.* at 366. That reasoning accords with the reasoning in *Cameron* 27 years later—the right being

protected is not the right to a “correct” verdict but the constitutional right to trial before a fair and impartial jury free from state officials’ improper influences. What matters is what was in fact said to the jurors by the state official, not a counterfactual analysis of what probably would have happened had that not in fact been said.

Our Supreme Court more recently touched on this point in *State v. Green*, 432 S.C. 97, 851 S.E.2d 440 (2020). In *Green*, during jury deliberations a juror asked a bailiff “what would happen in the event of a deadlock, and he responded the judge would likely give them an *Allen* charge and ask if they could stay later.” *State v. Green*, 427 S.C. 223, 229, 830 S.E.2d 711, 713 (Ct. App. 2019), *aff’d as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020) (citation omitted). The Court of Appeals held the bailiff’s comments were presumptively prejudicial because of his official position, but that the State rebutted that presumption by showing for various reasons that the remark did not in fact influence the outcome of the jury’s deliberations. *Id.* at 236, 830 S.E.2d at 717. The Supreme Court affirmed but modified the decision to correct the Court of Appeals’ reasoning. The communication was not prejudicial not because it did not in fact change the verdict, instead, it was not prejudicial because the subject matter of the communication was harmless: “The bailiff’s actions here—though improper—did not touch the merits, but dealt only with the procedural question of how the judge might handle a jury impasse that apparently never materialized.” *Green*, 432 S.C. at 100, 851 S.E.2d at 441. In other words, a bailiff presuming to tell the jury that if it is deadlocked, the judge will instruct them to keep deliberating is improper but likely harmless because the subject matter is procedural or logistical, rather than to the merits of the case.

Of course, the allegations in the instant motion—that a state official told the jury not to believe the defendant’s defense or his testimony when he testified in his own defense—

indisputably regard the merits of the case. The extensive, deliberate, and self-interested jury tampering in which Ms. Hill allegedly engaged far exceeds the simple bailiff mistakes that forced a retrial in *Cameron*, where “a bailiff’s misleading response to a juror’s question about sentencing options compromised the jury’s impartiality because it left the impression that their verdict could not affect the trial court’s sentencing discretion,” or in *Blake by Adams v. Spartanburg General Hospital*, where a bailiff told a juror “that the trial judge ‘did not like a hung jury, and that a hung jury places an extra burden on taxpayers.’” See *State v. Green*, 427 S.C. at 237, 830 S.E.2d at 717–18 (citing 311 S.C. at 208, 428 S.E.2d at 12 and quoting 307 S.C. 14, 16, 413 S.E.2d 816, 817 (1992)).

B. The State misstates the controlling legal standard and provides no authority supporting its mistaken position.

In response to Mr. Murdaugh’s motion for a new trial, the State incorrectly asserts that Murdaugh “must show both that the alleged improper communications occurred and that jurors were actually biased as a result.” Resp. Opp’n Mot. New Trial 3 n. 2. The State can cite no authority supporting that proposition. The State’s response includes citations to several cases purportedly supporting its position, but not one cited case actually supports it.

State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998): The State provides no parenthetical explanation of how *Kelly* supports its position because the case has nothing to do with the present motion. In *Kelly*, a juror was accused of misconduct, not a court official. During the guilt phase of a capital trial, a juror provided a pamphlet purportedly expressing God’s views on capital punishment to other jurors in the jury room. The trial judge dismissed the offending juror but determined that a mistrial was not warranted because it was not relevant to the issues in the guilt phase of the trial and because “no other juror had been exposed to the contents of this pamphlet.” *Id.* at 141, 502 S.E.2d at 104. The Supreme Court affirmed. Chief Justice Finney and Justice Toal

dissented, arguing “the inappropriate possession and use of the extraneous pamphlet by jury members so tainted the jury that its contents affected the ability of the jury to be fair and impartial at both the guilt and penalty phases of appellant’s bifurcated trial.” *Id.* at 150, 502 S.E.2d at 109. Regardless, as in the *Holmes* case that provides the controlling legal standard quoted in *Cameron*,

Here there is more than jury misconduct in reading forbidden matter. There 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. When there has been such a communication, 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.

Holmes, 284 F.2d at 718 (emphasis added).

Smith v. Phillips, 45 U.S. 209 (1982): This case says nothing about the standard for granting a new trial when a state official tampers with the jury. In *Smith*, the prosecution failed to disclose that a juror had, during trial, applied for employment as an investigator in the prosecutor’s office. The U.S. Supreme Court held “[t]his Court has long held that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias,” and agreed with the state courts and federal district court that no actual bias was proven at the hearing. *Id.* 455 U.S. at 214–15. It reversed the U.S. Court of Appeals for the Second Circuit on the issue of whether the prosecution’s failure to disclose the letter was misconduct necessitating a new trial. But the issue in the instant motion is not whether a particular juror had an undisclosed bias or whether the prosecution concealed any pertinent information.

State v. Green, 432 S.C. 97, 851 S.E.2d 440 (2020): As explained above, in *Green* the Court held that an improper procedural comment by a bailiff to a jury was harmless because it did not bear on the merits. There is no suggestion in *Green* that a comment by a state official that did bear on the merits of the case could also be harmless. Any such assertion would be precluded by the U.S. Supreme Court’s holding *Parker v. Gladden*, discussed above but notably not mentioned at

in the State's response despite also being discussed in Mr. Murdaugh's initial motion. The *Green* court did reasonably decline to extend the presumption in *Remmer v. United States* that “any private communication, contact, or tampering . . . with a juror during a trial about the matter pending before the jury is . . . deemed presumptively prejudicial” to situations where the communications at issue “did not touch the merits” of the case on trial. *Id.* at 99–100, 851 S.E.2d at 441 (quoting 347 U.S. 227 (1954)). Instead, it reversed the Court of Appeals application of *Remmer* prejudice and instead followed the reasoning of *Cameron*: the inquiry should focus on the subject matter of the improper communication rather than presuming all improper communications are prejudicial and then requiring the State to rebut the presumption even where the communications did not bear on the merits of the case. *Id.* at 99–101, 851 S.E.2d at 441. This has no relevance here because Ms. Hill's alleged statements to jurors indisputably bore on the merits.

State v. Cameron, 311 S.C. 204, 428 S.E.2d 10 (Ct. App. 1993): The State cites *Cameron* for the unremarkable proposition “[n]ot every inappropriate comment by a member of court staff to a juror rises to the level of constitutional error,” Resp. Opp'n Mot. New Trial 3, but in a footnote claims Mr. Murdaugh's citations to *Cameron* for the controlling legal standard cite to a “portion of the opinion which does not state the legal standard, but rather quotes a portion of a 4th Circuit Court of Appeals opinion inconsistent with the standard acknowledged by *Cameron* and more subsequently clarified in *Smith* and most recently in *Green*,” *id.* at 3 n.2. That assertion only makes sense if the State did not expect the Court to read the *Cameron* opinion. The entire portion of the *Cameron* opinion that follows its factual recitation is quoted below:

The trial judge ruled that the jury properly decided that the length of sentence he might impose was not their concern. He further ruled that the short colloquy between the bailiff and the forelady could not have in any way influenced the jury to refuse to recommend mercy.

A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature. *State v. Johnson*, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990); *State v. Wasson*, 299 S.C. 508, 511, 386 S.E.2d 255, 256 (1989); *State v. Salters*, 273 S.C. 501, 504, 257 S.E.2d 502, 504 (1979). The mere fact, however, that some conversation occurred between a juror and a court official would not necessarily prejudice a defendant. *State v. Goodwin*, 250 S.C. 403, 405, 158 S.E.2d 195, 197 (1967).

In this case, “[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. When there has been such a communication, 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.” *Holmes v. United States*, 284 F.2d 716, 718 (4th Cir. 1960); see *Blake v. Spartanburg General Hospital*, 307 S.C. 14, 413 S.E.2d 816 (1992).

While the trial court adequately instructed the jury on the verdicts of guilty with and without mercy, the jury was obviously confused as to the length of the respective sentences. In this case, the right to fix punishment or make a recommendation that would place punishment in the discretion of the court rested exclusively with the jury. *State v. Brooks*, 271 S.C. 355, 359, 247 S.E.2d 436, 438 (1978); *State v. McGee*, 268 S.C. 618, 620, 235 S.E.2d 715, 716 (1977). The bailiff’s response to the forelady, that they should not worry if they were deadlocked because the judge was fair, was misleading. It tended to lessen the jury’s sense of responsibility by implying that if they rendered a verdict of guilty without mercy, the judge had some discretion in sentencing. “Jurors are simply not to consider the opinions of neighbors, officials or even other juries.” *State v. Thomas*, 287 S.C. 411, 413, 339 S.E.2d 129, 129 (1986) (quoting *State v. Smart*, 278 S.C. 515, 526, 299 S.E.2d 686, 693 (1982), *cert. denied*, 460 U.S. 1088, 103 S. Ct. 1784, 76 L. Ed.2d 353 (1983)).

The appellant’s conviction is reversed and the case is remanded for a new trial.

REVERSED AND REMANDED.

311 S.C. at 205–08, 428 S.E.2d at 11–12. There is no standard “acknowledged” or otherwise stated in the above opinion other than “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.” Mr. Murdaugh has no idea what “*Smith*” case the State believes “more subsequently clarified” the legal standard. The only “*Smith*” case cited in the State’s response is *Smith v. Phillips*, the irrelevant 1982 U.S. Supreme Court case discussed above that predated *Cameron* by eleven years. And as

discussed above, *Green* reversed a Court of Appeals decision to correct its reasoning to bring it in line with *Cameron*.

C. South Carolina case law provides the controlling legal standard.

As discussed above, the burden-shifting described in *Remmer* is not relevant to this case because the alleged communications were by a court official, to at least one deliberating juror, and inarguably pertained to the merits of the case being tried. This is because South Carolina case law—*Cameron*—provides the legal standard, not *Remmer*. If Mr. Murdaugh proves that the Clerk of Court engaged in surreptitious advocacy on the merits during trial, there is nothing for the State to rebut. A new trial is required. *See Cameron*, 311 S.C. at 207–08, 428 S.E.2d at 12.

U.S. Supreme Court decisions—in particular, *Parker v. Gladden*—control the decision here only insofar as they establish a “floor” below which the protections of South Carolina constitutional and decisional law cannot fall. As the Supreme Court of Utah recently stated in a case alleging improper jury contact by a bailiff: “Still, the Sixth Amendment right to an impartial jury was incorporated against the states through the Fourteenth Amendment in *Parker v. Gladden*, 385 U.S. 363, 364, (1966) (per curiam). As such, the Sixth Amendment forms the ‘floor’ below which the Utah Constitution’s protections cannot fall.” *Utah v. Soto*, 2022 UT 26, ¶ 21, 513 P.3d 684, 690 (parallel citations omitted).

Moreover, were *Remmer* controlling in this case, it would create a strong presumption of prejudice that the State must rebut. “In a criminal case, any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial, if not made in pursuance of known rules of the court and the instructions and directions of the court made during the trial, with full knowledge of the parties.” *Remmer*, 347 U.S. at 229. This rule has not been abrogated by *Smith v. Phillips* or rejected by our Supreme Court in *Green*, as the State claims in its original prehearing

brief. “The scope and currency of the *Remmer* presumption has split the federal circuits, but it ‘remains [a]live and well in the Fourth Circuit,’ *United States v. Lawson*, 677 F.3d 629, 642 (4th Cir. 2012), and therefore controls our approach to the Sixth Amendment issue Green raises.” *Green*, 427 S.C. at 235, 830 S.E.2d at 711 (Court of Appeals decision affirmed as modified in 432 S.C. 97, 851 S.E.2d 440). The Fourth Circuit explains that “[w]ith respect to the presumption of prejudice, we have recently observed, there is a split among the circuits regarding whether the *Remmer* presumption has survived intact following the Supreme Court’s decisions in *Smith v. Phillips*, 455 U.S. 209 (1982), and *United States v. Olano*, 507 U.S. 725 (1993).” *Barnes v. Joyner*, 751 F.3d 229, 242 (4th Cir. 2014) (internal quotation marks and parallel citations omitted). “[W]e have held that the *Remmer* presumption is clearly established federal law . . . even after the Supreme Court’s decisions in *Phillips* and *Olano*. *Id.* at 243.

In the referenced circuit split, the Second, Fourth, Seventh, Ninth, Tenth, and Eleventh Circuits continue to apply the *Remmer* presumption in cases involving external influences on jurors, while the Fifth, Sixth, Eighth, and District of Columbia Circuits have departed from the presumption. *United States v. Lawson*, 677 F.3d 629, 643 (4th Cir. 2012). However, a majority of circuits “hold that the *Remmer* presumption is still good law **with respect to egregious external interference** with the jury’s deliberative process via private communication, contact, or tampering with jurors about the matter.” *Connecticut v. Berrios*, 129 A.3d 696, 709 (Conn. 2016). In such cases, the First and Eighth Circuits join the majority position in applying the *Remmer* presumption. *Id.* at 710 (collecting cases). State courts generally do the same. *Id.* at 710–11 (collecting cases from Arizona, Illinois, Indiana, Maryland, Nevada, Oregon, and the District of Columbia).

South Carolina likewise “accord[s] with the approaches of the Second and Fourth Circuits with respect to serious, or not ‘innocuous’ claims of external influence, such as jury tampering.”

Id. at 710. As explained above, that is exactly what our Supreme Court held in *Green*. “Our unwillingness to categorically apply the *Remmer* presumption of prejudice stems from our view that not every inappropriate comment by a bailiff to a juror rises to the level of constitutional error.” *Green*, 432 S.C. at 100, 851 S.E.2d at 441. “The attempted bribery of a juror in *Remmer*—conduct which goes to the heart of the merits of the case on trial—is a far cry from the circumstances presented in this case,” in which a bailiff’s improper comment “dealt only with the procedural question of how the judge might handle a jury impasse that apparently never materialized.” *Id.* And, again, *Parker* provides a floor regarding what the State can rebut under *Remmer*—while the State could in other circumstances perhaps show, for example, that a communication was harmless because it was only heard by a non-deliberating juror, where a state official’s exhortations on the evidence presented at trial it was communicated to at least one deliberating juror the Court cannot overlook the offense by speculating that the outcome would have been the same regardless. See *Parker*, 385 U.S. at 363.

D. In addition to juror bias issues, a state official’s surreptitious advocacy to the jury outside the courtroom creates a structural error in the conduct of the trial.

It has long been held to be a structural error for a state actor to engage in *ex parte* advocacy to the jury during trial. “The requirement that a jury’s verdict must be based upon the evidence developed at the trial goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury.” *Turner v. Louisiana*, 379 U.S. 466, 472 (1965) (internal quotation marks omitted). “The evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel . . .” *Parker*, 385 U.S. at 364. In *Simmons v. South Carolina*, the U.S. Supreme Court similarly holds it is unconstitutional for the defendant to receive the death

penalty “on the basis of information which he had no opportunity to deny or explain.” 512 U.S. 154, 161 (1994) (internal quotation marks omitted).

The principle is ancient and foundational to our jury system:

In the ultimate analysis, only the jury can strip a man of his liberty or his life. In the language of Lord Coke, a juror must be as ‘indifferent as he stands unsworne.’ His verdict must be based upon the evidence developed at the trial. This is true, regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life which he occupies. It was so written into our law as early as 1807 by Chief Justice Marshall in *1 Burr’s Trial* 416(1807).

Irvin v. Dowd, 366 U.S. 717, 722 (1961) (citations omitted). Indeed, what is now called the “*Remmer*” presumption is far older than the 1954 *Remmer* decision. “Private communications, possibly prejudicial, between jurors and third persons, or witnesses, or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear.” *Mattox v. United States*, 146 U.S. 140, 150 (1892).¹ Likewise,

It is well settled, that it is not necessary to show that the minds of the jury, or of any member of it, were influenced. It is sufficient to show that intermeddling did take place, to set aside the verdict. Too much strictness cannot be exercised in guarding trials by jury from improper influence. It has been said that, “this strictness is necessary to give confidence to parties in the results of their causes; and every one ought to know that, for any, even the least, intermeddling with jurors, a verdict will always be set aside.”- *Knight v. Freeport*, 13 Mass. 220.

This is the language of the Supreme Court of Massachusetts in a civil cause. How much more important is it, to guard the purity of jury trials, against improper influence, when the matter at stake is the life or liberty of a prisoner.

The authorities upon this point all agree; and, as they are very numerous

¹ *Maddox* has a “red flag” in Westlaw because it was superseded in 1975 by Rule 606(b) of the Federal Rules of Evidence on a separate issue regarding the admissibility of juror testimony to impeach the verdict. But it is still currently cited by federal appellate courts for the principle that when state officials communicate *ex parte* with the jury about the merits of the case during trial, a new is required. *E.g.*, *Tarango v. McDaniel*, 837 F.3d 936, 947 (9th Cir. 2016) (“*Mattox* and its progeny further establish that undue contact with a juror by a government officer almost categorically risks influencing the verdict.”).

Pope v. Mississippi, 36 Miss. 121, 124 (Miss. Err. & App. 1858). For an even older example,

An officer is sworn to keep the jury, without permitting them to separate, or any one to converse with them; for no man knows what may happen; although the law requires that honest men should be returned upon juries, and, without a known objection, they are presumed to be *probi et legales homines*, yet they are weak men, and perhaps may be wrought upon by undue applications. The evil to be guarded against, is improper influence; and when an exposure to such an influence is shown, and it is not shown that it failed of effect, then the presumption is against the purity of the verdict.

Lord Delamere's Case, 4 Harg. St. T. 232 (Eng. 1685) (In *Lord Delamere's Case* Henry, Baron Delamere was tried for high treason before the Court of the Lord High Steward on January 14, 1685. A text of the decision is available at <https://quod.lib.umich.edu/e/eebo/A63176.0001.001/1:3?rgn=div1;view=fulltext>).

Contrary to the State's position, our State Supreme Court has not abrogated or abandoned this foundational principle that when the State's officials engage in *ex parte* communications with the jury during trial about the merits of the case, a new trial is required. Nor has the U.S. Supreme Court opened a door that could allow states to abandon that principle. All that has happened is a sensible restriction of the principle to exclude improper communications that do not bear on the merits of the issue before the jurors. See *Green*, 432 S.C. at 100, 851 S.E.2d at 441.

E. Mr. Murdaugh will argue that a preponderance of the evidence shows Ms. Hill made statements to at least one deliberating juror about the merits of the evidence presented at trial.

If they testify consistently with their affidavits and witness interviews, Juror 630 will testify Ms. Hill said they should not be fooled by the defense and that they should watch Mr. Murdaugh's body language with suspicion when he testified in his own defense, Juror 785 will testify that Ms. Hill told them not to be fooled by the defense, Juror 741 will testify that Ms. Hill told them not to let the defense confuse or convince them, and Juror 254 will testify that Ms. Hill told them to watch Mr. Murdaugh's body language when he testified in his own defense. Ms. McElveen will

testify that some of those statements are substantively identical to statements Ms. Hill made directly to her during trial, and that staff were complaining to her about Ms. Hill's excessive contact with the jury. Any other jurors called to testify will only be able to state that they never heard those comments by Ms. Hill. The only witness to directly contradict the testimony of these jurors will be Ms. Hill, but even she admits she met with the jury foreperson "a few times" to discuss "jurors who were having a hard time with anxiety during the trial" and the foreperson's "ability to keep the peace within the jury room due to many large personalities."

Ms. Hill's denials should not be credited because her many acts of fraud and dishonesty, which will be explored and detailed during cross-examination, demonstrate that she has a character for untruthfulness. *Cf.* Rule 606(b), SCRE. With Ms. Hill's denials uncredited, the juror testimony will be uncontroverted. Moreover, Jurors 254, 630, 741, and 785 have not appeared on television or otherwise given interviews or sought any publicity for themselves. They have not sought any payment for their story. They did not seek to be placed on this jury, they have maintained their anonymity ever since, and they have nothing to gain from false testimony. Their testimony therefore should be credited over the testimony of a Clerk of Court who has been repeatedly caught seeking wrongful money and publicity from this case, even going so far as to writing a book about the case that was removed from publication for her plagiarism.

V. Any procedural issues which you feel may affect the evidentiary hearing:

A. Issues regarding the subpoena of specific witnesses

Mr. Murdaugh requests that the Court issue a subpoena for each of the jurors and witnesses identified in response to question number 1. He also requests that the Court issue a forthwith order compelling the immediate production of documents subpoenaed by any party, so that the documents may be reviewed in advance of the hearing. Further, he requests that each party be

compelled to produce all documents received in response to a subpoena to the other party immediately upon receipt.

B. Your position regarding how the court should receive testimony. Whether any witness testimony should be conducted in camera rather than in open court.

Mr. Murdaugh believes good cause exists for the Court to conduct the examination of jurors *in camera*, with a redacted transcript provided to the public. In addition to shielding jurors from appearing on television involuntarily, *in camera* examination is necessary because it will be difficult for a juror to testify without revealing personally identifying information like his or her name or the names of other jurors. By testifying *in camera*, jurors may speak freely with any personal information in their testimony redacted from the publicly available transcript.

Mr. Murdaugh previously took the position that jurors should be examined by the Court rather than by counsel, with the Court accepting suggested questions from the parties, in advance of the examination and during the examination, which the Court in its discretion may or may not ask. Mr. Murdaugh's reasoning was that jurors may be unsettled by being interrogated by the same lawyers they watched interrogate witnesses for six weeks.

However, after receiving the SLED's video recordings and summary memoranda of juror interviews, Mr. Murdaugh's counsel are concerned that the Court may not have sufficient information to examine the jurors effectively. The interview memoranda are sometimes grossly inaccurate. For example, Ms. McElveen told investigators that court staff asked her to speak to Ms. Hill about her excessive contacts with jurors, including at Walmart, and that Ms. Hill was working on a book deal during trial and gave an author a seat with court staff in the well of the courtroom from where she could see sealed exhibits, overruling objections by stating "well they'll

just have to do what I want, today.”² For some reason, none of that made it into the interview memorandum. Thus, to examine jurors effectively, the Court would at least need to watch the entire SLED interview for each testifying juror, and to the extent the jurors speak about other jurors or staff, the interviews for those other jurors or staff as well. With only 19 days before the evidentiary hearing, counsel is best equipped to review this information in preparation for questioning, rather than the Court.

The State originally argued jurors should be examined by the Court, and has argued the Court should question them “with a mind to at least (1) whether the communication actually occurred and, if so, its context and substance; (2) the number of jurors exposed to the improper communication; (3) the weight of the evidence properly before the jury; and (4) the likelihood that curative measures were effective in reducing the prejudice.” Resp. Opp’n Mot. New Trial 6. Only the first topic is appropriate. The only relevant subject for juror examinations is whether Ms. Hill made improper communications on the merits of the case, including anything serving to corroborate or refute testimony on that subject. The number of jurors exposed to the communications is irrelevant so long as it is at least one deliberating juror. *See Parker*, 385 U.S. at 366. The “weight of the evidence properly before the jury” and “the likelihood that curative measures were effective in reducing the prejudice” are entirely irrelevant under the controlling legal standard, *see Cameron*, 311 S.C. at 207–08, 428 S.E.2d at 12, and appear to solicit testimony inadmissible under Rule 606(b) of the South Carolina Rules of Evidence.

In its original prehearing brief, the State moved away from its position in its response to the motion for a new trial, to argue that the Court should only ask jurors (1) if they voted guilty,

² Ms. McElveen was not a juror, of course, but is used as an example in this brief to preserve juror privacy. The point is the same for any SLED interview.

and (2) whether their verdict was “based solely on the testimony, evidence, law, and arguments of counsel presented at trial.” Prehearing Br. 4. The State’s position appears to be a repackaging of its argument that there should not be an evidentiary hearing at all, which the Court has rejected. Obviously, an evidentiary hearing has no point if no one is going to ask any juror whether Ms. Hill made the statements Mr. Murdaugh alleges she made. The State appears to agree that if jurors indeed will be asked substantive questions, it may be necessary for them to be examined by counsel. *Id.* at 5 (noting that “additional inquiry” would be “with questions from the Court, questions suggested to the Court by counsel, and questioning by counsel”).

If testimony is needed from Judge Newman, Mr. Murdaugh believes it should also be conducted by the Court *in camera*, to preserve the dignity of his judicial office.

The default method of examining witnesses at an adversarial proceeding is through questioning by counsel for the parties. See Rule 614(b), SCRE (“***When required by the interests of justice only***, the court may interrogate witnesses.” (emphasis added)). All witnesses should be so examined unless there is good cause to reserve examination to the Court. *Id.* Mr. Murdaugh does not believe good cause exists to reserve the examination of any witness to the Court, other than Judge Newman and possibly the jurors. Ms. Hill especially is an elected public official accused of malfeasance in office, whom Mr. Murdaugh has accused of violating his constitutional rights in a criminal proceeding, and who has voluntarily provided an affidavit directly contradicting Mr. Murdaugh’s claims. She does not need to be shielded from scrutiny in the same manner as anonymous jurors involuntarily summoned to serve. She is a witness against Mr.

Murdaugh in a criminal case whom Mr. Murdaugh has a right to challenge in open court. See Rules 611(b) & 614(b), SCRE.³

VI. Any other issues regarding the conduct for the hearing of the merits of the motion.

A. Mr. Murdaugh needs wide latitude in impeaching Ms. Hill.

Ms. Hill has provided an affidavit that contradicts the sworn and unsworn statements of many jurors. As a result, Ms. Hill's credibility will be a central issue in this evidentiary hearing. For this reason, counsel requests wide latitude in examining Ms. Hill, if she is called as a witness by the State.

Mr. Murdaugh anticipates the only person who can directly contradict jurors who witnessed Ms. Hill's jury tampering is Ms. Hill.

Mr. Murdaugh therefore must present evidence corroborating Juror 630's testimony, including testimony from the alternate juror and Juror 785, who was dismissed on the last day of trial, and possibly testimony from court staff. He must also present evidence impeaching Ms. Hill.

Evidence impeaching Ms. Hill includes her emails, text messages, and telephone records, testimony from court staff, testimony and documentary evidence from persons involved in the production of her book, complaints against Ms. Hill and the results of investigations into Ms. Hill's wrongdoing. It includes evidence related to her involvement in the removal of Juror 785—not

³ Additionally, although the Sixth Amendment Confrontation Clause does not apply to a motion for a new trial, see, e.g., *United States v. Boyd*, 131 F.3d 951, 954 (11th Cir. 1997), Article I, § 14 of the South Carolina Constitution provides that "any person charged with an offense shall enjoy the right . . . to be fully heard in his defense by himself or by his counsel." This right would be violated if the Court were to credit Ms. Hill's testimony against Mr. Murdaugh without allowing his counsel the opportunity to challenge her testimony through cross-examination. Cf. *State v. Hester*, 137 S.C. 145, 134 S.E. 885, 899 (1926) (observing the "right to cross-examine is one which must remain inviolate," "[t]he power of cross-examination . . . certainly is one of the most efficacious, tests which the law has devised for the discovery of truth," and it is "[o]ne of the most inestimable rights by which a man may maintain his defense" (internal quotation marks omitted)). However, if the Court were to decide Ms. Hill's testimony cannot be credited, her testimony would not be relevant to any issue and Mr. Murdaugh would have no right to examine her.

because the removal itself is grounds for a new trial, but because Juror 785 has averred Ms. Hill was involved with her removal in an improper and dishonest way that, if true, would serve to impeach Ms. Hill's credibility. Both witnesses and documentary evidence regarding the allegedly fabricated Facebook post, which ultimately did not cause Juror 785 to be removed, and witnesses and documentary evidence regarding Juror 785's alleged statements to her tenants during trial, which ultimately did cause Juror 785 to be removed, are relevant to Ms. Hill's credibility. Evidence impeaching Ms. Hill includes evidence demonstrating her personal interest in the outcome of the trial and willingness to engage in obviously inappropriate conduct to further that personal interest. *See* Rule 606(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.") For example, emails released to journalists in response to FOIA requests show that Ms. Hill was sending emails directly to prosecutors and law enforcement witnesses for the State during trial about the merits of testimony from defense witnesses under examination at that moment. Emails from B. Hill to C. Waters, C. Jewell, & C. Ghent (Feb. 21, 2023) (FITSNEWS_FOIA_000624 & _000861. Evidence impeaching Ms. Hill may also include testimony from Judge Newman.

There will be much evidence to present that impeaches Ms. Hill. The State may argue presenting it all would be cumulative or repetitive or otherwise unnecessary. But evidence is cumulative only when it "supports a fact established by the existing evidence." Evidence, Black's Law Dictionary (11th ed. 2019). So long as the Court is prepared to give Ms. Hill's testimony any weight, her lack of credibility is not "established" and evidence impeaching her cannot be

considered cumulative or repetitive.⁴ Courts have underscored the noncumulative nature of additional evidence when a trial features a “swearing match” between witnesses on both sides. *See, e.g., English v. Romanowski*, 602 F.3d 714 (6th Cir. 2010) (rejecting state court’s conclusion that witness’s testimony was cumulative; the state court “failed to recognize that the trial was essentially a swearing match” between witnesses on both sides); *Montgomery v. Petersen*, 846 F.2d 407, 413, 415 (7th Cir. 1988) (holding that, given the “swearing match” between the witnesses, the uncalled witnesses were not cumulative because they would have “directly contradicted the state’s chief witness,” while providing the defense with a disinterested alibi witness who could have caused the jury to “view[] the otherwise impeachable testimony of the twelve [defense] witnesses in a different light”); *Nealy v. Cabana*, 764 F.2d 1173, 1174 (5th Cir. 1985) (holding that counsel’s failure to investigate and call alibi witnesses was prejudicial “[b]ecause the trial boiled down to a swearing match . . . and because the missing testimony might have affected the jury’s appraisal of the truthfulness of the state’s witness and its evaluation of the relative credibility of the conflicting witnesses”).

B. Counsel for non-parties should not be permitted to participate in these proceedings.

Attorney Eric Bland has requested to participate in these proceedings as counsel for certain jurors who may be called to testify as witnesses. Mr. Murdaugh objects to Mr. Bland’s request. This is a criminal proceeding brought by the State against the Defendant. Mr. Bland seeks a level of non-party participation (e.g., participating in status conferences) beyond even the rights afforded victims under Article I, § 24 of the South Carolina Constitution, and the jurors he represents are

⁴ If the Court were to decide pre-hearing that it cannot credit Ms. Hill over the sworn testimony of any juror, it is likely that the hearing would consist only of *in camera* examination of jurors. This would also avoid potential Fifth Amendment issues regarding Ms. Hill. It is unlikely the State would agree to that since it is likely the State can prevail **only** if the Court finds Ms. Hill to be credible.

not crime victims. In discussing his request in the media, Mr. Bland stated on his podcast Cup of Justice, episode 61 (Dec. 26, 2023), that Justice Toal, the newly assigned presiding judge in this matter “has friends sometimes to reward and enemies to punish” and “I worry about what procedures are going to be put in place, the fact that there was a status conference and you know I represent four jurors and I wasn’t even told of that status conference, and I believe that my jurors have the right to legal representation in any type of proceeding dealing with Alex Murdaugh’s verdicts where they’re going to have their verdicts questioned.” His stated intent is not to protect the personal interests of his clients as witnesses, but to advocate to sustain “their” verdict. To allow a publicity-seeking lawyer for non-victim private parties to intervene in this criminal case and advocate against Mr. Murdaugh as an additional opposing party would violate Mr. Murdaugh’s procedural due process rights under Article I, § 3 of the South Carolina Constitution and the Fourteenth Amendment to the United States Constitution.

The jurors are simply witnesses with no more right to participate in this criminal proceeding than witnesses in any other criminal case. Unlike typical witnesses, they do have a right to a degree of anonymity so it could be appropriate to allow them to be heard through counsel if the Court were inclined to strip them of that anonymity. But neither party is asking the Court to do that, and the Court has made clear it is not inclined to do that. Mr. Murdaugh does not seek to subpoena telephone records or other personal records regarding them, and if he decided to do so in the future, their lawyers of course could move to quash the subpoena. Otherwise, they have no cognizable interest in these proceedings, and if there is such an interest the Attorney General would be adequate to assert it.

The reason to hold an evidentiary hearing on Defendant’s motion for a new trial is to protect Mr. Murdaugh’s constitutional right to a fair judicial proceeding. It would defeat that purpose if

the proceedings were allowed to devolve into a speaker's corner for lawyers who want to appear on television even more than they already do. Mr. Murdaugh therefore asks the Court to limit the participation of any witness-retained lawyer to the extremely limited role traditionally allowed to a lawyer representing an innocent bystander witness in a criminal case. Further, he requests that the Court order the Clerk of Court not to accept any filings in this matter from any non-parties without leave of the Court obtained prior to filing.

VII. Responsive arguments on decided or moot issues presented for issue preservation

A. The Court must hold an evidentiary hearing.

The State's response argues Mr. Murdaugh has failed to show that he is entitled to an evidentiary hearing. Resp. Opp'n Mot. New Trial 19–21. The Court has instructed counsel that it has “already decided an evidentiary hearing will occur.” Nevertheless, because the State has made the argument in a filed memorandum and no filed order has addressed it directly, Mr. Murdaugh provides the following rebuttal for preservation purposes. As the State correctly argued before the Court of Appeals, the standard to suspend the direct appeal and for leave to file a motion for a new trial is a *prima facie* showing of an entitlement for relief. Return to Motion to Suspend Appeal and for Leave to File Motion for New Trial, *State v. Murdaugh*, Appellate Case No. 2023-000392 (Sept. 15, 2023) (citing *State v. Butler*, 261 S.C. 355, 358, 200 S.E.2d 70, 71 (1973)). Mr. Murdaugh agreed that is the correct standard. Reply to the State's Return, *Murdaugh*, Appellate Case No. 2023-000392 (Sept. 21, 2023) (quoting *State v. Ford*, 301 S.C. 485, 491, 392 S.E.2d 781, 784 (1990) (“In order to obtain leave from this Court to move for a new trial based on after-discovered evidence, an appellant must make a *prima facie* showing that a new trial is warranted.”)). The Court of Appeals concluded that standard was satisfied when it granted the motion to suspend the appeal and for leave to file the instant motion. Order, *Murdaugh*, Appellate Case No. 2023-000392 (Oct. 17, 2023). There has been no material change to the law or to the record before the Court

(other than the discovery of yet more examples of Ms. Hill’s dishonesty and malfeasance in office) since the Court of Appeals’ order. It therefore is the law of the case that a prima facie case has been made. *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) (“The doctrine of the law of the case prohibits issues [that] have been decided in a prior appeal from being relitigated in the trial court in the same case.”). Where a prima facie case is made, an evidentiary hearing is required. *Barnes v. Joyner*, 751 F.3d 229, 242 (4th Cir. 2014) (“[W]hen the defendant presents a credible allegation of communications or contact between a third party and a juror concerning the matter pending before the jury” the defendant has an “entitlement to an evidentiary hearing.” (citing *Remmer*, 347 U.S. 227)). The Court therefore must hold an evidentiary hearing on the merits of the motion for a new trial.

B. The State’s motions to strike should be denied.

In its response to the motion for a new trial, the State moves to strike (1) affidavits of paralegal Holli Miller, (2) anything statements regarding jury deliberations, and (3) any claims regarding Facebook posts, Ms. Hill’s book deal, or “post-trial media interactions.” It is unclear what purpose striking anything from the motion for a new trial would accomplish, given that it is the law of the case that a prima facie case has been made, that an evidentiary hearing therefore is required, that an evidentiary hearing has been scheduled, and that the motion will be decided on the evidence presented to the Court at the hearing and not on attorney argument made before the Court receives any evidence whatsoever. Nevertheless, since the State makes the argument, Mr. Murdaugh will briefly rebut it.

First, the affidavits of Holli Miller were offered only as evidence as to what certain jurors would say if called to testify at an evidentiary hearing. Of course, they are hearsay. All affidavits from persons who have not (yet) testified in court are hearsay. Rule 801(c), SCRE (“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in

evidence to prove the truth of the matter asserted.”). Hearsay is just an objection to the admissibility of evidence; it is not a basis to strike a filing. The purpose of Ms. Miller’s affidavits was to help obtain an evidentiary hearing, which has been accomplished. Obviously, they cannot prove Mr. Murdaugh’s is entitled to a new trial. Witness testimony in a courtroom will do that.

Second, there is no basis for the State’s motion to strike references to jury deliberations. Juror 630’s affidavit was freely given to support a public filing. Other jurors have spoken about the deliberations in national television interviews. Such statements may or may not be admissible as evidence at the merits evidentiary hearing, but Rule 606 of the South Carolina Rules of Evidence in no way supports striking public statements from a motion memorandum.

Third, the State correctly notes that the only relevance of the Facebook post Ms. Hill fabricated to remove Juror 785, her book plans, or her other post-trial actions, is to impeach Ms. Hill. The State argues attacking Ms. Hill’s character is “an outlandish theory” against “a dedicated public servant” that is “Immaterial, Impertinent, and Scandalous” and so should be struck. That is incorrect. Ms. Hill likely is the only witness the State can offer who can directly contradict Juror 630’s averments of jury tampering, and Ms. Hill has offered an affidavit doing exactly that. Resp. Opp’n Mot. New Trial Ex. A. Her credibility is the crux of the matter before the Court. The purpose of the evidentiary hearing is to allow the Court to decide whether it believes the word of Ms. Hill more than it believes the sworn testimony of one or more jurors. Anything that impeaches Ms. Hill is relevant. And the State’s rhetoric about Ms. Hill being “a dedicated public servant” unfairly maligned has not aged well in the two months since the State filed its response, to put it mildly. Ms. Hill is alleged to have stolen money, illegally sold access to the courthouse, conspired with her son to conduct illegal wiretaps, and even had her book removed from publication because of her plagiarism.

VIII. Conclusion

For the foregoing reasons, Mr. Murdaugh respectfully submits that when Ms. Hill's jury tampering is proven at the evidentiary hearing, the Court must grant the motion for a new trial.

Respectfully submitted,

s/ Richard A. Harpootlian

Richard A. Harpootlian, SC Bar No. 2725
Phillip D. Barber, SC Bar No. 103421
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

James M. Griffin, SC Bar No. 9995
Margaret N. Fox, SC Bar No. 76228
GRIFFIN HUMPHRIES LLC
4408 Forest Drive (29206)
Post Office Box 999
Columbia, South Carolina 29202
(803) 744-0800
jgriffin@griffinhumphries.com
mfox@griffinhumphries.com

Attorneys for Richard Alexander Murdaugh

January 10, 2024
Columbia, South Carolina.

EXHIBIT G

(Respondent's Second Brief)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	
State of South Carolina,	)	Case Nos: 2022-GS-15-00592
	)	2022-GS-15-00593
	)	2022-GS-15-00594
v.	)	2022-GS-15-00595
	)	
Richard Alexander Murdaugh,	)	STATE'S REVISED PRE-HEARING BRIEF IN
	)	OPPOSITION TO DEFENSE MOTION FOR A
Defendant.	)	NEW TRIAL
	)	

On Thursday, January 4, 2024, the Court requested further briefing from both parties to specifically address five issues:

1. List all potential witnesses planned to be called during the evidentiary hearing, and any objections or challenges you may raise to the opposing party's anticipated witnesses.
2. List all exhibits planned to be introduced during the evidentiary hearing, and any objections or challenges to the opposing party's exhibits.
3. Clarify the arguments as to whether Defendant is entitled to a new trial that will be made during the evidentiary hearing.
4. State any procedural issues which may impact the evidentiary hearing, in particular (a) issues regarding the subpoena of specific witnesses and (b) how the court should receive testimony and whether any such testimony should be conducted *in camera* rather than in open court.
5. State any other issues regarding the conduct for the hearing of the merits on the motion.

In response, the State here revises and expands its pre-hearing brief to address the specific questions of the Court, though not necessarily in the order as set forth above. Indeed, answers to the first and second questions raised by the Court are contingent on how the Court rules on the question of what standard and burden to apply to Defendant's motion. The scope of witnesses that the State intends to call depends, in

part, on who Murdaugh calls as movant, which in turn depends on how much Murdaugh must show to satisfy his burden of proof.

Therefore, the State's revised briefing below proceeds as follows:

1. **BURDEN OF PROOF:** Murdaugh must bear the burden of proof for his own motion and show that the material improprieties alleged actually occurred and that he was actually prejudiced thereby.
 - a. Murdaugh contends otherwise, and argues erroneously that if the material improprieties alleged occurred, there is prejudice to him *per se*. The law does not support Murdaugh's argument.
 - b. Because Murdaugh cannot show he was actually prejudiced by the material improprieties alleged, he is not entitled to a new trial. Furthermore, Murdaugh cannot show by that the material improprieties alleged actually occurred, and is thus not entitled to a new trial.
2. **MOTION UNTIMELY:** Additionally, Murdaugh's motion may be procedurally defective and untimely brought before the Court, given public statements of counsel at and around the time of its filing.
3. **EVIDENTIARY HEARING UNNECESSARY:** Notwithstanding the Court's clear statement of intent to hold an evidentiary hearing, the State argues for the purposes of preserving the issue that Murdaugh has failed to make a *prima facie* showing sufficient to justify an evidentiary hearing.
4. **WITNESSES, EXHIBITS, AND PROCEDURE:** Irrespective of burden, the State proposes that each of the twelve jurors who deliberated be polled by the Court. This inquiry should be conducted in open court, but in a manner to protect the identities of the jurors. If juror responses necessitate further inquiry, additional questioning may be warranted.
 - a. **EVIDENCE AND OBJECTIONS:** If questioning of the jurors and the law applied does not resolve the motion, and if Murdaugh has not already done so, the State may call members of court and clerk staff to further establish no material improprieties occurred, SLED agents as necessary to explain their investigation, as well as the legal representative to two jurors to confirm Murdaugh was not dilatory in raising the issue to the court. The State will object to witnesses and exhibits whose testimony would serve only to impeach one or more other witnesses by proof of specific instances of conduct through extrinsic evidence, and whose probative value would be substantially outweighed by the danger of unfair prejudice, confusion of the issues, and undue delay and waste of time.

- b. PROCEDURAL ISSUES: the Court should receive all testimony in open court, not in camera, but with limitations on media recording and broadcasting of the images or names of the jurors.

The State's revised brief follows.

I. BURDEN OF PROOF: Murdaugh must carry the burden of proving both that an improper contact occurred with the jury and that he was actually prejudiced thereby.

First is the appropriate burden and standard to apply to a motion for a new trial based on allegations of improper contact with the jury by clerk of court or court official. Namely, if the conduct alleged is proven, (1) must prejudice be shown, and (2) if so, who must carry the burden of showing prejudice? The law, and consequently the State, focuses on the jury. Murdaugh focuses on Clerk Hill. Prejudice must be shown, and it is Murdaugh's burden to do so.

Criminal defendants have a right to a fair and impartial jury, and private communications or contact with jurors during a criminal trial about the matter pending before them may necessitate an evidentiary hearing and, if defendant can show actual prejudice, a new trial. See *State v. Kelly*, 331 S.C. 132, 141-42, 502 S.E.2d 99, 104 (1998) ("In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences. Unless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict."); see also *Smith v. Phillips*, 455 U.S. 209, 215 (1982) ("This Court has long held that the remedy for allegations of juror partiality is a hearing which the defendant has the opportunity to prove actual bias."); *State v. Green*, 432 S.C. 97, 100, 851 S.E.2d 440, 441 (2020) (unanimously declining to adopt *Remmer v. United States*, 347 U.S. 227 (1954) and its presumptive prejudice standard in every instance of improper contact, and reversing the lower court opinion

that did so.). The law holds jurors in high regard and presumes that they fulfill their duties as instructed, with solemn diligence, impartial contemplation, firmness, and conviction, and that they are not readily swayed from the proper fulfillment of their duties by every wind of opinion that blows around their ears. *State v. Grovenstein*, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999); *State v. Rowell*, 75 S.C. 494, 56 S.E. 23, 29 (1906); see also *United States v. Olano*, 507 U.S. 705 (1993) (quoting *Francis v. Franklin*, 471 U.S. 307, 324, n. 9 (1985)) (In declining to presume prejudice from the presence of alternate jurors during deliberations, explaining “we presume that jurors, conscious of the gravity of their task, attend closely the particular language of the trial court’s instructions in a criminal case and strive to understand, make sense of, and follow the instructions given them.”). “Objections to verdicts on the ground that one or more of the jurors has been subjected to outside influences must be looked at in a practical way and every case decided on its own facts.” *Rowell*, 56 S.E. at 29. A simple jury poll may cure any procedural irregularities, and confirm that each juror approves of the verdict returned and that no one has been coerced or induced to agree to a verdict to which he or she does not actually assent. 89 C.J.S. Trial § 1002; *State v. Linder*, 276 S.C. 304, 308-09, 278 S.E.2d 335, 338 (1981).

The facts and opinion in *Rowell* are instructive. Rowell was convicted of manslaughter for shooting and killing a man armed with a stick in a drunk argument, right in front of a City of Florence police officer. *Rowell*, 56 S.E. at 28. Of relevance here, a juror provided an affidavit that while he was sequestered at a hotel overnight, a bailiff “talked about the case in his presence, and said that the defendant should be punished[.]” *Rowell*, 56 S.E. at 29. The trial court held that there was nothing presented

to show that the verdict was influenced by the bailiff's communications to the juror and denied the motion. *Id.* The Supreme Court of South Carolina affirmed the lower court's ruling on that issue, opined that "[w]here, without any misconduct on the part of the juror or the constable who had him in charge, an opinion was imprudently volunteered in the presence of the juror by another constable, we do not think it would be reasonable to reach the decision that the conclusion of this juror and the whole panel was influenced by it." *Id.* Moreover, the Supreme Court *did* reverse Rowell's conviction, not because of the imprudent opinion of the bailiff, but because of an erroneous jury instruction on fighting words and self-defense. *Id.*

a. Murdaugh's attempts to distinguish the authorities on which the State relies are based on nothing more than his own willful blindness to their explicit applicability.

Murdaugh, in an attempt to critique the law as set forth above, expresses that the State has cited "no authority" to support its position, and otherwise feigns confusion throughout. Murdaugh's confusion may generously be prescribed to his strategically myopic focus on Clerk Hill, rather than on the actual legal question of whether he was convicted of brutally murdering his son and wife with a shotgun and a rifle by an impartial jury free from improper influence.

The admonitions of *State v. Kelly*, 331 S.C. 132, 502 S.E.2d 99 (1998) are as binding in the present matter as in any case involving the provision of extraneous information, commentary, or guidance. "In determining whether *outside influences* have affected the jury, relevant factors include (1) the number of jurors exposed, (2) the weight of the evidence properly before the jury, and (3) the likelihood that curative measures were effective in reducing the prejudice." *Id.*, 331 S.C. at 63, 502 S.E.2d at 628 (emphasis added). The present matter concerns allegations of outside influences

on the jury and whether they affected them. Both the majority and the dissenting minority analyzed the actual prejudice of the pamphlet retained and introduced by the juror at question in *Kelly*; the dissent's ultimate conclusion was not that analysis for actual bias was improper, but that "[w]hen considered in its totality, the compelling conclusion is that the outcome of both phases of appellant's trial was influenced by cumulative bias on the part of his jury." *Id.*, 331 S.C. at 157, 502 S.E.2d at 112 (Finney, J., Toal, J. dissenting).

Murdaugh also expresses confusion about the relevance of *Smith v. Phillips*, 45 U.S. 209 (1982), despite citing to the same language as set forth in the parenthetical himself in his Motion for a New Trial as authority to support his argument that he was entitled to the hearing now scheduled. *See Id.* at 215 ("The Court has long held that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias."); *compare* Motion for a New Trial at 9-10 (citing same). *Smith* explores *Remmer v. United States*, 347 U.S. 227 (1954), on which Murdaugh previously relied, and abrogates *Remmer* to the extent which it may be relied upon for the proposition that prejudice must be presumed where external influences are brought upon the jury:

This Court recognized the seriousness of not only the attempted bribe, which it characterized as "presumptively prejudicial," but also of the undisclosed investigation, which was "bound to impress the juror and [was] very apt to do so unduly." Despite this recognition, and a conviction that the "[t]he integrity of jury proceedings must not be jeopardized by unauthorized invasions," the Court did not require a new trial like that ordered in this case. Rather, the Court instructed the trial judge to "determine the circumstances, the impact thereof upon the juror, and whether or not [they were] prejudicial, in a *hearing* with all interested parties permitted to participate."

Smith at 215-16. That *Smith* abrogates *Remmer*'s "presumption of prejudice" standard and places the burden of showing actual prejudice on Defendant is recognized by multiple federal circuit courts. See *United States v. Pennell*, 737 F.2d 521, 532-33 (6th Cir. 1984) (concluding that *Smith* "so changed the rules relating to unauthorized communications with jurors that the presumptive prejudice standard . . . no longer governs" and that *Remmer*-as-reinterpreted-by-*Smith* provides for "a hearing in which the defendant has the opportunity to prove actual bias."); *United States v. Williams-Davis*, 90 F.3d 490, 494-99 (D.C. Cir. 1996) (reviewing *Remmer* in the context of *Smith*, *Pennell*, and *Olano*, before affirming the lower-court's inquiry into whether any particular intrusion into the jury showed enough of a 'likelihood of prejudice' to justify assigning the government any burden); *United States v. Sylvester*, 143 F.3d 923, 933-94 (5th Cir. 1998) (reviewing *Remmer* in the context of *Smith*, *Olano*, and *Williams-Davis*, before concluding "[w]e agree that the *Remmer* presumption of prejudice cannot survive *Phillips* and *Olano*. Accordingly, the trial court must first assess the severity of the suspected intrusion; only when the court determines that prejudice is likely should the government be required to prove its absence."); see also *Criminal Procedure – Jury Tampering – Ninth Circuit Holds that Glaring by Government Agents May Trigger Presumption of Prejudice. – United States v. Rutherford*, 371 F.3d 634 (9th Cir. 2004), 118 Harv. L. Rev. 2445 (2005) (critiquing application of *Remmer* presumption to mere staring by a federal agent and noting rejection of *Remmer* in part or whole by authorities above).

Admittedly, many circuits continue to apply the *Remmer* presumption of prejudice, either in part or in whole, pending a more explicit statement from the

Supreme Court of the United States that it is overruled, and avoid addressing the continued applicability of *Remmer* if they can do so. See *United States v. Scull*, 321 F.3d 1270, 1280 n.5 (10th Cir. 2003) (acknowledging other circuits already concluded *Remmer* presumption was abrogated, but resolving to continue applying it for want of a Supreme Court case expressly stating as much); see also *Tong Xiong v. Felker*, 681 F.3d 1067, 1076-78 (9th Cir. 2012) (declining to apply the *Remmer* presumption to the observations made by three jurors of the defendant in a court hallway, let alone a *per se* prejudice standard, although treating it as otherwise controlling for any unauthorized communication between a juror and a witness or interested party); *United States v. Tejada*, 481 F.3d 44 (1st Cir. 2007) (acknowledging circuit split, but that “[a]lthough we too have questioned *Remmer*’s continuing vitality, . . . we need not decide today whether, or to what extent it remains good law. Here . . . the facts simply do not warrant the application of a *Remmer* presumption.”); *Parker v. Head*, 244 F.3d 831, 839 n.6 (11th Cir. 2001) (acknowledging and summarizing circuit split over continued viability of *Remmer* presumption, but not deciding issue because even applying the presumption resulted in denial of *habeas* relief); *Barnes v. Joyner*, 751 F.3d 229 (4th Cir. 2014) (holding North Carolina state post-conviction court contravened clearly established federal law by failing to follow *Remmer*’s rebuttable presumption approach and requirement that hearing be held on juror misconduct claim).

However, it is not necessary for this Court to resolve a federal circuit split regarding the continued viability of *Remmer* because, as it may concern criminal adjudication in this state, the Supreme Court of South Carolina resolved that split when it reversed the Court of Appeals’ application of the *Remmer* presumption to an instance

of a bailiff communicating improperly with a juror regarding the case before them, even as both courts reached the same ultimate conclusion that the conviction was valid and no prejudice existed. *State v. Green*, 432 S.C. 97, 99-100, 851 S.E.2d 440, 441 (2020); see also *State v. Aldret*, 333 S.C. 307, 313-14, 509 S.E.2d 811, 814 (1999) (“[W]e hold the burden is on the party alleging premature deliberations to establish prejudice[.]” functionally syncing the burdens for internal and external misconduct allegations.).

Of course, Murdaugh also attempts to stand *Green* on its head. “There is no suggestion in *Green* that a comment by a state official that did bear on the merits of the case could also be harmless.” Defendant’s Pre-Hearing Brief Re: Motion for a New Trial at 7. *Green* limits the applicability of *Remmer* to cases where a bog-standard prejudice analysis of the particular facts and circumstances, if proven true by evidence presented by the movant, would reach the same conclusion as that which would be presumed, which thus obviates the existence of a legal presumption—to continue calling it a “presumption” only serves to confound the law. *Cf. Fryer v. Fryer*, 9 S.C. Eq. (Rich. Cas.) 85, 95 (1832) (“It is too much the practice to convert mere matters of evidence into rules of law; and, under the specious names of badges and presumptions, compel courts and juries to draw inferences, according to artificial rules, against their real belief.”). Furthermore, even if *Green* leaves *Remmer* any room for more than procedural effect in South Carolina (i.e. a hearing is necessary upon a *prima facie* showing of such a communication), it would do so to apply a *Remmer* presumption in precisely the circumstance of “a comment by a state official that did bear on the merits of the case,” which would be rebuttable by showing the comment to be harmless. Murdaugh’s analysis of *Green* is muddled by his indecision as to whether he should

argue that he is entitled to a *Remmer* presumption—as he once desired—or an unfounded and unprecedented application of *per se* prejudice.

Finally, Murdaugh cites to *Parker v. Gladden*, 385 U.S. 363 (1966), and argues it represents that the statement of “that wicked fellow, he is guilty” cannot be harmless. However, *Parker* is factually distinguishable because he was able to do what Murdaugh cannot: “one of the jurors testified that she was prejudiced by the statements[.]” *Parker* at 365. The issue in *Parker* then became whether Oregon’s dreadful law that permitted a non-unanimous jury verdict to sustain a conviction meant there was no prejudice—the Court rejected that argument, and then rejected the non-unanimous verdicts in a fractured opinion decades later. *Parker* at 365; see, generally *Ramos v. Louisiana*, 590 U.S. ___, 140 S.Ct. 1390 (2020) (holding constitution requires unanimous verdicts to convict a defendant of a serious offense). In this case, Murdaugh has presented an affidavit from a single juror who deliberated, and that juror prescribed her verdict to pressure from other jurors—not anything Clerk Hill allegedly said.

b. Murdaugh’s proffers two mutually exclusive standards, neither of which are supported by either controlling authority or good sense.

As noted above, instead of the State’s straightforward and reasonable conclusion that movant must carry the burden of his own claims, Murdaugh contends each of two inconsistent standards apply. Most ambitiously, Murdaugh argues that if it is shown that a court official engaged in improper, private communications with members of the jury, such communications would constitute a “structural error.” “Structural defects affect the entire conduct of the trial from beginning to end, whereas trial errors occur during the presentation of the case to the jury and may therefore be quantitatively assessed in the context of other evidence presented in order to determine whether its admission was

harmless beyond a reasonable doubt.” *State v. Jenkins*, 412 S.C. 643, 650-51, 773 S.E.2d 906, 911 (2015) (quoting *State v. Mouzon*, 326 S.C. 199, 204, 485 S.E.2d 918, 921 (1997)) (cleaned up). “Differentiating between structural and trial errors serves to enforce procedural safeguards while ensuring that inconsequential, technical errors do not result in a new trial.” *Id.*, 412 S.C. at 651, 773 S.E.2d at 911 (quoting *State v. Chavis*, 412 S.C. 101, 115, 771 S.E.2d 336, 343 (2015) (Hearn, J., dissenting)). “Most errors that occur during trial, including those that violate a defendant’s constitutional rights, are trial errors that are subject to harmless error analysis.” *Id.* (citing *State v. Rivera*, 402 S.C. 225, 246, 741 S.E.2d 694, 704 (2013)).

Framing the allegation raised as one of a “structural” error subject to *per se* prejudice is wholly without precedential support. The Supreme Court of South Carolina has already explicitly rejected *per se* prejudice in the context of external influence on a jury. See *State v. Aldret*, 333 S.C. 307, 313-14, 509 S.E.2d 811, 814 (1999) (citing *United States v. Olano*, 507 U.S. 725, 736-38 (1993)) (“Given that we have not found automatic reversal warranted even in cases of external influences on a jury’s verdict, we decline to do so in the cases of internal misconduct consisting of premature deliberations.”); *Blake by Adams v. Spartanburg General Hosp.*, 307 S.C. 14, 18, 413 S.E.2d 816, 818 (1992) (“[A] bailiff’s remarks to a juror are not *per se* grounds for setting aside a jury verdict. The test is whether the verdict was solely the result of honest deliberation on the case as publicly developed at trial, or whether there is reason to suppose outside influences entered into it as a factor. Every case of this kind must be decided on its own facts.”). That the alleged external influencer was a court official is of no consequence—indeed, many of the cases dealing with the subject involve bailiffs, as

seen in the facts of the cases explored above. Murdaugh's only citation in "support" follows a tortuous reimagining of the Court's ability to consider the strength of the evidence against him as an ability to direct a verdict of guilty against him, and even then to a case concerning a jury instruction which omitted an element of an offense. Defendant's Pre-Hearing Brief Re: Motion for a New Trial at 3 (citing *Neder v. United States*, 527 U.S. 1, 34 (1999) (Scalia, J. dissenting¹)). Indeed, the application of *per se* prejudice has been rejected even by the jurisdictions which still consider a *Remmer* presumption. See, e.g. *Tejeda*, 481 F.3d at 50 (declining to apply structural error analysis to a claim of juror bias, adding in a footnote that it would be inconsistent with *Remmer*); *Tong Xiong*, 681 F.3d at 1077 (rejecting dissent's argument for *per se* prejudice as inconsistent with *Remmer*). Finally, analysis of Murdaugh's allegations as "structural error" would be fundamentally inconsistent with the standards set forth in *Kelly* and *Green*—there is no point to considering the impact on the jurors, the number of jurors exposed, the strength of the evidence, or questioning jurors as commended by the court in *Green* if prejudice from an improper communication is *per se*.

The State cannot overstate the impossibility of the structural-*per se* prejudice standard suddenly insisted upon by Murdaugh. Neither the State nor the judiciary can prevent in all instances jurors from being confronted with uninvited communications from third-parties, even if jurors were again treated like prisoners like in the days of old.² In Murdaugh's construction, defendants themselves could anonymously call jurors, or direct others to do so, with threats or comments upon the merits of the trial and thereby

¹ Scalia concurs in part and dissents in part, but that portion of the opinion relied upon by Murdaugh is very much in dissent. Murdaugh's citation implying that it was concurring is mildly misleading.

² Even our prison inmates have cell phones, to the State's chagrin and public's bloody and narcotic detriment.

invalidate the proceedings at a whim. Any unwanted text message, any shout from a crowd, or even any inadvertent eavesdrop on a conversation between people at the courthouse could invalidate days, weeks, or months of proceedings. The gears of justice turn slowly now, but in Murdaugh's construction they would stop forever for him and anybody else facing trial for a serious crime. The Constitutions of this State and the United States provide for justice, not such injustice.

More conservatively, Murdaugh relies upon *State v. Cameron*, 311 S.C. 204, 208, 428 S.E.2d 10, 12 (Ct. App. 1993), which is itself inconsistent with his "structural error" argument,³ and argues that if it is shown that a court official engaged in improper, private communications with members of the jury, "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." Defendant's Pre-Hearing Brief Re: Motion for a New Trial at 2; Motion for a New Trial at 10. *Cameron* is a divided Court of Appeals opinion, and thus cannot control over of the standards articulated by the Supreme Court of the United States in *Smith v. Phillips* and the Supreme Court of South Carolina in *Kelly, Green*, and *Rowell*. The opinion is also not entirely consistent internally; it both acknowledges that "[t]he mere fact . . . that some conversation occurred between a juror and a court official would not necessarily prejudice a defendant," and quotes a Fourth Circuit opinion declaring that the same "cannot be tolerated[.]" *Cameron*, 311 S.C. at 207-08, 428 S.E.2d at 12. Furthermore, the Fourth Circuit opinion in *Holmes v. United States*, 284 F.2d 716 (4th Cir. 1960), however persuasive it may have been to the divided Court of Appeals in *Cameron*, is itself not controlling. *Johnson v. Williams*, 568

³ Murdaugh, undeterred, nonetheless argues *Cameron* supports his assertion the issue he brings is structural.

U.S. 289, 305 (2013) (“[T]he views of the federal courts of appeals do not bind [a state supreme court] when it decides a federal constitutional question[.]”); *Limehouse v. Hulsey*, 404 S.C. 93, 744 S.E.2d 566 (2013) (“Although this Court often defers to Fourth Circuit decisions interpreting federal law, . . . it is not obligated to do so in view of the lack of uniformity amongst the federal circuits.”); *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 282 S.C. 144, 146, 318 S.E.2d 10, 11 (1984) (“[The Supreme Court of South Carolina] is not bound by the rulings of the Circuit Court of Appeals . . .”). Finally, the conclusion in *Cameron* does not at all appear to rely upon any presumptions, but rather turns on the forelady’s testimony to the trial judge which reflected that both she and the rest of the jury were actually confused by the bailiff’s statement in the course of their deliberations. *Id.*, 311 S.C. at 209, 423 S.E.2d at 12 (Goolsby, J., concurring) (“Clearly, the jury, judging from what both the bailiff and the forewoman testified to, had forgotten or, at the very least, were confused about the trial judge’s instructions regarding the effect of each of the two verdicts of guilty.”).

Murdaugh is particularly sardonic in responding to the State’s own string-cite to *Cameron* as support for the proposition that “[n]ot every inappropriate comment by a member of the court staff to a juror rises to the level of constitutional error[.]” a quotation from *Green*, but does not contest it. The “unremarkable proposition” is of considerable import in the present matter because the jurors disagree as to what, *if anything*, Clerk Hill ever said to any of them. As noted in the State’s Response to Defendant’s Motion, some jurors acknowledge neutral admonitions to pay attention, which can hardly prejudice anybody. See State’s Response to Defendant’s Motion at 21-22, Exh. B. Murdaugh also appears befuddled by the State’s citations to *Smith v. Phillips*, 455 U.S.

209 (1982) as *Smith*, despite it being the only *Smith* case cited in the entirety of the State's Response, and despite its full citation on the preceding page. As set forth above, an explicit statement from the Supreme Court of the United States that movant must show actual bias in a claim of juror impartiality, whatever the source of that impartiality, at the same time as it considers *Remmer* in its history of so requiring, is hardly "irrelevant." To the contrary, *Smith* is controlling.

c. Murdaugh cannot meet his burden because no credible evidence exists to show Clerk Hill made any comments to jurors regarding the merits of the case and because the jurors themselves refute that they considered anything but the evidence properly before them.

The burden rests with the movant, in this case Murdaugh, to prove that an improper contact occurred between at least one juror who deliberated and a non-juror, and further that he was actually prejudiced by that improper contact. The subject matter of the communication is but one factor in determining whether prejudice exists. The personal and professional characteristics of the alleged external influencer is but another factor in determining whether prejudice exists. The jurors themselves, under the procedure commended by *Green*, may attest to their compliance with the instructions of the Court to consider only the evidence and arguments properly presented, and that their verdict was based solely thereon, and that testimony may be taken together with all of the *Kelly* factors to determine whether Murdaugh has met his burden of showing actual bias. Murdaugh insists on any other standard because he knows he cannot satisfy that set forth by law, and because that failure will frustrate his hope of putting anybody other than himself on trial through the scheduled evidentiary hearing.

Thus, in summary, the State's argument is that Murdaugh is not entitled to a new trial because he cannot present any evidence that any juror was improperly influenced, because the jurors each individually affirmed at trial and again in written and video recorded statements that the verdict was their own and free of external influence, and because Clerk Hill did not exert or attempt to exert any improper influence on the jury.

II. MOTION WAS NOT TIMELY FILED: statements by Murdaugh's Counsels and associate suggest he knew of the allegations raised in his Motion for a New Trial and was dilatory in raising them to the Court's attention.

Additionally, Murdaugh's motion is arguably procedurally deficient. A review of the motion does not reveal precisely when or how it is he learned of the claims he now raises. Before the Court of Appeals, Murdaugh only provided an affidavit to that effect as required by *State v. DeAngelis*, 256 S.C. 364, 182 S.E.2d 732 (1971), upon prompting by the State, and even then only begrudgingly and with complaint. The State has reason to believe Murdaugh's affidavit is untruthful, and not merely because Murdaugh himself has proven to be extraordinarily untruthful at trial and throughout his entire life.

Where a defendant knows or could have known of a constitutional issue at the time of trial, the defendant is obliged to timely raise that issue to the Court's attention or else waive it on future appeals. *State v. Powers*, 331 S.C. 37, 42-43, 501 S.E.2d 116, 118 (1998); *State v. McWee*, 322 S.C. 387, 472 S.E.2d 235 (1996); *State v. Byram*, 326 S.C. 107, 113, 485 S.E.2d 360, 363 (1997); *see also State v. Aldret*, 333 S.C. 307, 315, 509 S.E.2d 811, 815 (1999). Except for motions for new trials based on after-discovered evidence, post-trial motions must be made within ten days after the imposition of the sentence. Rule 29(a), SCCrimP. Where a defendant does not learn of a constitutional violation until after trial, the defendant is obliged to seek relief within one

year of the actual discovery of the violation or when it could have been discovered through reasonable diligence, or within one year of the sending of the remittitur from appeal. See Rule 29(b), SCCrimP (as much in the context of after-discovered evidence);⁴ S.C. Code Ann. § 17-27-45 (in the context of the Uniform Post-Conviction Procedure Act).

Murdaugh's counsels have made *numerous* statements to various media outlets indicating they were potentially aware of an issue with the jury at and about the time of trial. In a press conference on the steps of the Court of Appeals on September 5, 2023, counsel Harpootlian, responding to a question as to whether the defense saw the alleged conduct during the jury view or found out about it after the fact, replies "I think... we observed it... I was there, I watched it."⁵ Later at that same press conference, when a reporter asked if they approached the jurors or vice-versa, counsel Griffin replied that "[i]mmediately in the aftermath of the verdict, we had received information that we needed to look into what happened in the jury room."⁶ In one interview with Good Morning America on September 6, 2023, counsel Griffin states that "soon after the trial... actually, as soon as the verdict was rendered, we had gotten some indication from folks in the courtroom that there was something untoward that had happened in the jury room. We didn't know exactly what, um, and we went on a campaign to find out what."⁷

⁴ Murdaugh submitted his Motion for a New Trial pursuant to Rule 29(b), SCCrimP.

⁵ Accessible at https://www.youtube.com/live/myuNfAevjAw?si=Vshu_NMu2-JLFxPf&t=200 at 3:19 as of January 10, 2024.

⁶ Accessible at <https://www.youtube.com/live/myuNfAevjAw?si=IVDeYxQDfv9LkwHT&t=311> at 5:10 as of January 10, 2024.

⁷ Accessible at <https://www.goodmorningamerica.com/news/video/alex-murdaugh-attorneys-call-new-trial-102955711> at 0:12 as of January 10, 2024.

Later on September 6, 2023, attorney Joseph M. McCulloch, Jr., who represents two jurors who provided affidavits to Murdaugh, stated to Court TV that he came to be involved with the jurors “because [he] was asked to be,” (though he does not disclose who asked) initially for the purpose of protecting jurors from swarming press attention

If Murdaugh’s counsels were indeed informed of the allegations immediately after the verdict, before sentencing, then Murdaugh was obliged to raise his concerns to the Court immediately, even if the concerns were at that time ill-defined or inchoate. If Murdaugh’s counsels directed McCulloch to speak to jurors, or even insinuated a desire for such to occur in the fashion of a king complaining of a turbulent priest, McCulloch may be an agent of Murdaugh under the law.

Murdaugh and his counsels, at the hearing scheduled for Tuesday, January 16, 2024, should be required to explain the inconsistency between their statements to the media regarding the time of their discovery of the allegations and the affidavit submitted by their client. If counsels did indeed know of these claims at the time of trial, the motion for a new trial is untimely filed and must be denied.

III. EVIDENTIARY HEARING IS UNNECESSARY: because Murdaugh has failed to make a *prima facie* showing of prejudice, no evidentiary hearing is necessary.

The State acknowledges the Court’s decision to proceed with an evidentiary hearing. Nonetheless, in order to ensure this issue is preserved, and because the same arguments go to the question of whether Murdaugh has met his burden of showing actual prejudice, the State retains and restates here its arguments that no such hearing is necessary.

No further evidentiary inquiry is necessary as Defendant failed to make a *prima facie* showing required to necessitate an evidentiary hearing. Not a single juror who

actually deliberated on the case indicates that their deliberations or verdict was in any way affected by the improper contacts alleged. The jurors were polled individually and affirmed their verdicts on the record. See State's Response to Motion at 21-22.

Murdaugh offers with his motion an affidavit from only one juror who deliberated: Juror 630. In the affidavit, Juror 630 attributes statements to Clerk Hill which resemble arguments made by the State, but she does not claim she was influenced by Clerk Hill, but rather merely felt pressure from other jurors. Due process is not implicated by pressure upon one juror by other jurors. See, *generally State v. Franklin*, 341 S.C. 555, 534 S.E.2d 716 (Ct. App. 2000) (due process not implicated where other jurors verbally abused a holdout for at least four hours). Thus, Juror 630's affidavit is affirmatively inconsistent with a *prima facie* showing necessary for an evidentiary hearing. See State's Response to Motion at 19-20.

Juror 785 – the so-called “egg juror” and landlord to Juror 630 – did not participate in deliberations and was removed for her own violations of the court's instructions not to discuss the case with third-parties, and lack of forthcoming candor regarding those discussions. Further, when asked by Judge Newman at trial if Clerk Hill discussed anything about the case with anybody on the jury, Juror 785 replied “**not that I'm aware of.**” See State's Response to Motion at 10-16; 20; 23; Trial Tr. 5553, ll. 22-25. The affidavits in the defense motion on their own do not support a new trial and the motion should be denied on the pleadings.

Moreover, none of the other jurors who deliberated who spoke to SLED after Murdaugh filed his motion indicated their verdict was in any way based on anything but

a fair consideration of the evidence, further supporting that the motion should be rejected on the pleadings. See State's Response to Motion at 21-22.

Nonetheless, Murdaugh argues that a hearing is necessary, seemingly in order to impeach Clerk Hill. That a potential witnesses may be impeachable is inconsequential to whether Defendant has made a *prima facie* showing. The jurors found Murdaugh guilty, affirmed their verdict when polled, and none have alleged Clerk Hill influenced them. See State's Response to Motion at 24. Thus, no evidentiary hearing is necessary and the motion should be denied.

IV. WITNESSES, EXHIBITS, AND PROCEDURE: the evidentiary hearing procedure should be judicially guided questioning of jurors who deliberated, followed as necessary by other witnesses called by the parties, but the scope of relevant evidence is limited.

Each of the twelve jurors who deliberated must be called as witnesses before the Court to affirm the verdict in order to satisfy Murdaugh's burden of prejudice. Any inquiry to jurors should be limited and judicially conducted to minimize intrusion into the lives of those who performed such public service in this case. Assuming the Court rules as argued above that Murdaugh must show prejudice, the following questions to deliberating jurors, based in what the record on appeal reflects the trial court used in *State v. Green*, 432 S.C. 97, 851 S.E.2d 440 (2020), should be sufficient, with additional inquiry to be conducted only if necessary:

1. On March 2, 2023, did you answer when polled that your verdict was guilty on each of the charges?
2. As you were instructed to do by Judge Newman, was your verdict on March 2, 2023 based solely on the testimony, evidence, law, and arguments of counsel as presented at the trial?

This is sufficient to determine whether there was any improper effect on the verdict and minimizes intrusion on the jury, while preserving the focus of the proceedings upon the

allegation actually raised by Murdaugh's motion. See State's Response to Motion at 5-

6.

Rule 606(b), SCRE, also makes this principle clear:

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. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

In the event any juror's answer to the above questions raises the need for additional inquiry, then additional inquiry would be warranted with questions from the Court, questions suggested to the Court by counsel, and questioning by counsel, as well as evidence from additional relevant witnesses.

a. EVIDENCE AND OBJECTIONS: the scope of the witnesses the State intends to call is contingent upon this Court's rulings, but may include the jurors who deliberated, jurors who did not deliberate, clerk staff, court staff, law enforcement, and others with knowledge.

The State addresses the types of witnesses and anticipated objections below. However, a list of potential witnesses and exhibits is sent separately as it contains sensitive identifying information.

1. Deliberating jurors

Procedurally, the State contends the evidentiary hearing should begin with the previously suggested short polling of each juror as to their verdict. The results of that examination will determine first, whether further inquiry should occur, and second, the relevance of specific witnesses and specific subjects to that inquiry. See, *generally*

Rule_611(a), SCRE (court has reasonable discretion to control mode and order of interrogating witnesses and evidence); *State v. Green*, 432 S.C. 97, 100, 851 S.E.2d 440, 441 (2020) (affirming trial court's "deft handling" of contact with bailiff through limited inquiry to jurors). If there is no indication of any prejudice then there is no need for further inquiry. See *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999) (defendant has the burden to demonstrate prejudice from allegations of internal misconduct by or external influence on jury).

Only in the event a juror's response necessitates further inquiry, would the State have specific objections to certain witnesses and specific objections to portions of certain witnesses' testimony. This list of course cannot be exhaustive and will ultimately depend on how the testimony and evidence develops at any hearing.

First, the State would generally object to any inquiry to the jurors beyond that which is allowed by Rule 606, SCRE. That rule prohibits any inquiry into internal jury discussions, mental processes, mind or emotions, and discussions. Our state appellate courts have repeatedly indicated that any judicial inquiry beyond whether "extraneous improper information" affected the jury is improper unless it goes to fundamental fairness. See *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999) (defendant must demonstrate prejudice from allegations of internal misconduct such as premature deliberations, and defendant was not only procedurally barred from failing to timely raise the issue), *State v. Hunter*, 320 S.C. 85, 463 S.E.2d 314 (1995) (inquiry proper where juror claimed racial prejudice influenced verdict); See also *State v. Zeigler*, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005) (finding that although jurors submitted note asking defendants to testify, trial judge's charge and affidavits did not indicate any juror based

the decision on a defendant's lack of testimony); *State v. Franklin*, 341 S.C. 555, 324 S.E.2d 716 (Ct. App. 2000) (internal pressure from jurors, including "screaming" and calling one "stupid" and other names, was insufficient to raise concerns of fundamental fairness to invade internal deliberations of verdict). Indeed, as the Court of Appeals noted in *Franklin*:

But the integrity of the jury system is jeopardized any time a court finds it necessary to intrude into the internal deliberation process. Such an inquiry should not be lightly made.

State v. Franklin, 341 S.C. 555, 562, 534 S.E.2d 716, 720 (Ct. App. 2000).

Therefore, assuming further inquiry is necessary based on a polling of the jurors, it should be limited to issues raised, and only if those issues go to extraneous prejudicial information or internal deliberative processes that fit in the narrow category of fundamental fairness. In the event a juror's response to the polling necessitates additional inquiry, that inquiry should also assess whether there was prejudice under the law. See *Aldret*, 333 S.C. at 313-14, 509 S.E.2d at 312 (automatic reversal not required for either external influence nor internal juror misconduct, and burden is on defendant to show prejudice); *Zeigler*, 364 S.C. at 111-12, 610 S.E.2d 868-69 (even if jurors thought defendant should have testified none said that was the reason they found the defendant guilty).

Jurors should be required to stay until polling is completed, and be subject to recall in the event that development of additional issues during the evidentiary hearing require more inquiry as to specifics within the above-defined confines of the law.

2. Alternate, excused, or removed jurors

The State would first object to the testimony from any alternate or removed juror under Rules 401 to 403, SCRE, since they did not deliberate and thus were not part of the verdict under attack. Certainly, there is no relevance and any non-deliberating juror should not be allowed to speculate on the effect of any alleged external or internal conversation on jury deliberations or the verdict. See *also* Rule 606, SCRE.

In the event that a non-deliberating juror, Juror 785, who was removed by Judge Newman for talking to her husband and tenants about the case in violation of the judge's instruction, is allowed to testify to alleged external influence because of developments during the polling and initial inquiry to the deliberative jurors, the State would seek to admit as an exhibit the entirety of the trial transcript containing the *in camera* examination of Juror 785, the spouse, and the tenants, as well as Judge Newman's ruling on the issue finding the juror should be removed for her violation of instructions.

The State would object under Rules 401-403, SCRE to any testimony from Juror 785 as to her claims as to interactions with Clerk Hill, specifically as to paragraphs 3 through 11 but also any similar or related claims, because none of them involve alleged interaction with or discussion with any deliberating juror. See *also* Rule 606(b), SCRE.

The State would generally object to any hearsay from Juror 785's claims about conversations she had after the trial with people such as Daindridge or Webb.

Aside from the discussion of the issue in the transcript, the State would object to testimony regarding the so-called Facebook issue under Rules 401-403, SCRE, since Judge Newman did not rely upon it in excluding the juror.

Unless the proper foundation is laid and joined by any issue following polling of the deliberative jurors, the State would also generally object to discussion of these and similar issues from any removed or alternate juror, as the case may necessitate, as: (1) improper character evidence under Rule 404 and 405, SCRE, as any character trait is not pertinent; (2) Rule 608, SCRE (setting out proper impeachment and limiting the use of extrinsic evidence); Rule 609, SCRE (allowing impeachment for certain crimes for which a witness has been convicted); Rule 613, SCRE (setting forth foundational requirements for use of prior inconsistent statements); and Rule 801-804, SCRE (hearsay). This list is not intended to be exhaustive and will depend on how the testimony and evidence develops.

3. Clerk of Court Hill

Again, only if the initial polling of the jurors requires further inquiry, then Clerk Hill may be called to testify by either party depending on allocation of the burden.

Various allegations have been made involving the Clerk both in the defense motion and in public reporting. Some of these include supposed manufacturing of a Facebook post, supposed conversations with the removed Juror 785, plagiarism as to the book about the trial, a wiretapping arrest of her son related to his county employment, and investigations into use of government office for private gain. Generally, again, the State would object to relevance under Rules 401-03, SCRE, to any testimony of or examination about any alleged conduct that occurred outside of the time period of the trial, and any conduct that does not involve interaction with a deliberative juror. For example, the Facebook issue was not relied upon by Judge Newman to exclude Juror 785, and her claims as to conversations with Clerk Hill did not

involve any other deliberating juror. Any claims as to plagiarism or wiretapping or use of office for personal gain occurred after trial and are similarly irrelevant.

Unless the proper predicates exist or a foundation is laid, the State would generally object to examination of these and similar issues, as: (1) improper character evidence under Rule 404 and 405, SCRE, as any character trait is not pertinent; (2) Rule 608, SCRE (setting out proper impeachment and limiting the use of extrinsic evidence); Rule 609, SCRE (allowing impeachment for certain crimes for which a witness has been convicted); Rule 613, SCRE (setting forth foundational requirements for use of prior inconsistent statements); and Rule 801-804, SCRE (hearsay). This list is not intended to be exhaustive and will depend on how the testimony and evidence develops.

4. Courthouse staff

Again, only if the initial polling of the jurors requires further inquiry, then other courthouse staff, such as the jury coordinator, other clerks, and bailiffs, may be called to testify.

As before, the State would submit their testimony should be limited to allegations of extraneous influence or any other permissible juror inquiry, and as before, depending on whether proper predicates exist or a foundation is laid, the State would object to relevance under Rules 401-03, improper character evidence under Rules 404 and 504, improper impeachment under Rules 608, 609, and 613, and hearsay, among others, inasmuch as inquiry is sought into issues that do not directly address permissible issues regarding the deliberative jurors.

5. Other Witnesses

Other witnesses could become relevant, but depending on the nature of the inquiry and the issues joined after polling of the deliberative jurors. For example, Attorney Joe McCullouch was present as a media commentator but also represented Juror 785 shortly after trial (if not before the end of trial), and may be relevant as to when the defense first became aware of these allegations. If the Facebook issue is deemed relevant, testimony from judicial or external witnesses may be necessary to explain the manner in which the issue arose. Similarly, testimony may be needed from the tenants of Juror 785, as well as the person who sent the email upon hearing from a coworker that Juror 785 was talking about the case and expressing an opinion during trial – which was why she was excluded. If the book issue is relevant testimony may be needed as to the manner in which that issue arose. Finally, SLED agents from the trial, into the allegations against Juror 785, and from the investigation following the defense motion may need to be called depending on the evidence otherwise allowed.

6. Credibility

In the end, though, assuming there is inquiry beyond polling of the jurors, and conflicting evidence arises on the issues, including impeachment evidence, it will be for this Court to decide credibility and to determine based on those findings: (1) whether misconduct occurred, and (2) whether Murdaugh can show prejudice. See *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999) (defendant must demonstrate prejudice from allegations of internal misconduct or external influence), *State v. Hunter*, 320 S.C. 85, 463 S.E.2d 314 (1995) (rejecting claims from juror about supposed racial bias and coercion, noting no evidence it affected the verdict and the juror agreed guilty was her

verdict when polled); *State v. Zeigler*, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005) (finding that although jurors submitted note asking defendants to testify, trial judge's charge and affidavits did not indicate any juror based the decision on a defendant's lack of testimony); *State v. Covington*, 343 S.C. 157, 539 S.E.2d 67 (Ct. App. 2000) (where there was conflicting information regarding whether extraneous information was brought to the jury about defendant, trial court properly resolved the credibility issues and found defendant failed to prove misconduct by either clear and convincing or preponderance); *State v. Franklin*, 341 S.C. 555, 324 S.E.2d 716 (Ct. App. 2000) (affirming trial court's rejection of claims from one juror about threats and verbal abuse from the others did not rise to the level of internal misconduct such as to raise a due process claim).

In the end:

In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences. Unless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict. The trial court has broad discretion in assessing allegations of juror misconduct. Relevant factors to be considered in determining whether outside influences have affected the jury are 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. Generally, the determination of whether extraneous material received by a juror during the course of the trial is prejudicial is a matter for determination by the trial court.

State v. Kelly, 331 S.C. 132, 141–42, 502 S.E.2d 99, 104 (1998).

Here, Juror 785 was removed prior to deliberation, the Judge properly instructed the jury, and the jurors all indicated guilty was their verdict after polling. There will be no credible evidence this verdict was based on anything but the evidence, law, and permissible argument at the trial.

b. PROCEDURAL ISSUES: the Court should receive all testimony in open court, not *in camera*, but with limitations on media recording and broadcasting of the images or names of the jurors.

There is a presumption of courtroom openness that applies to post-trial hearings involving allegations of alleged juror misconduct. *Ex parte The Greenville News, et. al.*, 326 S.C. 1, 482 S.E.2d 556 (1997). Restrictions on the general openness of the courts are allowed if essential to preserve higher values and they are narrowly tailored to serve that interest. *Id.*

In this case, some reasonable restriction on the general openness of the courts is necessary because of the unprecedented public interest in this case, and judicial interest in protecting these jurors from unreasonable intrusion and respecting their public service – particularly in a case as lengthy and complicated as this one. Like trial, arrangements should be made for the jurors to be able to report offsite and be transported to the courthouse by law enforcement or court personnel, so they will not have to walk through the public entrances where they may be filmed or approached by media or gallery members. Additionally, jury room(s) inaccessible to the public should be made available for the jurors during pendency of the hearing.

Any examination of the jurors during the hearing should be with any media and gallery members present under strict order not to record, photograph, report, or broadcast their faces or any potential identifying or private information. Cell phones or any other recording device should be prohibited from any gallery member in the court room except for legitimate media members approved by the Court. The only live video or audio feed allowed to be broadcast in real time should be from an approved pool feed, which should have safeguards built in including an appropriate delay with the pool feed provider under instructions to monitor and black out from broadcast any portion of

the feed inadvertently recorded which would violate these restrictions and the jurors' privacy. See generally Rule 605(f), SCACR (generally addressing trial court's discretion to control media presence in courtroom and providing that members of the jury should not be photographed, and requiring pooling arrangements when more than two media outlets have given notice).

If other witnesses become necessary, similar protection of their identities or some of their testimony may be necessary in order to protect the identities of the jurors.

Of course, the Court could and should exercise reasonable discretion to add or modify any restrictions as the hearing develops in order to protect the judicial interest in preventing unreasonable intrusions on juror privacy, while still honoring the general openness of matters occurring in court.

While subpoenas should be allowed in order to secure the attendance of jurors and other possible witnesses that may become necessary for the evidentiary hearing, depending again on this Court's decisions as to the manner of inquiry and the evidence that develops at the hearing, subpoenas beyond that for such things as jurors' phone records should not be allowed absent good cause shown. This Court always retains discretion to allow further inquiry depending on evidence that develops at the hearing, including supplemental productions or hearings if necessary.

{Conclusion and signature on following page}

CONCLUSION

WHEREFORE, the State respectfully requests that this Court deny Murdaugh's motion for a new trial or, barring that, convene an evidentiary hearing consistent with that conducted in *State v. Green* and, upon hearing the testimony of all twelve jurors who deliberated and witnesses presented, find Murdaugh's allegations to be not credible, find Murdaugh has failed to meet his burden of proof as to both the factual allegations and prejudice therefrom, and deny his motion for a new trial.

A list of potential witnesses and exhibits is sent separately as it contains sensitive identifying information.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

S. CREIGHTON WATERS
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By: s/ S. Creighton Waters
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

January 10, 2024

EXHIBIT H

(Appellant's Reply Brief)

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

State of South Carolina,

v.

Richard Alexander Murdaugh,

Defendant.

**COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

Indictment Nos. 2022-GS-15-00592, -593,
-594, and -595

**DEFENDANT’S REPLY TO THE
STATE’S PRE-HEARING BRIEF**

Defendant Richard Alexander Murdaugh, through undersigned counsel, hereby replies to the re-submitted pre-hearing brief the State submitted to the Court but did not file or otherwise make available to the public, pursuant to the Court’s direction on January 4, 2024.

I. Introduction

On October 27, 2023, Mr. Murdaugh filed a motion for a new trial based on after-discovered evidence, having obtained leave from the Court of Appeals to suspend his appeal of his convictions to file the motion. His motion alleges that Rebecca Hill, the elected Clerk of Court for Colleton County, had extensive private communications with members of the jury during trial. This allegation was supported by sworn affidavits of jurors and a witness to juror interviews, testimony at *in camera* proceedings, and other evidence including Ms. Hill’s own book. The subject matter of Ms. Hill’s alleged communications was the evidence being presented at trial. Mr. Murdaugh alleges that an elected state official deliberately violated his constitutional right to a fair trial before an impartial jury. If that allegation is proven, the law requires a new trial.

On December 21, 2023, the Court instructed the parties to submit pre-hearing briefs by January 3, 2024. Mr. Murdaugh submitted a 21-page brief (approximately 19 pages excluding caption and signature block). The State submitted a 7-page brief, which excluding the caption and signature page was only 5 pages long, half of which was dedicated to arguing that the Court should not hold an evidentiary hearing at all even though the Court has already set the evidentiary hearing

dates. On January 4, 2024, the Court instructed the parties to resubmit their briefs answering the following questions directly:

1. List all potential witnesses you plan to call during the evidentiary hearing.
 - a. List any objections or challenges you plan to make to opposing party's witnesses. I understand you may not have an exact list but you can predict the opposing side's intentions as far as witnesses.
2. List all exhibits you plan to introduce during the evidentiary hearing.
 - a. Again, list any objection or challenges to opposing party's exhibits.
3. Clarify your argument as to whether the Defendant is entitled to new trial or not.
 - a. Specifically, clarify the argument you will make during the evidentiary hearing. I've already decided an evidentiary hearing will occur. The mere fact that I have set the matter to include an evidentiary hearing does not mean I have decided any issue in the case at the present.
4. Any procedural issues which you feel may affect the evidentiary hearing:
 - a. Issues regarding the subpoena of specific witnesses.
 - b. Your position regarding how the court should receive testimony. Whether any witness testimony should be conducted in camera rather than in open court.
5. Any other issues regarding the conduct for the hearing of the merits of the motion.

The Court further stated, "I understand that you may not want these particular details on the public record until the evidentiary hearing or the status conference. You are welcome to send the revised briefs to me directly without filing."

On January 10, 2024, Mr. Murdaugh filed his revised brief, 32 pages long, making it available to the public. The State submitted its revised brief, 31 pages long directly to the Court, with a cover email stating, "We are electing at this time to just send the brief to the Court and defense counsel rather than filing." The State's revised brief, six times longer than its publicly

available brief, contains many novel legal arguments purporting to explain why the Court should avoid determining whether Ms. Hill tampered with the jury during the trial. What it lacks is any claim that the facts will show Ms. Hill did not tamper with the jury during the trial.

The State's new brief is organized under four top headings, "Burden of Proof," Motion Untimely," "Evidentiary Hearing Unnecessary," and "Witnesses, Exhibits, and Procedure," to which Mr. Murdaugh replies below (except for the State's argument against holding an evidentiary hearing, which the Court has already decided will occur).

II. Reply to State's "Burden of Proof" arguments.

Mr. Murdaugh does not have a burden to prove. Where there

In a criminal case, any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial, if not made in pursuance of known rules of the court and the instructions and directions of the court made during the trial, with full knowledge of the parties. The presumption is not conclusive, but the burden rests heavily upon the Government to establish, after notice to and hearing of the defendant, that such contact with the juror was harmless to the defendant.

Remmer v. United States, 347 U.S. 227, 229 (1954). Mr. Murdaugh argues this "burden shifting" under *Remmer* is irrelevant in this case because where a state official communicates to the jury about the merits of the case before it, our Court of Appeals subsequently sharpened and simplified the standard:

In this case, there 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. When there has been such a communication, 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.

State v. Cameron, 311 S.C. 204, 208, 428 S.E.2d 10, 12 (Ct. App. 1993) (internal quotation marks and alteration marks omitted).

The *Cameron* standard is slightly different than the standard in *Remmer* in that it restricts the presumption to egregious cases of external influence but does not admit the possibility that such egregious cases could be harmless. *Cf. Connecticut v. Berrios*, 129 A.3d 696, 709–11 (Conn. 2016) (collecting federal and state cases when discussing majority position that “the *Remmer* presumption is still good law with respect to egregious external interference with the jury’s deliberative process via private communication, contact, or tampering with jurors about the matter”).¹ In that, it presages our Supreme Court’s holding in *Green*: “The attempted bribery of a juror in *Remmer*—conduct which goes to the heart of the merits of the case on trial—is a far cry from the circumstances presented in this case. The bailiff’s actions here—though improper—did not touch the merits” *State v. Green*, 432 S.C. 97, 100, 851 S.E.2d 440, 441 (2020). But, of course, the logic of *Cameron* does directly follow the reasoning of *Parker*, *Remmer*, *Mattox*, and a line of cases extending to early English law predating our Republic by centuries. *See* Def.’s Revised Prehearing Br. 18–20 (citing, *inter alia*, *Parker v. Gladden*, 385 U.S. 363 (1966) (*per curiam*); *Remmer*; *Mattox v. United States*, 146 U.S. 140 (1892); *Lord Delamere’s Case*, 4 Harg. St. T. 232 (Eng. 1685)).

Mr. Murdaugh argues those cases nevertheless are not, technically, relevant because this Court is a trial court called upon to follow *Cameron*, not to agree with it. The State, however, broadly offers four arguments against application of the *Cameron* standard in this case. Each is unavailing.

First, the State argues this Court should ignore published appellate authority that is directly on point because *Smith v. Phillips* purportedly abrogated *Remmer*, and that *Green* recognizes this

¹ Mr. Murdaugh’s revised pretrial brief emphasized language in this quote but inadvertently failed to provide parenthetical noting he added the emphasis.

by “unanimously declining to adopt *Remmer* . . . and its presumptive prejudice standard in every instance of improper contact.” State’s Second Prehearing Br. 3–4 (citing *Smith v. Phillips*, 455 U.S. 209 (1982) and *State v. Green*, 432 S.C. 97, 851 S.E.2d 440 (2020)). As Mr. Murdaugh argues extensively in his revised brief, that is not correct. There is a circuit split on the issue and the Fourth Circuit takes the majority position in rejecting the State’s argument: “We cannot accept the Commonwealth’s argument that the presumption of prejudice attaching to extrajudicial communications was overturned by the Supreme Court in *Tanner v. United States*, 483 U.S. 107 (1987), or *Smith v. Phillips*, 455 U.S. 209 (1982).” *Stockton v. Virginia*, 852 F.2d 740, 743–44 (4th Cir. 1988) (parallel citations omitted).² The South Carolina Supreme Court is not obliged to follow the Fourth Circuit’s position on this split, but South Carolina courts often defer to the Fourth Circuit in such situations. See *Limehouse v. Hulsey*, 404 S.C. 93, 108–09, 744 S.E.2d 566, 575 (2013). The Court of Appeal’s *Green* opinion expressly discussed the circuit split. 427 S.C. 223, 235, 830 S.E.2d 711, 717 (Ct. App. 2019), *aff’d as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020). Our Supreme Court affirmed the decision as modified without rejecting Fourth Circuit case law, instead stating “[w]e are not persuaded that the *Remmer* presumption of prejudice applied here” and “we decline to adopt the *Remmer* presumption of prejudice in every instance of an inappropriate bailiff communication to a juror”—which would be a very tortured way of saying the *Remmer* presumption of prejudice no longer applies at all. *Green*, 432 S.C. at 100–101, 851 S.E.2d at 441. *Green* of course does not say that; rather, it says *Remmer* does apply in certain

² Significantly, Justice O’Connor explicitly stated in her concurring opinion in *Smith*, that the Court’s holding did not foreclose the use of presumptive implied bias in appropriate cases. 455 U.S. 209, 224, 102 S. Ct. 940, 949, 71 L. Ed. 2d 78 (1982)

cases, just not in cases in which the state actor’s actions “though improper—did not touch the merits” of the matter before the jury. *Id.*

Second, the State argues “*Parker* is factually distinguishable because” in *Parker* “one of the jurors testified that she was prejudiced by the statements.” State’s Second Prehearing Br. 10 (citing 385 U.S. at 365). The State fails to note that in the very next sentence the Court went on to hold that “Aside from this [referring to the testimony of the juror that she was prejudiced], we believe that the unauthorized conduct of the bailiff involves such a probability that prejudice will result that it is deemed inherently lacking in due process.” *Id.* (internal quotation marks omitted). In other words, as discussed in *Cameron* and *Green*, when a state actor’s communication concerns a harmful “subject matter” or the “merits” of a criminal case, it does not matter whether the jurors say they were prejudiced.

Third, the State argues that framing a state official’s intentional jury tampering during trial as a structural error is without procedural support. Mr. Murdaugh will not repeat in this Reply his discussion of the many cases that provide such support. *E.g.*, Def.’s Revised Prehearing Br. 18–20; *see also Parker*, 385 U.S. at 365 (“[W]e believe that the unauthorized conduct of the bailiff ‘involves such a probability that prejudice will result that it is deemed inherently lacking in due process.’” (quoting *Estes v. Texas*, 381 U.S. 532, 542–43 (1965))).³ Mr. Murdaugh merely adds that the issue here is not whether a juror engaged in misconduct, not whether some member of the public engaged in misconduct, not whether a defendant engaged in misconduct, and not even

³ In identifying deliberate jury tampering by a state actor during a criminal trial as structural error, *Parker* quotes from its opinion in *Estes* issued the previous year, which more fully stated: “It is true that in most cases involving claims of due process deprivations we require a showing of identifiable prejudice to the accused. Nevertheless, at times a procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process.” 381 U.S. at 542–43. That is the definition of structural error.

whether a bailiff made an unguarded statement that he should have known a juror would hear (as in *State v. Rowell*, 75 S.C. 494, 56 S.E. 23 (1906)⁴). The issue is whether an elected state official using the power of her office to enter the jury room during trial to advocate against the defendant to promote her own interests is a structural error in the conduct under the trial, under the principle that all evidence and argument presented to the jury must be presented in the courtroom. *Turner v. Louisiana*, 379 U.S. 466, 472–73 (“In a constitutional sense, trial by jury in a criminal case necessarily implies at the very least that the ‘evidence developed’ against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel.”).

The State complains that this sort of tampering happens so commonly that it “cannot overstate the impossibility” of considering it a structural error. State’s Second Prehearing Br. 12. That exactly reverses the issue. To the undersigned’s knowledge, nothing like Ms. Hill’s conduct has ever happened before this case. Most likely it will never happen again. The impossibility should be found in excusing Ms. Hill’s conduct with post hoc reasoning that her tampering probably did not change the outcome of the trial. If Ms. Hill’s misconduct is excused, then truly anything goes.

Fourth, the State argues this Court should simply ignore the controlling precedent of *Cameron* because a judge dissented, because it was somehow abrogated by *Smtih* eleven years before it issued, or because its reasoning is otherwise flawed. Of course, a dissenting opinion in no way changes the trial court’s obligation to faithfully follow controlling precedent. *Cameron*

⁴ The State relies heavily on *State v. Rowell* in support of its position. This 117-year-old case decision is inapposite because the *Rowell* decision predates the incorporation of the Sixth Amendment right to an impartial jury to the states through the due process clause of the Fourteenth Amendment by *Parker v. Gladden*, 385 U.S. 363, 364 (1966). In other words, *Parker* abrogated *Rowell* on this point.

was cited and discussed with approval in the Court of Appeal's *Green* decision, which contrasted the harmless bailiff conduct there with the conduct requiring a mistrial in *Cameron*. 427 S.C. at 237, 830 S.E.2d at 717. Our Supreme Court affirmed that decision as modified without mentioning *Cameron* at all. If the Supreme Court meant to overrule *Cameron*, it would have said so. Instead, it corrected the Court of Appeals reasoning to conform with the reasoning in *Cameron*. *Cameron* post-dates *Smith* by eleven years and so could not have been abrogated by it. If *Cameron* court misapprehended the meaning of *Smith* as to the issue before it (it did not), that would simply mean *Cameron* was wrongly decided, which is not an issue for the trial court's consideration. Neither is the State's complaint that the *Cameron* opinion purportedly "is also not entirely consistent internally." Trial courts do not reject controlling precedent because they disagree with the appellate court's reasoning—appellate courts correct trial courts' errors, not the other way around.

Cameron sets forth the controlling legal standard:

In this case, there 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. When there has been such a communication, 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.

311 S.C. at 208, 428 S.E.2d at 12.⁵ That decision has not been overruled by any later decision of our Supreme Court or the United States Supreme Court. It therefore is binding authority which this Court must follow faithfully. If the State disagrees with the standard set forth in *Cameron*, it can explain why in its appellate brief and seek leave for oral argument against precedent on appeal. See Rule 217, SCACR.

⁵ The State appears to have dropped its claim that the standard Mr. Murdaugh quotes from *Cameron* is not in fact the one and only standard set forth in *Cameron*. Compare State's Second Prehearing Br. 14 with State's Initial Prehearing Br. 3 n.2.

III. Reply to State’s “Motion Untimely” arguments.

The State argues,

Murdaugh’s motion is arguably procedurally deficient. A review of the motion does not reveal precisely when or how it is he learned of the claims he now raises. Before the Court of Appeals, Murdaugh only provided an affidavit to that effect as required by *State v. DeAngelis*, 256 S.C. 364, 182 S.E.2d 732 (1971), upon prompting by the State, and even then only begrudgingly and with complaint. The State has reason to believe Murdaugh’s affidavit is untruthful, and not merely because Murdaugh himself has proven to be extraordinarily untruthful at trial and throughout his entire life.

State’s Second Prehearing Br. 16. This argument is unsound for four reasons.

First, there is no legal requirement for an affidavit from Mr. Murdaugh stating that he did not know Ms. Hill was tampering with the jury during his trial. The State relies exclusively on an out-of-context, cherry-picked quote from *State v. DeAngelis*, a 52-year-old case that has never been cited for that proposition. 256 S.C. 364, 182 S.E.2d 732 (1971). *DeAngelis* affirmed a trial court’s denial of a motion for a new trial, in which the defendant sought a “new trial” as a device to challenge his own guilty plea that occurred after a jury was empaneled but before trial commenced. *Id.* at 368–69, 182 S.E.2d at 733. His motion for a “new trial” was supported only by two affidavits from other persons criminally involved in the crimes for which he was accused and one from his own attorney. *Id.* at 369–71, 182 S.E.2d at 734. The trial court determined that, among other issues, an affidavit was at least needed from the defendant, given that he was challenging his own decision to plead guilty, and it denied the motion for a new trial. *Id.* at 371, 182 S.E.2d at 734–35. The Supreme Court affirmed. *Id.* at 372, 182 S.E.2d at 735. In 52 years, the fact-specific decision in *DeAngelis* has never been cited by any court for the proposition that a motion for a new trial always requires an affidavit from the defendant, regardless of the circumstances or the factual basis for the motion.

Mr. Murdaugh refuted this argument in the Court of Appeals, but to avoid delay additionally provided an affidavit from Mr. Murdaugh stating the obvious, that he did not know of the Clerk of Court's improper communication with the jury until after the trial concluded. That affidavit states, in its entirety,

I, Richard Alexander Murdaugh, after being duly sworn, depose and state that I did not have any knowledge or information that the Colleton County Clerk of Court, Rebecca Hill, or anyone else, had communications with the jury during the trial in the above-captioned matter about the evidence, jury deliberations, and the other matters identified in the proposed Motion for New Trial filed as an exhibit in the Court of Appeals, until after the jury rendered its verdict and I was sentenced.

Exhibit A to Reply to State's Return to Motion to Suspend Appeal, *State v. Murdaugh*, Appellate Case No. 2023-000392 (Sept. 21, 2023).

The State now asserts it "has reason to believe Murdaugh's affidavit is untruthful," which necessarily means that it believes Mr. Murdaugh had knowledge during trial that Ms. Hill was communicating with the jury outside the courtroom to secure his conviction for murder but remained silent about that fact until six months after his conviction and sentencing. State's Second Prehearing Br. 16. Since he was in custody during the trial, he could only have learned that from his counsel. So, the State says Mr. Murdaugh's lawyers told him Ms. Hill was tampering with the jury, and he agreed the best course of action would be to remain silent, be convicted and sentenced for murdering his own family, then file a post-trial motion six months later. No reasonable person believes that.

Second, the State claims Mr. Murdaugh's motion for a new trial is defective because it does not indicate how or when he learned of the allegations contained therein. Again, this argument was refuted in the Court of Appeals. The "how" is that jurors and other witnesses spoke to Mr. Murdaugh's counsel after the trial. The "when" is on or about the dates on the affidavits regarding those interviews. Mot. Exs. A, F, H to Ex. 1 (affidavits from witnesses dated August 14, August

18, and August 13, 2023, respectively); Mot. Exs. B ¶ 1, J ¶ 1 to Ex. 1 (affidavits from defense paralegal regarding interviews with jurors stated to have occurred on August 6, 2023); Mot. Ex. G ¶ 2 to Ex. 1 (affidavit from defense attorney regarding Facebook download conducted at a witness interview stated to have occurred on August 18, 2023). If the Court is so inclined, it can ask the witnesses to confirm when they were first contacted by Mr. Murdaugh's counsel.

Third, the State's assertion that Mr. Murdaugh's counsel should have immediately filed a frivolous motion for a new trial the moment they first heard any unsubstantiated rumor about jury issues is absurd. The State provides many quotes from media statements by Mr. Murdaugh's counsel (which explicitly state that rumors were first heard *after* the trial), but even those quotes include the statement "We didn't know exactly what, um, and we went on a campaign to find out what." State's Second Prehearing Br. 17. Of course, the State does not really believe defense counsel could or should have immediately filed a motion after trial demanding a new trial because they heard rumors giving them "some indication from folks in the courtroom that there was something untoward that had happened in the jury room" without first investigating "exactly what" actually happened. The proper course of action was to investigate the rumors. That is what Mr. Murdaugh's counsel did, but no one would speak with them until Ms. Hill published her book. As Mr. Griffin stated to the media in the press conference the State repeatedly cites, *see* State's Second Prehearing Br. 17 n.5, n.6, n.7, after Ms. Hill published her book, "That zone of silence collapsed, and jurors were upset about that, the ones we talked with, and they were more than willing to come forward."

Fourth, the State makes this argument for an improper purpose. As the State itself explains, its purpose is to obtain discovery into how the defense learned about Ms. Hill's jury tampering, a subject that has nothing to do with whether Ms. Hill actually engaged in jury tampering. The State

wants an examination of Mr. Murdaugh’s lawyers and attorney Joseph M. McCulloch, Jr., who represents certain jurors who have given statements the State does not like, to establish that Mr. McCulloch is a sinister “agent of Murdaugh.” *Id.* at 18. It is incredible that the State would argue, in the same brief, both that the Court should inquire into how Mr. Murdaugh’s lawyers learned about Ms. Hill’s jury tampering and that the Court should **not** inquire into whether Ms. Hill actually tampered with the jury. *Compare* State’s Second Br. 18 *with* State’s Second Br. 20–21. It is rather unlikely any juror would vote to convict Mr. Murdaugh of murdering his own family, then immediately decide to corruptly work with Mr. Murdaugh’s counsel to overturn the verdict, all while maintaining his anonymity and seeking no money or publicity for himself. It is rather more likely that the Clerk of Court who has stolen public money, sold access to the courthouse, conspired to engage in illegal wiretapping, invented a fictitious Facebook post in an attempt to have a juror removed, covertly used the defense’s trial graphics contractor as a spy during and after trial, sent *ex parte* emails to the prosecution with suggestions for impeaching the defense’s expert during the testimony of the expert, organized juror appearances on national television, published a book on the trial that was withdrawn from publication because she plagiarized a reporter covering the trial, is the subject of multiple ethics commission and criminal investigations, and who was not even allowed to have a county credit card because of her history of misappropriation of funds, engaged in self-interested jury tampering and her distasteful self-promotion finally caused jurors to come forward.

IV. Reply to State’s “Witnesses, Exhibits, and Procedure” arguments.

The State argues that the jurors should only be asked two questions:

1. On March 2, 2023, did you answer when polled that your verdict was guilty on each of the charges?

2. As you were instructed to do by Judge Newman, was your verdict on March 2, 2023 based solely on the testimony, evidence, law, and arguments of counsel as presented at the trial?

State's Second Prehearing Br. 20. According to the State, no juror should be asked if Ms. Hill tampered with the jury if the jurors testify that they obeyed the trial judge's jury charge. A juror would need to confess to willfully disregarding Judge Newman's instructions as a prerequisite to even ask what Ms. Hill did or did not do. The State even wants a leading "As you were instructed to do by Judge Newman" appended to the question just to make sure the jurors know how they should answer. This argument should be rejected for four reasons.

First, an evidentiary hearing is required, and the purpose of an evidentiary hearing is not merely to poll the jury again. The purpose is to allow the party with the burden of production the opportunity to produce evidence meeting the burden of persuasion required (here, a preponderance of the evidence) to obtain the relief it seeks. If Mr. Murdaugh is not allowed to ask jurors if Ms. Hill actually said what he alleges she said, he will not have been afforded that opportunity and no evidentiary hearing will have been held, violating not just generally controlling appellate case law, but also the controlling appellate law of *this* case. See Def.'s Revised Prehearing Br. 29–30 (explaining why the law of the case requires an evidentiary hearing).

Second, the State claims that our Supreme Court in *Green* approved the trial court only asking these two questions when investigating improper contact by a bailiff with jurors during trial by a state official. State's Second Prehearing Br. 20. Of course, the trial court in *Green* asked the jurors whether the bailiff said anything to them, and if so, what was said, and this Court should do likewise regarding Ms. Hill. In *Green*, Judge Hocker asked every juror if they had direct communications with the bailiffs, even after they answered "no" when asked whether their verdict was influenced by any communication with any bailiff. See Record on Appeal 555–77, *State v.*

Green, Appellate Case No. 2017-001332 (attached as **Exhibit A**). When there was a communication, he asked what the communication was. *Id.*

Third, the second proposed question violates Rule 606(b) of the South Carolina Rules of Evidence. A version of the question was asked in *Green*, but the Rule 606(b) issue was not before the Court of Appeals. 427 S.C. 223, 236 n.3, 830 S.E.2d 711, 717 (Ct. App. 2019), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020) (“Not before us is the issue of how far a trial court can go in questioning jurors post-verdict without crossing the bounds of Rule 606(b), SCRE.”). The Supreme Court decision modifying the Court of Appeals opinion has no discussion of Rule 606(b). *See generally Green*, 432 S.C. 97, 851 S.E.2d 440 (2020).

The Fourth Circuit explained, in a case cited by the Court of Appeals in *Green*:

The rules of evidence make it difficult for either party to offer direct proof of the impact that an improper contact may have had on the deliberations of the jury. *See* Fed. R. Evid. 606(b); *Mattox*, 146 U.S. at 149, 13 S.Ct. at 53 (quoting *Woodward v. Leavitt*, 107 Mass. 453 (1871)) (“the evidence of jurors as to the motives and influences which affected their deliberations, is **inadmissible either to impeach or to support the verdict**”). The right to an impartial jury belongs to the defendant, however; thus a rebuttable presumption of prejudice attaches to the impermissible communication. While juror testimony concerning the effect of the outside communication on the minds of the jurors is inadmissible, the state may rebut the presumption of prejudice through whatever circumstantial evidence is available, including juror testimony on the facts and circumstances surrounding the extraneous communication. This circuit has held in the civil context that the party supporting the jury's verdict must overcome the rebuttable presumption of prejudice that attaches once an impermissible contact with the jury has been established. *Haley v. Blue Ridge Transfer Co.*, 802 F.2d 1532, 1535–37 (4th Cir.1986). If this was true in the civil context, it would appear no less applicable to a criminal trial.

Stockton v. Virginia, 852 F.2d 740, 743–44 (4th Cir. 1988) (emphasis added); *cf.* Rule 606, SCRE note (stating “[t]he language of this rule is identical to the federal rule”). Another federal case cited by the Court of Appeals in *Green* observes, “The rule forbidding the questioning of jurors concerning the impact of improper communications is the law not only in this circuit but in every

other circuit in which the question has arisen.” *Haugh v. Jones & Laughlin Steel Corp.*, 949 F.2d 914, 918 (7th Cir. 1991) (collecting cases).

Thus, the Court cannot ask jurors to testify as to the effect Ms. Hill’s communications had on their minds as they deliberated in the jury room, either directly or through the backhanded leading question the State proposes. Mr. Murdaugh has no burden to show prejudice; rather, the State must use circumstantial evidence to show the communications did not prejudice the outcome. It could do so, for example, by showing the communications never reached the ears of a deliberating juror. That is unlikely in a case where a deliberating juror has submitted an affidavit stating she heard the communications. Where, as here, the communication is from a state official in a criminal case and did reach at least one deliberating juror, *Cameron* greatly simplifies the issue for the State: The State must show that the communication did not bear on the merits of the matter before the jury, which is exactly what our Supreme Court held the State accomplished in *Green*. 432 S.C. at 100, 851 S.E.2d at 441. If the communications did not bear on the merits, the State has no burden to prove anything. *Id.* If they did, the result is a structural error requiring a new trial. *See Cameron*, 311 S.C. at 208, 428 S.E.2d at 12; *see also Parker*, 385 U.S. at 365 (“[W]e believe that the unauthorized conduct of the bailiff ‘involves such a probability that prejudice will result that it is deemed inherently lacking in due process.’” (quoting *Estes v. Texas*, 381 U.S. 532, 542–43 (1965))).

Fourth, the State’s reasoning has no limiting principle and leads to absurd results. By the State’s reasoning, no defendant has a right to a trial free from jury tampering by a state official, no matter how extreme, if jurors testify that they would have reached the same verdict regardless. According to the State, if Ms. Hill had the jury room decorated like a grade-school classroom with colorful signs saying “Murdaugh is guilty,” that would not violate Mr. Murdaugh’s right to a fair

trial (at least not in any way he could enforce) so long as jurors did not testify that they voted guilty because of the décor. If Ms. Hill entered the jury room with a firearm and threatened the jurors with death unless they voted to convict, according to the State that would not violate Mr. Murdaugh's right to a fair trial (again, at least not in any way he could enforce) so long as the jurors testified that they bravely obeyed the trial judge's jury charge.

* * *

The State then proceeds to object to testimony from any non-deliberating juror, even those who were percipient witnesses to Ms. Hill's jury tampering. The State's reasoning is such jurors cannot testify as to the impact on deliberations. As explained above, no juror can do that. This objection is just another example of the State desperately trying to prevent the Court from determining the truth of Mr. Murdaugh's allegations. The percipient witnesses to Ms. Hill's misconduct in the jury room are of course relevant to an evidentiary hearing in which Mr. Murdaugh has the burden to prove her misconduct.

The State also asserts various unexplained Rule 403 objections. Rule 403 objections are irrelevant in a cause tried to the bench. *See, e.g., Schultz v. Butcher*, 24 F.3d 626, 632 (4th Cir. 1994) ("Rule 403 was designed to keep evidence not germane to any issue outside the purview of the jury's consideration. For a bench trial, we are confident that the district court can hear relevant evidence, weigh its probative value and reject any improper inferences.").

The State objects to any impeachment of Ms. Hill based on conduct during the trial (the "Facebook issue") or outside the time of the trial. It is impossible to respond to general assertions of rules of evidence not tied to specific possible evidentiary proffers. Mr. Murdaugh discussed possible evidentiary objections in his revised prehearing brief which he will not belabor again here, Def.'s Prehearing Br. 3–8, but generally notes Rule 608(b) allows, within the discretion of

the Court, inquiring on cross-examination into the witness's character for untruthfulness, Rule 405(a) allows inquiry into specific instances of conduct on cross-examination where a person's character trait is at issue, Rule 608(c) allows a party to offer proof of bias or any motive to misrepresent for impeachment purposes, and Rule 613(b) allows use of extrinsic evidence of a prior inconsistent statement for impeachment if the prior inconsistent statement is denied.

The State provides specific examples of the "Facebook issue," plagiarism, and criminal wiretapping as "irrelevant." Plagiarism about the trial itself in the book that led to this motion, of such a degree as to cause the book to be pulled from publication, certainly is relevant to whether Ms. Hill's word can be taken over the word of anonymous jurors who have not money or fame from their participation in this case. The same is true of criminal wiretapping in response to, of all things, ethics complaints from her own employees. As for Facebook, discovery Mr. Murdaugh has received from Colleton County only within the last few days **proves** Ms. Hill fabricated the Facebook post and then lied to Judge Newman about it. Ms. Hill received an email from someone in Indiana watching the trial livestream online through a Facebook link. There was a Facebook chat in which someone claiming to be the ex-husband of a juror said his ex-wife was telling people she was on the jury and had already decided Mr. Murdaugh was guilty. The first and last names of the juror were included in the post, leaving no doubt the juror at issue was **not** Juror 785. The Indiana spectator emailed a screenshot of the chat message from her cell phone to Ms. Hill.

Ms. Hill did not act on the email because the juror at issue purportedly was going to vote guilty, which conformed to her interests. But Ms. Hill believed Juror 785 might not vote guilty, based on the conversations with the jury foreperson to which she admitted in her interview with SLED. The emailed Facebook post gave her the idea to invent one about Juror 785, which she would say she saw on the "Walterboro Word of Mouth" group instead of having received it by an

email she would otherwise be asked to produce. When Judge Newman asked her to produce the Facebook post about Juror 785 to him, she lied and said it had been deleted. In fact, the “real” Facebook post was still sitting in her email. This is proven by the fact that defense counsel obtained a copy of it when they obtained her emails from Colleton County. She enlisted her staff to assist in her corroborating her lie to Judge Newman that she had seen it posted somewhere but it was subsequently deleted. She even sold that lie for money in her now-withdrawn plagiarized book. The reason she lied was that her illegal private conversations with the jury foreperson made her believe Juror 785 might vote not guilty and she wanted to remove her from the jury. This information must be relevant to whether Ms. Hill is once again lying when she denies tampering with the jury.

V. Conclusion

For the foregoing reasons, Mr. Murdaugh respectfully submits that when Ms. Hill’s jury tampering is proven at the evidentiary hearing, the Court must grant the motion for a new trial, and that the State’s arguments to the contrary are without merit.

Respectfully submitted,

s/Richard A. Harpootlian

Richard A. Harpootlian, SC Bar No. 2725

Phillip D. Barber, SC Bar No. 103421

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

James M. Griffin, SC Bar No. 9995

Margaret N. Fox, SC Bar No. 76228

GRIFFIN HUMPHRIES LLC

4408 Forest Drive (29206)

Post Office Box 999

Columbia, South Carolina 29202

(803) 744-0800
jgriffin@griffinhumphries.com
mfox@griffinhumphries.com

Attorneys for Richard Alexander Murdaugh

January 15, 2024
Columbia, South Carolina.

EXHIBIT A

(Excerpt from *State v. Fabian LaMichael*
R. Green Record on Appeal)

VOLUME II of II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Donald B. Hocker, Circuit Court Judge

RECEIVED
JUL 16 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FABIAN LAMICHAEL R. GREEN,

APPELLANT

APPELLATE CASE NO 2017-001332

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SAMUEL M. BAILEY
Assistant Attorney General
S.C. Bar No. 103131

P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

DAVID M. STUMBO
Solicitor, 8th Judicial Circuit

ATTORNEYS FOR RESPONDENT

1 courtroom at this time.

2 (Whereupon, these individuals as indicated by the
3 Court exited the courtroom.)

4 THE COURT: I am going to have them sworn in but I
5 will take care of that, I will take care of that. And,
6 Johnny, he can be just on the other side of the door.

7 (Whereupon, Juror, Ameca Thomas entered the
8 courtroom.)

9 THE COURT: Ms. Thomas, if you will have a seat, I am
10 going to swear you in.

11 AMECA THOMAS, being
12 first duly sworn, testified as follows:

13 THE COURT: Again, I just want to make sure your
14 guilty verdict on both charges was that and is that still
15 your verdict in the case?

16 MS. THOMAS: Yes, sir.

17 THE COURT: Okay. Is your verdict based one-hundred
18 percent on the evidence and testimony and the law
19 presented at this trial?

20 MS. THOMAS: Yes, sir.

21 THE COURT: Okay. Was your verdict influenced in any
22 way whatsoever by any communications that you may have had
23 with any of the bailiffs or any other person outside of
24 the twelve member jury?

25 MS. THOMAS: No, sir.

1 THE COURT: All right. If you had any
2 communications, if you had any communications with any of
3 the bailiffs can you relay to me what those communications
4 were, if you had any.

5 MS. THOMAS: Did not have any.

6 THE COURT: Okay, alright, okay. Thank you, Ma'am.
7 I am going to put you in another room, then bring
8 everybody else, it is still going to be a little bit. I
9 eventually will bring the whole jury back in before I
10 release you. If you can assist, Madam Clerk, on that.

11 (Whereupon, Ms. Thomas exited the courtroom.)

12 (Whereupon, Juror, Rachel Hughes entered the
13 courtroom.)

14 THE COURT: Have a seat and I just need to have you
15 sworn in and ask you a couple of questions.

16 RACHEL HUGHES, being
17 first duly sworn, testified as follows:

18 THE COURT: Can you give me your name, please.

19 MS. HUGHES: Rachel Hughes.

20 THE COURT: Ms. Hughes, I just need to ask you again,
21 the verdict of guilty on both charges, was that and is it
22 still that, your verdict in this case?

23 MS. HUGHES: Yes, sir.

24 THE COURT: Okay. Was your verdict based one-hundred
25 percent on the testimony, evidence and the law presented

1 in this case?

2 MS. HUGHES: Yes, sir.

3 THE COURT: Okay. Was your verdict in any way
4 influenced by any communications that you may have had
5 with any of the bailiffs in this case or anybody outside
6 of the twelve member jury?

7 MS. HUGHES: No, sir.

8 THE COURT: Have you had any communications during
9 this week with any of the bailiffs or any third party
10 outside of the twelve member jury?

11 MS. HUGHES: No, sir.

12 THE COURT: Alright. Thank you, go to another room,
13 I will bring the whole group back out after I do this
14 individually. Okay. Thank you, Ma'am.

15 (Whereupon, Ms. Hughes exited the courtroom.)

16 (Whereupon, Juror, Jacqueline Noffz entered the
17 courtroom.)

18 THE COURT: Have a seat and I just need to have you
19 sworn in.

20 JACQUELINE NOFFZ, being
21 first duly sworn, testified as follows:

22 THE COURT: Give us your name, please.

23 MS. NOFFZ: Jacqueline Noffz.

24 THE COURT: And, Ms. Noffz, your verdict of guilty on
25 both charges, was that and is that still your verdict in

1 this case?

2 MS. NOFFZ: Yes, sir.

3 THE COURT: Okay. Was your verdict based one-hundred
4 percent on the testimony, evidence and law presented in
5 this case?

6 MS. NOFFZ: Yes, sir.

7 THE COURT: Okay. Was your verdict in any way
8 influenced by any communications that you may have had
9 with any of the bailiffs or any third party outside of
10 this twelve person jury?

11 MS. NOFFZ: No, sir.

12 THE COURT: Did you have any communications with any
13 of the bailiffs or with any third parties outside of the
14 twelve member jury?

15 MS. NOFFZ: No, sir.

16 THE COURT: Alright. Thank you, Ma'am. She will
17 tell you where to go.

18 (Whereupon, Ms. Noffz exited the courtroom.)

19 So far my questions in keeping with our conversation?

20 MR. SHAFFER: That's correct, Your Honor.

21 MR. MOWRY: Yes, sir.

22 (Whereupon, Juror, Benjamin Bryson entered the
23 courtroom.)

24 THE COURT: Just have a seat in that first seat and I
25 need to have you sworn in.

1 BENJAMIN BRYSON, being
2 first duly sworn, testified as follows:

3 THE COURT: State your name, please.

4 MR. BRYSON: Benjamin Bryson.

5 THE COURT: Okay, Mr. Bryson, you can put your hand
6 down. Your verdict on guilty of both charges, was that
7 and is that still your verdict in this case?

8 MR. BRYSON: Yes, sir.

9 THE COURT: Was your verdict or is your verdict based
10 one-hundred percent on the testimony, evidence and the law
11 presented in this case?

12 MR. BRYSON: Yes, sir.

13 THE COURT: Okay. Was your verdict influenced, by
14 any means, in any communications that you may have had
15 with any of the bailiffs in this case, or any third party
16 outside of the twelve person jury?

17 MR. BRYSON: No, sir.

18 THE COURT: Did you have any communications with any
19 of the bailiffs or with any third party outside of the
20 twelve person jury?

21 MR. BRYSON: No, sir.

22 THE COURT: Thank you very much, sir. You can go
23 back, she is going to show you where to go.

24 (Whereupon, Mr. Bryson exited the courtroom.)

25 (Whereupon, Juror, Daniel Schrantz entered the

1 courtroom.)

2 THE COURT: Have a seat and I need to have you sworn
3 in.

4 DANIEL SCHRANTZ, being
5 first duly sworn, testified as follows:

6 THE COURT: Give me your name, please.

7 MR. SCHRANTZ: Daniel Nicholas Schrantz.

8 THE COURT: Okay. And your verdict of guilty on both
9 of the charges, was that and is that still your verdict in
10 this case?

11 MR. SCHRANTZ: Yes, sir.

12 THE COURT: Alright. Was your verdict and is your
13 verdict based totally, one-hundred percent, on the
14 testimony, evidence and law presented in this case?

15 MR. SCHRANTZ: Yes, sir.

16 THE COURT: Was your verdict influenced in any manner
17 whatsoever by any communications with any of the bailiffs
18 or any third party, not a part of the twelve person jury?

19 MR. SCHRANTZ: No, sir.

20 THE COURT: Have you had any communications with any
21 of the bailiffs or any third party, not a part of the
22 twelve person jury?

23 MR. SCHRANTZ: No, sir.

24 THE COURT: Thank you very much, sir. She will show
25 you where to go.

1 (Whereupon, Mr. Schrantz exited the courtroom.)

2 (Whereupon, Juror, Shannon Byers entered the
3 courtroom.)

4 THE COURT: Come on in and have a seat and I need to
5 have you sworn in, Ma'am.

6 SHANNON BYERS, being
7 first duly sworn, testified as follows:

8 THE COURT: Have a seat. Concerning your verdict of
9 guilty on both charges, was that and is that still your
10 verdict in this case?

11 MS. BYERS: Yes, sir.

12 THE COURT: Was your verdict and is your verdict
13 based one-hundred percent on the evidence, testimony and
14 law presented in this case?

15 MS. BYERS: Yes, sir.

16 THE COURT: Was your verdict influenced in any manner
17 whatsoever by any communications with any of the bailiffs
18 or any third party not a part of the twelve person jury?

19 MS. BYERS: No, sir.

20 THE COURT: Did you have any communications with any
21 of the bailiffs or any third party, not a part of the
22 jury?

23 MS. BYERS: No. Not about the case.

24 THE COURT: Tell me, did you have any communications
25 with the bailiffs?

1 MS. BYERS: Just if we could walk outside.

2 THE COURT: Okay. Anything else other, can we take a
3 break. I know that there was a break requested today,
4 this afternoon.

5 MS. BYERS: Right.

6 THE COURT: Any other communications?

7 MS. BYERS: No.

8 THE COURT: Thank you very much, Ma'am.

9 (Whereupon, Ms. Byers exited the courtroom.)

10 (Whereupon, Juror, Velvet Boston entered the
11 courtroom.)

12 THE COURT: I just need to have you sworn in.

13 VELVET BOSTON, being
14 first duly sworn, testified as follows:

15 THE COURT: Your verdict of guilty on both charges,
16 was that and is that still your verdict in this case?

17 MS. BOSTON: Yes.

18 THE COURT: You hesitated, are you sure?

19 MS. BOSTON: Yes.

20 THE COURT: Was and is your verdict based one-hundred
21 percent on the testimony, evidence and law presented in
22 this case?

23 MS. BOSTON: Yes.

24 THE COURT: Okay. Was your verdict influenced in any
25 manner whatsoever by any communications with any of the

1 bailiffs or any third party not connected with the twelve
2 person jury?

3 MS. BOSTON: No.

4 THE COURT: Did you have any communications with
5 either any of the bailiffs or with any third party, not a
6 part of the twelve person jury?

7 MS. BOSTON: No.

8 THE COURT: Thank you, Ma'am. She will show you
9 where to go.

10 (Whereupon, Ms. Boston exited the courtroom.)

11 (Whereupon, Juror, Stacy Ruff entered the courtroom.)

12 THE COURT: Have a seat right here, Ma'am. Thank
13 you. I need to have you sworn in.

14 STACY RUFF, being
15 first duly sworn, testified as follows:

16 THE COURT: Your verdict of guilty in this case on
17 both charges, was that and is that your verdict in this
18 case?

19 MS. RUFF: Yes, sir.

20 THE COURT: Was and is your verdict based one-hundred
21 percent on the testimony, evidence and law presented in
22 this case?

23 MS. RUFF: Yes, sir.

24 THE COURT: Was your verdict influenced in any manner
25 whatsoever by any communications with any of the bailiffs

1 or any third party not a part of the jury?

2 MS. RUFF: No, sir.

3 THE COURT: Did you have any communications with any
4 of the bailiffs or with any third party not a part of the
5 jury?

6 MS. RUFF: No, sir.

7 THE COURT: Okay, thank you, Ma'am.

8 (Whereupon, Ms. Ruff exited the courtroom.)

9 (Whereupon, Juror, Octavius Wheeler entered the
10 courtroom.)

11 THE COURT: Have a seat here and I need to swear you
12 in.

13 OCTAVIUS WHEELER, being
14 first duly sworn, testified as follows:

15 THE COURT: Your verdict of guilty on both charges in
16 this case, was that and is that currently your verdict in
17 this case?

18 MR. WHEELER: Yes, sir.

19 THE COURT: Is that a, yes sir?

20 MR. WHEELER: Yes, sir.

21 THE COURT: Okay. Was and is your verdict based
22 one-hundred percent on the testimony, evidence and law
23 presented to you in this case?

24 MR. WHEELER: Yes, sir.

25 THE COURT: Was your verdict influenced by any

1 communications with any bailiffs or any third party not
2 connected with the jury?

3 MR. WHEELER: No, sir.

4 THE COURT: Did you have any communications with any
5 of the bailiffs or with any third party not a part of the
6 jury?

7 MR. WHEELER: No, sir.

8 THE COURT: Okay, thank you, she will show you where
9 to go. Oh, we need your name for the record.

10 MR. WHEELER: Octavius Wheeler.

11 (Whereupon, Mr. Wheeler exited the courtroom.)

12 (Whereupon, Juror, Garrett Pace entered the
13 courtroom.)

14 THE COURT: Come on around, sir, and have a seat
15 right there. I need you to raise your right hand, let me
16 swear you in, please.

17 GARRETT PACE, being
18 first duly sworn, testified as follows:

19 THE COURT: Your verdict of guilty on both charges,
20 was that and is that currently your verdict in this case?

21 MR. GARRETT: Yes, sir.

22 THE COURT: Was and is your verdict based one-hundred
23 percent on the testimony, evidence and law presented to
24 you in this case?

25 MR. GARRETT: Yes, sir.

1 THE COURT: Was your verdict influenced in any way,
2 with any communications with any of the bailiffs or any
3 third party not connected with the jury in this case?

4 MR. GARRETT: No, sir.

5 THE COURT: Did you have any communications with any
6 of the bailiffs or with any third party not a part of the
7 jury in this case?

8 MR. GARRETT: Not on the case, no.

9 THE COURT: Did you have any communications with any
10 of the bailiffs or any third party?

11 MR. GARRETT: Just in a professional manner, yes.

12 THE COURT: Need to tell me what those communications
13 were.

14 MR. GARRETT: Just walking in, telling to come in,
15 come out. Did I talk to them, yes.

16 THE COURT: Anything related to this case?

17 MR. GARRETT: No, sir.

18 THE COURT: All right. And your name?

19 MR. GARRETT: Garrett Pace.

20 THE COURT: Mr. Pace, thank you, she will show you
21 where to go.

22 (Whereupon, Mr. Pace exited the courtroom.)

23 (Whereupon, Juror, Jocelyn Ellis entered the
24 courtroom.)

25 THE COURT: I need to swear you in, would your raise

1 your right hand, please, Ma'am.

2 JOCELYN ELLIS, being

3 first duly sworn, testified as follows:

4 THE COURT: Your name?

5 MS. ELLIS: Jocelyn Ellis.

6 THE COURT: And, Ms. Ellis, your verdict of guilty on
7 both charges in this case, was that and is that currently
8 your verdict in this case?

9 MS. ELLIS: Yes, sir.

10 THE COURT: Was and is your verdict based one-hundred
11 percent on the testimony, evidence and law presented to
12 you in this case.

13 MS. ELLIS: Yes, sir.

14 THE COURT: Was your verdict influenced in any manner
15 with any communications with any of the bailiffs and any
16 third party not a part of the jury in this case?

17 MS. ELLIS: No, sir.

18 THE COURT: Did you have any communications with any
19 of the bailiffs or with any third party not a part of the
20 jury in this case?

21 MS. ELLIS: No, sir.

22 THE COURT: Thank you, Ms. Ellis, she will show you
23 where to go.

24 (Whereupon, Ms. Ellis exited the courtroom.)

25 (Whereupon, Juror, Christopher Vaughn entered the

1 courtroom.)

2 THE COURT: Have a seat, I need to swear you in.

3 CHRISTOPHER VAUGHN, being

4 first duly sworn, testified as follows:

5 THE COURT: And your name again?

6 MR. VAUGHN: Chris Vaughn.

7 THE COURT: And, Mr. Vaughn, your verdict of guilty
8 on both charges in this case, was that and is that
9 currently your verdict in this case?

10 MR. VAUGHN: Yes.

11 THE COURT: Was and is your verdict in this case
12 based one-hundred percent on the testimony, evidence and
13 law presented to you in this case?

14 MR. VAUGHN: Absolutely.

15 THE COURT: Was your verdict influenced in any
16 manner, in any way, by any communications with any
17 bailiffs or any third party not a part of the jury in this
18 case?

19 MR. VAUGHN: No, Your Honor.

20 THE COURT: Did you have any communications with any
21 of the bailiffs or with any third party not a part of the
22 jury in this case?

23 MR. VAUGHN: Absolutely not, Your Honor.

24 THE COURT: Thank you, sir, she will show you where
25 to go.

1 (Whereupon, Mr. Vaughn exited the courtroom.)

2 THE COURT: I think that is the last one, Madam
3 Clerk?

4 MADAM CLERK: Yes, sir.

5 THE COURT: Okay. What I am going to do is bring the
6 jury back out, thank them for their service, give them the
7 little spill that I give and, but before they come in we
8 can certainly bring everybody back into the courtroom and
9 then excuse the jury. And then we can, I can hear any
10 matters you need to raise, you need to hold up first?

11 MR. SHAFFER: Well, Your Honor, I thought we were
12 going to question the two bailiffs as well. That is part
13 of my motion for a mistrial, I would like to question both
14 of them.

15 THE COURT: Okay, alright, we can do that then.
16 Which one do you want first?

17 MR. SHAFFER: It doesn't matter, whichever one.

18 THE COURT: Okay.

19 MR. MOWRY: Technically, Your Honor, I think the more
20 important thing with this is the, is the answers from the
21 jury.

22 THE COURT: Right. And I agree. I think that is
23 controlling as far as how they responded to my questions.
24 However, for there to be a complete record and since we
25 did have some informal talks with the bailiffs and I will

1 allow some, and I will allow you to conduct some limited
2 examination of both Mr. Easley and Mr. Bolt, just so we
3 can have a record even though I have to agree with the
4 State that I think the answers from the jury are, would be
5 controlling in this case. But I want to have a complete
6 record and I don't want to prevent you from not having a
7 complete record.

8 MR. SHAFFER: Okay, Your Honor.

9 THE COURT: Are you satisfied with you conducting
10 this?

11 MR. SHAFFER: Yes, Your Honor.

12 MR. MOWRY: Your Honor, if we could, on the motion
13 for a mistrial, if we could do that also with a cleared
14 courtroom so that is not--

15 THE COURT: Sure, I don't have a problem with that.
16 Since we are talking, you know, if, because I typically on
17 motions for a new trial I give the Defense lawyer, if it
18 is a guilty verdict, ten days to make any motions for a
19 new trial. I will be glad to give that time for motion
20 for a mistrial as well.

21 MR. SHAFFER: And, Your Honor, I actually to do a--

22 THE COURT: Excuse me?

23 MR. SHAFFER: I am happy to do it if the Court would
24 like me to within ten days. I think I can make it
25 sufficiently. I already have one realm for a mistrial

1 being the previous juror issue from the first day.

2 THE COURT: Right.

3 MR. SHAFFER: I was also going to move based off of
4 this. But I, I am happy to do it either way. I am happy
5 to do it orally or in writing.

6 THE COURT: No, we can do it now. I offer that if
7 counsel wants some time to get their thoughts together.
8 But, no, I, we can do it now, we can do mistrial motion
9 now, new trial motion now. That is not a problem, I just
10 offer that.

11 MR. SHAFFER: I should be able to do it now, Your
12 Honor.

13 THE COURT: Okay. Alright, let's, can you bring,
14 let's just bring Mr. Bolt in and you can examine him and
15 then we will bring Mr. Easley in. Okay.

16 (Whereupon, Bailiff, Johnny Bolt entered the
17 courtroom.)

18 THE COURT: Mr. Bolt, I need to have you sworn in and
19 just put something on the record concerning your
20 communications with us back in-chambers.

21 JOHNNY BOLT, being
22 first duly sworn, testified as follows:

23 THE COURT: And I am going to allow, he is going to
24 conduct just some limited questions, so I am going to
25 allow Mr. Shaffer to do that.

EXAMINATION BY MR. SHAFFER

By Mr. Shaffer:

Q Mr. Bolt, during your time as a Bailiff working on this case you said, am I correct in saying that you had some communication with jurors?

A Not really communication, just other than the fact that when we went on break and outside there was concern that they just asked me about, well they didn't really ask me, just kind of came out, one individual kind of brought up something that was involved, why did we have so many, because I could sense there was some fear amongst them, you know, because, and anyway I told them they were for protection, for the Judge, the victims, for the jurors and they didn't have anything to worry about. But they had some, for some reason they had a lot of concerns as far as fear was concerned. And that is when, because I, I had one girl, one juror had asked me, says I want to ask you something. I said, as long as it has nothing to do concerning the trial. Because I have been doing this long enough to know that I am not suppose to communicate about nothing about what the trial or what, you know, goes on and everything. So basically, fear of some things that was noticed in the courtroom as far as some pointing to the jurors going up and down the hall.

Q What do you mean by pointing at jurors going up and

1 down the hall?

2 A Well, one of them, it wasn't me but one of the other
3 Bailiffs had told me that one of the jurors had, not the
4 jury, one of the Defendant's member would point at them
5 going, you know, going up and down the hall. Said, you
6 know, like that, you know.

7 Q The Defendant's family member?

8 A Yes.

9 Q Do you have any details of which juror this was?

10 A No sir, I don't. Because I am used to pretty much
11 standing here. And then, of course, they see some things
12 that is going on in the courtroom as far as, you know,
13 like they had to take, I think on two different occasions,
14 had to take a family member, you know, escort them out of
15 the courtroom, I think making some kind of hand motions or
16 some kind of something which I didn't even see. I had to
17 ask later what was going on. Somebody raised their hand
18 so they took them out.

19 Q Did any, at any point during their deliberations did
20 they ever mention to you that they may be deadlocked?

21 A No, no. But they just, the Foreman did say, what
22 happens if we can't reach a, reach a, you know, that, we
23 can't reach any verdict. And I said, well, the Judge will
24 give you some details on that if something happens, that
25 you will need to write him a note and I will have to take

1 it to him.

2 Q Okay. Did you ever tell them anything about an Allen
3 Charge?

4 A Well, I was familiar and I said, well, he will give
5 an Allen charge, you know, because I have been doing a
6 lot, I have seen this and I just mentioned, you know, that
7 is usually the procedure that they do. And I said, yeah,
8 he would probably give you an Allen charge. I said, well,
9 he will just give you a charge and probably want to see
10 if, see if you can stay later, something or another, of
11 that nature.

12 Q Okay. Specifically related to the Allen charge, do
13 you recall the exact words that you said to the juror?

14 A I just mentioned name, Allen charge, and that, that
15 he may give them an Allen charge if they need.

16 Q And you told them they may have to stay later?

17 A I said once we give them the Allen charge, it is
18 based on what he told them.

19 Q Okay. And that they would have to go back and stay
20 later and deliberate?

21 A I didn't, I don't recall saying that.

22 Q What did you say specifically, because you just said
23 something about, if they gave you, you told them that the
24 Judge would probably give them an Allen charge?

25 A I mentioned the Allen charge, I did know what that

1 was. I said an Allen charge, he may give you an Allen
2 charge, you may have to, well I did say, he may ask you to
3 stay and stay later. I think that is what I said.

4 Q No further questions.

5 THE COURT: Okay. All right, Mr. Bolt, if you will
6 go on out and ask Mr. Easley to come in, please.

7 (Whereupon, Mr. Bolt exited the courtroom.)

8 (Whereupon, Bailiff, Mike Easley entered the
9 courtroom.)

10 THE COURT: Mr. Easley, I just need to have you sworn
11 in and Mr. Shaffer is going to ask you some questions.

12 MIKE EASLEY, being
13 first duly sworn, testified as follows:

14 EXAMINATION BY MR. SHAFFER

15 By Mr. Shaffer:

16 Q It is Mr. Easley, correct?

17 A Yes.

18 Q Mr. Easley, did you have any communication with any
19 juror about this case?

20 A About the case, no sir.

21 Q Okay. Did you have any communication with any of the
22 jurors about my client's family?

23 A There were questions asked to me by the jury.

24 Q What did they ask you?

25 A They would come to me, when they were coming in in

1 the mornings, one of them said that she felt uncomfortable
2 in the hallway, that the Green Family had been walking in
3 front of her and they stopped and turned around and
4 pointed at her. I had jurors this week ask where the
5 family was, are we going to be alright when we leave the
6 building. Other than that that is the gist of everything.

7 Q Did you, did you communicate in any way back with
8 them about the Green Family?

9 A Just that they would, everything would be alright
10 because we would make sure that there were no problems.

11 Q Okay. Did you have any communication or do you have
12 any knowledge about whether or not the jury was
13 deadlocked?

14 A No, I could not know what their--

15 Q Did anyone ever tell you anything about an Allen
16 charge coming from the jury?

17 A Coming from the jury, no.

18 Q Okay. What about coming from Mr. Bolt, what did Mr.
19 Bolt tell you about the Allen charge?

20 A Mr. Bolt never said anything to me personally about
21 the Allen charge. I know what it is and I know the
22 purpose of it.

23 Q Okay. And did Mr. Bolt tell you anything about being
24 deadlocked?

25 A No.

1 Q The jurors being deadlocked?

2 A No.

3 Q No further questions.

4 THE COURT: Thank you, Mr. Easley.

5 (Whereupon, Mr. Easley exited the courtroom.)

6 MR. MOWRY: Quite frankly, Your Honor, I think, as
7 far as Mr. Easley is concerned, that is exactly what the
8 Bailiffs are here for. They are here to receive jury
9 concerns and deal with those.

10 THE COURT: I understand. Let's go ahead and, let's
11 cut the jury loose, let me bring them in, thank them for
12 their service and going to cut them loose and then we will
13 take up your mistrial motion and then if you want to renew
14 your new trial motion with everybody back in we can do
15 that. Because I image your new trial motion is just going
16 to be raising issues that you have already raised anyway.

17 MR. SHAFFER: Yes, Your Honor.

18 MR. MOWRY: Do you want the family in here for this,
19 Your Honor.

20 THE COURT: Let's go ahead and leave them out so we
21 don't go back and forth.

22 MR. MOWRY: Alright.

23 (Whereupon, the jury came into open court at
24 approximately 7:11 p.m.)

25 THE COURT: In about two minutes, ladies and

1 gentlemen, I am going to cut you loose, how about that, is
2 that good news. Let me just tell you a couple of things.
3 First of all, the verdict that you reach in this case
4 matters, doesn't mean anything to me, doesn't matter
5 whether you find somebody guilty, it doesn't matter if you
6 find somebody not guilty. What matters to me is that you
7 perform your jury duty conscientiously, that you take it
8 seriously, that you work hard and that you follow all of
9 my instructions and you have done that. And that is what
10 is important to me. As I told you early on this week and
11 I think maybe one of the lawyers eluded to it, how high a
12 responsibility it is to serve on a jury. And we take it
13 very seriously and I believe you have taken it very
14 seriously as well. And so I appreciate that. It is a
15 tough job, I have never personally served on a jury,
16 naturally I won't ever serve on a jury. But I know that
17 it is tough just being a part of the judicial process in
18 the roll that I am. But even though it has been tough and
19 it has been hard and it has been long hours and now it is
20 7:15 on a Friday night, I hope that you can say that you
21 have experienced something, learned something that you
22 didn't know before. And that even though it is extremely
23 difficult, very hard to find someone guilty of serious
24 criminal charges, I hope that you can still say that it
25 has been a good experience for you in some respect, I am

1 not saying everything would be a good experience but at
2 least in some respects. And that maybe some time down the
3 road you would not be adverse to serving on a jury again,
4 whether it is in the criminal arena or whether it is in
5 the civil arena. I am going to Greenwood next week and
6 try a civil case. So, I thank you, I would like to, as
7 you are exiting, I like to shake the hands of my jury.
8 Madam Forelady, you need to hang around for just a minute
9 because you have to sign the back of both of the
10 indictments. So if you will just kind of hang, I tell you
11 what, if you would go to the, come around and get with Ms.
12 Lancaster. When you exit, just hang around here because
13 the Clerk has your checks. Don't make big plans for the
14 check. We will be engaging in the sentencing phase of
15 this trial in just a little bit. If you would like to
16 stay around for that you are more than welcome to, you
17 certainly don't have to. You are more than welcome to.
18 If you do they will assist you in coming back around and
19 sitting in the very back of the courtroom, just let the
20 deputies know that and they can assist you with that.
21 Okay. So, just exit and hang around so the Clerk can hand
22 you your checks.

23 (Whereupon, the jury was excused from open court at
24 approximately 7:15 p.m.)

25 THE COURT: We still need to keep the courtroom clear

1 and let's go ahead and do the mistrial motion and then we
2 can maybe take a short little break and finish up
3 everything else.

4 MR. SHAFFER: Your Honor, obviously in-chambers,
5 before the jury came back, we were informed about
6 essentially Mr. Bolt's communication with the jury, the
7 jurors or a juror, I am not sure how many it was. Your
8 Honor, I would, I guess I moved in-chambers for a mistrial
9 based off of that. Your Honor, I think that he is
10 entitled to, yeah, he is sufficiently entitled to a trial
11 by a jury that is free of improper influences. I cite to
12 a case called Holmes versus United States which is a
13 Fourth Circuit case from 1960. It is 284, F.2d, 716. And
14 it is a case involving, you know, similar facts, because
15 it is a little bit different issue. It is whether or not,
16 basically a court person, someone in the court informed
17 the jurors of where someone was being housed at, that they
18 were being housed in pretrial detention somewhere. I very
19 quickly read it, I haven't read the entire thing but
20 essentially the Fourth Circuit, that that was, that was a
21 Constitutional violation. There is some South Carolina
22 cases that address this issue mainly dealing with things
23 about asking a question. I think that Mr. Bolt's
24 questions, I guess his response to their question, you
25 know, what happens if we can't reach a verdict. Well, the

) IN THE COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
)

Indictment Nos. 2022GS1500592 – 00595

CERTIFICATE OF SERVICE

Richard Alexander Murdaugh,
Defendant.

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

s/Richard A. Harpootlian
Richard A. Harpootlian

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT I

(Prehearing Transcript)

State of South Carolina) In the Court of General Sessions
County of Colleton) Fourteenth Judicial Circuit
2022-GS-15-0592
2022-GS-15-0593
2022-GS-15-0594
2022-GS-15-0595

The State of South Carolina,)
vs.) Transcript of Record
Richard Alexander Murdaugh.)
_____)

January 16, 2024
Columbia, South Carolina

B E F O R E:

The Honorable Jean H. Toal, Judge

A P P E A R A N C E S:

Alan M. Wilson, Attorney General
Donald J. Zelenka, Deputy Attorney General
Samuel Creighton Waters, Senior Assistant Deputy AG
Johnny E. James, Assistant Attorney General
John P. Meadors, Assistant Attorney General
Attorneys for the State

Richard A. Harpootlian, Esquire
James M. Griffin, Esquire
Phillip D. Barber, Esquire
Attorneys for the Defendant

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>Ev.</u>
No exhibits introduced			

1 THE COURT: This is a prehearing procedure in the
2 matter of State against Richard Alexander Murdaugh. It's
3 case numbers 2022-GS-15-00592 through 00595. Defendant
4 Murdaugh was indicted for the murder of his wife, Margaret
5 Brandstetter Murdaugh, and his son Paul Bennett Murdaugh,
6 and related weapons charges. His trial began on January
7 23, 2023. The presiding judge was Clifton Newman. After
8 six weeks of trial, on the evening of March the 2nd of
9 2023, the jury returned a verdict of guilty on all four
10 indictments, on which the defendant was sentenced on March
11 2023 to two consecutive terms of life imprisonment.

12 Notice of appeals of his convictions and sentences
13 were filed by defendant Murdaugh's attorneys on March 9,
14 2023, with the South Carolina Court of Appeals. The
15 transcript in this very lengthy trial took several months
16 to produce, even in draft form. Before the attorneys
17 received the final transcript, on September the 5, 2023
18 defendant filed with the Court of Appeals a motion to
19 suspend his appeal and for leave to file a motion for a new
20 trial with accompanying affidavits and transcript excerpts.
21 After further defense and state filings, on October 17,
22 2023, the Court of Appeals granted appellant Murdaugh's
23 motion to suspend the appeal and to remand this case to the
24 circuit court to allow defendant Murdaugh to file a motion
25 for a new trial.

1 On October 17, 2023, defendant Murdaugh received the
2 final trial transcript and very shortly thereafter filed a
3 motion for new trial in the Colleton County Clerk of
4 Court's office. Subsequently, Judge Clifton Newman recused
5 himself from further proceedings in this matter.

6 On December 16, 2023 -- excuse me, on December 18,
7 2023, Chief Justice Donald W. Beatty signed an order
8 appointing or directing that the Honorable Jean Hoefer
9 Toal, retired Chief Justice of South Carolina, be assigned
10 exclusive jurisdiction for the limited purpose of presiding
11 over defendant's motion for a new trial. I promptly
12 contacted counsel in this case and set deadlines for
13 briefing and arguments of the new trial motions. The new
14 trial motions were set to be argued on January the 23rd --
15 30th and 31st of 2024. And after several rounds of
16 pretrial briefs having been submitted to me, I also set
17 today's date for a procedural prehearing.

18 Before I begin, may I say that we certainly welcome
19 members of the media, and I thank publicly attorney Jay
20 Bender for agreeing to be the voluntary media coordinator
21 for this matter, as he did for Judge Clifton Newman on the
22 trial of this matter.

23 Cell phones are normally not permitted at all in our
24 courtrooms, but the press have been allowed to bring in
25 certain cell phones and laptops and electronic devices

1 because of the nonjury nature of this portion of the
2 proceedings. But if any device rings or sounds to receive
3 a call or to receive an email or a message, that device
4 will be confiscated, and the owner will be asked to leave
5 the courtroom. So, please now, if you haven't already,
6 check your electronic devices and be sure that they will
7 not sound during the time that these proceedings take
8 place.

9 Major topics to be covered today have been addressed
10 by me and discussed with counsel in a short pretrial
11 conference in my chambers, and counsel may have certain
12 things that they will put upon the record as we proceed
13 through these topics that deal with what should be covered.

14 The first topic is, is an evidentiary hearing
15 necessary at all. The State took the position the answer
16 to that was no. Obviously, the defendant not. I have set
17 an evidentiary hearing because I felt like we had to have
18 some brackets on that time that we'll spend on this matter,
19 but I have made no conclusive decisions beyond that on
20 matters affecting the arguments the State makes about the
21 procedural posture of this matter.

22 The next topic would be the burden of proof. Who has
23 the burden of proof in this matter, and what must be shown
24 to meet that burden of proof, and what must then be shown
25 to contest what has been shown and proved?

1 The third topic is procedural defects, most
2 specifically a contention by the State that this motion is
3 untimely because of what was known before a verdict was
4 rendered, accepted, and the jury polled.

5 And finally, we need to discuss witnesses: juror
6 witnesses, the clerk of court of Colleton County, Ms. Hill,
7 and other witnesses, and exhibits.

8 I note that at least one attorney in the room is an
9 attorney for some of the jurors, and other jurors may have
10 other attorneys. When I get to the portion of this
11 discussion when we talk about specific witnesses, and if I
12 am asked to hear from attorneys for the witnesses, I will
13 at least consider that request. I don't know where we will
14 be at that time in terms of what has been decided, but I
15 will at least inquire about that.

16 To that end, if you have not already, during the first
17 break be certain that all of you, the lawyers participating
18 at counsel table and any other lawyers that feel they may
19 have some interest in the proceedings that would warrant
20 comment by them, please give your cards or information
21 about your contacts to our court reporter, Ms. Harris.

22 With that, Mr. Harpootlian, you are the moving party.
23 You may proceed.

24 MR. HARPOOTLIAN: If it please the Court, Your Honor,
25 you raised -- I assume you want to go in the order in which

1 you just ---

2 THE COURT: I would.

3 MR. HARPOOTLIAN: Okay. You raised a number of legal
4 issues, from whether we've waived -- I forget the order
5 that you just took them, but Mr. Griffin is going to
6 address those *in seriatim* based on what you said just a
7 moment ago. As to the witnesses and the jurors, I will be
8 handling that portion of the argument today.

9 THE COURT: Very good.

10 Mr. Griffin, we'll hear from you now.

11 MR. GRIFFIN: Yes. Thank you, Your Honor. The, the
12 first issue that you've asked us to address is, is an
13 evidentiary hearing necessary, and the answer to that
14 question is very straightforward, is yes. Under, under
15 established case law and the Supreme Court, the Fourth
16 Circuit, and the South Carolina Supreme Court under *Remmer*,
17 a *Remmer* hearing is absolutely necessary where there has
18 been credible evidence presented that there's been an
19 improper third-party contact with the jury prior to their
20 deliberations that, that, frankly, whether it goes to the
21 merits or not, a *Remmer* hearing is absolutely necessary.
22 And, and, and, we believe that the Court of Appeals
23 decision in this case contemplated a *Remmer* hearing.

24 In a *Remmer* hearing, evidence is presented as to, to
25 what outside influences, if any, were brought to bear upon

1 the jury. We have in our motion for a new trial submitted
2 affidavits of one deliberating juror, one alternate --
3 excuse me -- and then a -- and then another affidavit of a
4 witness to an interview of an alternate wherein all three
5 statements are consistent and, and -- in that they heard
6 Ms. Hill, the clerk of court, prior to deliberations and,
7 frankly, before the defense put on their case, Ms. Hill
8 instructed do not be fooled by the defense. That's what
9 the sworn statements say. And secondly, before Mr.
10 Murdaugh took the stand, Ms. Hill advised one deliberating
11 juror and two alternates at least watch his demeanor, which
12 is an indication of, you know, he's going to lie.

13 And so then the question becomes factually did those
14 contacts happen. And, and then, you know, we proceed from
15 there as to what the burden of proof is after that. But
16 the threshold, are we entitled to evidentiary hearing? The
17 law is crystal, Your Honor.

18 THE COURT: Thank you, sir.

19 Mr. Waters for the State.

20 MR. WATERS: Thank you, Your Honor. May it please the
21 Court? Your Honor, obviously you've addressed the issue of
22 whether an evidentiary hearing is necessary. The State
23 certainly understands that. It is incumbent upon us,
24 though, based on the law to preserve our arguments as to
25 procedural bar, and those are twofold.

1 The first one, of course, is that a motion for a new
2 trial must be filed within ten days of the verdict unless
3 there's after-discovered evidence. And I think an initial
4 inquiry that needs to be determined is when the defense
5 first learned of these particular allegations. In
6 conversations with the defense -- and they said they were
7 going to give me an answer -- that they may have had
8 conversations with Juror 785 prior to her being
9 represented, which was only a couple of days after trial.
10 So, if that is the case and they were aware of these
11 allegations, then we would want to argue to Your Honor and
12 preserve the issue that this is not after-discovered
13 evidence, and that there's a procedural bar in that regard.

14 Secondly, we made the argument that the affidavits on
15 their face, the only deliberating juror indicated -- and
16 that's 630 -- in that affidavit only said that she voted
17 guilty. She had questions but voted guilty because she
18 felt pressured by other jurors. And, of course, the law is
19 crystal clear in multiple cases that that's sort of
20 internal debate. It's actually in Rule 606(b) that that's
21 not any sort of misconduct or anything that is an
22 appropriate venue or mechanism to attack the verdict.

23 So, for that reason we've argued that their showing in
24 their motion for a new trial is insufficient based on the
25 case law for an evidentiary hearing because there is on its

1 face no sufficient allegation of prejudice. That being
2 said, of course, we fully understand and expect the
3 evidentiary hearing will go forward, and we'll be happy to
4 address burden of proof after the defense makes their
5 arguments.

6 THE COURT: Very good.

7 With respect to -- well, Mr. Griffin, anything in
8 reply?

9 MR. GRIFFIN: Your Honor, it does not appear that the
10 State takes a position contrary that a *Remmer* hearing is
11 required. They're arguing that we have waived the right to
12 that hearing. There's no evidence in the record of that, I
13 can assure the court. We did not know of, of this
14 information within ten days after the trial, and, and when
15 we learned of it, we promptly acted.

16 MR. WATERS: Well, in conversations with Mr.
17 Harpootlian and Mr. Griffin, they were going to actually
18 look into that and look at their paralegal's notes. So, I
19 fully rely on, trust the defense to give me a fair answer
20 to that question. And then again if there's an issue to be
21 raised, we would raise that. We're not conceding anything.
22 We just wanted to preserve our issues.

23 THE COURT: I don't think we need to go back and forth
24 many times about this. I think I understand your position.
25 Here is my decision on the matter.

1 First of all, this is not -- I am not conducting a
2 *Remmer* hearing. *Remmer* is a 1954 decision of the United
3 States Supreme Court that deals with question of influence
4 of the jury and a motion for a new trial on the basis of
5 after-discovered evidence of that influence. I rely on the
6 South Carolina decision of our Supreme Court authored by
7 Justice Kittredge, *State v. Green*, and the *Green* decision
8 specifically says that *Remmer* is not the guidance that
9 South Carolina trial judges should look to in conducting
10 hearings on after-discovered evidence.

11 Now, that says nothing about what the burden of proof
12 should be, and I don't intend to say anything thereby. But
13 I do intend tell to you right away that I will be relying
14 on South Carolina's jurisprudence and South Carolina's
15 jurisprudence specifically on what must be proved in a
16 hearing of this nature and who bears the burden of that
17 proof.

18 All right, and that leads me to the very next topic
19 that we will now take up, which is the burden of proof.

20 Mr. Griffin.

21 MR. GRIFFIN: Yes, Your Honor. The -- as, as we cited
22 in, in our papers, we believe that the controlling case in
23 this instance, based on discovered conduct as alleged, and
24 that is conduct of court official -- here the clerk of
25 court having communication with the jury about the

1 substance or the merits of the case -- that the standard to
2 be applied is, is not *Green* because *Green*, Justice
3 Kittredge says that the contact by the bailiff was about a
4 procedural issue, not about the merits of the case. Here
5 we're dealing specifically with the merits of the case and
6 the -- and the Court of Appeals decision in *State v.*
7 *Cameron* we believe is the controlling standard.

8 And in *State v. Cameron* -- and that was decided in
9 1993, and, and the Court says in citing *Holmes v. United*
10 *States*, which is a Fourth Circuit opinion, says:

11 In this case, there was a private communication
12 of a court official to members of the jury, an
13 occurrence which cannot be tolerated if the
14 sanctity of the jury system is to be maintained.
15 When there has been such communication, a new
16 trial must be granted unless it clearly appears
17 the subject matter of the communication was
18 harmless and could not have affected the verdict.

19 Now, now, we strongly believe that is the standard, is
20 the question was the subject matter of the communication
21 harmless and that it could not have affected the verdict.
22 And, and we are -- that's our position on the standard.

23 Your Honor, if, if, if Your Honor looks to a different
24 standard, we, we, we believe that *State v. Green*, the
25 measure of *State v. Green*, you can't look just at Justice

1 Kittredge's opinion. You to look -- because, because he
2 complimented the Court of Appeals decision. And the Court
3 of Appeals decision absolutely applied the *Remmer* standard
4 of the burden of production is on the defendant, but when
5 the defendant produces evidence of a substantive
6 communication to the jury by any third party -- that's,
7 that's what *Remmer* is, by any third party -- that, that
8 then there is a presumption of bias and that the State then
9 has to overcome that presumption, produce strong, clear and
10 convincing evidence that it was harmless. And, and, and
11 that was the standard that the Court of Appeals applied in
12 the *State v. Green*. And in *State v. Green* the Court of
13 Appeals says that this is the standard of the Fourth
14 Circuit, and we follow the Fourth Circuit law in this area.

15 Now, Justice Kittredge says that the communication by
16 the bailiff, which essentially said if, if you're
17 deadlocked, which they never were and never became
18 deadlocked, then the judge may ask you to stay longer. I
19 mean, that was the communication by the bailiff in *Green*,
20 and Justice Kittredge said that did not go to the merits of
21 the case. Justice Kittredge didn't throw out the *Remmer*
22 presumption standard in *State v. Green*, Your Honor.

23 And it's important that the Court of Appeals decision,
24 looking to the Fourth Circuit because, as Your Honor knows,
25 this case -- and, and I would encourage the court to look

1 at the *Holmes* decision out the Fourth Circuit which we cite
2 which applies to *Remmer*. It applied to *Remmer* in a *habeas*
3 *corpus* case when they said *Remmer* is the clearly
4 established law in the Fourth Circuit, and it vacated a
5 death penalty conviction out of North Carolina because the
6 North Carolina courts did not follow *Remmer*. And, and so
7 the Court of Appeals decision in *Green* says we look to
8 *Remmer*. Justice Kittredge says, you know, we're not going
9 to apply the *Remmer* decision here because it didn't go to
10 the merits.

11 What we have in this case and what we have, you know,
12 presented through proffer on the affidavits, something that
13 goes to the heart of the merits. It's the defense. It's
14 the credibility of the defendant's testimony. And so we,
15 we do have the burden of production, but we do believe
16 that, that the standard in *Cameron* is we just have to show
17 that the subject matter of the communication, that it was
18 material to the case, and that then the burden shifts to
19 the defendant to prove that it was harmless -- excuse me,
20 the burden shifts to the State to prove it was harmless.

21 THE COURT: Thank you, sir.

22 MR. GRIFFIN: That -- that's what we believe the
23 standard is.

24 THE COURT: Mr. Waters.

25 MR. WATERS: Your Honor, as you -- and I'm going to

1 walk through some of the cases in South Carolina to -- that
2 address this issue. But as Your Honor is aware, of course,
3 when we deal with these issues, we have two types. We have
4 internal misconduct, and our courts have been reluctant --
5 Rule 606 says this as well -- to delve into that unless
6 there are concerns of fundamental fairness like racism and
7 things like that. And then there's external, allegations
8 of external influence and that sort of thing, and that's
9 what we're dealing with here today.

10 And to quote *State v. Grovenstein*, which is a 1999
11 case of the State Supreme Court, it cites *Aldret* and *Kelly*
12 and says:

13 We have consistently held that defendant must
14 prove prejudice in these sorts of claims.

15 And if we walk through all of the case law, our court
16 has been very careful and as much said so in *Aldret*, which
17 was an internal case, to sync the analysis and the -- and
18 the standards between those two, and consistently held that
19 the defendant has to show prejudice. It's their burden to
20 do so.

21 In *Blake*, 1992, the Court held:

22 I don't presume prejudice, and the test of the
23 courts was whether or not the verdict was solely
24 the product of honest deliberation or whether it
25 was the product of outside influence.

1 We go over to *State v. Kelly*. The Court -- of course
2 Your Honor concurred with Chief Justice Finney's dissent in
3 that case. But in that case, there was a pamphlet in the
4 grand jury room. Clearly an external influence was alleged
5 there, and ultimately in that case the court held that the
6 defendant failed to show prejudice from that particular
7 external influence.

8 In *State v. Grovenstein*, in this instance it was
9 clearly external. There was an alternate who was present
10 in the jury room and even took a preliminary vote with the
11 jurors. So, clearly an external influence, far more than
12 is even alleged in this case. That juror was removed, a
13 curative instruction was given, but ultimately the Court
14 was very clear: That we have consistently held the
15 defendant must prove prejudice. Again, the burden being on
16 the defendant.

17 In *Bryant*, this was a capital case, one that I argued
18 from way back when, and in that instance, there was a
19 police investigation, background investigation into
20 death-qualified jurors in a capital case. Clearly
21 external. The trial court conducted an inquiry with
22 questions submitted by the parties as well, and ultimately
23 noted that it was the defendant's burden to prove actual
24 bias on the part of the jury.

25 In *State v. Pittman*, another case that I argued before

1 Your Honor, in that particular case there was a juror who
2 had a conversation with his wife and with a bartender, and
3 ultimately again the Court held that the defendant failed
4 to meet the burden of prejudice because the wife's comment
5 was the defendant was not guilty, and the comment to the
6 bartender took place after deliberations had begun.

7 And then of course in *Green* in 2020, Your Honor just
8 commented on that, and the Court clearly held that the
9 *Remmer* presumption of prejudice doesn't apply here. And
10 then, of course, went on to note that the defendant bears
11 the burden of proving, proving prejudice.

12 And *Cameron* is a case that they rely on a lot, and I
13 would say this about *Cameron*. And then *Cameron*, of course,
14 goes on to say that the mere fact of any official
15 communication does not mean necessarily that the jury was
16 prejudiced and went on again to do a prejudice analysis and
17 a harmless error analysis.

18 *Covington* is a Court of Appeals case from 2000. In
19 this particular case, there were jurors who supposedly knew
20 the defendant and knew some external information about
21 whether or not he had previous difficulties with his wife.
22 That was clearly external information. Again, the Court
23 held that the defendant failed to show prejudice.

24 So, the case law in South Carolina, both from our
25 state Supreme Court as well as our state Court of Appeals,

1 it's clear. It's in sync. It's uniform that it's the
2 defendant's burden to show prejudice, and that's, of
3 course, only after there's a determination that any sort of
4 extraneous influence occurred. And that would be the
5 State's position, that it is the defendant's burden.

6 And again we can address at the appropriate time what
7 the State's position is as to the order in which the
8 evidentiary hearing should go.

9 THE COURT: Thank you, sir.

10 Mr. Griffin, any reply?

11 MR. GRIFFIN: Yes, Your Honor. There is a tremendous
12 difference in the law as to how the court analyzes juror
13 misconduct as in *Kelly*, where the juror reaches out to her
14 pastor, gets a pamphlet, brings it into the jury room, and,
15 and that was found during the course of the trial.

16 The trial judge removed Juror O, who had gotten a
17 pamphlet, voir dired every, every juror to ask what affect
18 that had and could they put that out of their mind and
19 deliberate. So, that happened during the middle of the
20 trial, but it was juror misconduct. All the cases that he
21 cited, the State relies upon, are juror misconduct cases,
22 not, not unauthorized third-party communication that goes
23 to the heart of the Sixth Amendment right by defendant to
24 confront his accusers, to, to cross-examine witnesses who
25 present evidence. And, and when a third party makes an

1 improper contact with the deliberating jury before they
2 deliberate, that falls at the heart of the Sixth Amendment,
3 which is a different, different animal altogether than,
4 than where a juror engages in misconduct. And that's where
5 you get to *Cameron*. That's where you get to *Green*, which,
6 which *Green* says it was a procedural communication, not,
7 not a merits communication.

8 And, and, Your Honor, in *Bryant* -- well, I would note
9 Your Honor dissented in *Kelly*, but in, in *Bryant*, no jurors
10 were interviewed, as best we can tell by the -- by the
11 record. But in *Bryant*, it was a death penalty case. Law
12 enforcement -- I believe it was Horry County -- questioning
13 the jurors' relatives and friends and trying get their
14 belief as to whether they believed in the death penalty.
15 Apparently that -- some of that kind of leaked back to one
16 juror or maybe -- but, but there's -- there was no record
17 saying that jurors were prejudiced by that. But the Court
18 said that behavior cannot stand, and we find prejudice
19 based on conduct, not on the jurors' testimony. And, and
20 they didn't use the word presumption, but they found
21 prejudice.

22 And, and I don't want to get caught up in this issue
23 of, of do we have to establish prejudice. I think
24 prejudice is established, but the question -- it has to be
25 established, but the question is, is it presumed under the

1 circumstances. And if it's presumed under the
2 circumstances, what does the State have to rebut? And, and
3 so, you know, prejudice is a touchstone, but the question
4 is evidentiary presumption. Here where there is a
5 third-party communication that goes to the merits of the
6 case, the law is crystal clear that there is a presumption
7 of prejudice, and the State has the burden of proving it's
8 harmless beyond a doubt.

9 THE COURT: Thank you, sir.

10 MR. GRIFFIN: Thank you.

11 THE COURT: All right, Mr. Waters, you know, I'm not
12 going to go back and forth a million times, but if you want
13 to have a short comment in addition.

14 MR. WATERS: Very short, Your Honor. He said that
15 these were not external influence cases, and every one of
16 them that I listed was. Your Honor, *Blake* was bailiff.
17 *Kelly* a pamphlet. Again, it was an external piece of
18 information coming in. *Grovenstein*, it was an alternate;
19 again, that's an external influence. *Bryant* was police
20 investigation. *Pittman* was a bartender and a wife's
21 comment. *Green* was a bailiff, and so -- and *Covington* was,
22 you know, evidence that was not submitted at trial but the
23 jurors were aware of. So, clearly all of those were
24 external influence cases, Your Honor.

25 THE COURT: All right. I do not regard *State v.*

1 *Cameron* as the guidance that needs to be used by me in
2 making a determination about this case. It's a Court of
3 Appeals case. Since that case in 1993, there have been
4 several cases, including *Green*, *Aldret*, and others, that
5 very specifically talk about this issue of what the burden
6 is on a motion for a new trial on the basis of
7 after-discovered evidence that involves tampering or
8 alleged tampering of the jury.

9 All those cases say that prejudice must be proved, not
10 presumed, and it may very well be that that is what's going
11 to be shown. But for purposes of what the defendant must
12 show as the case goes forward to an evidentiary hearing,
13 the presumption simply by the contact -- which we don't
14 have any sworn evidence about except in the area of one
15 juror at this time -- presumption is not the way to examine
16 this issue, but rather specific evidence about what was
17 said, when it was said, and how it was perceived by the
18 juror is what I believe is required by *State v. Green* and
19 other cases. And, therefore, that is the approach I will
20 take.

21 All right, the next area of inquiry is the procedural
22 argument of the State that this matter was untimely made.

23 Mr. Waters.

24 MR. WATERS: Yes, ma'am, Your Honor, and again we have
25 raised the issue, as we talked about earlier, that we

1 believe that there is at least an inquiry as to a
2 procedural bar that if the defense was aware of these
3 allegations during the ten days, then it is not
4 after-discovered evidence and the motion is untimely.

5 And additionally we also, as I previously expressed,
6 would raise the issue that affidavits on their face are
7 insufficient to put in play at an evidentiary hearings, and
8 there are multiple cases that have -- in the State that
9 held -- I think *Yarborough* is one of those -- that held
10 that where those -- that showing was not made, that the
11 trial court properly denied an evidentiary hearing. So, we
12 would just preserve those issues, understanding the Court's
13 plan, procedure that you previously expressed.

14 THE COURT: All right. All right, Mr. Griffin or Mr.
15 Harpootlian, let me say, I will say to the defense -- I
16 mean, to the State that I believe that issue needs further
17 exploration. So, I am not prepared to rule that this
18 matter is untimely in the least. We're going to have a
19 hearing on this matter at which time this issue will be
20 further explored. So, the State has preserved its
21 position, but you need not argue about that matter at this
22 time.

23 MR. HARPOOTLIAN: Thank you, Your Honor.

24 THE COURT: And now the matter that, to me, is the
25 heart and soul of what we're doing today is the witnesses,

1 the exhibits, and procedure needed with respect to the
2 witnesses. And the witnesses at least are the jurors and
3 the clerk of court, Ms. Hill. What I'd like each side to
4 explore with me is how those witnesses should be presented,
5 who should present them, and how they should be questioned,
6 and whether there are any brackets or limitations that
7 should be imposed on what these witnesses are asked. And I
8 will begin with the jurors, which is really the heart and
9 soul of the matter. Other witnesses are very secondary to
10 the first issue, which is the jurors themselves.

11 Mr. Harpootlian, you are the moving party, and you may
12 proceed.

13 MR. HARPOOTLIAN: Your Honor, we agree all twelve
14 jurors should testify. We -- I think both sides agree Your
15 Honor should question those jurors.

16 The only question is -- I mean, not the only question.
17 The first question would be as Your Honor questions these
18 jurors, would you -- would you -- in all the cases the
19 judge questions, would you want suggestions from us as to
20 what additional questions we have after they respond to
21 your questions, raise additional questions? That's number
22 one.

23 Number two, each one of these jurors except -- of the
24 original twelve, I think all have been interviewed. Maybe
25 two have not been interviewed by SLED and given statements,

1 recorded statements. The rest have all given recorded
2 statements, and then SLED prepared a memorandum of
3 interview. We have reviewed all these videos and the MOI,
4 and I can tell the court that the MOIs aren't consistent in
5 many instances with what was said on the video to the
6 extent that information was left out.

7 Now, if Your Honor is going to be very restrictive
8 and, and did the clerk communicate something to you and did
9 it affect your decision, I guess that's what we're hearing
10 from Your Honor when you're following *State v. Green*. If
11 you're going to say that, ask those questions, I mean,
12 there's some of these jurors who indicated they heard the
13 clerk say what the, the, the juror that gave the affidavit
14 for us say, and I think they're going to say it didn't
15 affect them, which is fine. If it affected that one juror,
16 we think that's enough, and that juror has obviously given
17 an affidavit to us.

18 The alternate which was excused and the -- he called
19 her the egg lady, but she was also excused: the alternate
20 because she wasn't needed, the egg lady because the judge
21 found that she had had contact with people and discussed
22 the case. They further indicated that the clerk said what
23 we say she said, and we believe they should be examined.
24 We'll be happy to do that, or the Court could do that.

25 So, there are witnesses, and then we have the clerk

1 herself. I talked to her lawyer this morning, who
2 indicated she has not made a decision as to whether or not
3 she will assert any constitutional right not to testify,
4 and obviously that could be on a question-by-question basis
5 maybe. I don't know. I mean, we're not ready to argue
6 what the standard is on the Fifth Amendment at this point.
7 But if she does testify, there are literally thousands of
8 emails we were furnished last week by Colleton County, some
9 information furnished by SLED this morning, and the
10 attorney general which might be utilized. I can't say
11 right now it would or wouldn't, depending on her answer, to
12 impeach, contradict. And so it's, it's -- I can't tell you
13 what exhibits it would be or we would do because I don't
14 know what her answers are going to be.

15 We believe we should be able to examine her as a
16 hostile witness. We, we should be able to call her as a
17 witness because the burden is on us, as Your Honor has just
18 enunciated.

19 Now, the only other thing I would say is this. Even
20 if Your Honor determines that a piece of evidence or a
21 question is not admissible for your consideration, for
22 purposes of the appellate record, we believe we ought to be
23 able to make a proffer. So, it may be that you allow --
24 Your Honor allows us to go forward and then in your
25 decision decide it's not relevant, in your decision decide

1 you didn't consider it or whatever, but stop and go is
2 going to elongate that hearing dramatically. And again,
3 since you're the finder of fact, you can decide not what a
4 jury is going to hear but what you, you -- it matters to
5 you.

6 So, we think the examination of the clerk should be
7 wide open, and we think that the exhibits we would use to
8 impeach her, we would attempt to keep it relevant to the
9 specific issues in this case.

10 I mean, her son has been -- for instance, her son has
11 been indicted for, for wiretapping. There seems to be some
12 inference, what we read in the paper -- we don't have any
13 specific knowledge -- that she was aware of that, and that
14 wiretapping was in relation to some ethics complaint about
15 her. That's not relevant; we're not going to ask her about
16 that. Now, we're continuing to examine whether or not
17 there is some connection there, and we're, we're
18 investigating that. But at this point, I will tell you
19 that's not where we're going.

20 Where we are going, by way of example, is we have been
21 furnished an email that she, she got on February 24th from
22 somebody which was a photo, a screenshot of a, a -- looks
23 like a posting on some sort of Facebook page where the
24 ex-husband of a juror -- not the egg lady -- alleges that
25 his ex-wife was talking about the case, and she was going

1 to vote guilty because she hates men.

2 Now, we, we know she got it. We know she got it on
3 February 24th, yet on the morning of February 27th she
4 tells in the -- in the chambers, the hearing we were all
5 present at, that she had seen a Facebook page posting by
6 egg lady's ex-husband alleging that she was talking about
7 the case. She didn't think he was guilty. That Facebook
8 page has never been produced, and then she produced a, a
9 Facebook posting she said by the egg lady's husband. Turns
10 out to be a guy I interviewed in Georgia apologizing for
11 what he had posted on Friday night which concerned his
12 wife's aunt meddling in their marriage. I think that's
13 fertile ground for cross-examination. Your Honor may
14 disagree with me, but I still would like to put those items
15 into evidence for the appellate record at the time.

16 The last thing I would say is this. In terms of Your
17 Honor questioning the jurors, we need instructions from you
18 as to whether you want -- when you finish with a juror, do
19 you want us to submit questions to you? Do you want -- I
20 doubt you're going to let us question them. How is that
21 process going to work, and will that be done someplace --
22 would be done in this courtroom? Will be done somewhere
23 else? And if the jurors will be questioned outside of this
24 courtroom, will there be a way for the public to hear what
25 they have to say?

1 Beg the court's indulgence.

2 (A PAUSE.)

3 MR. HARPOOTLIAN: Beg the court's indulgence.

4 (A PAUSE.)

5 MR. HARPOOTLIAN: And Mr. Griffin correctly points out
6 it's not just what they heard, may have heard from the
7 clerk, but did any of the other jurors -- for instance, egg
8 lady, we keep calling her, gave an affidavit indicating
9 Becky said things like don't be fooled. Watch the body
10 language. Watch, watch his body language as he testifies,
11 Mr. Murdaugh. Did she relate that to any other jurors?
12 It's not just what -- was it -- did it -- or did the
13 sitting juror or the alternate in the...

14 Beg the court's indulgence.

15 (A PAUSE.)

16 MR. HARPOOTLIAN: One other point. In the memorandum
17 of interview, now the clerk's private lawyer, Mr. Lewis,
18 objected to any videotaping or audio taping of the clerk
19 when she was interviewed. But in the memorandum of
20 interview, she -- that is the clerk -- indicated she had
21 conversations with the forelady outside the presence of the
22 rest of the jury about what was going on in the jury room.
23 Obviously, I would cross-examine her on that, but it may be
24 necessary if she testifies to things that are inconsistent
25 in that MOI for us to call the SLED agent that did the

1 interview to corroborate the MOI.

2 The MOI may be introduceable in and of itself as an
3 exception to hearsay rule, but I believe it would -- may be
4 necessary for us to call the SLED agent.

5 We're not going -- and, Your Honor, we're not --
6 you've indicated you're not going to want to know what --
7 any sort of summaries of those interviews by the jurors
8 when we talked back in chambers or necessarily the MOIs.
9 You want your own fact-finding with the jurors. To the
10 extent that they contradict those, we may put all of that
11 in the record for appellate purposes. And if you want,
12 want to see those before you have this hearing, we can
13 obviously put those -- we could put those in the record
14 today or have those available for you, both the MOIs and
15 the videos or -- we're, we're -- obviously, we're going to
16 do whatever you tell us to do, but we're looking for some
17 guidance as to if there's anything we can get you prior to
18 that evidentiary hearing concerning those memorandum of
19 interview by the SLED agents and the videotapes, whatever
20 you -- whatever you instruct us to do.

21 Beg the court's indulgence.

22 (A PAUSE.)

23 MR. HARPOOTLIAN: Your Honor, we mentioned and Mr.
24 Griffin reiterated to me just now, obviously you don't need
25 to tell us that -- this today because we're not going to be

1 doing the questioning, but there is the consideration of
2 606(b) and the, the incursion into deliberations. At some
3 point -- we don't need to know that today -- but at some
4 point prior to you questioning the jurors, we'd like you to
5 enunciate what your position is on that.

6 THE COURT: You're going to have to outline that a
7 little bit more for me. What part of 606(b) are you
8 discussing?

9 MR. HARPOOTLIAN: Well, it says:

10 Upon an inquiry into the validity of a verdict or
11 indictment, a juror may not testify as to any
12 matter or statement occurring during the course
13 of the jury's deliberations, or to the effect of
14 anything upon that, or any other juror's mind as
15 -- or emotions as to influence a juror to assent
16 to or dissent from the verdict.

17 THE COURT: All right, sir, and what are you saying
18 that imports for this proceeding?

19 MR. HARPOOTLIAN: Well, I mean, for instance, if we
20 show, if we prove to you that the clerk said do not be
21 fooled or, you know, watch, watch Murdaugh's testimony,
22 watch the body language, referring -- he was lying, he
23 would be lying, one of the issues is if, if the juror who
24 sat during deliberations who said that she -- that the
25 clerk said that, did she discuss that with any other

1 jurors? Did she infect the jury? Does this allow you to
2 do that?

3 THE COURT: Well, you certainly -- if you go to
4 606(b), it gives you some guidance about that. It says:

5 Upon inquiry into the validity of a verdict or
6 indictment, a juror may not testify as to any
7 matter or statement occurring during the course
8 of the jury's deliberations, or to the effect of
9 anything upon that, or any other juror's mind or
10 emotions influencing the juror to assent or
11 dissent from the verdict or indictment, or
12 concerning the juror's mental processes; except a
13 juror may testify on the question of whether
14 extraneous prejudicial information was improperly
15 brought to the juror's attention, or whether any
16 outside influence was improperly brought to bear
17 upon any juror. Nor may -- nor may a juror's
18 affidavit or evidence of any statement by the
19 juror concerning a matter about which juror will
20 be precluded from testifying be received for
21 these purposes.

22 I take that to give us the guidance we need about the
23 parameters of the questions.

24 MR. HARPOOTLIAN: But, but if -- again, the juror that
25 gave us the affidavit, would she be asked did you discuss

1 that during deliberations, did she do that?

2 THE COURT: That apparently is very questionable under
3 the terms of 606, and I intend to abide by that. The way
4 those questions have been asked in the many cases I have
5 reviewed is to ask the juror whether that's still their
6 verdict. If they're asked about improper contact and they
7 talk about improper contact, then the way to pursue it
8 beyond that for the judge is to ask about the impact on the
9 verdict, not on the deliberations themselves. That may be
10 a small slice of difference, but I think it's very
11 important to understand that no one, not myself or anyone
12 else, is going to be asking the jurors about the specifics
13 of their deliberation, and the rule is quite clear about
14 that.

15 MR. HARPOOTLIAN: Okay, and, and, and is it clear that
16 you will not be using the SLED interviews or MOIs to
17 attempt to impeach.

18 THE COURT: I told you when -- when that was brought
19 to my attention in our chambers conference this morning I
20 haven't made my mind up about that. I don't know what's in
21 those summaries or anything else, and we're going to have
22 to discuss that, but again I'm going to be doing the
23 questioning at this point, Mr. Harpootlian.

24 MR. HARPOOTLIAN: Yes. Yes, Your Honor.

25 THE COURT: And I am trying to perceive what you all

1 are asking, and I'm going to go to the State now and what
2 their reaction is to what you said.

3 MR. HARPOOTLIAN: Thank you, Your Honor.

4 THE COURT: Mr. Waters.

5 MR. WATERS: Thank you, Your Honor. May it please the
6 Court? Your Honor, again we would concur with what Your
7 Honor just said about Rule 606 and, of course, all the
8 cases that we've talked about, and the need to show
9 prejudice. And obviously when you're talking about
10 external influence, that prejudice would be an appropriate
11 subject to inquire into the jurors as whether or not there
12 was an impact on the verdict.

13 And we, of course, have suggested to Your Honor not
14 only based on the cases that, that should be judicially
15 conducted in a manner that protects the privacy of those
16 jurors and protects the privacy of their identities. These
17 jurors were drafted into service, and this inquiry, of
18 course, has to happen, but it needs to be conducted in a
19 manner that respects their privacy and should be, of
20 course, judicially conducted.

21 We have suggested those, those two questions. If we
22 look at the *Bryant* case, the *Bryant* case specifically talks
23 about the fact that, depending on how the examination goes,
24 there could be questions suggested by the parties. And
25 obviously I think we would need to cross that bridge if and

1 when that needs to be crossed. And that starts with the --
2 with the Court's inquiry to those jurors and only if
3 something arises that needs further inquiry could that be
4 addressed at that point. And that could be even a
5 discussion from counsel with the Court as to what
6 additional questions may be proper.

7 You know, when the State first became aware of these
8 allegations, the first thing that we did was ask SLED do an
9 independent investigation, and the goal was good, bad, or
10 ugly to get to the bottom of what, if anything, happened.
11 And the result of that is why we are still here today. And
12 that is that in speaking with the jurors that spoke to us,
13 that the balance of the evidence, as well as in talking to
14 the clerk's staff, was that there was no impact on any
15 verdict. There was nothing unprofessional or untoward that
16 happened that had any affect on the verdict. And so when
17 we did that inquiry and that is what the jurors said, that
18 is why we're here today, and that's what this hearing is
19 going to address.

20 The only juror that we have is the one who filed the
21 affidavit, that 630, and even she -- or that person said
22 that she, you know, eventually voted guilty because she
23 felt pressured by the other jurors. Did not even mention
24 any external impact. And so unless she'd going to change
25 her story, that is what was in her affidavit. So, the

1 balance of the evidence is the reason why we're here today
2 and, and why this hearing needs to take place.

3 Your Honor, as far as inquiry to those jurors, again
4 there could be a need that the parties would suggest
5 questions. And it could be, depending on how things go,
6 that the affidavits or maybe even the recordings, all of
7 which have been provided to the defense, full recordings of
8 those interviews of any potential witness in this case has
9 been provided to the defense, it could be that issues
10 could, could arise from either the State or the defense as
11 to impeachment. And we can address those issues as they
12 arise under the appropriate rule, 608, 613, and the like,
13 dealing with not only prior incon -- state -- inconsistent
14 statements but other evidence that would be properly
15 impeached.

16 Ultimately, I do need to address one thing as it -- as
17 it deals with all this, and that is the defense's
18 contention that somehow the clerk is a party opponent in
19 this particular case, and we believe that that is
20 incorrect. Obviously, there is a hearsay exception or a
21 non-hearsay determination in the evidentiary rules, I
22 believe in 801, that exclude statements of the party
23 opponent. But just because the clerk is an elected
24 official and of the State does not make them a party
25 opponent in the way that term is defined. A party opponent

1 is an active litigant before the case, and that is, I
2 think, a difference. So, we would certainly say that, that
3 hearsay rules would still be in effect as it relates to Ms.
4 Hill and any testimony that she may provide.

5 I know there's been some discussion about the order in
6 which the witnesses may be called and whether or not Ms.
7 Hill would be a hostile witness. And obviously that's
8 under Rule 611 and, I believe (c), which would allow
9 leading questions, you know, if a person is hostile. I
10 think, again, at this point I don't know that any showing
11 necessarily has been made, but I understand the defense may
12 raise that point. We may have some arguments at that time.
13 But I, I don't know that there's been such an
14 identification between Ms. Hill and the State that would
15 allow, A, her to be identified as a party. I mean, that's
16 far out of bounds, but also that she would be applicable --
17 to allow defense leading questions under 611(c).

18 Your Honor, in looking at the type of examination that
19 would need to happen here, and again the issue also was --
20 arose of the Fifth Amendment, and I know that the defense
21 would like to brief that issue. We're happy to respond.
22 We don't know exactly how that might arise in the course of
23 any examination. We need to cross that bridge again when
24 we get there. We would say, though, that the Fifth
25 Amendment is question specific, and so again it may be

1 something that this Court has to rule, as is in any sort of
2 evidentiary presentation, question by question based on any
3 objection by the party. So, it's kind of hard to say that
4 -- exactly what the blanket position would be until we
5 actually get to, to that determination.

6 Ultimately, the defense referred to some information
7 provided this morning. Actually, both sides exchanged last
8 night their communications with the clerk during the course
9 of the trial. So, both, both sides did that last night and
10 that there were a lot of communications with the defense as
11 well. So, again, and I just want to point that out in the
12 -- if there's any sort of allegation or, or insinuation
13 that the State's not providing information, we've been very
14 diligent about providing any and all information to the
15 defense. And if any additional information arises, we will
16 continue to do so. But both sides exchanged that last
17 night.

18 And, of course, there's been some reference in their
19 filings as to emails that were forwarded from the clerk to
20 me and to my paralegal, and they've actually even listed me
21 on the -- on the witness list. And, Your Honor, as we've
22 had a chance to peruse the defense communications with the
23 clerk, there is just as much communication and offers of
24 help. It was just a uniform, across-the-board
25 courteousness that's reflected from those. So, we think

1 that that's a non-issue, and we think that that should not
2 be something that arises during the course of this
3 evidentiary hearing, at least as it would require
4 communication from -- or testimony from attorneys.

5 Your Honor, ultimately as we look at the inquiry that
6 will need to be conducted, as the State had made clear, it
7 starts with the jurors and only if something arises in that
8 inquiry, further inquiry to those jurors may be necessary.
9 And that could be in discussion with the parties, as I've
10 stated before.

11 And then I know Your Honor has indicated that the
12 clerk should testify, and we certainly understand that.
13 The clerk filed an affidavit denying any of these
14 allegations, and so again as we address the clerk's
15 testimony, the State would have objection to some of the
16 information I believe the defense would propose to examine
17 her on. We believe that an inquiry should be limited to
18 what is appropriate and relevant impeachment but not should
19 be just a far-ranging fishing expedition or full, full
20 inquiry into a lot of subjects that have come up since the
21 trial that we believe are not relevant to any inquiry that
22 is before the court here now.

23 Obviously, Rules 404, 401, 402, and 403, as well as --
24 which, of course, address relevance and 403 objections.
25 404 addresses other crimes or wrongs or acts. Rule 606 --

1 or, excuse me, 608 which addresses, you know, inquiry into
2 other specific acts and impeachment, and Rule 613 which
3 talks about prior inconsistent statements, all those rules
4 potentially could come into play depending on the nature of
5 the testimony and the nature of the inquiry.

6 But there have been allegations since the trial about
7 the book, about this wiretapping case, about investigations
8 into alleged use of office for improper gain, but again all
9 those are subsequent to the trial. So, again, depending on
10 how the testimony goes, the State would raise appropriate
11 objections at that time to limit the inquiry to what is
12 appropriate for what is before the Court, and that is what
13 occurred during the trial. So, we would make those
14 particular evidentiary objections as things developed.

15 Ultimately, that would be the State's position. I
16 know that we're trying to put as much meat on the bones as
17 we can at this particular point in time. But I think the
18 reality is, is that the Court's inquiry to the jurors will
19 really determine the nature of the inquiry that needs to
20 proceed from there. And at that point, the State would,
21 you know, take the positions that I've outlined here today.

22 THE COURT: Any reply?

23 MR. HARPOOTLIAN: Please the court, Your Honor? 404,
24 it's somewhat ironic the State is quoting 404, Your Honor.
25 One of the exemptions to 404 -- I know this will be

1 surprising to Mr. Waters -- is motive, as if he'd never
2 heard that before. He told me this morning one of the
3 assistants that worked for Ms. Hill during this trial was
4 told by Ms. Hill during the trial that a guilty verdict
5 would be good for sales of the book. Motive: selling
6 books.

7 So, we believe we should be able to get into that; we
8 should be able to ask Ms. Hill about it. If she denies it,
9 to call that witness, that assistant, and have her testify
10 that she was told that. I mean, why would a clerk do what
11 we've alleged she did we think is important for Your Honor
12 in terms of credibility and context. That's number one.

13 Number two, Your Honor, I think we've all agreed.
14 You're going to ask the questions, whether we've agreed or
15 not, and we do agree with that. The question is going to
16 become as we go through that process how, if a juror says X
17 and they said in their interview Y or if they've said to us
18 Y or didn't include it in their original affidavit, and you
19 don't ask that question initially, how are you going to
20 handle -- or do you care how we suggest to you a further
21 question? Because, as Your Honor sees this morning, the
22 back and forth can go on for a while, and we certainly
23 don't want that to go on with a juror. So, we're going to
24 need some guidance on that. I'm not expecting that
25 guidance this morning.

1 But the last thing is we -- as these jurors are
2 examined, I need to understand a little bit about the
3 logistics. Are we going to do it in this courtroom? Are
4 we going to do it in another courtroom? Is the public
5 going to be able to hear the responses? Will there be an
6 audio feed if we do it somewhere else? Are you not -- are
7 you going to have cameras turned -- do it in this courtroom
8 and have cameras turned off? And we're obviously not to
9 refer to jurors by their names, even though three of these
10 jurors went on the *Today Show* and another went on ABC.
11 They were all in the courtroom when the judge had them
12 brought in at the end. They were in the courtroom, all
13 except for one of them, for the verdict. Cameras were
14 there then.

15 Again, I'm sensitive to their anonymity, but I don't
16 know that any of them have any real anonymity anymore.
17 Saying that, I think it's important not only for Your Honor
18 to hear their answers but the public to hear their answers.
19 Thank you.

20 THE COURT: All right, sir.

21 MR. HARPOOTLIAN: Thank you.

22 THE COURT: With respect to the jurors first as
23 witnesses, I will be doing the questioning of the jurors,
24 and I will notify the parties pretty promptly what I intend
25 to ask the jurors. The ambit of what I will be asking them

1 is informed by the question of whether improper contact was
2 made with them, and whether it affected their verdict.

3 I understand that you on the defense side have views
4 about what further should be asked of jurors on two levels.
5 One, as a predicate to what you want to do with the clerk
6 herself in examining her, and two, as a means of further
7 attacking the credibility of the clerk and her testimony.

8 I have not seen any of the SLED material or memoranda
9 concerning the State's summary of these interviews and so
10 forth. I will be open to receiving that if it's done
11 promptly because we've got a hearing coming up the 29th,
12 and I want there to be plenty of time to revise any current
13 ideas about who to subpoena, who to call as witnesses, and
14 who has to do that.

15 But I can tell you that I am very, very reluctant to
16 turn this hearing about juror contact into a wholesale
17 exploration of every piece of conduct by the clerk alleged
18 to have been improper on its own, indicative of her or
19 characteristics of personality, or anything of that nature.
20 This is a very focused inquiry that deals with this jury
21 and what impact contact, if any, had on this jury. So, I
22 am very mindful of the limited nature of it. As I say, I'm
23 not excluding submission in advance of information that
24 would take the questions beyond the limited questions I
25 initially indicated. But I will be very hesitant about any

1 of those questions as it involves propounding those
2 questions to the jury.

3 As it involves questions to Ms. Hill similarly, this
4 is not a time to explore every mistake or incorrect
5 statement or false statement that ever has been made by
6 this witness. I am the judge of the credibility of this
7 witness for purposes of this new trial motion. I don't
8 think it's necessary, nor do I think it's proper, to
9 explore each and every impropriety alleged to have been
10 committed by the clerk. At the same time, what
11 specifically should be asked is something that I will look
12 at as I look at the submissions that are made before the
13 hearing takes place about what is requested be allowed as
14 topics for questioning of the clerk and what exhibits
15 should be used.

16 I can't imagine allowing thousands of emails to be
17 made exhibits in this process, either emails sent by her to
18 attorneys in the case, to other court officials in the
19 case, or to other individuals during the course of the
20 trial of the case. I certainly will try to preserve the
21 appellant posture of defense in this regard, but I will put
22 certain limitations on just a wholesale exploration of
23 every problematic piece of conduct, ethical dealings with
24 the county, and so forth. This is a very focused inquiry
25 about this jury and its ability to render the verdict it

1 rendered in an impartial manner.

2 So, I say that to tell you that when the clerk is
3 offered -- and I think the clerk is going to have to be
4 offered as a witness. The whole allegation revolves around
5 the contention that the clerk made contact with the jury
6 about matters material to their verdict, that that contact
7 was improper, and that it impacted their verdict. There is
8 a whole lot more that Mr. Harpootlian has indicated he'd
9 like to explore that I regard as totally extraneous to the
10 inquiry that we've maintained. I'm not going to allow
11 those questions to be asked by way of proffer and then have
12 the clerk answer those questions and have that be the
13 proffer, although I consider them irrelevant questions.
14 We're not going to handle the case in that way.

15 If I exclude a certain question from being asked, then
16 the proffer will be whatever in writing is chosen to be
17 offered in that regard, but I will not conduct a hearing
18 where there's a whole side hearing in which every question
19 desired is asked and will required to be answered or dealt
20 with in some other way. I don't think that is an
21 appropriate use of this very targeted hearing that I'm
22 directed to have.

23 I also think it makes a great deal of difference
24 whether the questions that are being asked relate to the
25 clerk's conduct at the time this case was tried as opposed

1 to other conduct at a later time or in connection with
2 other things than the trial of this case.

3 So, I will be looking very carefully before we conduct
4 this hearing and try to give the parties as much advice as
5 I can about what I would find to be acceptable topics to
6 pursue. I think you're entitled to that. But I also think
7 the record of the case is not to be used as a platform to
8 explore each and every fault of each and every witness,
9 whether it be the juror or the clerk, and I'm not going to
10 have the hearing conducted in that manner. I think there
11 are other ways of preserving topics that I rule should not
12 be pursued than having those questions asked and answered
13 even though I've ruled that they are not proper in the
14 hearing.

15 So, I hope that explains kind of where I am on the
16 subject of how questions are asked. And, therefore, some
17 of the suggestions that are made in the filings you've made
18 with me about the additional witnesses you'd like to call
19 and subpoena, I think we need to be sure we're all on the
20 same page about what is acceptable in evidence and what is
21 not. But I can tell you that I would not allow the
22 subpoenaing and examination of attorneys in this case, of
23 the judge who heard the case, or any of those type of
24 witnesses. This case is very focused on the jurors and the
25 clerk of court as I see it.

1 Now, it's about 11:15 or close to it. I'm going to do
2 this. I'm going to take a break for a minute. Let's take
3 until 11:25 as a break, and in that time I would hope that
4 you formulate the other things you think we need to look at
5 by way of the specifics of how this matter is to be
6 conducted.

7 I will then do two things when I come back. Ask you
8 for further ideas, both sides, as to who should be called,
9 get very specific about who can be called and who cannot,
10 who should offer these witnesses. And I would also at that
11 time ask those who represent potential witnesses in this
12 matter to come forward and have conversation with me about
13 your position on behalf of your clients.

14 I think that's generally important because as we have
15 the actual hearing itself, I've never heard of a situation
16 where a witness can have their lawyer actively participate
17 in the examination of the witness in a proceeding in which
18 the witness is being offered. So, I would not allow that,
19 but I think we can protect the legal positions that
20 attorneys for witnesses want to take and need to take and
21 want to put upon the record by pursuing the way I just
22 outlined, and I'll be prepared to do that when we return.

23 All right, Court will be in recess.

24 (OFF THE RECORD.)

25 THE COURT: Please be seated. Before we proceed

1 further, a few other things that you've been asked about
2 that I want to clarify before we then go forward with a
3 more specific look at how witnesses will be questioned.

4 First of all, how the jurors will be questioned,
5 everything will be done in open court. The jurors will be
6 referred to by number. The Court TV cameras which are the
7 ones used to film these proceedings will not be allowed to
8 focus on the image of the jurors as witnesses, and if
9 there's some need to further obscure the way they are
10 presented, we can talk about that, but they'll be examined
11 right here in the courtroom as the other witnesses would
12 be. And I've kind of looked to a little bit of exchange
13 we'll have with attorneys for the jurors to see what we can
14 work out about how exactly the jurors are presented, but
15 everything will be on the record here in open court with
16 measures taken to ensure the privacy of the jurors.

17 No photographs would be permitted of the jurors or
18 anything of that nature. And I believe if I announce that
19 in advance, the press that are present and press that have
20 covered this proceeding throughout have been respectful of
21 the judge's request, and I am very confident they will be
22 in this matter as well.

23 With respect to the alternate jurors, I will question
24 only the jurors who sat and considered this case. So, the
25 alternate who was dismissed, was dismissed by the trial

1 judge, that alternate did not participate in any way in the
2 deliberations in this case. There's nothing that has been
3 brought to my attention about anything the alternate might
4 have done that was improper at all in terms of
5 communications with fellow jurors; nothing's been alleged
6 in that regard. So, my focus will be on the jurors that
7 heard this case and not on either that alternate or any
8 other alternate juror that is been proposed for
9 questioning. I will not permit that.

10 With witnesses or testimony, I do not allow -- let me
11 explain about proffer. Proffer will be a written proffer
12 by the party to satisfy the limitations of my ruling, but
13 there will not be some examination as to proffer. The
14 proffer will be a written proffer by the attorneys in
15 accordance with their positions about witnesses and
16 testimony.

17 With regard to the subpoenaing of witnesses, the
18 parties should subpoena these witnesses, and when it comes
19 to the jurors, I would urge that the parties, the state and
20 the defendant, jointly deal with the issue of subpoena of
21 these witnesses. I do not think it is the court's place to
22 subpoena witnesses or order witnesses' appearances.

23 This case is driven by the parties and their
24 positions. The initial position of defense was that only
25 certain jurors should be called; the state said no jurors

1 should be called but if you do, all should be called. All
2 who sat on the case should be called. If the parties can't
3 agree on how that subpoena should be accomplished, I'm sure
4 -- let me know, and I will try to take some measures in
5 that regard.

6 The concept I would have is that jurors would be --
7 would report to a place that I will specify, and when they
8 report, they would be taken to a room with appropriate
9 supervision by court personnel and then called individually
10 to recite their testimony, and when their testimony was
11 complete, they would simply take their place in the jury
12 box until all were questioned. And then if there were any
13 questions further by me that would be made collectively to
14 the jury, I could do that. And if there are any further
15 questions submitted to me by the parties that I chose to
16 question, I would do that. And then when all of that was
17 complete, the jurors would be allowed to be dismissed. So,
18 that is how I would handle the juror witness portion of
19 this. And, of course, I know I'm going to take some
20 commentary from each side about that. That's why I talk
21 about this in advance.

22 The other witness that surely needs to be called
23 because of the allegations made is the clerk of court. The
24 State has submitted a preliminary affidavit by the clerk of
25 court, and the defense has many areas that they want to

1 explore for the court. Again, I would like for the parties
2 to develop some joint way of subpoenaing the clerk of
3 court, and if I need to be a part of that, then I'm sure
4 the parties will let me know.

5 But I say this for the benefit particularly of the
6 attorney for the clerk of court to know that I would expect
7 that the clerk of court will be called as a witness in
8 these proceedings 29th, 30th, and 31st if necessary.

9 You will be using the same courtroom for these
10 proceedings, this courtroom, and 3B will be used as an
11 overflow for the press. Excuse me, 3A is the one over
12 here, and that's the one I will be using to conduct the
13 hearing. This courtroom we're sitting in now will be an
14 overflow courtroom for press with, I'm sure, Court TV
15 monitor that's available for them to monitor the
16 proceedings if there's not enough room. Based on the
17 attendance today, might be plenty of room but we'll see.
18 We'll have this as -- I will try to figure out a way to be
19 sure that the broadcast in here of the proceedings will not
20 interfere with the conduct of the hearing past this
21 partition next door.

22 I will trust Mr. Bender to work with the press and the
23 overflow courtroom in accordance with the rules I'm going
24 to set forth here and anything else that may come up that
25 needs my attention. I think that covers it at the present

1 time.

2 So, the first thing I'd like to do is to get some
3 clarity from the attorneys as to what further more, for the
4 parties, as to what further more needs to be discussed, and
5 then after that we will explore the attorneys for the
6 jurors and the attorney for Clerk Hill. Any other issues
7 that still need developed?

8 Mr. Harpootlian.

9 MR. HARPOOTLIAN: Please the court, Your Honor. I'm
10 trying to make sure I understand what you just ruled. Are
11 you ruling we cannot call the alternate juror or the
12 so-called egg lady to corroborate what was said to the
13 sitting jurors as they were all told at the same time?

14 THE COURT: I'm not sure I understand your question,
15 but I'm telling you that I want -- these jurors, these
16 alternates would be called apparently to testify as to what
17 the clerk said.

18 MR. HARPOOTLIAN: Yes.

19 THE COURT: At the present time, I see no necessity
20 for them to be called to say what the clerk said because
21 we're talking about what the clerk said to the remaining
22 jurors, those who actually sat upon the case. The
23 corroboration is something I don't think I need at this
24 time. I think I'm perfectly capable of evaluating what the
25 jurors tell me and I'll do that. I think I'm also

1 perfectly capable of evaluating the credibility of Ms. Hill
2 and the jurors, for that matter.

3 MR. HARPOOTLIAN: Well, Your Honor, for us to -- and
4 then you say you wouldn't allow a proffer of that except in
5 writing.

6 THE COURT: Yes. I'm not going to have a courtroom
7 proffer of any kind. If you want to proffer what would be
8 offered by means of affidavits, copies of emails, or
9 anything else you want to, that's fine, but I'm not going
10 to have a courtroom proffer, no. I think you're -- the
11 only reason for the proffer would be to preserve your right
12 to appeal. I believe your right to appeal my ruling will
13 be perfectly be preserved, frankly, if you didn't have a
14 proffer, but even more so if you supply an in-writing
15 proffer.

16 MR. HARPOOTLIAN: Well, I'm trying to determine
17 whether an affidavit is sufficient for an appellate court,
18 federal or state, when the state won't have an opportunity
19 to examine that witness. I mean, they've given -- we can
20 get more detailed affidavits. And, you know, these people
21 are witnesses to what the clerk said to the jury that
22 deliberated. I don't understand how that can't be relevant
23 to Your Honor's decision.

24 I understand there's two steps; one, did she make the
25 statement; two, was it prejudicial. These witnesses

1 corroborate she made the statement.

2 THE COURT: Well, of course, that's what you say. So
3 far I haven't seen any of that. If that's what you say and
4 you offer it to me in some form that I can evaluate it, I
5 may revisit that decision.

6 MR. HARPOOTLIAN: Okay.

7 THE COURT: At the present time ---

8 MR. HARPOOTLIAN: Okay.

9 THE COURT: But at the present time, I see nothing
10 that prompts me to think I need to have people who did not
11 sit on the case talk about what they think the clerk said
12 to other people when I've got the direct people to whom
13 it's said that I will question.

14 MR. HARPOOTLIAN: Well, Your Honor, we did submit an
15 affidavit, but I have no problem going back ---

16 THE COURT: You submitted one alternate affidavit.

17 MR. HARPOOTLIAN: Right.

18 THE COURT: And one affidavit of a dismissed
19 alternate. I'm aware of that.

20 MR. HARPOOTLIAN: Right. So.

21 THE COURT: And that doesn't prompt me to change what
22 I've just said to you at all.

23 MR. HARPOOTLIAN: If we could be more, more -- I
24 understand what the questions are you have, and I would
25 only put those folks up to deal with those very limited,

1 very limited issues that you described, put them up in ten
2 minutes.

3 THE COURT: Well, again, I'm not going to rule in a
4 vacuum. I'll see what you say, and I'll rule upon it.

5 MR. HARPOOTLIAN: We'll get affidavits and file them
6 with the Court.

7 THE COURT: Very good.

8 MR. HARPOOTLIAN: Thank you.

9 MR. WATERS: Your Honor, just one issue as to
10 logistics. Obviously, these jurors are down in Colleton
11 County and we're up here in Richland County. I've spoken
12 to SLED, and in as much as we need -- you know, there may
13 be jurors who need transport, you know. SLED has certainly
14 agreed to have twelve cars if we need to to make sure that
15 they're individual. They can come in through the garage,
16 and obviously they would be brought up to a jury room. I
17 think Your Honor indicated they could be in a jury room
18 with a bailiff in there, make sure that no one is talking
19 about their testimony and that sort of thing. But also so
20 that they don't have to come in through the public entrance
21 and that sort of thing. So, that would be ---

22 THE COURT: I think that would be a good solution and,
23 of course, to satisfy the concerns that the defense may
24 have, you could even have a member of the defense team or
25 one of their employees ride with them. Or if you can agree

1 upon sworn statement by the agent or person that does drive
2 them that they, A, will not say anything and B, did not say
3 anything, then that may cure the problem, too. I think you
4 all can work that out. I do think having proper transport
5 would, first of all, be a comfort to the witnesses
6 themselves, the jurors themselves, but if they can arrange
7 something otherwise, of course they'd be free to do that.
8 But to the extent it is a burden on them, yes, I think it's
9 a good idea. And in all events, I would want arrangements
10 to be made to have the jurors come to the parking garage in
11 this building and be escorted up in a private way into
12 their assembly room.

13 MR. WATERS: Yeah. Absolutely, Your Honor, and we
14 will -- I'm sure SLED -- I've already spoken with them
15 about that, have uninvolved agents who will be under strict
16 instructions not to discuss the case and happy to have them
17 sign affidavits for whatever.

18 THE COURT: Very good. All right, anything further
19 before I go to the lawyers for the jurors? All right.

20 MR. HARPOOTLIAN: Your Honor, only one other point and
21 that is you've asked us to give you exhibits that we would
22 use.

23 THE COURT: Yes, sir.

24 MR. HARPOOTLIAN: Having not asked or had the
25 opportunity to ask Ms. Hill a single question, I don't -- I

1 can't tell you -- there's not thousands of emails. I would
2 use probably five.

3 THE COURT: I'm just going on some of the descriptions
4 that were in the filing y'all have made to me.

5 MR. HARPOOTLIAN: Well, we've received thousands of
6 emails from Colleton County based on the subpoena we sent;
7 we received hundreds of pages from the AG's office and
8 SLED.

9 THE COURT: It will make it a lot simpler if it's a
10 small number and a discrete number by submitting them to
11 me. Again, I told you I would evaluate that when I get it.

12 MR. HARPOOTLIAN: Of course, I don't think you can
13 evaluate them until she testifies.

14 THE COURT: I think you're going to have to trust that
15 I am going to do some evaluating before she testifies.

16 MR. HARPOOTLIAN: Okay, and, Your Honor, you know,
17 she's given an affidavit denying any of these statements.

18 THE COURT: She has.

19 MR. HARPOOTLIAN: So, these alternate jurors that have
20 been dismissed, would you allow us to call them to impeach
21 her if that's what she testifies to?

22 THE COURT: At the present time, the answer to that is
23 no, as I've indicated, but again I'm not going to rule in a
24 vacuum. I would hope that what you all would do is send me
25 a pretty specific idea of what you want and how you want me

1 to permit it. So, I'm not going to rule on something I
2 haven't seen yet, which is your proposal as to how exactly
3 these witnesses and alternates are to be used.

4 MR. HARPOOTLIAN: All right. We'll get more extensive
5 affidavits from those alternates.

6 THE COURT: Okay. That's fine or descriptors of some
7 sort from you as to what you intend to do. I'm not going
8 to dictate how you do it, but I'm going to have to have a
9 lot more than just generalities that have been discussed in
10 these briefs in order to permit such.

11 MR. HARPOOTLIAN: Well, I think we're going to need
12 affidavits for appellate purposes, if nothing else. My
13 description to you is not evidence.

14 THE COURT: Oh, I agree but, you know, again I will
15 tell you how I'm going to accept a proffer. How you --
16 what you put in the proffer, written proffer, is up to you.
17 I don't want to dictate that or manage it.

18 MR. HARPOOTLIAN: Well, I just want to say that we're
19 hopefully going to get affidavits from these folks.

20 THE COURT: Yes, sir.

21 MR. HARPOOTLIAN: Much more descriptive than the
22 original affidavits.

23 THE COURT: All right, sir.

24 MR. HARPOOTLIAN: Thank you.

25 THE COURT: All right.

1 MR. WATERS: Your Honor, may I consult with counsel
2 very briefly?

3 THE COURT: Certainly.

4 (A PAUSE.)

5 MR. WATERS: Your Honor, one of the things that was
6 discussed earlier was the independent SLED investigation
7 that was done. There were recordings of some of these
8 interviews.

9 THE COURT: Yes, sir.

10 MR. WATERS: And analyzed, prepared, and were meant to
11 be summaries. I know Your Honor mentioned earlier that you
12 would be open to receiving those.

13 THE COURT: Sure. I'll be glad to review any of that.

14 MR. WATERS: Discussed that with counsel, and I
15 believe they said, well, we want to send the ones we want
16 to send. I think if Your Honor is amenable to that, we
17 would just add Your Honor to the discovery upload that was
18 provided to the defense so that that information is
19 available to the Court for whatever purposes the Court
20 deems necessary.

21 THE COURT: Can I ask this first? Would that
22 discovery upload include your interviews, the tape of the
23 interviews, as well as your summary of them?

24 MR. WATERS: Yes, ma'am.

25 THE COURT: All right. I will ask you to let my

1 clerk, Eva Diaz, talk with you afterwards about how to send
2 me something of that volume.

3 MR. WATERS: Sure.

4 THE COURT: Our court IT has a lot of barriers in our
5 system to us receiving even conventional websites and web
6 tools for examining, in volume, documents, and so I will
7 want her to interact with you all about exactly how I am to
8 receive that material, but yes, I will be happy to receive
9 it.

10 MR. WATERS: We, we'd be happy to get flash drives to
11 provide, provide it that way, if that makes sense.

12 THE COURT: That might be the better way to do it
13 because, again, I can very easily examine a flash drive
14 even though it takes a long time, and particularly if you
15 are kind enough to provide an index at the front of the
16 flash drive as to where these various materials are
17 located. That might be better than using one of these web
18 document sources since so many of them are excluded from
19 our system.

20 MR. WATERS: We'll prepare one and have a copy for
21 you, Your Honor, and Ms. Diaz, your clerk.

22 THE COURT: That would be good.

23 MR. WATERS: Thank you.

24 THE COURT: All right. All right. Now, on my list I
25 have in the courtroom at this time Mr. Bland, who

1 represents certain of the jurors; Mr. McCulloch, who
2 represents certain of the jurors; and Mr. Lewis represents
3 Ms. Hill. Are there others in the courtroom who represent
4 jurors or Ms. Hill?

5 Mr. RICHTER: Thank you, Your Honor. Ronnie Richter.
6 I'm Eric Bland's partner.

7 THE COURT: Running a little fast for me.

8 MR. RICHTER: Ronnie Richter, Mr. Bland's partner.

9 THE COURT: Oh. Right.

10 Any others?

11 All right, well, then we'll begin with you, Mr. Bland.
12 If you and Mr. Richter would come forward?

13 MR. BLAND: May it please the Court, Your Honor?
14 Ronnie and I represent four jurors who rendered verdicts in
15 this case.

16 THE COURT: I would like their numbers off that --
17 only if that doesn't violate the attorney-client privilege,
18 and you may give them to me now or later.

19 MR. BLAND: Can I give them to you later?

20 THE COURT: Yes.

21 MR. BLAND: I've got them now. I just -- our job, we
22 want to preserve their anonymity.

23 THE COURT: I understand.

24 MR. BLAND: Two, we want to make sure they are not
25 harassed, and three, we want to make sure that the verdicts

1 of their conscience remain, and that is not only because
2 they voted guilty. If they voted not guilty, we'd feel the
3 same way.

4 After hearing what Your Honor has established by the
5 way of procedures, we've very comfortable with what you
6 have established to protect their anonymity and that
7 they're not harassed.

8 Ronnie came up with a good suggestion. May you
9 renumber the jurors 1 through 12, and that way because
10 there has been some public disclosure of the jurors'
11 numbers in some of those emails, they were -- the big batch
12 of emails that Mr. Harpootlian referenced. So, maybe we
13 cross reference with the chart 1 through 12 and their juror
14 numbers.

15 But as far as the questioning goes, there's no need
16 for us to, to be part of this. You're going to make the
17 questions. You've indicated you're going to preserve their
18 anonymity -- that they can't be photographed, they can't be
19 on videotape -- and that's about all we have.

20 MR. RICHTER: Again, Your Honor, I would amplify I
21 certainly respect and appreciate the significance of the
22 issues before you. And, and I respect your decision that
23 you're going to make this public. I would have asked you
24 to make the jury portion closed courtroom and, Your Honor,
25 only, only for this reason.

1 That I don't know what the jurors are going to say,
2 and I don't know what you're going to rule, but let's just
3 say in a hypothetical setting that because Juror Number 9
4 said something that you believe deprived Mr. Murdaugh of
5 his right to a fair trial, you're going to grant him a fair
6 trial -- a new trial. I, I would hate for there to be any
7 negativism for somebody to back trace to who was Juror
8 Number 9 because the public has very firm opinions about
9 this matter, and I wouldn't want that person to be subject
10 to any kind of public scrutiny. So, I would have asked of
11 you that for the juror portion of it we do closed
12 courtroom; that the press would be present; that their
13 likeness, both voice and face, be muddled just as an
14 additional safeguard. But I certainly appreciate the
15 safeguards you have put in place, and I respect your
16 ruling. I throw that out for consideration.

17 And on a broader perspective, I know that you've had
18 this experience as well, Your Honor. It's becoming more
19 and more difficult in this state to seat a jury, and I
20 can't think of anything more injurious to jury service from
21 a broader perspective than to see, you know, jurors who've
22 given up six weeks of their lives being pulled back in for
23 a process like this, as necessary as it is. So, I, I worry
24 that the process, we handle it as gingerly as possible so
25 not to further prejudice our ability to get jurors going

1 forward.

2 THE COURT: Thank you, sir. What I will do is this.
3 I think your suggestion of renumbering is a good one. It's
4 something that my clerk and I have talked about between the
5 two of us as well.

6 In every proceeding I've ever seen where a juror was
7 questioned, in every case I've ever read where jurors were
8 questioned because of allegations either during trial or
9 posttrial that they had been tampered with, those
10 proceedings have been in open court. And I don't feel it
11 would be appropriate for me to have some kind of *in-camera*
12 proceeding even if it included the attorneys, as it would
13 have to, and even if it included members the press but not
14 the general public. I don't think that is in keeping with
15 the public nature of trials in this state and the public
16 nature of court proceedings.

17 However, I think we could make some protective
18 arrangements for when they testify and their ability to be
19 dismissed after they've testified that would protect them
20 from being set upon to the best extent possible. So, that
21 is -- that is the way I will handle it, and I hope, all
22 things on balance, that that as protective as you think it
23 needs to be.

24 MR. RICHTER: We trust you, Your Honor.

25 THE COURT: All right, sir.

1 MR. BLAND: Your Honor, on behalf of our clients, we
2 will accept service of the subpoena so that they don't have
3 to served.

4 THE COURT: Well, that's great and, of course, you
5 don't represent all of them.

6 MR. BLAND: No. Our four.

7 THE COURT: Your four, but that's great and it may
8 very well be that these parties are going to be able to
9 work out something with respect to some of the rest of
10 them. I don't know, but I appreciate that on behalf of the
11 ones you represent.

12 MR. BLAND: Do you want me to come up and tell you our
13 juror numbers, or you want me to wait?

14 THE COURT: No, sir. I don't need that this moment.

15 MR. BLAND: Okay. Thank you.

16 MR. RICHTER: Thank you, Judge.

17 THE COURT: Yes, sir.

18 Mr. McCulloch.

19 MR. McCULLOCH: Would you like me here or there?

20 THE COURT: Go to the podium, please, sir.

21 MR. McCULLOCH: Your Honor, I believe some of the
22 Court's rulings today, they've satisfied several of the
23 things I was going to mention. One was, of course ---

24 THE COURT: And how many jurors do you represent?

25 MR. McCULLOCH: I'm sorry, Your Honor. I represent

1 Number 785 and 630 as a deliberating juror, and the other
2 juror was the removed juror.

3 THE COURT: Right. Now, with respects to the replaced
4 juror, I think my ruling about the ambit of any testimony
5 from that juror satisfies any requirements you've made.
6 I've ruled that I will not hear testimony from that juror,
7 alternate juror at the present time.

8 Now, Mr. Harpootlian is going to submit additional
9 information as regards your client. I'd ask him to submit
10 that information to you as well, and then I'll see if
11 there's any revision of the position I take about that.

12 You also represent one sitting juror, so you may
13 continue.

14 MR. McCULLOCH: Your Honor, the other juror was not an
15 alternate. She was actually a seated juror.

16 THE COURT: Sitting juror.

17 MR. McCULLOCH: Who was removed at the end.

18 THE COURT: Oh.

19 COURT REPORTER: I need Mr. McCulloch to speak up,
20 please.

21 THE COURT: You need to speak up some, Mr. McCulloch.

22 MR. McCULLOCH: I don't get that much, Your Honor.

23 THE COURT: Yes, sir.

24 MR. McCULLOCH: Your Honor, if you'll indulge me just
25 a moment? I think much of what you've said today bears on

1 the quote that I'm taking from the response of the State
2 which was filed and is part of your record, and my letter
3 of November 10th responding to that filing is also a part
4 of your record. The state said that:

5 Jury duty is this cornerstone civic duty.

6 Needless exposure to jurors to litigative stress
7 and impeachment by zealous attorneys in a case
8 especially of this public exposure can only serve
9 to discourage the citizens from willingly
10 participating in jury -- in this civic duty.

11 Your Honor, I am delighted with your ruling that
12 you'll be asking the questions. I've been subject to your
13 interrogative skills in my appearances before the Supreme
14 Court. So, I'm pleased with that, and I checked that off
15 my list.

16 I would like, Your Honor, for you to take judicial
17 notice that there have been excessive public comments by --
18 and I -- and I have to say, Your Honor, in my letter of
19 November 10th, I took Mr. Waters, who signed the letter, to
20 task for labeling one of my clients, one of these jurors,
21 as dishonest. I think I didn't -- I wasn't pleased with
22 that. I think that discourages civic participation. I
23 would ask the Court to admonish the litigants, the
24 attorneys ---

25 THE COURT: I'm not going to -- Mr. McCulloch, let me

1 stop you there. I am not aware of any of what you're
2 talking about in terms of comments about the jurors or
3 otherwise. So, that's just not something I'm going to take
4 into account by listening to it or by taking any judicial
5 notice of it. I don't know what I would be taking judicial
6 notice of; I do not know anything about what you're talking
7 about.

8 MR. McCULLOCH: Well, Your Honor, both my letter and
9 the response of the State are part of the record which you
10 obviously have not gotten to yet. My only request is
11 either admonish lawyers and officers of the court in this
12 courtroom and outside of this courtroom who represent
13 people to be cautioned that, that we -- that this is a
14 search for the truth, not an effort to protect the verdict
15 nor an effort to discourage people from participation, and
16 negative commentary does that, or runs the risk of doing
17 that. That's all I have to say.

18 THE COURT: I understand and I decline to instruct or
19 admonish participants in this procedure in any way about
20 what you say.

21 MR. McCULLOCH: Thank you. Your Honor, next, like
22 Mr. Richter and Mr. Bland, I appreciate your efforts. I
23 suspect is that we will decline a ride to the courthouse,
24 but I would ask the Court to consider allowing the jurors
25 who don't -- choose not to ride with SLED agents to be

1 permitted entry and exit from the courthouse that would
2 involve -- relieve them of the necessity of coming through
3 the front door.

4 THE COURT: I think I've already said I will make
5 arrangements for juror witnesses to report to the basement
6 where the law enforcement station is, and they will be
7 appropriately directed to the assembly room.

8 MR. McCULLOCH: Your Honor, lastly, if I understand
9 your ruling or discussions about the process that occurred
10 here -- this may run at odds with Your Honor, and I'm not
11 arguing with you. But I am of the belief that this
12 litigative stress earlier referenced could be avoided and
13 the public media not denied their opportunity to, to gain
14 access and knowledge of the proceedings by not exposing
15 these jurors to a crowded gallery, a full gallery of press
16 by allowing its recording through -- I understand Court TV
17 will be the pool camera. That is to say that I have
18 actually in my history participated in proceedings that
19 involved the questioning of jurors which was done *in*
20 *camera*. So, I, I don't think it's without any precedent,
21 but I would obviously respect your ruling. But I would ask
22 you to consider or reconsider that no damage would be done
23 to the right of the public to know and participate in the
24 proceedings, but you could accomplish the same thing by
25 allowing the, the pool camera and avoid the distraction and

1 the imposition of that on these jurors.

2 THE COURT: I hear what you're saying, and I'm not
3 inclined to change the ruling I have made at the present
4 time, but I'll keep an open mind about it as we make
5 pretrial preparations for the hearing. At the present
6 time, the jurors will be examined in the courtroom, as I
7 have indicated, with the appropriate identity protection.

8 MR. McCULLOCH: Thank you, Your Honor, and subject to
9 your rulings, I will have both of my clients available for
10 these parties as they might be needed subject to your
11 subsequent rulings.

12 THE COURT: Thank you.

13 MR. McCULLOCH: Thank you.

14 MR. RICHTER: Your Honor, do you expect all jurors to
15 be present for all three days?

16 THE COURT: No. Let me make it very clear that I
17 expect the jurors to be the first witnesses to be called in
18 these proceedings. And the jurors would testify, and then
19 they would be dismissed. They would not be required to
20 stay for the rest of the proceedings at all. So, that is
21 very much a part of my thought of what it takes to protect
22 their identities. They would be protected as best I can,
23 and the ability of others to come and beset them with
24 questions as they leave would be protected.

25 MR. BLAND: Do you -- do you expect that you could get

1 through all twelve in one day, or should I tell them --
2 because a couple will have to take off of work.

3 THE COURT: Yes, I do.

4 MR. BLAND: Okay. Thank you.

5 THE COURT: All right, and, Mr. Lewis.

6 MR. LEWIS: Your Honor, I'll be brief. In light of
7 your rulings, I don't think you need much from me. The
8 only thing that I'll add is I'll have Ms. Hill available
9 for you as the parties need, and I'll be happy to accept
10 service to alleviate one issue for this Court.

11 THE COURT: All right, sir. Thank you for that, and
12 before you leave the podium, let me just consult with the
13 lawyers. I'm not going to ask them to examine you. That
14 wouldn't be fair at all, but I'm going to ask them if
15 there's anything else I need to inquire of before I let you
16 go.

17 As I understand it, the subpoena -- and we would have
18 a formal subpoena of Ms. Hill -- would be placed in your
19 hands as her attorney, and you would assure her appearance,
20 and I appreciate that very much.

21 MR. LEWIS: Absolutely.

22 THE COURT: Is there anything else on behalf of Mr.
23 Murdaugh?

24 MR. HARPOOTLIAN: Thank you, Your Honor, and just in
25 an effort to try to expedite this matter, I'd have two

1 questions. One, will Ms. Hill meet with Mr. Griffin and I?

2 MR. LEWIS: I'll evaluate that.

3 MR. HARPOOTLIAN: You'll have to evaluate it? Okay.

4 That's all I need to ask. And secondly, should we have her
5 here on that Monday or wait? I mean, we could be doing the
6 jurors most -- all day.

7 THE COURT: She should be here as court begins.

8 MR. HARPOOTLIAN: All right. Thank you.

9 MR. WATERS: Nothing from the State, Your Honor.

10 THE COURT: All right.

11 MR. LEWIS: Thank you, Your Honor.

12 THE COURT: I'll go over my checklist one more time,
13 but I think I covered everything I want to cover. I'll
14 come to each of you in a moment.

15 Yes, just, just to clarify other witnesses, as matters
16 now stand, witnesses in this proceeding would be jurors and
17 Ms. Hill. So, I want to be sure that we're all
18 understanding what's going on in that regard. I would not
19 allow the attorneys to be called. I am unclear about the
20 mention in some of the papers that SLED investigators would
21 be asked to testify or any other witnesses, so I'm going to
22 go one more time. I want to get real specific so you will
23 understand what you need to prepare for by way of in-court
24 examination and what you need to prepare for by way of
25 submitting proffer.

1 All right, first of all for the defendant.

2 MR. HARPOOTLIAN: Please the Court, Your Honor? Just
3 a couple of issues. One, we don't know who we're going to
4 call to impeach Ms. Hill because we don't know what she's
5 going to say. So, it's difficult for us. I mean, we -- I
6 mean, once she testifies, at that point we'd say we'd like
7 to call so-and-so and so-and-so and such-and-such and
8 such-and-such, number one. So -- or maybe no one. I mean,
9 she may concede every issue we have. For instance, she did
10 tell, according to the State, she did tell one of her
11 assistants, one of the people helping her, you know, I hope
12 he's found guilty because it will help book sales. Now ---

13 THE COURT: I hope that's the last time you're going
14 to repeat that until I ask for it again, Mr. Harpootlian.
15 I've told you that I can't imagine a situation in which I
16 would go that far, a statement like that, and she may well
17 have said it. If it goes to anything I'm asked to
18 consider, it would be to her credibility. And I'll
19 evaluate whether I think that's even proper to ask, but
20 let's move on from that.

21 MR. HARPOOTLIAN: So -- but there are other questions
22 concerning her credibility.

23 THE COURT: Yes, sir.

24 MR. HARPOOTLIAN: 404 motive. If she -- I mean, if
25 she did this, it is a crime and so, you know, the questions

1 of why she would have done this extraordinary act, and we
2 can argue this at another time, but in terms of being --
3 the reason I mention it is for us to proffer those people
4 not knowing what she may, may -- the question may get
5 asked. She may admit it. There's no witness that needs to
6 be called.

7 So, it's difficult for me to game this out. I don't
8 think I've ever been asked to list witnesses I would call
9 to, to impeach somebody if they lie under oath. I have
10 never heard of such a thing, but I will attempt to do the
11 witnesses we would call prior to Ms. Hill's testimony.
12 That's all I think I can do, if that makes sense.

13 THE COURT: It doesn't make complete sense to me
14 because this is not the trial of Ms. Hill. And issues
15 about motive and so forth and the possible commission of
16 crimes are not what this inquiry is about. It is about her
17 contact, if any, with the jurors and what she said. So, I
18 will be treading very carefully with a good deal of what
19 you say about what you might or might not ask.

20 But I am going to ask all the parties to be pretty
21 specific with me about what I ask, I should be asking the
22 jurors, and I can make a decision in advance as to what I
23 am going to do about that and what is going to be, at least
24 by general topic, pursued with witnesses.

25 MR. HARPOOTLIAN: Yes, Your Honor.

1 THE COURT: And the reason I do that is because it
2 gives me the opportunity to then consider what rulings I
3 would make and move the proceedings along in an orderly
4 way.

5 MR. HARPOOTLIAN: Well, Your Honor, it may be
6 premature for me to note this for the record, but we would
7 except your ruling on that.

8 THE COURT: All right, sir.

9 MR. HARPOOTLIAN: Secondly, Mr. Murdaugh has been
10 unable to review any of the discovery material in this case
11 because of the confidential -- confidentiality order
12 prohibits him -- us to distribute to him while he's in
13 jail. We don't have time in the next less than two weeks
14 to go sit down with him and review everything.

15 Would Your Honor allow him to have them? And the
16 materials are not as to the evidence in the underlying
17 case. It's as to juror issues. And while he's no longer a
18 lawyer, he was a lawyer at one point and can -- and
19 evaluate this and be of assistance to us if he has an
20 opportunity to review that material.

21 THE COURT: You're speaking to me about something in a
22 complete vacuum as far as I'm concerned. So, I can't
23 really evaluate what you haven't been able to review with
24 him and what you have been able to review with him.

25 As I understand what you're telling me is I have

1 received certain information as the attorney for defendant
2 that I have not been able to show defendant for defendant's
3 review because of a confidentiality order.

4 MR. HARPOOTLIAN: Yes, Your Honor.

5 THE COURT: I can't imagine that. I think what you
6 may be saying is Mr. Murdaugh has not been able to keep for
7 himself while I'm not there confidential material.

8 MR. HARPOOTLIAN: That's correct.

9 THE COURT: Well, that is something common to many
10 folks who are under incarceration and are limited in the
11 kind of materials that they can receive and keep in their
12 possession when they are not with their lawyer. So, this
13 is not an issue where he's being deprived of the ability to
14 consider material that you have received. This is a
15 question of whether he can have that material in his
16 possession when you are not there or your representatives
17 are not there and study upon it and so forth.

18 I can't control what the limitations of the Department
19 of Corrections are, nor can I control what limitations may
20 have been put on the confidential material because of the
21 fear that it would be -- it would fall into other hands.
22 So, I'm not going to rule in the abstract on things. I
23 would have to have something that was pretty specific.

24 But I can tell you this. I would certainly not order
25 that these materials be wholesale given to him for him to

1 take back to his cell and have in his possession because I
2 don't know who might see them, were that the case. And if
3 they are confidential materials, that would be an extreme
4 risk of breaching the confidentiality of materials to do
5 that because of his situation. And his situation is as it
6 is not of my making or yours.

7 MR. HARPOOTLIAN: Your Honor, we'd only note for the
8 record this. Much of the material received has been within
9 the last two weeks. This hearing is scheduled for two
10 weeks from yesterday.

11 THE COURT: Yes, sir.

12 MR. HARPOOTLIAN: We've been -- and you've given us
13 more stuff we have to do between now and that hearing.
14 There's nobody to go sit with him at the jail, and time is
15 limited as to when those, those people can visit. So,
16 without him being able to view this material, I don't
17 believe we can be effective and would be ineffective in
18 representing him.

19 THE COURT: Well, I understand that those are wise
20 statements for an attorney to make to preserve your
21 position on the record. It doesn't change my view of how
22 we should proceed in this matter at all.

23 MR. HARPOOTLIAN: Well.

24 THE COURT: I think you will be able to -- if there
25 are deficits in what you have been able to do with your

1 client, you will place those contingents on the record, and
2 the appellate courts of the state will have adequate chance
3 to review them.

4 MR. HARPOOTLIAN: Well, Your Honor, would you consider
5 continuing the hearing on the 29th to allow us to meet with
6 the client to effectively review these materials?

7 THE COURT: No, sir.

8 MR. HARPOOTLIAN: Okay.

9 THE COURT: Thank you.

10 MR. HARPOOTLIAN: We respectfully except your ruling.

11 THE COURT: I understand.

12 MR. HARPOOTLIAN: Thank you.

13 THE COURT: Mr. Waters.

14 MR. WATERS: I don't have much to address, Your Honor.
15 The initial question Your Honor asked was about SLED agents
16 being listed on the potential witnesses. You know, again,
17 Your Honor, when these allegations were first raised, we
18 instructed SLED to do an independent investigation, good,
19 bad, or ugly, and only because of the results of that
20 investigation are the reason why we're standing here and
21 litigating these issues before Your Honor.

22 Ultimately, the only way that SLED agents could
23 potentially be testifying, again when we filed our
24 response, we didn't know exactly the parameters the Court
25 would rule. The only way I can see them potentially

1 testifying is in the event there is an excepted witness by
2 Your Honor that there was some sort of prior inconsistent
3 statement under Rule 613 or some other permissible inquiry.
4 But I think Your Honor's rulings as to the, the nature of
5 the inquiry we're going to conduct would probably remove or
6 make it very unlikely that may be.

7 THE COURT: All right. Anything further?

8 MR. WATERS: Nothing from the State, Your Honor.

9 MR. HARPOOTLIAN: Nothing from -- nothing from the
10 defense, Your Honor.

11 THE COURT: I say to attorneys for both sides the
12 Court is deeply grateful for the very fine materials you
13 have submitted so far. This is an extreme amount of work
14 in a very truncated period of time, and I appreciate the
15 burdens this places upon you.

16 Mr. Harpootlian, I particularly thank you as a member
17 of the General Assembly for not interposing your immunity
18 because you are in session, and I respect that. I set
19 these matters after consultation with y'all so that I could
20 fulfill my obligations to the Court, as expressed in Chief
21 Justice Beatty's order, but I realize that I'm doing that
22 with your extreme cooperation in light of your other
23 duties, and I appreciate it very much.

24 MR. HARPOOTLIAN: Thank you, Your Honor.

25 THE COURT: I look forward to further submissions from

1 the parties and the hearings commencing January 29th.

2 Court will be in recess.

3 MR. WATERS: Thank you, Your Honor.

4 MR. HARPOOTLIAN: Thank you, Your Honor.

5 (OFF THE RECORD.)

6 THE COURT: Parties, just one moment. I asked Ms.
7 Harris before these matters commenced to please expedite,
8 even if it's in a rough form and not in the perfect form
9 that the court reporters like to produce their transcripts,
10 I asked her to produce a rough copy of the transcript just
11 as soon as she possibly could for both sides. I hope you
12 all will consider without me having to order it sharing the
13 expense of this production, this early production of the
14 rough copy of this matter. She will be in touch with you,
15 and you may be in touch with her with regard to the rough
16 transcript of these proceedings.

17 Court will be in recess.

18 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR COLLETON COUNTY, SOUTH CAROLINA, ON
THE 16TH DAY OF JANUARY, 2024.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JUNE 17TH, 2024

EXHIBIT J

(R. Harpootlian's Letter, January 25,
2024)



HARPOOTLIAN
ATTORNEYS AT LAW

RICHARD A. HARPOOTLIAN
RAH@HARPOOTLIANLAW.COM

PHILLIP D. BARBER
PDB@HARPOOTLIANLAW.COM

ANDREW R. HAND
ARH@HARPOOTLIANLAW.COM

OFFICE
1410 LAUREL STREET
COLUMBIA, SC
29201

MAILING ADDRESS
POST OFFICE BOX 1090
COLUMBIA, SC
29202

DIRECT CONTACT
TELEPHONE (803) 252-4848
FACSIMILE (803) 252-4810
TOLL FREE (866) 706-3997

ONLINE
HARPOOTLIANLAW.COM

January 25, 2024

RECEIVED

Jan 26 2024

S.C. SUPREME COURT

Chief Justice (Ret.) Jean Hoefer Toal
2418 Wheat Street
Columbia, SC 29205

In re: State v. Richard Alexander Murdaugh

Dear Chief Justice Toal,

I write in response to the email from Ms. Diaz dated January 24, 2024, communicating your desire for responses from counsel to the Court's proposed questions for jurors and for suggested questions and topics for the examination for Rebecca Hill. I have attached Mr. Murdaugh's proposed juror questions as **Exhibit A** to this letter.

Mr. Murdaugh objects to the Court's first proposed question, "The verdict of guilty you rendered on March 2, 2023, is that currently your verdict in this case?" The issue under the legal standard adopted by the court is whether Ms. Hill made comments during trial that affected the vote of any juror on March 2, 2023. Mr. Murdaugh objected to that standard, but even under it what a juror would or would not do a year after the trial has no possible relevance to any issue before the Court. Judge Hocker did pose a similar question to the jurors in *Green*, but he did so when polling the jurors *immediately* after the verdict and before they were discharged. Here, a year has passed since the start of Mr. Murdaugh's trial. Asking jurors how they feel about the verdict today is both irrelevant and prejudicial in that it invites jurors to consider a full year of post-trial media coverage when answering questions about events during trial. Further, if a juror did answer "no," the Court would be compelled to ask "why," which could have only two possible answers: some irrelevant consideration arising after the verdict, or reflection on some perceived defect in jury deliberations as to which the juror could not testify under Rule 606(b) of the South Carolina Rules of Evidence.

Mr. Murdaugh objects to the Court's second proposed question, "Was and is your verdict based entirely on the testimony, evidence and law presented to you in this case?" This question violates Rule 606(b), which provides in part, "Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as 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" This question violates the rule because it directly asks the juror what did or did not have an "effect" "upon that . . . juror's mind or emotions as influencing the juror to assent to or dissent from the verdict." Mr. Murdaugh understands the Court has decided to directly ask jurors about what affected their verdict because

it has held prejudice must be proven by evidence on that point rather than presumed based on the source and content of the illicit communications per federal authorities such as *Remmer v. United States*, 34 U.S. 227 (1958) and *Parker v. Gladden*, 385 U.S. 363 (1966), and state authorities like *State v. Cameron*, 311 S.C. 204, 428 S.E.2d 10 (Ct. App. 1993), and so he asserts this objection for preservation purposes.

Additionally, Mr. Murdaugh objects that the second proposed question is highly suggestive of an affirmative answer. It could (and likely would) cause a juror to reasonably believe the Court *prefers* he or she give an affirmative answer. Cf. § 2:21 *Questioning of witnesses by judge*, Trial Handbook for South Carolina Lawyers § 2:21 (5th ed.) (“The primary purpose of the trial judge’s questioning should be to clarify and promote a better understanding of the witness’s testimony, to elicit the truth, and to cover matters omitted by inadvertence or any other cause.” *State v. Stroman*, 281 S.C. 508, 316 S.E.2d 395 (1984); *Fowler v. Laney Tank Lines, Inc.*, 263 S.C. 422, 211 S.E.2d 231 (1975)). This question is an unnecessarily convoluted and indirect way of asking the question that needs to be asked. Reserving his objection to the Court’s rejection of the controlling legal standard and his Rule 606(b) objection, Mr. Murdaugh submits that under the Court’s prior ruling on the legal standard the proper inquiry is (1) did you hear Ms. Hill say anything about the merits during trial, and, if so, (2) did it in any way influence your verdict decision on March 2, 2023. The Court should ask those questions plainly and directly, without language mirroring the judge’s jury charge or otherwise suggesting a correct answer and without requiring additional inferences to get to the actual issue before the Court. Instead of asking a juror whether your verdict was entirely based on A to infer that it was therefore not influenced by B, the Court should just ask whether the verdict was influenced by B.

Mr. Murdaugh objects to the Court’s third proposed question, “Was your verdict influenced in any way with any communications by the Clerk of Court, Becky Hill, in this case?” This question directly violates Rule 606(b) for the same reason the Court’s second proposed question violates that rule. Mr. Murdaugh additionally objects that the language “your verdict” is unclear. It could be taken to mean the juror’s own vote, or it could be understood more literally to mean the collective decision of the jury of which the juror was a member. Mr. Murdaugh also objects to asking this question before asking the juror whether he or she heard any comments on the merits by Ms. Hill. If a juror heard no comments by Ms. Hill, there is no reason to ask what effect Ms. Hill’s comments had on the juror’s verdict. Reserving his Rule 606(b) objection, Mr. Murdaugh therefore proposes this question be asked after the juror is asked if Ms. Hill made any inappropriate comments, and that it be rephrased to as “Did Ms. Hill’s comments prejudice you against the Defendant Alex Murdaugh in any way?”

Mr. Murdaugh objects to the Court’s fourth proposed question, “Did you have any communication with Becky Hill about your verdict in this case?” and the follow up “If yes, what did Ms. Hill say?” because “have any communication with Becky Hill” is an unclear statement. Mr. Murdaugh suggests a more clear and direct question: “Did you hear Ms. Hill make any comments about the testimony, evidence, or arguments presented by the State or defense during Mr. Murdaugh’s trial?” If the answer is yes, in addition to asking what was said, Mr. Murdaugh believes the Court should ask when it was said, where it was said, and who else was present when it was said. And as explained above, Mr. Murdaugh believes what (if anything) was heard should be asked before the Court asks what effect it had.

Mr. Murdaugh again objects to including counsel for jurors participating in the merits of this proceeding, for the reasons previously briefed. He respectfully submits the Court should not have included Eric Bland in correspondence discussing what questions will be posed to his client. I am aware of no precedent for a court providing a witness's lawyer with an advance copy of the questions the witness will be asked during a criminal proceeding. Fortunately, there was no prejudice to Mr. Murdaugh because the Court granted Mr. Murdaugh's request to sequester the witnesses and Mr. Bland agreed to abide by the Court's decision.

However, if the examination of Juror 826 is held in public tomorrow, the attendant media coverage means the other witnesses will not be sequestered and will be given advance notice of the questions they will be asked and an opportunity to discuss their answers with others. Mr. Murdaugh therefore objects to holding tomorrow's hearing in public, and requests the courtroom be sealed, with the transcript and perhaps an audio recording released on Monday once the juror witnesses are assembled in the courthouse. The public interest in observing the examination of a single witness one business day in advance of the actual hearing is minimal and is outweighed by Mr. Murdaugh's interest in witness sequestration. For example, the juror witnesses are in communication with each other through a "chat group," for which Mr. Murdaugh can provide documentary evidence of such if the Court desires. Mr. Murdaugh should not lose the ability to seek sequestration of witnesses simply because he, the State, and the Court wished to accommodate an innocent juror's prepaid travel plans.

Mr. Murdaugh objects to the Court examining Ms. Hill at all. Rule 614(b) of the South Carolina Rules of Evidence provides, "*When required by the interests of justice only*, the court may interrogate witnesses" (emphasis added). This restriction is almost unique to South Carolina jurisprudence. It does not appear in the federal Rule 614 and Florida is the only other state with this restriction in its corresponding rule. Ms. Hill is an elected public official accused of wrongdoing, which she has denied by a sworn statement filed with this Court. She is the State's principal witness against Mr. Murdaugh. The prosecution and SLED agents just held a four-hour preparation session with her to coach her testimony even though they are supposedly investigating multiple criminal allegations against her. There is no reason the "interests of justice" would require her to be shielded from being asked questions in the same manner as almost every other witness in every other case in the history of this State. The Court has not stated any reasons for conducting the examination of Ms. Hill itself, and if the Court is determined to do so Mr. Murdaugh respectfully requests the Court state its reasons on the record prior to her examination.

Mr. Murdaugh has a right to present *any* evidence relevant to his claims which is not prohibited by "the Constitution of the United States, the Constitution of the State of South Carolina, statutes, [the South Carolina Rules of Evidence], or by other rules promulgated by the Supreme Court of South Carolina." Rule 402, SCRE. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Witness credibility is always relevant. Rule 611(b), SCRE ("A witness may be cross-examined on any matter relevant to any issue in the case, including credibility."); *see Holmes v. South Carolina*, 547 U.S. 319, 331 (2006) ("The point is that, by evaluating the strength of only one party's evidence, no logical conclusion can be reached regarding the strength of contrary

evidence offered by the other side to rebut or cast doubt.”) (unanimous opinion overruling the South Carolina Supreme Court following the second trial of a capital case). Generally, “any matter is [a] proper subject of cross-examination which is responsive to testimony given on direct examination, or which is material or relevant thereto, and which tends to elucidate, modify, explain, contradict or rebut testimony given in chief by the witness.” *State v. Taylor*, 333 S.C. 159, 174, 508 S.E.2d 870, 878 (1998). For that reason, “Considerable latitude is allowed in cross-examination to test a witness’s credibility.” *State v. Johnson*, 338 S.C. 114, 124, 525 S.E.2d 519, 524 (2000).

Whether Ms. Hill lied to the Court during trial about a member of the jury is probative of whether she is now lying to the same Court about her contacts with jurors during trial. For that reason, inquiry (by counsel) should be made into the “Facebook” matter. Plagiarizing the book that she purportedly wrote about the trial is probative of her truthfulness about her conduct during the trial. Inquiry should therefore be made into that matter. Whether Ms. Hill stated during trial that she had a financial interest in a guilty verdict is probative of the truth of her denial of allegations that she acted to secure a guilty verdict. Inquiry should therefore be made into that matter. Abusing the power of her office to steal money is probative of whether she at about the same time abused the power of her office for financial gain in other ways. “‘Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness’ testimony.’” *State v. Pipkin*, 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Ct. App. 2004) (Beatty, J.) (quoting *United States v. Abel*, 469 U.S. 45, 52 (1984)). An inquiry should therefore be made into the allegations that Ms. Hill sold access to the courthouse and otherwise misappropriated funds, to the point that during the trial she was not even allowed to have a county credit card.

The evidentiary rules prevent witness impeachment from turning into a trial-within-a-trial by prohibiting the introduction of extrinsic evidence regarding specific instances of conduct, instead generally limiting it to prior inconsistent statements and evidence of bias. *See* Rules 609(b), 609(c), 613(b), SCRE. Those rules are sufficient to contain the Defendant’s examination of Ms. Hill. There is no need for the Court go further and rob Mr. Murdaugh of his right to cross examine the State’s principal witness against him. Indeed, for most lines of questioning, the impeaching inquiry of Ms. Hill would be very quick. For example, she has already admitted publicly to plagiarism so that line of inquiry would be over in a minute. At a minimum, if she denies speaking with jurors about the merits of the case, Mr. Murdaugh should at least be allowed to call any percipient eyewitnesses who would contradict her. The testimony of those witnesses likely would take less than ten minutes. Whether those witnesses later deliberated with the jury is irrelevant. Ms. Hill, after all, did not deliberate with the jury either. She too is relevant only as an eyewitness to her actions.

When ruling that Mr. Murdaugh will be prohibited from calling percipient eyewitnesses to Ms. Hill’s alleged jury-tampering statements, whether to corroborate jurors who testify Ms. Hill made such statements or to rebut Ms. Hill’s sworn denial of making such statements, the Court stated, “The corroboration is something I don’t think I need at this time. I think I’m perfectly capable of evaluating what the jurors tell me and I’ll do that. I think I’m also perfectly capable of evaluating the credibility of Ms. Hill and the jurors, for that matter.” Hr’g Tr. 51:16–21. Mr. Murdaugh objects to those statements. He has a right to challenge the credibility of the State’s

principal witness against him through cross-examination, which is not contingent on how the Court perceives its own needs or capabilities. *See State v. Hester*, 137 S.C. 145, 134 S.E. 885, 899 (1926) (observing the “right to cross-examine is one which must remain inviolate,” “[t]he power of cross-examination . . . certainly is one of the most efficacious, tests which the law has devised for the discovery of truth,” and it is “[o]ne of the most inestimable rights by which a man may maintain his defense” (internal quotation marks omitted)). Respectfully, it is inappropriate for the Court to direct the parties’ factual presentations based on its own opinions, formed before receiving any evidence, about what it needs to assess witness credibility. The parties decide and present, within the limits set by the South Carolina Rules of Evidence, what they believe the Court needs to make findings of fact. *Cf. Wolff v. McDonnell*, 418 U.S. 539, 566 (1974) (“Ordinarily, the right to present evidence is basic to a fair hearing . . .”); *see also Ponte v. Real*, 471 U.S. 491, 495 (1985) (same); *Baxter v. Palmigiano*, 425 U.S. 308, 321 (1976) (same). It is Mr. Murdaugh’s burden to prove his allegations, not the Court’s. It is the State’s burden to rebut Mr. Murdaugh’s proof, not the Court’s. This is an American adversarial proceeding in a trial court, not a European inquisitorial proceeding conducted by an investigating magistrate.

With warm personal regards, I am

Sincerely,



Richard A. Harpootlian

Exhibit A

DEFENDANT MURDAUGH'S PROPOSED JUROR QUESTIONS

Q. Did you hear Ms. Hill make any comments about the testimony, evidence, or arguments presented by the State or defense, or the anticipated length of your deliberations during Mr. Murdaugh's trial?

If the answer is no, then no further questions.

If the answer is yes, then ask the following:

Q. What comments did you hear Ms. Hill make?

Q. Who else was present when Ms. Hill made those comments?

Q. Did Ms. Hill's comments influence you in any way and if so, how?

Q. Did Ms. Hill's comments prejudice you against Defendant Alex Murdaugh in any way, however slight?

EXHIBIT K

(Juror Z Affidavit)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

AFFIDAVIT OF
JUROR

PERSONALLY appeared before me, [REDACTED] who being first duly sworn, deposes,
and states as follows:

1. I would like to clarify my testimony today.
2. As I testified, I felt influenced to find Mr. Murdaugh guilty by reason of Ms. Hill's remarks,
before I entered the jury room.
3. Once deliberations began as I stated in paragraph 10 of my earlier affidavit, I felt further,
additional pressure to reach the guilty verdict.

FURTHER AFFIANT SAYETH NOT.

[REDACTED]
[REDACTED]
January 29, 2024.

SWORN TO before me this 29th day
of January, 2023.

Elizabeth Guts
Notary Public for South Carolina
My Commission Expires: 12/7/25

RECEIVED

Jan 29 2024

S.C. SUPREME COURT

Richard Alexander Murdaugh v. The State of South Carolina

Appellate Case No. 2024-000576

Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR

EXHIBIT L

(Order Denying Motion for New Trial)

) IN THE COURT OF GENERAL SESSIONS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
) RECEIVED

) Case No.: 2022-GS-15-00592

2022-GS-15-00593

2022-GS-15-00594

2022-GS-15-00595

Apr 04 2024

S.C. SUPREME COURT

This matter comes before the Court on an Order to Remand by the South Carolina Court of Appeals filed October 17, 2023, and a Motion for a New Trial filed in this Court by Richard Alexander Murdaugh (“Murdaugh” or “Defendant Murdaugh”) on October 27, 2023.

Upon Defendant Murdaugh's allegation that the jury was subjected to improper external influences by the Colleton County Clerk of Court, Rebecca Hill ("Clerk Hill"), this Court examined each of the twelve jurors who comprised the deliberative jury. Clerk Hill, Barnwell County Clerk of Court Rhonda McElveen ("Clerk McElveen"), and an alternate juror also testified. The Court had before it a copy of the original trial transcript, the pleadings, exhibits filed by the parties which included affidavits of some jurors obtained by representatives of Defendant Murdaugh, affidavits of a paralegal for defense attorney Richard A. Harpootlian, notes of interviews of jurors by South Carolina Law Enforcement Division agents, and other emails and documents thereto, and the pre-hearing briefs requested by the Court. The Court finds as follows:

I. PROCEDURAL HISTORY

Defendant Murdaugh is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. Murdaugh was

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indicted at the July 2022 term of the Colleton County Grand Jury for two counts of murder (2022-GS-15-00592; -00593), and two counts of possession of a weapon during the commission of a violent crime (2022-GS-15-00594; -00595). Richard A. Harpootlian, James Mixon Griffin, Phillip D. Barber, and Margaret N. Fox, Esqs. represented Murdaugh at trial. Senior Assistant Deputy Attorney General S. Creighton Waters was the lead prosecutor at the trial, which also included Attorney General Alan Wilson, Deputy Attorney General Donald J. Zelenka, Assistant Deputy Attorney General David A. Fernandez, and Assistant Attorneys General Johnny Ellis James Jr., John B. Conrad, Savannah M. Goude, and John P. Meadors.

On Monday, January 23, 2023, Murdaugh proceeded to trial before the Honorable Clifton Newman and a jury. On March 2, 2023, the jury found Murdaugh guilty on each count as indicted on March 2, 2023. Judge Newman sentenced Murdaugh to imprisonment for consecutive terms of his natural life.

Murdaugh filed a notice of appeal. While the appeal was pending before the Court of Appeals of South Carolina, but before completion and delivery of the trial transcript, Murdaugh filed a Motion to Suspend Appeal and for Leave to File Motion for New Trial, on September 5, 2023. The State filed its return on September 15, 2023. Murdaugh filed his reply to the State's return on September 21, 2023. The Court of Appeals granted Murdaugh's motion to remand by Order filed October 17, 2023. It held the appeal in abeyance and remanded the matter to the circuit court for consideration of the motion.

Murdaugh filed his Motion for a New Trial with the Colleton County Clerk of Court on October 27, 2023. The State filed its return on or about November 7, 2023. By Order dated December 18, 2023, Chief Justice of the Supreme Court of South Carolina, Donald

W. Beatty, upon request of Judge Newman to be recused from post-trial matters in this case, appointed this Court as trial judge to preside over Defendant Murdaugh's motion. This Court convened a conference call with attorneys for the parties on December 21, 2023, and thereafter issued a scheduling order for this matter on January 3, 2024.

The parties submitted initial pre-hearing briefings on January 3, 2024, and pursuant to this Court's request, both submitted supplemental briefing on January 10, 2024.¹ Murdaugh further revised his briefing by filing on January 12, 2024. Defendant Murdaugh subsequently filed a reply to the State's pre-hearing brief on January 16, 2024.

The parties appeared before this Court on January 16, 2024, at the Richland County Judicial Center in Columbia, South Carolina, for an on-the-record status conference, at which legal arguments were made regarding the form, structure, and legal burdens to be met in the proceedings. This Court provided the parties with its proposed questions for the deliberative jurors by e-mail on January 24, 2024, and invited objections. The State provided its response by e-mail on January 24, 2024, and Defendant Murdaugh provided his response by letter e-mailed on January 25, 2024.

The Court thereafter convened evidentiary hearings into the matter on Friday, January 26, 2024,² and Monday, January 29, 2024, at the Richland County Judicial Center. Defendant Murdaugh was present at the hearing and represented by Richard A. Harpootlian, James Mixon Griffin, Phillip D. Barber and Margaret N. Fox, Esqs. Senior Assistant Deputy Attorney General S. Creighton Waters represented the State, along with

¹ Because this Court requested particulars as to expected witnesses and exhibits, and permitted the parties to send revised briefs directly to the Court rather than through public filing. The State sent its revised pre-hearing brief to this Court via e-mail on January 10, 2024, and thereafter publicly filed a redacted copy of that brief on January 29, 2024.

² With both parties' consent, this Court permitted Juror X to testify separately from the other members of the deliberative jury on Friday, January 26, 2024, because of an unavoidable scheduling conflict.



Attorney General Alan Wilson, DAG Donald J. Zelenka, AAG Johnny Ellis James Jr., and AAG John P. Meadors.

II. PRESENT APPLICATION

In his motion for a new trial, Murdaugh alleges he is entitled to a new trial because the Colleton County Clerk of Court, Rebecca Hill, made inappropriate remarks to or in the presence of the jury during the course of the trial. For the following reasons, this Court denies the motion.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. This Court makes the following rulings and findings based upon the applicable laws and all of the probative evidence presented.

A. Legal Standard for Motion for New Trial for External Influence on Jury

The first question for this Court to resolve is the appropriate standard for review of this issue. Murdaugh argues that because he alleges improper contacts by a court official, prejudice must be presumed under Remmer v. United States, 347 U.S. 227 (1954), and that the burden of proof thus shifts to the State to prove lack of any prejudice. The State agrees that criminal defendants have a right to a fair and impartial jury, but argues that the overwhelming weight of South Carolina caselaw is clear that in either cases of alleged internal *or* external influence on a jury, the burden is on the defendant to show not only



that the improper influence occurred but also resulting prejudice. After reviewing and analyzing extensive caselaw on the subject, this Court agrees with the State.

First, this Court must recognize the longstanding rule that preserves the sanctity of the jury room and generally precludes any evidentiary inquiry into the jury's deliberations or communications during such deliberations. Rule 606(b), SCRE, makes this principle clear:

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. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

Our state supreme court has repeatedly recognized this principle, only allowing inquiry into allegations of internal misconduct that affect fundamental fairness, such as racism in the jury room or premature deliberations. See State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999) (premature deliberations); State v. Hunter, 320 S.C. 85, 89, 463 S.E.2d 314, 316 (1995) (racial prejudice). See also State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005) (juror consideration of defendant's exercising right not to testify); State v. Franklin, 341 S.C. 555, 324 S.E.2d 716 (Ct. App. 2000) (internal pressure from jurors did not raise issues of fundamental fairness).

Regardless, even in those cases where inquiry into internal jury misconduct was allowed, our state supreme court has still required the defendant to show both misconduct and prejudice. See Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999) (while premature



deliberations could affect fundamental fairness, the burden is still on the defendant to show prejudice—that it affected the jury’s impartiality and “affect[ed] the jury’s verdict”, and citing cases such as United States v. Piccarreto, 718 F.Supp. 1088 (W.D.N.Y.1989) for the proposition that “given length and nature of trial, it is not surprising a juror may make some comments as trial progresses; new trial is not warranted absent evidence showing such discussions shaped final deliberations or improperly influenced jurors or prejudiced defendants”, and United States v. Klee, 494 F.2d 394 (9th Cir. 1974), for the proposition that “not every instance of misconduct warrants a new trial, [and the] test is whether misconduct has prejudiced the defendant to the extent he did not receive a fair trial.); State v. Hunter, 320 S.C. 85, 89, 463 S.E.2d 314, 316 (1995) (inquiry into allegations of internal misconduct was proper where a juror claimed racial prejudice influenced the verdict, but affirming by finding defendant “ha[d] not shown juror conduct denied him a fair trial” in that the verdict was affected by racism or that the juror was physically threatened or coerced); see also Zeigler, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005) (finding that although jurors submitted note asking defendants to testify, trial judge’s charge and affidavits did not indicate any juror based the decision on a defendant’s exercise of right not to testify); see also Franklin, 341 S.C. 555, 324 S.E.2d 716 (Ct. App. 2000) (internal pressure from jurors, including “screaming” and calling one “stupid” and other names, was insufficient to raise concerns of fundamental fairness to invade internal deliberations of verdict).

Moreover, where the allegations are of external influence on the jury such as the ones made in this case, the South Carolina Supreme Court has been also clear that the burden is on Defendant to show not only external influence but also resulting prejudice—

defined as whether the verdict “was solely the result of honest deliberation” or the product of “outside influence”. Blake by Adams v. Spartanburg Gen. Hosp., 307 S.C. 14, 18, 413 S.E.2d 816, 818 (1992) (affirming despite bailiff’s comment to jurors on time and expense of mistrial; while the comments improper, they “are not per se grounds for setting aside a jury verdict”, and “the test is whether the verdict was solely the result of honest deliberation on the case as publicly developed at trial, or whether there is reason to suppose outside influences entered into it as a factor”). See also State v. Green, 432 S.C. 97, 100, 851 S.E.2d 440, 441 (2020) (finding no prejudice from bailiff’s improper comments to jury on Allen procedure); State v. Pittman, 373 S.C. 527, 647 S.E.2d 144, 158-59 (2007) (defendant “failed to make the required showing of prejudice” from juror’s alleged conversation with bartender and wife; trial court conducted evidentiary inquiry and made findings supported by record, and thus did not abuse its discretion in denying motion for new trial); State v. Bryant, 354 S.C. 390, 581 S.E.2d 157 (2003) (noting that in case where police background inquiry into jurors influenced verdict, “the defendant has the opportunity to prove actual juror bias”); State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999) (presence of alternate juror in jury room, who even took a preliminary vote, noting that “[w]e have consistently required defendants to demonstrate prejudice due to improper jury influences”, and finding no prejudice where juror was removed and trial court gave curative instruction); State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998) (in external influence case where a pamphlet on death penalty was brought into jury room, affirming denial of new trial in capital case, noting that trial court had examined the jurors and made credibility findings and “appellant failed to show

prejudice”); State v. Rowell, 75 S.C. 494, 56 S.E. 23, 29 (1906) (in case where bailiff made comments that defendant should be punished, finding no effect on the verdict).

Indeed, Aldret flatly noted the universal requirement of prejudice, stating: “given that we have not found automatic reversal warranted even in cases of external influences on a jury's verdict, we decline to do so in the cases of internal misconduct”, 333 S.C. at 313-14, 509 S.E.2d at 814. Grovenstein reversed our state Court of Appeals, holding that it erred because the “burden was not on the state” to rebut any presumption of prejudice, 335 S.C. at 353, 517 S.E.2d at 219. Just as in Grovenstein, the Supreme Court of South Carolina in Green reversed the Court of Appeals’ application of the Remmer presumption of prejudice, in a case alleging improper contact from a bailiff. 432 S.C at 99-100, 851 S.E.2d at 441.

Having determined that Defendant Murdaugh must show both external influence and resulting prejudice, the next point is the manner of inquiry. The South Carolina cases are clear that any such inquiry to jurors is appropriately in the discretion of this Court, and it is appropriate for any inquiry of jurors to be judicially conducted. Additionally, it for this Court to make any credibility determinations in assessing influence and resulting prejudice. See Green, 432 S.C. 97, 851 S.E.2d 440 (trial court conducted inquiry); Bryant, 354 S.C. 390, 581 S.E.2d 157 (trial court conducted limited *voir dire* of the jurors); Kelly, 331 S.C. 132, 502 S.E.2d 99 (trial court examined jurors and made credibility determinations); State v. Covington, 343 S.C. 157, 539 S.E.2d 67 (Ct. App. 2000) (where there was conflicting information regarding whether extraneous information was brought to the jury about defendant, trial court properly resolved the credibility issues and found defendant failed to prove misconduct by either clear and convincing or preponderance);

State v. Franklin, 341 S.C. 555, 324 S.E.2d 716 (Ct. App. 2000) (affirming trial court's rejection of claims from one juror about threats and verbal abuse from the others did not rise to the level of internal misconduct such as to raise a due process claim).

Indeed:

The trial court may exercise broad discretion in assessing the prejudicial effect of an allegation of juror misconduct due to an external influence. *Id.* The trial court should consider three factors when making this determination: (1) the number of jurors exposed, (2) the weight of the evidence properly before the jury, and (3) the likelihood that curative measures were effective in reducing the prejudice. *Id.* The trial court's finding will not be disturbed absent an abuse of discretion.

Pittman, 373 S.C. at 556, 647 S.E.2d at 159. In the end:

Unless [extraneous or improper influences affect] the jury's impartiality, it is not such misconduct as will affect the verdict. The trial court has broad discretion in assessing allegations of juror misconduct. . . . Generally, the determination of whether extraneous material received by a juror during the course of the trial is prejudicial is a matter for determination by the trial court.

Kelly, 331 S.C. at 141–42, 502 S.E.2d at 104.

Here, this Court in its discretion decided to ask each juror the following series of four questions, as well as follow up questions as deemed appropriate by this Court or as this Court deemed appropriate after consultation with the parties. The four questions were generally based on those used by the trial court who was upheld in Green, and are as follows:

1. You rendered a verdict on March the 2, 2023. That verdict was made in open court by the foreperson of the jury, and then the Court said this: Madame Forelady and members of the jury, if that is your verdict of each and every juror, let it be known by raising your hand. The transcript then indicates that the jurors complied. The jury was individually polled, and each was asked: Was that your verdict? Each juror answered yes. Each juror was then asked: Is that still your verdict? And each juror answered yes. Was that an accurate statement about your verdict at that time?

2. Was your verdict based entirely on testimony, evidence, and law presented to you in this case?
3. Did you hear Ms. Becky Hill make any comment about this case before your verdict?
4. Was your verdict influenced in any way by any communications by the clerk of court Becky Hill, in this case?

B. Assessment of Evidence before the Court at the Evidentiary Hearing

The Defendant Murdaugh asserts that Clerk Hill, motivated by her desire to sell her self-published book (published August 2023) made prejudicial comments to the jury which deprived Murdaugh of his right to a fair and impartial trial by jury. This Court had the opportunity to observe the witnesses who testified at the hearing, and to closely evaluate their credibility. For the reasons expressed herein, this Court concludes that the motion for a new trial should be denied.

1. Summary of the Testimony

A summary of the testimony before this Court is as follows:

Juror X

Juror X was the only witness who testified on January 26, 2024, due to a scheduling conflict. In response to this Court's inquiry, Juror X responded that it was an accurate statement that her verdict was guilty at the time she was polled, that her verdict was based entirely upon testimony, evidence, and law presented in the case, that she did not hear Clerk Hill make any comments about the merits of the case before their verdict, and that her verdict was not in any way influenced by communication by Clerk Hill. {P. 20}.



After the court's initial questioning of Juror X, Defendant Murdaugh's attorney published a statement received the morning of the hearing from the State which states:

Please be advised that the attorney for [Juror X] has told us that his client says that prior to the defendant's testimony, his client did hear Clerk Hill say words to the effect of, "looks like the defendant is going to testify, this is an important day" or "this is an epic day", and that there was some statement that it was rare for a defendant to testify.

After further questioning by the Court, Juror X testified that before the defendant testified in his own defense, she heard Clerk Hill say something to the effect of "this is an important day," or "this is an epic day," and some comment to the effect that it was rare for a defendant to testify. {P. 23}. She further stated that those comments had no impact on her verdict. {P. 24}.

Juror Z

In response to this Court's inquiry, Juror Z testified that it was an accurate statement that her verdict was guilty at the time she was polled, and that her verdict was based entirely upon testimony, evidence, and law presented in the case. However, Juror Z stated that she did hear Clerk Hill make comments about the case before the verdict. Juror Z stated that Clerk Hill said "to watch his actions" and "to watch him closely". {P. 45}. Juror Z stated that her verdict was influenced by communication by Clerk Hill, and that she felt Clerk Hill thought the defendant was guilty. {P. 46}. This Court provided the witness with her prior affidavit, which was attached to the defense motion, and in which Juror Z stated that she "had questions about Mr. Murdaugh's guilt but voted guilty because [she] felt pressured by the other jurors." The court asked Juror Z whether her



affidavit was a more accurate statement of how Juror Z felt. She responded "Yes" and she stood by her affidavit. **{PP. 55-56}**.

Following the testimony of Juror Z, this Court was made aware that some of the trial jurors in the jury room waiting to testify in the January 29 hearing had their cell phones out and were observing a livestream of the court proceedings. Accordingly, this Court in its discretion also inquired of jurors whether they had observed the prior proceedings and whether it had any effect on their testimony.

Juror C

Juror C stated that he was not one of the people with their phone out, and that he had not seen any prior January 29 proceedings on a cell phone. In response to this Court's inquiry, Juror C responded that it was an accurate statement that his verdict was guilty at the time he was polled, that his verdict was based entirely upon testimony, evidence, and law presented in the case, that he did not hear Clerk Hill make any comments about the merits of the case before his verdict, and that his verdict was not in any way influenced by communication by Clerk Hill. **{P. 65}**.

Juror F

Juror F stated that she was not one of the people with their phone out, and that nothing that she had seen or heard would impact her testimony. In response to this Court's inquiry, Juror F responded that it was an accurate statement that her verdict was guilty at the time she polled, that her verdict was based entirely upon testimony, evidence, and law presented in the case, that she did not hear Clerk Hill make any comments about the merits of the case before her verdict, and that her verdict was not in any way influenced by communication by Clerk Hill. **{P. 65-67}**.



After further questioning by this Court regarding allegations by Defendant Murdaugh that Clerk Hill drove Juror F home, Juror F stated that Clerk Hill never gave her a ride home nor rode with her in a vehicle. {P. 69}.

Juror L

Juror L stated that he was not one of the people with their phone out, and that he had not seen any prior proceedings from the January 29 hearing. In response to this Court's inquiry, Juror L responded that it was an accurate statement that his verdict was guilty at the time he was polled, that his verdict was based entirely upon testimony, evidence, and law presented in the case, that he did not hear Clerk Hill make any comments about the merits of the case before his verdict, and that his verdict was not in any way influenced by communication by Clerk Hill. {PP. 71-72}.

Juror E

Juror E stated that he was not one of the people with their phone out, and that he had not seen any prior proceedings from the January 29 hearing. In response to this Court's inquiry, Juror E responded that it was an accurate statement that his verdict was guilty at the time he was polled, that his verdict was based entirely upon testimony, evidence, and law presented in the case, that he did not hear Clerk Hill make any comments about the merits of the case before his verdict, and that his verdict was not in any way influenced by communication by Clerk Hill. {PP. 73-74}.

Juror P

Juror P stated that he was not one of the people with their phone out, and that he had not seen any prior proceedings from the January 29 hearing. In response to this Court's inquiry, Juror P responded that it was an accurate statement that his verdict was



guilty at the time he was polled, and that his verdict was based entirely upon testimony, evidence, and law presented in the case. {P. 77}. Juror P stated that the day Defendant Murdaugh testified in his own defense Clerk Hill said to watch his body language. The Juror recalled no other statements. {P. 78}. Juror P testified that his verdict was in no way influenced by any communication by Clerk Hill. {P. 78}.

Juror O

Juror O stated that he was not one of the people with their phone out, and that he had not seen any prior proceedings from the January 29 hearing. In response to this Court's inquiry, Juror O responded that it was an accurate statement that his verdict was guilty at the time he was polled, that his verdict was based entirely upon testimony, evidence, and law presented in the case, that he did not hear Clerk Hill make any comments about the merits of the case before his verdict, and that his verdict was not in any way influenced by communication by Clerk Hill. {PP. 79-81}.

Juror Y

Juror Y stated that he was not one of the people with their phone out, and that he had not seen any prior proceedings from the January 29 hearing. In response to this Court's inquiry, Juror Y responded that it was an accurate statement that his verdict was guilty at the time he was polled, that his verdict was based entirely upon testimony, evidence, and law presented in the case, that he did not hear Clerk Hill make any comments about the merits of the case before his verdict, and that his verdict was not in any way influenced by communication by Clerk Hill. {PP. 82-84}.

Juror W



Juror W stated that she was not one of the people with their phone out, and that nothing she had seen from others' phones would affect her testimony. In response to this Court's inquiry, Juror W responded that it was an accurate statement that her verdict was guilty at the time she was polled, that her verdict was based entirely upon testimony, evidence, and law presented in the case, that she did not hear Clerk Hill make any comments about the merits of the case before her verdict, and that her verdict was not in any way influenced by communication by Clerk Hill. **{PP. 86-87}**.

Juror Q

Juror Q stated that he did have his cell phone out during the testimony of Juror Z, but that what he saw had no impact on his testimony. **{P. 90}**.

In response to this Court's inquiry, Juror Q responded that it was an accurate statement that his verdict was guilty at the time he was polled, that his verdict was based entirely upon testimony, evidence, and law presented in the case, that he did not hear Clerk Hill make any comments about the merits of the case before his verdict, and that his verdict was not in any way influenced by communication by Clerk Hill. **{P. 89}**.

Juror K

Juror K stated that she did have her cell phone out and was looking at Facebook about Juror Z's testimony, but that she did not watch Juror Z's testimony and closed it. She stated that what she saw had no impact on her testimony. **{P. 92}**.

In response to this Court's inquiry, Juror K responded that it was an accurate statement that her verdict was guilty at the time she was polled, that her verdict was based entirely upon testimony, evidence, and law presented in the case, that she did not hear

Clerk Hill make any comments about the merits of the case before her verdict, and that her verdict was not in any way influenced by communication by Clerk Hill. **{P. 93}**.

Clerk Hill

During testimony at the hearing before this Court, Clerk Hill denied making the statements alleged by Defendant Murdaugh.³ **{PP. 108-109}**. When asked if she made any comment to the jurors about the fact that the Defendant Murduagh was going to testify in his own defense, Clerk Hill stated that she had a conversation with Mr. Bill, the jury bailiff, when jurors were nearby. Clerk Hill testified that during that conversation she stated that the defendant was going to testify. She further testified that she had given a pep talk to the jurors, as she often did, reminding them to pay attention and that today was a big day. **{P. 110}**.

Clerk Hill testified that after the jury had entered their verdict and been individually polled, she informed the jury that members of the media were interested in interviewing them about the trial. She stated that she did not pressure the jurors to participate in interviews and told them it was their decision. **{P. 113}**.

When questioned by Defendant Murdaugh's attorneys, Clerk Hill stated that she began working with her coauthor on the book several weeks after the trial. **{P. 117}**. She stated that she spoke to several people about the possibility of writing a book before the trial. Clerk Hill generally could not recall the content of her conversations with Barnwell Clerk of Court Rhonda McElveen. Clerk Hill denied telling Clerk McElveen that she wanted to write a book in order to make a lot of money. **{P. 119}**.

³ 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.



When questioned by Defendant Murdaugh's attorneys about the conclusions in her book, Clerk Hill stated that she took poetic and literary license when writing her book in order to make a compelling narrative. {P. 125}. She admitted under oath to plagiarizing portions of the book from a journalist. {P. 126}. Clerk Hill testified that the book made roughly \$100,000 in the six months it was on the market. {P. 133}.

This Court then made an inquiry into the dismissal of a juror before the conclusion of the trial. Clerk Hill testified that she recalled seeing in the transcript that Judge Newman expressed unhappiness that she had questioned the dismissed juror before bringing the juror to the judge. {P. 146}. Clerk Hill denied asking the dismissed juror about her ex-spouse or the Facebook post, but stated the juror mentioned the ex-spouse and restraining orders on her own while walking to the judge's chambers. {PP. 147-19}. Clerk Hill stated that she believed the Juror spoke with a member of the staff but not with her directly. {P. 151}. Clerk Hill stated that she did not deny the allegations as Judge Newman made them because she was not in the room. {P. 153}.

Clerk Hill denied giving anyone access to the sealed exhibits, and stated that during trial someone in the gallery took a picture of a sealed exhibit. {PP. 153-156}.

When questioned by the Court, Clerk Hill denied that she wanted a guilty verdict in order to increase book sales. However, under further questioning from the Court, Clerk Hill admitted that she wrote that she wanted a guilty verdict in the book. She further testified that her book said she and the jurors looked at one another and there was a silent understanding that he was guilty. Clerk Hill again blamed this on literary license. {P. 157}. She stated that she personally felt the defendant was guilty before the verdict was rendered. {P. 158}. On re-direct Clerk Hill stated that she was only in the room with

the excluded juror when Clerk Hill herself was being asked questions, and that some body-cam videos had not been sealed and there was a post-trial hearing in which Judge Newman fixed the problem. **{PP. 159-160}**.

On re-cross Clerk Hill admitted exhibits that should have been sealed were released in error to Netflix, but they got them back before Netflix even looked at them. She denied that sealed exhibits were sent to a Japanese film crew or other outlets. **{PP. 160-161}**. Defendant put in an e-mail where Clerk Hill informed the Japanese film crew of the mistaken release and stated Judge Newman ordered that they not be used. **{PP. 162-163; Def. Ex. 2}**. This email was at variance with her sworn testimony before this Court.

Clerk McElveen

Clerk McElveen testified that she was present at the hearing nearly every day of the six-week trial. She was requested by Clerk Hill to assist with the administration of the Murdaugh trial. **{P. 180}**. Clerk McElveen testified that Clerk Hill told her she wanted to write a book about the Murdaugh trial and that she wanted a guilty verdict. **{P. 181}**. Clerk McElveen stated that Clerk Hill said this multiple times over the course of the trial. **{P. 182}**.

Clerk McElveen testified that she had heard from another party that that Clerk Hill had driven a juror home. She stated that she confronted Clerk Hill about the incident. She further testified that she did not inform Judge Newman. **{P. 183}**. Under additional questioning from the State, Clerk McElveen testified she never observed or was told Clerk Hill was having improper conversations with jurors, or that she observed anything Clerk



Hill or anyone else untoward or improper, or she would have gone to Judge Newman as would have been her obligation. {P. 194-96}.

Clerk McElveen further testified that the comments she heard Clerk Hill make regarding the defendants' guilt and conduct all took place away from the jurors. {P. 193}. Clerk McElveen stated that she was not aware of any confidential information or sealed images being given to members of the press. {P. 195}.

Juror 714

Juror 714 testified under questioning by Defendant Murdaugh's attorneys based upon an affidavit signed the morning of the hearing that Clerk Hill told the jury "Don't let them confuse you or convince you or throw you off." {P. 203}. Juror 714 further testified that on the visit to Moselle, Clerk Hill and a juror were talking as they walked to the property, but she could not hear what was said. {P. 205}.

2. Findings of the Court

As to the first prong, whether Clerk Hill had any improper or undesirable communication with any opinion to a juror, the Court finds Clerk Hill not to be a completely credible witness. This Court finds that Clerk Hill wanted to write a book as early as November 2022. This Court finds Clerk Hill stated to Clerk McElveen that she "might want to write a book because [Clerk Hill] needed a lake house and [Clerk McElveen] needed to retire, ..." {P. 182}. Clerk Hill also told Clerk McElveen that "a guilty verdict would sell more books, ..." *Id.* This Court further finds that Clerk Hill made comments such as "this is an important day" or "this is an epic day" on the day Defendant testified (as testified to by Juror Z), or to watch Defendant's body language (as testified to by Juror P). Clearly these comments were improper and should not have been made to any juror. Clerk Hill's

denial under oath that she made these comments is not credible. Clerk Hill was attracted by the siren call of celebrity. She allowed her desire for the public attention of the moment to overcome her duty to her oath of office and her oath as a witness.

This Court finds that there was no effect on the verdict of any juror from any such comments from Clerk Hill, and this Court specifically finds, after conducting this evidentiary hearing, that Defendant Murdaugh's verdict was the product of a fair and impartial jury. This Court had the opportunity to observe and question the jurors, and specifically finds jurors X, C, F, L, E, P, O, Y, W, Q, and K to be credible. Moreover, this Court specifically finds jurors X, C, F, L, E, P, O, Y, W, Q, and K credible that their verdict was accurately announced during polling, that it was the product entirely of the testimony, evidence, and law in the case, and that their verdict was in no way influenced by any communications from the Clerk.

The Court finds Juror Z to have been at first ambivalent in her testimony. However, this Court finds credible the portion of her statements made both at trial and during the hearing before this Court that her verdict was accurately announced as guilty during polling, and that it was the product entirely of the testimony, evidence, and law in the case. This Court also finds credible Juror Z's statement in her affidavit and at the hearing that any effect she felt was pressure from other jurors, which is a normal part of the give and take of the deliberative process. This Court also finds credible the juror's statement under questioning by this Court that her statement in her affidavit that she voted guilty because of pressure by other jurors was the "more accurate statement" of how she felt. **{PP. 95-96}**. Internal deliberative pressure is not a basis for challenging a verdict.⁴ This

⁴ Rule 606(b), cmt., SCRE ("Subsection (b) is consistent with the general rule that a juror may not present testimony as to the deliberations in the jury room; as to any mistake, irregularity, or misconduct on the part



Court finds that both at trial and at the hearing before this Court, Juror Z stood on her oath as to the accuracy and impartiality of her guilty verdict. Finally, for these reasons this Court does not find credible Juror Z's ambivalent and self-contradicted statements to the contrary that her verdict was in any way affected by any comments from Clerk Hill.

Accordingly, this Court specifically finds after its review of the evidence and credibility findings, that each member of this jury took its involuntary assignment seriously, that they obeyed the instructions of the trial court, that they obeyed their oath, and that they stood to their duty and rendered a fair and impartial verdict free of fear, favor, or influence.

of jurors; or which would impeach the verdict or contradict the record."); see also *State v. Pittman*, 373 S.C. 527, 553–55, 647 S.E.2d 144, 157–58 (2007) (citing Rule 606(b), SCRE, and affirming trial court's rejection of post-trial testimony from two jurors that they thought the defendant was not guilty, and holding that: "[t]he jurors' post-verdict testimonies are representative of many jury deliberations where individuals are persuaded, for whatever reason, to change their vote. As long as the reason prompting the change was not coercive or oppressive, the court should not disturb the finality of the verdict."); *State v. Franklin*, 341 S.C. 555, 534 S.E.2d 716 (Ct.App.2000) (finding juror's affidavit was insufficient to show that she was coerced to vote guilty as a result of internal misconduct where she was allegedly called derogatory names and screamed at by fellow jurors). See also *United States v. Wettstain*, 618 F.3d 577 (6th Cir. 2010) (quoting *McDonald v. Pless*, 238 U.S. 264, 267 (1915)) (in affirming rejection of juror's letter regretting voting for a guilty verdict, explaining the rule is that a juror is incompetent to impeach the verdict, and that "[i]f this were not so, the Supreme Court explained, 'jurors would be harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct sufficient to set aside a verdict.'"); *United States v. Gerardi*, 586 F.2d 896, 898 (1st Cir.1978) (juror's second thoughts about conviction do not compel new trial); *United States v. Weiner*, 578 F.2d 757, 764 (9th Cir. 1978) (refusing to grant new trial after juror expressed second thoughts about verdict); *Reames v. State*, 497 N.E.2d 559, 565-66 (Ind. 1986) (quoting *Stinson v. State*, 313 N.E.2d 699, 704 (Ind. 1974)) (in affirming denial of motion for new trial based on juror comment of regret for verdict, explaining that if the juror's regret were considered "Jurors would be harassed by both sides of litigation and find themselves in a contest of affidavits and counter-affidavits and arguments and re-arguments as to why and how a certain verdict was reached. Such an unsettled state of affairs would be a disservice to the parties litigant and an unconscionable burden upon citizens who serve on juries."); *Diaz v. Uniroyal Tire Co.*, 618 So. 2d 505, 508 (La. Ct. App. 1993) ("Furthermore, a final adjudication is just that, and, thereafter, any second thoughts of the jurors will not be entertained."); *Com. v. Dias*, 646 N.E.2d 1065, 1068 (Mass. 1995) ("When a verdict is received and recorded, and the jurors indicated their concurrence by affirming the verdict in open court, neither a juror's change of heart nor a juror's subsequent disclosure of a subjective disagreement with her apparent vote provides a basis for vacating the verdict."); *State v. Buchmann*, 380 N.W.1d 879 (Minn. 1986) ("[a]bsent a showing of juror bias or prejudice or outside influence, claims of second thoughts are too late and cannot be used to impeach a verdict."); *State v. Wells*, 249 S.C. 249, 262, 153 S.E.2d 904, 910-11 (1967) (quoting 53 Am.Jur. 769, Trial § 1105) ("[I]t is a long-established and generally accepted doctrine, except where modified by statute, that testimony or affidavits of jurors impeaching a verdict rendered by them will not be received where the facts sought to be shown are such as inhere in the verdict.").

This Court further finds that the improper comments made by Clerk Hill as expressed by Jurors Z and P were limited in subject and not overt as to opinion, were only heard by, at most, three jurors, and were made in a case with overwhelming and compelling evidence. This Court further finds that any comments that occurred were cured by the trial court's extensive instructions. Once the jury was selected, Judge Newman promptly admonished the original eighteen jurors that "[i]t is important for you to know that you are not to discuss the case with each other or with anyone else, and not to endeavor to find out any information about this case other than what you will see herein the jury—in the courtroom." {Tr. 411, ll. 12-16}. After a break, and during Judge Newman's preliminary instructions, he again emphasized the importance of not discussing the case and accepting only the evidence presented in the courtroom:

Until I tell you that it's time to do so, you cannot discuss the case with anyone, including your fellow jurors. You cannot discuss the case with family, friends, or anyone else. The attorneys in the case, you cannot discuss it with them or any parties or anyone else that might be connected with the case. Should you discover that a fellow juror is violating that oath and that order, you are to bring that to my attention.

Now, it's also—and it's vital that you do not seek information outside of the courtroom during the case. That means that you're not to search internet websites, watch television reports, news reports, any other form of social media accounts of the case because you are sworn to decide this case based on the facts as you determine them to be, and based on the evidence presented in the case, as well as the law as I give it to you.

{Tr. 417-18}.

Consistently throughout the trial, and even at points during jury selection, the Court reminded and admonished jurors to not discuss the case.⁵

⁵ See Tr. 99, ll. 10-12; Tr. 127, ll. 13-20; Tr. 177, ll. 22-25; Tr. 452, ll. 12-18; Tr. 502, ll. 2-4; Tr. 566, ll. 9-11; Tr. 627, ll. 14-15; Tr. 710, ll. 18-19; Tr. 810, ll. 21-23; Tr. 840, ll. 6-8; Tr. 861, ll. 18-20; Tr. 908, ll. 24-25; Tr. 1001, ll. 6-8; Tr. 1125-26; Tr. 1251, ll. 10-12; Tr. 1513, ll. 3-5; Tr. 1535, ll. 13-18; Tr. 1694, ll. 24-25; Tr. 1950, ll. 20-21; Tr. 1966, ll. 11-14; Tr. 2140, ll. 14-15; Tr. 2228, ll. 23-25; Tr. 2304, ll. 13-15; Tr. 2480, ll. 15-17; Tr. 2542, ll. 17-18; Tr. 2649, ll. 12-14; Tr. 2877, ll. 22-24; Tr. 2933, ll. 16-18; Tr. 3005, ll. 18-20; Tr. 3034,

In his charge to the jury at the end of the case, Judge Newman instructed the jury they were to accept only the evidence presented, and that they were the sole judges of credibility:

You are to consider only the testimony which has been presented from this witness stand, along with other exhibits that—and evidence presented during the trial. Any other evidence or exhibits which have been made a part of the record you may consider, along with any stipulations made by counsel.

You are also the judges, the sole judges of the credibility, that is the believability, of the witnesses who have testified and of the evidence offered. [. . .]

It becomes your duty as jurors to analyze and to evaluate the evidence, and determine that evidence, which convinces you of its truth. [. . .]

(Tr. 5853-84). In addition to the *dozens* of times Judge Newman told the jury “do not discuss the case,” prior to the close of evidence, he again instructed jurors: “If your deliberations necessitate an overnight break, you may use these [electronic] devices as necessary, but you may not use them to communicate with anyone about the case until the case is over.” (Tr. 5862, ll. 18-21). Judge Newman further instructed jurors that an overnight break in deliberations was a possibility, and that if they so broke that they were not to seek information and should avoid the use of electronic devices. (Tr. 5862-64).

ll. 4-5; Tr. 3058, ll. 4-5; Tr. 3231, ll. 1-2; Tr. 3322, ll. 9-10; Tr. 3352, ll. 6-8; Tr. 3384, ll. 14-16; Tr. 3451, ll. 19-20; Tr. 3553, ll. 13-14; Tr. 3831, ll. 8-9; Tr. 3883, ll. 4-6; Tr. 3904, ll. 9-10; Tr. 3923, ll. 7-8; Tr. 3972, ll. 20-21; Tr. 4048, ll. 2-4; Tr. 4130, ll. 15-21; Tr. 4202, ll. 12-14; Tr. 4271, ll. 12-13; Tr. 4310, ll. 13-14; Tr. 4394, ll. 21-25; Tr. 4462, ll. 14-16; Tr. 4534, ll. 13-14; Tr. 4593, ll. 20-21; Tr. 4693, ll. 12-14; Tr. 4748, ll. 17-19; Tr. 4774, ll. 21-22; Tr. 4890, ll. 16-20; Tr. 4966, ll. 20-24; Tr. 5014, ll. 18-20; Tr. 5065, ll. 5-6; Tr. 5084, ll. 8-12; Tr. 5147, ll. 20-21; Tr. 5280, ll. 16-17; Tr. 5359, ll. 22-23; Tr. 5526, ll. 10-12; Tr. 5656, ll. 2-5; Tr. 5668, ll. 20-25; Tr. 5816, ll. 13-15; Tr. 5851, ll. 8-11). The Court cannot confirm that every admonition to the jury to not discuss the case is here cited from the 5,895-page transcript, however this Court find that Judge Newman consistently admonished the jury with “do not discuss the case” upon breaks in the proceedings, and the citations here provided represent an index of such verbiage.

Not every inappropriate comment by a member of court staff to a juror rises to the level of constitutional error. Green, 432 S.C. at 100, 851 S.E.2d at 441; State v. Cameron, 311 S.C. 204, 207-08, 428 S.E.2d 10, 12 (Ct. App. 1993). "Were that the rule, few trials would be constitutionally acceptable." Phillips, 455 U.S. at 217. Additionally, jurors are presumed to follow the law as instructed to them, to include instructions of what constitutes proper evidence to consider in deliberations, and such instructions are usually deemed to have cured the erroneous exposure to improper evidence or argument. Grovenstein, 335 S.C. at 353, 517 S.E.2d at 219 (1999).

Given all these factors, this Court simply does not believe and does not conclude that a few foolish comments by a publicity-influenced clerk of court were such that they could in any way undermine the fairness and impartiality of six-week trial with its extensive evidentiary presentations, arguments from counsel, and instructions from the trial court. While this Court finds that Defendant Murdaugh failed his burden to prove prejudice, this Court also find that any possible presumption of prejudice was overcome by these facts and this Court's findings.

This was an enormously difficult criminal trial. Judge Newman began this trial only two weeks after he and his wife lost their son to unexpected heart failure. In the face of this personal tragedy, Judge Newman, over six difficult weeks of trial, exemplified complete command of the law and the facts of this very complex proceeding. His patience and professional manner exemplified the ideals of fair and equal justice to which all of his fellow judges, including the undersigned, aspire. It was a high honor for me to complete this task.



IV. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Murdaugh is not entitled to a new trial.

IT IS THEREFORE ORDERED:

1. That the motion for a new trial is **DENIED**;
2. Murdaugh must provide a filed copy of this Order to the Court of Appeals of South Carolina in order to lift the prevailing stay on his appeal; and
3. Murdaugh must remain and be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 3d day of April, 2024.



JEAN HOEFER TOAL, CHIEF JUSTICE (RET.)
Presiding Judge
Fourteenth Judicial Circuit

Columbia, South Carolina

State of South Carolina) In the Court of General Sessions
County of Colleton) Fourteenth Judicial Circuit
2022-GS-15-0592
2022-GS-15-0593
2022-GS-15-0594
2022-GS-15-0595

The State of South Carolina,)
vs.) Transcript of Record
Richard Alexander Murdaugh.)
_____)

January 23 through March 3, 2023

B E F O R E:

The Honorable Clifton Newman, Judge, and a jury.

A P P E A R A N C E S:

Alan M. Wilson, Attorney General
Donald J. Zelenka, Deputy Attorney General
Samuel Creighton Waters, Senior Assistant Deputy AG
John B. Conrad, Assistant Attorney General
David A. Fernandez, Assistant Attorney General
Savannah M. Goude, Assistant Attorney General
Johnny E. James, Assistant Attorney General
John P. Meadors, Assistant Attorney General
Attorneys for the State

Richard A. Harpootlian, Esquire
James M. Griffin, Esquire
Phillip D. Barber, Esquire
Margaret N. Fox, Esquire
Attorneys for the Defendant

Elizabeth B. Harris, CVR-M-CM
Michael C. Watkins
Circuit Court Reporters

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E X H I B I T S

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23	S-48	Photo		782
24	S-49	Photo - SEALED		581
25	S-50	Photo - SEALED		782

			28
1	No.	Description	I.D. Ev.
2	S-51	Photo - SEALED	581
3	S-52	Photo	782
4	S-53	Photo	787
5	S-54	Photo	787
6	S-55	Photo	787
7	S-56	Photo	787
8	S-57	Photo	788
9	S-58	Photo	788
10	S-59	Photo	788
11	S-60	Photo	788
12	S-61	Photo	785
13	S-62	Photo	788
14	S-62	Photo (Different from Original S-62)	794
15	S-63	Shell Casing	789
16	S-64	Shell Casing	789
17	S-65	Cartridge Casing	790
18	S-66	Cartridge Casing	790
19	S-67	Cartridge Casing	790
20	S-68	Shell Casing	785
21	S-70	Photo	903
22	S-71	Photo	903
23	S-72	Photo	796
24	S-73	Photo	796
25	S-74	Photo	796

				29
1	No.	Description	I.D.	Ev.
2	S-75	Photo		796
3	S-76	Round		797
4	S-77	Diagram		798
5	S-83	Swabs		806
6	S-88	Rifle		936
7	S-89	Shotgun with Shell		942
8	S-90	Shotgun		939
9	S-91	Shotgun with Shells		944
10	S-93	Photo		805
11	S-95	Shell Casing		806
12	S-96	Photo		805
13	S-97	Photo		805
14	S-99	Photo		805
15	S-100	Seatbelt	812	2213
16	S-102	Metal Fragments	794	
17	S-103	300 Blackout Ammo		813
18	S-104	Photo		805
19	S-107	Photo (WITHDRAWN)		3051
20	S-109	Piece of Lead	818	1913
21	S-110	Pellets	818	1913
22	S-111	Wadding	818	1915
23	S-112	Pellets and Wadding	818	1915
24	S-113	Pellets	818	1915
25	S-114	Diagram		777

				30
1	No.	Description	I.D.	Ev.
2	S-115	Diagram		777
3	S-116	Photo		823
4	S-117	Photo		823
5	S-118	Photo		823
6	S-119	Photo		823
7	S-120	Photo		823
8	S-121	Photo		823
9	S-122	Photo		823
10	S-123	Photo		823
11	S-124	Photo		823
12	S-126	Cartridge Casing		831
13	S-127	Cartridge Casing		832
14	S-128	Cartridge Casing		828
15	S-129	Cartridge Casing		828
16	S-130	Cartridge Casing		828
17	S-131	Cartridge Casing		828
18	S-132	Cartridge Casing		828
19	S-133	Cartridge Casing		828
20	S-134	Cartridge Casing		828
21	S-135	Cartridge Casing		828
22	S-136	Cartridge Casing		828
23	S-137	Cartridge Casing		828
24	S-138	Cartridge Casing		828
25	S-139	Cartridge Casing		828

				31
1	No.	Description	I.D.	Ev.
2	S-140	Cartridge Casing		828
3	S-141	Cartridge Casing		829
4	S-142	Cartridge Casing		829
5	S-143	Unfired Shell		830
6	S-144	Unfired Shell		830
7	S-145	Unfired Shell		830
8	S-146	Unfired Shell		830
9	No.	Description	I.D.	Ev.
10	S-147	Unfired Shell		830
11	S-148	Unfired Shell		830
12	S-149	Unfired Shell		830
13	S-150	Cartridge Casing		830
14	S-151	Ammo		958
15	S-152	Magazine		833
16	S-153	DVD of Interview One		697
17	S-154	Chain of Custody Form	919	
18	S-155	Property Report		1000
19	S-156	Buccal Swab		1000
20	S-157	Buccal Swab		997
21	S-158	Photo	833	962
22	S-159	DVD of Body-worn Camera		924
23	S-160	DVD of Body-worn Camera		924
24	S-161	DVD of Body-worn Camera		953
25	S-162	DVD of Body-worn Camera		976

				32
1	No.	Description	I.D.	Ev.
2	S-163	Photo		962
3	S-165	Screen Shot		912
4	S-166	Screen Shot		912
5	S-167	Screen Shot		913
6	S-168	Screen Shot		913
7	S-169	Screen Shot		913
8	S-170	Screen Shot		913
9	S-171	Screen Shot		913
10	S-172	Screen Shot		913
11	S-173	Photo		962
12	S-175	Photo		962
13	S-176	Photo		962
14	S-177	Photo		962
15	S-179	Photo		963
16	S-180	Photo		963
17	S-181	Photo		963
18	S-182	Photo	961	
19	S-183	Photo		963
20	S-184	Photo		978
21	S-185	Photo		978
22	S-186	Photo		978
23	S-187	Drone Video		627
24	S-188	Drone Video		627
25	S-189	Photo		628

				33
1	No.	Description	I.D.	Ev.
2	S-190	Photo		628
3	S-191	Photo		628
4	S-192	Photo		628
5	S-193	Photo - SEALED		637
6	S-194	Photo - SEALED		690
7	S-195	Photo - SEALED		638
8	S-196	Photo - SEALED		642
9	S-197	Photo - SEALED		642
10	S-198	Photo		769
11	S-199	Photo		769
12	S-200	Photo		643
13	S-201	Buccal Swabs		748
14	S-202	Buccal Swabs		748
15	S-203	Chain of Custody Form	748	
16	S-204	Cell Phone with Bag	750	970
17	S-205	Chain of Custody Form	748	
18	S-210	Ammo and Magazine		936
19	S-212	Unfired Round	838	
20	S-213	Empty Box of Ammo		931
21	S-214	Shell Boxes and Receipt		957
22	S-217	Buccal Swab		1702
23	S-218	Property Receipts		998
24	S-219	Property Receipts		998
25	S-220	Property Receipts		998

				34
1	No.	Description	I.D.	Ev.
2	S-222	Photo		2110
3	S-223	Photo		2110
4	S-224	Photo		2157
5	S-225	Photo		2160
6	S-226	Raincoat		2161
7	S-227	Google Map		1655
8	S-228	Photo		1657
9	S-229	Photo		1657
10	S-230	Photo		1657
11	S-231	Photo		1658
12	S-232	Photo		1658
13	S-233	Photo		1658
14	S-234	Photo		1658
15	S-235	Photo		1658
16	S-236	Photo		1658
17	S-237	Photo		1647
18	S-238	Photo		1648
19	S-239	Photo		1648
20	S-240	Photo		1648
21	S-241	Photo		1648
22	S-242	Photo		1648
23	S-243	DVD of Interview Two		986
24	S-245	Document for Firearms Purchase		1149
25	S-247	Checks/Receipt		1149

				35
1	No.	Description	I.D.	Ev.
2	S-248	DVD of Body-worn Camera		976
3	S-249	Buccal Swab		764
4	S-250	Projectile		835
5	S-251	Fingernail Clippings	818	3207
6	S-252	Fingernail Clippings	818	3207
7	S-254	Unfired Rounds	838	
8	S-255	Shotgun Shell	838	
9	S-256	Shotgun Shell	838	
10	S-257	Shotgun Shell	838	
11	S-258	Cartridge Case	833	
12	S-259	Swabs		836
13	S-260	Cartridges	838	1921
14	S-261	Collection of Shell Casings	839	1921
15	S-262	DVD with Cell Phone Data		1073
16	S-263	DVD with Cell Phone Data		1075
17	S-264	DVD with Cell Phone Data		1076
18	S-265	DVD with Cell Phone Data		1072
19	S-266	DVD with Cell Phone Data		1077
20	S-267	DVD with Cell Phone Data		1078
21	S-268	DVD with Cell Phone Data		1070
22	S-269	DVD with Cell Phone Data		1071
23	S-270	Explanatory Key		1079
24	S-271	Chain of Custody Form		1117
25	S-272	Photo		1118

	No.	Description	I.D.	Ev.
1				
2	S-273	Chain of Custody Form		1124
3	S-274	IPhone 11	1113	1285
4	S-275	Location Service for Phone		1194
5	S-276	Photo		1193
6	S-277	Photo		1191
7	S-278	Photo		1196
8	S-279	Photo		1198
9	S-280	External Harddrive		1202
10	S-281	Cellebrite Report		1205
11	S-282	Text Message Report - SEALED		1216
12	S-283	Cellebrite Timeline Report		1225
13	S-284	Data Report on Cell Phone		1246
14	S-285	IPhone		1257
15	S-286	External Hard drive		1259
16	S-287	Cellebrite Extraction - SEALED		1259
17	S-288	Cellebrite Extraction Report - SEALED		1266
18	S-289	Cellebrite Report - SEALED		1271
19	S-290	AXIOM Report		1271
20	S-292	External Hard Drive with Report		1286
21	S-293	External Hard Drive with Report - SEALED		1286
22	S-294	Cellebrite Report - SEALED		1290
23	S-295	Timeline Report - SEALED		1298
24	S-296	AXIOM Report		1312
25	S-297	DVD of Video from Phone		1321

1	No.	Description	I.D.	Ev.
2	S-298	Chain of Custody Form		1114
3	S-299	Chain of Custody Form		1112
4	S-300	GSR Form		1395
5	S-301	GSR Kit		1392
6	S-302	Photo		1143
7	S-303	Blow-up of Photo		1386
8	S-304	Snapchat Sheet		1528
9	S-305	Snapchat CD		1528
10	S-306	Snapchat CD		1510
11	S-307	Benelli Shotgun		1856
12	S-308	Swabs		1860
13	S-309	Swabs		1858
14	S-310	Employment Agreement	1541	2250
15	S-311	Settlement Documents	1546	
16	S-312	Expense Check with Documents	1553	2281
17	S-313	Check	1566	2294
18	S-314	Spreadsheet	1572	2301
19	S-315	Disbursement Documents	1572	2322
20	S-316	Disbursement Documents	1579	
21	S-317	Disbursement Documents	1579	2307
22	S-318	Disbursement Documents	1579	2310
23	S-319	Disbursement Documents	1580	2315
24	S-320	Disbursement Documents	1580	2317
25	S-321	Disbursement Documents	1580	2318

	No.	Description	I.D.	Ev.
1				
2	S-322	Disbursement Documents	1580	2325
3	S-323	Disbursement Documents	1580	2327
4	S-324	Disbursement Documents	1580	2328
5	S-325	Disbursement Documents	1580	2330
6	S-326	Disbursement Documents	1580	2331
7	S-327	Disbursement Documents	1580	2333
8	S-328	Disbursement Documents	1580	2334
9	S-329	Spreadsheet	1594	2336
10	S-330	Disbursement Documents	1594	2339
11	S-331	Disbursement Documents	1594	2343
12	S-332	Disbursement Documents	1594	2344
13	S-333	Disbursement Documents		2350
14	S-334	Disbursement Documents		2344
15	S-335	Fake Forge Account Documents		2298
16	S-336	Buccal Swab		1878
17	S-337	Buccal Swab		1878
18	S-338	Buccal Swab		1876
19	S-339	Buccal Swab		1876
20	S-340	Buccal Swab		1880
21	S-342	Buccal Swab		1882
22	S-343	Buccal Swab		1882
23	S-344	Buccal Swab		1882
24	S-345	Copy of Check	1738	2682
25	S-346	Copy of Checks	1738	2685

	No.	Description	I.D.	Ev.
1				
2	S-347	Copy of Checks	1738	2686
3	S-348	Emails	1744	2698
4	S-349	Email	1744	2720
5	S-350	Promissory Note	1744	2725
6	S-351	Text Messages	1744	2744
7	S-352	Confession of Judgment		2834
8	S-353	Disbarment Document	1744	
9	S-354	PSB Documents	1746	2854
10	S-355	PSB Minutes		2847
11	S-356	Account Statement	1786	2850
12	S-357	PSB Minutes	1786	2863
13	S-358	PSB Wire Request	1790	2858
14	S-359	Copy of Check	1790	
15	S-360	Copy of Check	1790	2872
16	S-361	Account Document	1791	
17	S-362	Promissory Note	1791	2856
18	S-363	Business Purpose Statement	1791	2856
19	S-364	Email	1791	2871
20	S-365	PSB Memo	1799	2855
21	S-366	PSB Note	1799	2865
22	S-367	PSB Statement	1802	2872
23	S-368	PSB Statement	1802	2873
24	S-369	PSB Statement	1803	2874
25	S-370	PSB Statement	1803	2874

				40
1	No.	Description	I.D.	Ev.
2	S-371	PSB Statement	1803	2875
3	S-372	Coversheet	1803	2818
4	S-398	Swab		1922
5	S-399	Unfired Shotshells		1924
6	S-400	Greer Report		1989
7	S-401	Text Message	2012	
8	S-402	Motion	2017	2925
9	S-403	Text Message	2017	
10	S-404	Email	2024	2941
11	S-405	Email	2024	2943
12	S-406	Email	2024	2945
13	S-407	Email	2027	2947
14	S-408	Email	2027	
15	S-409	Order	2060	
16	S-410	Photo		2119
17	S-411	Photo		2112
18	S-412	Photo		2110
19	S-413	Photo		2111
20	S-414	Photo		2158
21	S-415	Disc with Bank Records		2195
22	S-416	Disc with Bank Records		2195
23	S-417	Disc with Bank Records		2196
24	S-418	Shirt and Shorts		2206
25	S-419	Shoes		2214

				41
1	No.	Description	I.D.	Ev.
2	S-420	Particle Lifts		2217
3	S-421	Particle Lifts		2218
4	S-422	GSR Inventory Sheet	2207	
5	S-423	GSR Worksheet		2210
6	S-424	GSR Worksheet		2210
7	S-425	GSR Worksheet		2210
8	S-427	Particle Lifts		2217
9	S-428	Copy of Check		2263
10	S-429	Disbursement Documents		2272
11	S-430	Photo		2467
12	S-431	Photo		2467
13	S-432	Photo		2467
14	S-433	Photo		2467
15	S-434	Photo		2467
16	S-435	Photo		2467
17	S-436	Photo		2467
18	S-437	Photo		2467
19	S-438	Photo		2467
20	S-439	Photo		2467
21	S-440	Text Message		
22	S-441	Text Message		2549
23	S-442	Log Files		2619
24	S-443	DVD with Report		2614
25	S-444	Property Receipt		2593

				42
1	No.	Description	I.D.	Ev.
2	S-445	Property Receipt		2595
3	S-446	Call Log		2617
4	S-447	Car Module	2595	2605
5	S-448	Car Module	2595	2605
6	S-449	Report		2616
7	S-450	Text Message		2675
8	S-451	Phone Log		2705
9	S-452	Text Message		2707
10	S-453	Text messages		2826
11	S-454	Cell Phone Record	2829	
12	S-455	Photo of Insurance Card/Text Message		3002
13	S-457	Photo of Insurance Card/Text Message		3002
14	S-458	Cell Phone Data - SEALED		3081
15	S-459	DNA Items		3197
16	S-460	Cuttings		3215
17	S-461	Cuttings		3215
18	S-462	Raincoat Swabs		3217
19	S-463	Buccal Swab		3247
20	S-464	Buccal Swab		3190
21	S-465	Buccal Swabs		3190
22	S-466	Buccal Swabs		3190
23	S-467	Buccal Swabs		3190
24	S-468	Buccal Swabs		3190
25	S-471	Photo		3213

				43
1	No.	Description	I.D.	Ev.
2	S-472	Photo		3213
3	S-473	Photo		3212
4	S-474	Chart	3246	
5	S-475	Chart	3246	
6	S-478	Photo - SEALED		3336
7	S-479	Photo - SEALED		3336
8	S-480	Photo - SEALED		3336
9	S-481	Photo - SEALED		3336
10	S-482	Photo - SEALED		3336
11	S-483	Photo - SEALED		3343
12	S-484	Photo - SEALED		3343
13	S-485	Photo - SEALED		3343
14	S-486	Photo - SEALED		3343
15	S-487	Photo - SEALED		3343
16	S-488	Photo - SEALED		3372
17	S-489	Photo - SEALED		3372
18	S-490	Photo - SEALED		3372
19	S-491	Photo - SEALED		3372
20	S-492	Photo - SEALED		3372
21	S-493	Photo - SEALED		3372
22	S-495	Photo - SEALED		3372
23	S-498	Photo - SEALED		3372
24	S-499	Photo - SEALED		3372
25	S-500	Diagram		3357

			44
1	No.	Description	I.D. Ev.
2	S-501	Diagram	3378
3	S-502	Photo	3468
4	S-503	Photo	3468
5	S-504	Photo	3468
6	S-505	Photo	3469
7	S-506	Photo	3469
8	S-507	Photo	4834
9	S-511	Photo - WITHDRAWN	3639
10	S-512	Photo	3639
11	S-513	Photo	3639
12	S-515	DVD	3457
13	S-516	Photo	3469
14	S-517	DVD of Interview Three	3642
15	S-518	Copy of Check	3509
16	S-519	Timeline Report	3942
17	S-520	Timeline Report	3942
18	S-521	Spreadsheet of Movements	4018
19	S-523	Text Message	4043
20	S-524	OnStar Data	3946
21	S-526	Map	5441
22	S-528	Cell Phone Records	3745
23	S-529	Cell Phone Records	3738
24	S-530	Cell Phone Records	3736
25	S-531	Photo	3780

			45
1	<u>No.</u>	<u>Description</u>	<u>I.D.</u> <u>Ev.</u>
2	S-532	Photo	3780
3	S-533	Photo	3780
4	S-534	Photo	3783
5	S-535	Photo	3791
6	S-536	Photo	3791
7	S-537	Photo	3791
8	S-538	Photo	3791
9	S-539	Photo	3794
10	S-540	Photo	3794
11	S-541	Photo - SEALED	3813
12	S-542	Photo - SEALED	3828
13	S-543	DVD OF 911 Call	3881
14	S-544	Photo	3888
15	S-545	DVD of Body-worn Camera	3884
16	S-546	Photo	3889
17	S-547	Sketch	3894
18	S-548	Photo	3896
19	S-549	Photo	3897
20	S-550	Photo	3897
21	S-551	Photo	3900
22	S-552	DVD of Interview Four	3902
23	S-553	Extraction Documents	4045
24	S-554	Photo	4047
25	S-555	Photo	4047

			46
1	<u>No.</u>	<u>Description</u>	<u>I.D.</u> <u>Ev.</u>
2	S-556	Text Message Thread	4046
3	S-557	Photo	4575
4	S-558	Photo	4573
5	S-559	Photo	4573
6	S-560	Photo	4574
7	S-561	Photo	4574
8	S-562	Photo	4575
9	S-563	Photo	4575
10	S-564	Photo	4574
11	S-565	Photo	4571
12	S-566	Photo	4574
13	S-569	Photo	4838
14	S-570	Badge	4823
15	S-571	Badge	4823
16	S-572	Text Messages	4937
17	S-573	Photo	5031
18	S-575	Photo	5322
19			
20			
21	D-1	Photo - SEALED	517
22	D-2	Photo - SEALED	517
23	D-3	Search Warrant	716
24	D-4	Diagram	846
25	D-5	Measurements	849

			47
1	No.	Description	I.D. Ev.
2	D-6	Photo	850
3	D-7	DVD of FARO Software	854
4	D-9	Photo	862
5	D-10	Photo	862
6	D-11	Photo	861
7	D-12	Photo	862
8	D-13	Photo	862
9	D-14	Photo	862
10	D-15	Photo	862
11	D-16	Photo	863
12	D-17	Photo	863
13	D-18	Photo	863
14	D-19	Photo	863
15	D-20	Photo	863
16	D-21	Photo	863
17	D-22	Photo	863
18	D-23	Photo	863
19	D-24	Photo	863
20	D-25	Photo	863
21	D-26	Photo	863
22	D-27	Photo	863
23	D-28	Photo	863
24	D-29	Large Diagram	877
25	D-30	Photo	896

				48
1	No.	Description	I.D.	Ev.
2	D-31	Photo		894
3	D-32	Photo		894
4	D-33	Photo		897
5	D-38	KnowledgeC Database Report		1324
6	D-41	KnowledgeC Database Report		1328
7	D-42	Evidence Intake Form		1359
8	D-43	Worksheet from Report		1361
9	D-45	Database From M. Murdaugh's Phone		1365
10	D-46	Evidence Intake Form		1360
11	D-54	Text Message Report		1333
12	D-59	Photo - SEALED		1404
13	D-60	Vehicle Report		1349
14	D-61	DVD		1506
15	D-62	Receipt		1502
16	D-63	Excerpt of Report		1973
17	D-64	Excerpt of Report		1973
18	D-69	Excerpt of Report		1953
19	D-80	Motion by M. Tinsley	2031	
20	D-82	Motion to Compel	2032	
21	D-86	Blue Tarp	2123	2124
22	D-87	Photo		2152
23	D-90	Report on Vehicle		2655
24	D-91	Loan Review		2886
25	D-95	Memo - Zapata		3301

	No.	Description	I.D.	Ev.
1				
2	D-96	Photo		3301
3	D-97	Photo		3301
4	D-98	Photo		3302
5	D-99	Photo		3302
6	D-100	Photo		3302
7	D-101	Photo		3302
8	D-102	Photo		3302
9	D-103	Photo		3302
10	D-104	Photo		3302
11	D-105	Photo		3302
12	D-107	Photo of Text Messages		3051
13	D-109	Photo - SEALED		3425
14	D-111	Photo of X-ray - SEALED		3405
15	D-112	Photo of X-ray - SEALED		3405
16	D-113	Photo of X-ray - SEALED		3405
17	D-115	Photo - SEALED		3388
18	D-116	Photocopy - Page of Book		3415
19	D-122	Photo		3540
20	D-123	Photo		4182
21	D-124	Excerpt of Medical Records		3908
22	D-125	Photo		3912
23	D-126	News Release		4194
24	D-127	Photo		3912
25	D-129	Text Messages	4190	

	No.	Description	I.D.	Ev.
1				
2	D-130	Photo		4161
3	D-131	Photo		4161
4	D-132	Photo		4161
5	D-133	Photo		4161
6	D-134	Photo		4161
7	D-135	Photo		4162
8	D-136	Photo		4162
9	D-138	Text Message		4091
10	D-140	PowerPoint Printout		4297
11	D-141	Speed Graph - SEALED		4298
12	D-142	Speed Graph - SEALED		4298
13	D-143	DVD of PowerPoint - SEALED		4226
14	D-144	SLED Crime Scene Notes - SEALED		4382
15	D-145	PowerPoint Presentation (Paper)		4594
16	D-156	Report on Steps		4616
17	D-158	PowerPoint Presentation (Paper)		4623
18	D-159	Photo - SEALED		5156
19	D-160	Photo - SEALED		5156
20	D-161	Photo - SEALED		5156
21	D-162	Photo - SEALED		5152
22	D-163	Photo - SEALED		5210
23	D-164	Photo - SEALED		5210
24	D-165	Photo		5192
25	D-168	X-ray of P. Murdaugh		5156

				51
1	No.	Description	I.D.	Ev.
2	D-169	X-ray of P. Murdaugh		5156
3	D-177	MUSC File - M. Murdaugh		5113
4	D-178	MUSC File - P. Murdaugh		5113
5	D-179	Text Message		5069
6	D-180	Photo		5069
7	D-181	Photo		5204
8	D-182	Photo		5206
9	D-183	Photo		5204
10	D-186	Photo		5204
11	D-188	Photo		5204
12	D-189	Photo of Book Page - WITHDRAWN	5138	
13	D-190	Photo - SEALED		5190
14	D-191	Photo - SEALED		5190
15	D-192	Photo		5192
16	D-193	Photo - SEALED		5201
17	D-194	Photo - SEALED		5212
18	D-195	Photo		5360
19	D-196	Photo		5515
20	D-197	Photo		5515
21				
22				
23				
24				
25				

				52
1	<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
2	C-1	Firearms Report		344
3	C-2	Email		457
4	C-3	Jury Note		3975
5	C-4	DVD of Interview		5737
6	C-5	Packet of Emails - SEALED		5737
7				
8				
9				
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1 MONDAY, JANUARY 23, 2023

2 JURY PANEL ONE

3 THE COURT: Good morning, ladies and gentlemen. I am
4 Clifton Newman, and I am the presiding judge this week.
5 You all have been summoned for jury duty, and the trial of
6 the case that we're going to try this week is the case of
7 *The State v. Richard Alexander Murdaugh*.

8 In order to serve on jury duty, you must be qualified
9 to serve, and we're going to go through the juror
10 qualifications process at this time. The first part --

11 (Break in proceedings.)

12 THE COURT: Madame Clerk, if you will proceed with
13 passing out the questionnaire to the jurors?

14 (Break in proceedings.)

15 THE CLERK: Good morning. Thank you.

16 THE COURT: Hold it there for just a moment. Hold it
17 right there.

18 (Break in proceedings.)

19 THE CLERK: Thank you. I'm sorry.

20 (At this time, the jury panel was sworn.)

21 THE COURT: Ladies and gentlemen, as I was stating, a
22 juror questionnaire is being handed to you. I know you all
23 have submitted another questionnaire previously. Another
24 questionnaire is being handed to you now to complete. The
25 reason I proceeded with placing you under oath is so that

1 you understand you're answering and completing this
2 questionnaire under oath.

3 The questionnaire is a two-page questionnaire, and we
4 need you to sign the first page and print your name and
5 juror number on the second page. We'll take a break of
6 about 5 minutes or so to give you an opportunity to
7 complete this juror questionnaire.

8 And we'll be in recess while the jury has that
9 opportunity to work on this questionnaire.

10 (Break in proceedings.)

11 THE COURT: Ladies and gentlemen, as I indicated
12 earlier, you've been summoned for jury duty in the case of
13 *The State v. Richard Alexander Murdaugh*.

14 Mr. Murdaugh, if you will stand, face the jury panel.
15 All right. Thank you.

16 And we're going through the juror qualifications
17 process, the first part of which is the roll call. You've
18 been sworn to give complete and truthful responses
19 throughout this process, and that extends throughout the
20 entirety of the trial, should you be selected. We will
21 proceed now with the roll call by the Clerk.

22 (Roll Call was followed by jury venire.)

23 JURY VOIR DIRE - PANEL ONE

24 THE COURT: Ladies and gentlemen, some more questions
25 more specific to the case we are here concerning, which is

1 *The State of South Carolina v. Richard Alexander, Alex,*
2 *Murdaugh.* Mr. Murdaugh is charged with murdering,
3 murdering his wife, Maggie Murdaugh, and son Paul Murdaugh
4 on June 7, 2021, outside their home located at 4147 Moselle
5 Road, Islandton, South Carolina. If you have heard about
6 this case, read about this case, or know anything about
7 this case, please stand. And what I would like for you to
8 do is give me your juror number and juror number only,
9 starting on this side with the young lady over here.

10 THE JUROR: 148.

11 THE JUROR: 203.

12 THE JUROR: 43.

13 THE JUROR: 45.

14 THE JUROR: 185.

15 THE JUROR: 39.

16 THE JUROR: 75.

17 THE JUROR: 110.

18 THE JUROR: 11.

19 THE JUROR: 22.

20 THE JUROR: 59.

21 THE JUROR: 55.

22 THE JUROR: 95.

23 THE JUROR: 30.

24 THE JUROR:, 220.

25 THE JUROR: 52.

1 THE JUROR: 44.

2 THE JUROR: 214.

3 THE JUROR: 149.

4 THE COURT: When you give me -- provide the
5 information, please be seated.

6 Yes.

7 THE JUROR: 149.

8 THE JUROR: 16.

9 THE JUROR: 129.

10 THE JUROR: 26.

11 THE JUROR: 176.

12 THE JUROR: 77.

13 THE JUROR: 180.

14 THE JUROR: 193.

15 THE JUROR: 112.

16 THE JUROR: 24.

17 THE JUROR: 166.

18 THE JUROR: 82.

19 THE JUROR: 202.

20 THE JUROR: 152.

21 THE JUROR: 124.

22 THE JUROR: 96.

23 THE JUROR: 58.

24 THE JUROR: 97.

25 THE JUROR: 179.

1 THE JUROR: 221.

2 THE JUROR: 180.

3 THE JUROR: 17.

4 THE JUROR: 131.

5 THE JUROR: 80.

6 THE COURT: If you did not stand for that question,
7 please stand if you did not stand. It appears that
8 everyone stood.

9 With regard to those of you who have stood indicating
10 that you have heard something about this case, I want you
11 to now provide me the source of your information:
12 newspaper, radio, Internet, whatever the source of your
13 information. Give us your juror number and source of your
14 information, starting first with Juror Number 4, I believe,
15 or this juror. Juror number and the source of the
16 information.

17 THE JUROR: 148, and then what -- you need sources?
18 Like, Facebook and the Internet.

19 THE COURT: All right. Thank you.

20 THE JUROR: 203. *Crime Watch*, YouTube, podcasts, and
21 stuff like that on the Internet.

22 THE JUROR: 45. Local news.

23 THE JUROR: 185. Local news.

24 THE JUROR: 43. Internet.

25 THE JUROR: 45. Local news.

1 THE JUROR: 185. Local news.

2 THE JUROR: 39. Local news, Facebook, news, and TV
3 special.

4 THE JUROR: Number 75. Channel, Channel 5 in
5 Charleston, TV.

6 THE JUROR: 110. News.

7 THE JUROR: News, social media, and grapevine.

8 THE COURT: Juror number, please.

9 THE JUROR: 11.

10 MR. WATERS: I'm sorry, Your Honor, could we request
11 he say that number again? I didn't hear it.

12 THE COURT: Did you say 7?

13 THE JUROR: 22.

14 THE JUROR: 11. One-one.

15 THE COURT: 11. All right. Thank you.

16 THE JUROR: Local news.

17 THE CLERK: And your number, please.

18 THE COURT: Juror number?

19 THE JUROR: 22.

20 THE COURT: Thank you.

21 THE JUROR: 59. Local news, Internet.

22 THE JUROR: 55. Internet.

23 THE JUROR: 95. Supervisor and those that know the
24 defendant.

25 THE JUROR: Yes. Next.

1 THE JUROR: 30. I hear it in my office. I'm, I'm the
2 post master of that town that they lived in, and I hear a
3 lot of it.

4 THE JUROR: 220. Internet, Google, television.

5 THE JUROR: 52. Various sources, documentaries, news.

6 THE JUROR: Internet, social media. I've got people
7 that live in other countries I talk. I've seen articles in
8 other countries that cover this case, and family because
9 the young lady the son's accused -- the wreck and killing
10 is actually my cousin.

11 THE COURT: And your juror number again, please.

12 THE JUROR: Number 44.

13 THE COURT: Thank.

14 THE JUROR: 214. Local news.

15 THE JUROR: 149. Podcast, YouTube.

16 THE JUROR: 16. News, accounts of family from the
17 Islandton area.

18 THE JUROR: 129. Local and national news,
19 documentaries, radio.

20 THE JUROR: 46, national news.

21 THE JUROR: 176. News, documentaries, and Facebook.

22 THE JUROR: 77. News and coworkers.

23 THE JUROR: 180. Facebook, podcasts, and news.

24 THE JUROR: 193. Internet and word of mouth.

25 THE JUROR: 112. Word of mouth and Internet.

1 THE JUROR: 44. Internet.

2 THE JUROR: 166. Local news, media, friends.

3 THE JUROR: 62. Internet, social media.

4 THE JUROR: 202. The Internet.

5 THE JUROR: 152. Local news and then the paper.

6 THE JUROR: 144. All above.

7 THE JUROR: 96. All of them.

8 THE JUROR: 58. Local news, news breaks, and
9 associates.

10 THE JUROR: 97. Facebook and all above.

11 THE JUROR: 179. Social media, news, documentaries.

12 THE JUROR: 221. News Breakout.

13 THE JUROR: 181. Local news, Internet, social media.

14 THE JUROR: 17. All the news I can read.

15 THE JUROR: 131. Local news.

16 THE JUROR: 80. Local newspaper and Facebook.

17 THE COURT: Based on what you have heard or been
18 exposed to concerning this case, have you worked an opinion
19 as to the guilt or the innocence of Mr. Murdaugh? If you
20 have formed an opinion in your mind as to the guilt or the
21 innocence of the defendant, please stand and tell me your
22 juror numbers.

23 THE JUROR: 44.

24 THE JUROR: 30.

25 THE JUROR: 220.

1 THE JUROR: 52.

2 THE JUROR: 139.

3 THE JUROR: 16.

4 THE JUROR: 166.

5 THE COURT: Thank you and those of you indicated that
6 you have formed an opinion concerning the guilt or the
7 innocence of the defendant, would you be able to set aside
8 that opinion and decide this case solely and only based on
9 the evidence presented in this courtroom and the law as I
10 will instruct you? If you cannot decide the case based on
11 what is presented in the courtroom and the law as I give it
12 to you, but you have decided the case based on opinions
13 that you've already formed, please stand. If the opinion
14 you've formed is so fixed that you cannot decide the case
15 based on what's presented in the courtroom, if that's your
16 case, situation, please stand.

17 All right, tell me your juror number.

18 THE JUROR: 52.

19 THE COURT: 52. Jury 52 will be excused. Thank you
20 very much for coming.

21 THE JUROR: 30.

22 THE COURT: Juror Number 30, you will be excused.
23 Thank you for coming.

24 THE JUROR: 44.

25 THE COURT: 44. Thank you, Mr. 44. You are excused.

1 Thank you for coming.

2 If you have been asked to participate in any media
3 coverage regarding the defendant or his family, if you've
4 been asked to participate in any media coverage concerning
5 this case, concerning the defendant, or his family, if so
6 please stand.

7 (No one stood.)

8 THE COURT: If you have expressed opinions to friends,
9 family, coworkers, or anyone about this case, please stand.
10 If you expressed opinions concerning this case to anyone,
11 if so please stand.

12 Okay, tell me your juror numbers.

13 THE JUROR: 220.

14 THE COURT: 220.

15 THE JUROR: 149.

16 THE JUROR: 16.

17 THE JUROR: 129.

18 THE JUROR: 26.

19 THE JUROR: 156.

20 THE JUROR: 96.

21 THE COURT: If you or any member of your family of any
22 significant others of yours, if any -- if they are related
23 or you are related by blood or by marriage to Margaret,
24 Maggie, Murdaugh, Paul Murdaugh, or defendant Richard
25 Alexander Murdaugh, any of you or any significant other of

1 yours is socially acquainted, related by blood or marriage
2 to Maggie Murdaugh, Paul Murdaugh, or Richard Alex
3 Murdaugh, if so please stand.

4 All right, and your juror number, please.

5 THE JUROR: 129.

6 THE COURT: 122?

7 THE JUROR: 9.

8 THE COURT: And who are you related to or socially
9 acquainted with?

10 THE JUROR: Socially acquainted with. My, my
11 brother-in-law is the Youngs family. They're very well
12 acquainted with Randolph Murdaugh.

13 MR. WATERS: Your Honor, I believe the number was 129.

14 THE COURT: 129.

15 All right, thank you, ma'am.

16 Someone on this side? Yes, ma'am.

17 THE JUROR: 180. My grandmother's side of the family
18 are related down the line to -- they are Murdaughs down the
19 line from his side of Murdaughs. And then my best friend
20 for eleven years used to work in the Hampton PMPED office.

21 THE COURT: All right. Thank you.

22 And, ladies and gentlemen, backing up a little bit,
23 the defendant is represented by counsel, and the State is
24 represented by counsel. We'll have counsel introduce
25 themselves.

1 First the State.

2 MR. WATERS: Good morning, everybody. My name is
3 Creighton Waters; I'm from the Attorney General's Office,
4 and I will be the lead prosecutor in this case. With me is
5 David Fernandez, another prosecutor in the office. Next to
6 him is Savannah Goude in the office. Next to Savannah is
7 John Meadors in the office. We have John Conrad seated
8 over there. My boss is Don Zelenka, who's here, and then
9 we have Johnny James sitting right there, and those are
10 some of the attorneys that may make an appearance in this
11 case.

12 THE COURT: And for the defense.

13 MR. HARPOOTLIAN: Good morning, ladies and gentlemen.
14 My name is Dick Harpootlian. I'm an attorney from
15 Columbia. Jim Griffin is my partner on this case; he's
16 also from Columbia. Phil, Phil Barber works in Columbia.
17 He is also on this case. Maggie Fox is -- works in Jim's
18 office, and she is also on this case. That's it. Thank
19 you.

20 THE COURT: Ladies and gentlemen, if any of you are
21 related by blood or marriage, socially acquainted,
22 represented by, or have been represented by the defendant
23 Richard Alex Murdaugh's defense attorneys, Mr. Harpootlian,
24 Mr. Griffin, Ms. Fox, Mr. Barber, or by the State, State's
25 attorney Mr. Waters, Mr. Zelenka, Mr. Fernandez, Mr. James,

1 and the others I'm miss -- Mr. Meadors, Mr. Conrad, and Ms.
2 Goude, if so please stand. Or if you're acquainted with
3 any of them or have had any representation relationship
4 with any of them.

5 THE JUROR: Does it count if Mr. Murdaugh was my
6 employer's legal representer?

7 THE COURT: Yes. Tell me your juror number.

8 THE JUROR: 68.

9 THE COURT: And why are you standing?

10 THE JUROR: Because my employer, Estill Gas, Mr.
11 Murdaugh represented them in the past.

12 THE COURT: All right. Thank you.

13 As relates to the defendant, Mr. Murdaugh, if you know
14 him, have been represented by him, or have close
15 acquaintances who know him or were represented by him,
16 please stand.

17 Yes, sir.

18 THE JUROR: His brother represents the family. He
19 helped me in a lot of cases.

20 THE COURT: Your juror number is?

21 THE JUROR: 179.

22 THE COURT: And do you believe that would affect your
23 ability to be a fair and impartial juror?

24 THE JUROR: Could you repeat that?

25 THE COURT: Do you believe that relationship would

1 affect your ability to be a fair and impartial juror?

2 THE JUROR: Yes.

3 THE COURT: And you believe that you will be -- have
4 some bias one way or the other based on that relationship?

5 THE JUROR: I can't hear.

6 THE COURT: Do you believe you would have some bias?

7 THE JUROR: Yes.

8 THE COURT: Based on that relationship, and your juror
9 number is?

10 THE JUROR: 179.

11 THE COURT: Any objection to this juror being excused?

12 MR. WATERS: No objection from the State, Your Honor.

13 MR. HARPOOTLIAN: Not on behalf of Mr. Murdaugh, Your
14 Honor.

15 THE COURT: Thank you, sir. You are excused.

16 Yes, sir?

17 THE JUROR: 124. The Murdaugh family has represented
18 my family in legal issues.

19 THE COURT: I missed the last part. Represented your
20 family and?

21 THE JUROR: Some legal issues.

22 THE COURT: In some legal issues, and would that
23 affect your ability to be a fair and impartial juror?

24 THE JUROR: It might.

25 THE COURT: It might? Is that relationship ongoing or

1 not?

2 THE JUROR: Well, we haven't had dealings with them
3 for a while.

4 THE COURT: And during the course of that
5 representation, were you involved with Mr. Murdaugh, Alex
6 Murdaugh?

7 THE JUROR: I think I did at one time.

8 THE COURT: All right, sir, we'll get back to you.
9 Your juror number again is 1?

10 THE JUROR: 24.

11 THE COURT: 124. Thank you.

12 If you are or any member of your immediate family or a
13 significant other employed with or has ever been employed
14 with the Colleton County Sheriff's Office, the South
15 Carolina Law Enforcement Division known as SLED, the
16 solicitor's office of the Fourteenth Circuit, or the
17 Attorney General's Office of the State of South Carolina,
18 if so please stand.

19 Yes, ma'am.

20 THE JUROR: 149. My fiancé was actually on the scene.

21 THE COURT: Say it louder for me.

22 THE JUROR: 149. My fiancé was actually on the scene.
23 He works in the sheriff's office's.

24 MR. WATERS: This is correct. I believe that he is
25 one of the responding officers to the scene, the fiancé.

1 THE COURT: Any objection to this juror being excused?

2 MR. HARPOOTLIAN: No, Your Honor.

3 MR. WATERS: None from the State.

4 THE COURT: Thank you, ma'am. You'll be excused.

5 Yes, ma'am.

6 THE JUROR: My ex brother-in-law, the police. City
7 police and Highway Patrol.

8 THE COURT: And, ma'am, your juror number is?

9 THE JUROR: 80.

10 THE COURT: Would that affect your ability to be a
11 fair and impartial juror?

12 THE JUROR: No.

13 THE COURT: Thank you.

14 Any of you or any member of your immediate family has
15 ever been arrested by, investigated by, prosecuted by
16 Colleton County Sheriff's Department, SLED, Fourteenth
17 Circuit Solicitor's Office, or the Attorney General's
18 Office, if so please stand. If any of you or any of your
19 immediate family members have been investigated by or
20 arrested by or charged by or prosecuted by Colleton County
21 Sheriff's Department, South Carolina Law Enforcement
22 Division, solicitor's office of this circuit, or the
23 Attorney General's Office, if so please stand.

24 THE JUROR: 166.

25 THE COURT: And, ma'am, is that an ongoing matter or a

1 closed matter?

2 THE JUROR: It's closed.

3 THE COURT: And --

4 THE JUROR: Been for years.

5 THE COURT: Would that fact affect your ability to be
6 a fair and impartial juror?

7 THE JUROR: Yes.

8 THE COURT: And based on that experience, you would be
9 biased as a juror?

10 THE JUROR: Yes, sir, I would.

11 THE COURT: And your juror number is 1?

12 THE JUROR: 166.

13 THE COURT: 66.

14 Any objection to this juror being excused?

15 MR. WATERS: No objection from the State, Your Honor.

16 MR. HARPOOTLIAN: None from Mr. Murdaugh.

17 THE COURT: Thank you, ma'am. You are excused.

18 Yes, sir?

19 THE JUROR: 80. My spouse.

20 THE COURT: What about your spouse?

21 THE JUROR: He was investigated.

22 THE COURT: And by which agency?

23 THE JUROR: Sheriff's department.

24 THE COURT: And would that fact affect your ability to
25 be a fair and impartial juror?

1 THE JUROR: No.

2 THE COURT: All right. Thank you.

3 Yes, sir, in the back?

4 THE JUROR: 26. 2015 I was arrested and charged.

5 THE COURT: You were?

6 THE JUROR: 26. Yeah, I was, yes, sir.

7 THE COURT: And by which agency?

8 THE JUROR: Sheriff's department, sheriff's office
9 right here in town.

10 THE COURT: And would that fact affect your ability to
11 be fair and impartial?

12 THE JUROR: I don't think so, Judge.

13 THE COURT: All right. Thank you, sir.

14 THE JUROR: Thank you.

15 THE COURT: Yes, ma'am?

16 THE JUROR: Juror Number 95. My son. It's not
17 recently, and, no, it won't affect me.

18 THE COURT: All right. Thank you.

19 If any of you or any of your immediate family member
20 or a significant other has ever been employed by or
21 represented by the firm of Peters, Murdaugh, Parker,
22 Eltzroth, and Detrick or the Parker Law Group, or if you've
23 ever attended any functions or events, parties, hunts,
24 raffles, gatherings, or anything of a similar nature hosted
25 by the firm of Peters, Murdaugh, Parker, Eltzroth, and

1 Detrick or by Mr. Alex Murdaugh or his family, if so please
2 stand. If you have ever been represented by the firm that
3 I mentioned, the firms that I mentioned, or been sued by,
4 attended any functions, events, parties, hunts, giveaways,
5 raffles, gatherings, or any similar events hosted by the
6 firm, firms, or Mr. Murdaugh, or any of their respective
7 families, if so please stand.

8 Yes, sir?

9 THE JUROR: Yeah. He, he sued my father.

10 THE COURT: Yes, sir, and your juror number?

11 THE JUROR: 203.

12 THE COURT: And you believe that would affect your
13 ability to be fair and impartial?

14 THE JUROR: I do.

15 THE COURT: And you would be biased as a juror because
16 of that?

17 THE JUROR: Yes.

18 THE COURT: All right, any objection to 203 being
19 excused?

20 MR. WATERS: Based on the responses, no, sir.

21 MR. HARPOOTLIAN: No objection.

22 THE COURT: All right. Thank you, Number 203. You
23 are excused.

24 Yes, ma'am, in the back.

25 THE JUROR: I attended a, I guess, an engagement type

1 party at Mr. Murdaugh's practice.

2 THE COURT: Ma'am, would that fact affect your ability
3 to be a fair and impartial juror?

4 THE JUROR: No.

5 THE COURT: Thank you.

6 MR. WATERS: Your Honor, what's the number?

7 THE COURT: 129?

8 THE JUROR: 129.

9 THE COURT: 129.

10 Ladies and gentlemen, let's all stand for a moment and
11 stretch.

12 (Break in proceedings.)

13 THE COURT: Thank you, ladies and gentlemen. If you
14 will come back to order.

15 All right, ladies and gentlemen, if you have any
16 religious beliefs or otherwise that would prevent you from
17 sitting on a jury and deciding this case based on the
18 evidence and the law, if you are prevented by any religious
19 beliefs from doing so, if so please stand.

20 (No one stood.)

21 THE COURT: If you know of any reason why you cannot
22 serve as a fair and impartial juror in this case and give
23 both the State and the defendant a fair trial, if you know
24 of any reason whatsoever why you should not be required or
25 chosen to be seated on the jury, if so please stand.

1 No one is standing.

2 Ladies and gentlemen, there are many witnesses,
3 prospective witnesses, people who might testify, and I'm
4 going to read this list.

5 If any of these prospective witnesses are here, we'd
6 like you to stand so the jury can see you. At the end, I
7 need to know whether or not you are acquainted with any of
8 these of prospective witnesses.

9 Daniel Greene from the Colleton County Sheriff's
10 Office. Chad McDowell from the Colleton County Sheriff's
11 Office. William Cody Pruitt, formerly of the sheriff's
12 office. Tinish Bryson Smith from Hampton County Dispatch.
13 Angela Stallings from Colleton County Dispatch.
14 Dispatcher. Dathan Varnadoe from the sheriff's office.
15 Charlie Jones, CCRF (sic).

16 Is that fire and rescue?

17 Fire and rescue, Colleton County Fire and Rescue.
18 Berry McRoy, Colleton County Fire And Rescue. Melinda
19 Worley for SLED. Laura Rutland, sheriff's office. The
20 following people work at SLED. Thomas Darnell. Rachel
21 Nguyen. Paul Greer. Madison Willis. Julia Begeman.
22 Olivia Cartwright. Rachel Noelle Johnson. Christine
23 Dadabo. Jeff Croft. Katie McCallister. Then not-SLED
24 employee. Norris Laffitte. Claude C.B. Rowe. Roger Dale
25 Davis. Mushelle Shelley Smith. Belinda Rast. MaeLynn

1 Haynes. Barbara Mixon. Also from SLED, Christian Moore.
2 Jennifer Nates. Sara Zapata. Kukila KiKi Wallace. Megan
3 Fletcher. Britt Dove. Rebecca Gregg. Bobby Bancroft.
4 Brian Hudak. Todd Schnek -- Schenk. Then Jonathan
5 VanHouten from the US Secret Service, is it?

6 MR. WATERS: Yes, sir, Your Honor.

7 THE COURT: US Secret Service. Paul McManigle from
8 the Charleston County Sheriff's Office. Dylan Hightower
9 from the Fourteenth Circuit Solicitor's Office. Tom Bevel.
10 John Bedingfield. Nathan Tuten. Nolen Tuten. Willis
11 Wills Chapman. Marian Proctor. Chris Wilson, attorney.
12 Lee Cope, attorney. Mark Tinsley, attorney. Michael Gunn,
13 attorney. Johnny Parker, attorney. Carson Burney, South
14 Carolina Attorney General's Office. Jan Malinowski. Carey
15 Sauls. Eric Harriott. Ryan Kelly from SLED. From EMS for
16 Hampton County, Andrew Farmer. Charles Long, formerly,
17 formerly of the Hampton County EMS. Curtis Eddie Smith.
18 Attorney Mark Ball. Attorney Ronnie Crosby. Attorney
19 Danny Henderson. Matt Wright from SLED. Savannah Hospital
20 records custodian Jessica Dunivan, a registered nurse at
21 Savannah Hospital. Tommy Robertson from SLED. Kenneth
22 Martin.

23 What is BGA?

24 MR. WATERS: Bevel, Gardner, and Associates, Your
25 Honor.

1 THE COURT: Say that again.

2 MR. WATERS: Bevel, Gardner, and Associates, Your
3 Honor.

4 THE COURT: Bevel, Gardner, and Associates, out of
5 state. Sydney Freeman. Hunter Wilson. Bailey Wilson.
6 Colleton County Sheriff's Office, Alex -- Anthony Russell.
7 From SLED, Joshua Duerkp. Lynn Black. Blanca
8 Turrubiate-Simpson. Kenneth Kenny Hughes. Rogan Gibson.
9 Will Loving. Bart Proctor. Randy Murdaugh. Jeannie
10 Seckinger. Annette Griswold. Peter Rudofski of SLED.
11 Alfred Johnson from JLA Investigations. David Grubbs from
12 the Attorney General's Office. Demi Garvin from the
13 Forensic Science Network. Kenny Kinsey, Orangeburg County
14 Sheriff's Department. From SLED, Dave Owens (sic).
15 Charles Ghent. Ryan McNeill (sic). Attorney General's
16 Office, Oswaldo Toledo. Jason Chapman of the Colleton
17 County Sheriff's Office. Greg Cook from SLED. Courtney
18 Adams. Jomar Albayalde. Mitchell Altman. Steven
19 Bechtold. Alice Hazel, a CPA. Mark Altman, IT, PSB.
20 Attorney Eric Bland. From SLED, Matt Brown. Frank
21 Chapman. Charles Chapman from SLED. Dalila Cirencione and
22 Timothy Collier, Sr. From Highway Patrol, John Conley.
23 Varnville Fire Department, Tyrone Corbin. Colleton County
24 Sheriff's Office, Keith Crosby. Gary Davis. Mary Dempsey.
25 Richard Dixon. Morgan Doughty. Nancy Drawdy, county

1 sheriff's office. Richard Haley. Coroner Deputy David
2 Drawdy. Donna Eason. Ashlynn Gantt. From SLED, Haley
3 Godley. Virginia Hadwin from SLED. Jamie Hall. Scott
4 Harriott. Richard Harvey from the Colleton County
5 Sheriff's Office. From SLED, Laura Hash. Bailey Haynes.
6 Michael Hazel. William Headden. From SLED, Adrienne
7 Hefney. Gray Laffitte Henderson. From the Hampton County
8 Sheriff's Office, Kendrell Henderson. From SLED, Marcus
9 Heyward. Clarendon -- Colleton County Sheriff's Office
10 Guerry Buddy Hill. SLED, Tommy Hines. Jonathan Holdbrook.
11 Chandler Horney. Graham Holmes. Steven Hudson. From
12 SLED, Jennifer Huntun. William Hutto. Highway Patrol
13 person, Jessea James. Kristi Jarrell. From SLED, Hannah
14 Jefferson. Blake Jefferson. Byron (sic) Jones. From
15 SLED, Pat Keegan. Wayne Kirby, III. Tommy Kinard. Tonya
16 King. Richard Kneece, Jr. From the FBI, Mark Labreche.
17 Henry Laffitte. Rebecca Laffitte, attorney Rebecca
18 Laffitte. Paul LaRosa from SLED. Stacey Loadholt from the
19 sheriff's office. David Long, the sheriff's office.
20 Elizabeth Laffitte Malinowski. Vera Martinez from SLED.
21 Linda McAlhaney. William McElveen. Leigh McGuinness.
22 From SLED, Jaclynn McKay. Haley Moody. From SLED, John
23 Nelson. Haley Nelson from SLED. John Peters. William
24 Polk from the sheriff's office. Captain Samuel Reighley
25 from SLED. Kashyap Patel. Emily Reinhart from SLED. Dr.

1 Ellen Riemer, MUSC pathologist. George Rioux, R-i-o-u-x,
2 sheriff's office. Major Tommy Robertson from SLED. Diane
3 Rowe. Walter Salisbury. Anthony Sampson from SLED.
4 Christopher Sarine, fire and rescue. Michael Tommy
5 Satterfield. Jerry Smith of SLED. Caleigh Smoak. James
6 Tallon, III, and Dana Temple of SLED. Courtney Thompson.
7 From DHEC, Chelsea Townsend. Phil -- Phillip Turner from
8 SLED. Dr. Luis Vega. Russell Vernali from SLED. Tammy
9 Weber. Glen Welcker. Chad Westendorf. Samuel White, the
10 Hampton County Sheriff's Office. Lawrence Wiggins,
11 formerly of SLED. From the FBI, Matt Wild. SLED, David
12 Williams. From fire and rescue, Matthew Williams. Madison
13 Willis from SLED. From Savannah Memorial Hospital the
14 following: Dr. William Bromberg, Caitlyn Bowman, Dr. Karie
15 Jeter, Alice Dionne, Dr. Brandon Runyan, Dr. Brenna Casey,
16 Dr. James Mitchell, Dr. Brittany Matthews. Also from SLED,
17 Lesa Chapman. Bailey Morgan. Margaret Pauli. SLED
18 continued, Haley Fiorucci. Jennifer Hunton. Lonnie
19 Nettles from the sheriff's office. David Weaver from SLED.
20 Al Jarvis from SLED. Also Christopher Anderson. Arthur
21 Badger. Johnny Bush. James Randall Drawdy. Angel Gary.
22 Jordan Jinks. Damien Risher. Eleese Taylor Mallory. Deon
23 Martin. Thomas Moore. Pamela Pinckney. Natarsha Thomas.
24 Buster Murdaugh. John Marvin Murdaugh. Liz Murdaugh.
25 Kennedy Branstetter. Terry Branstetter. Marian

1 Branstetter. Russell Laffitte. Jay McGill. Joseph
2 Dingle. Scott O'Quinn. Charles Laffitte, II, and III.
3 Harold Trey Mathisen, III. Meagan Kimbrell. Terry Haynes.
4 Kyna Treherme, T-r-e-h-e-r-m-e. Attorney Ann (sic) Bower.
5 SLED Stanley -- Stephanie Stanley. Dr. Robert Cotton.
6 Pathologist, Dr. Jonathan Eisenstat. Crime scene analysis,
7 Tim Palmbach. Crime scene exhibit examination, Mike
8 Sutton. Kenneth Zerci, crime scene reconstruction. Jim
9 Persinger, computer forensics. Chip Johnson, computer and
10 phone forensics, forensics. William Tobin, GSR firearms
11 and ballistics. Micah Sturgis, Cellebrite digital
12 evidence. Dr. Amy Brodner, BPA CSI. Lynn Murdaugh
13 Goettee, G-o-e-t-t-e-e. Dr. Donna Schwartz Maddox,
14 psychologist. Eric Robinson. Kyla Robinson.

15 MR. WATERS: Your Honor, can I approach real quick?

16 (A bench conference was held.)

17 THE COURT: All right, Philip Strother from Hampton
18 and Dwight Falkofske, F-a-l-o -- F-a-l-k-o-f-s-k-e from the
19 FBI.

20 As relates to any of those people, if you are a
21 friend, relative, associate, acquaintance of any of them,
22 please stand. All right, and tell me the basis for your
23 standing.

24 First, with the gentleman, your juror number, and why
25 you're standing.

1 THE JUROR: 43. Charles Long is my cousin.

2 THE COURT: Say again.

3 THE JUROR: 43. Charles Long is my cousin.

4 THE COURT: Cousin, and should your cousin testify,
5 would that affect your ability to be fair and impartial?

6 THE JUROR: It might.

7 THE COURT: It just might. All right. Well, we'll
8 talk with you a little further in a minute.

9 Yes, sir?

10 THE JUROR: Juror Number 85. Law enforcement from
11 Colleton County and Agent Smith is an acquaintance from
12 years back.

13 THE COURT: And should they testify, would that affect
14 your ability to be fair and impartial?

15 THE JUROR: No, sir.

16 THE COURT: All right. Thank you.

17 Yes?

18 THE JUROR: 39. I have a social acquaintance with
19 Chad Westendorf. I think he's at the sheriff's department.
20 He's a friend, and my son is or was a friend of Buster
21 Murdaugh.

22 THE COURT: And would that affect your ability to be
23 fair and impartial?

24 THE JUROR: No.

25 THE COURT: Thank you.

1 Yes, ma'am?

2 THE JUROR: 110. Dr. Luis Vega was my supervising
3 provider from 2020 to 2021.

4 THE COURT: A little louder, please.

5 THE JUROR: Dr. Luis Vega was my supervising provider
6 from 2020 to 2021.

7 THE COURT: And should he testify --

8 MR. WATERS: Could she repeat her number again?

9 THE COURT: Your number again?

10 THE JUROR: 110.

11 THE COURT: 110. Thank you, and should Dr. Vega
12 testify, would that affect your ability to be fair and
13 impartial?

14 THE JUROR: No.

15 THE COURT: Thank you.

16 Yes, sir?

17 THE JUROR: 59. I have met Angela Stallings, Norris
18 Laffitte, and Buddy Hill, and I know Barry McRoy pretty
19 well. Followed him for a long time with the fire
20 department, and now I also work there part-time as a fire
21 fighter.

22 THE COURT: And would that affect your ability to be
23 fair and impartial?

24 THE JUROR: No.

25 THE COURT: Thank you.

1 Yes, ma'am?

2 THE JUROR: 55. I went to school with Morgan Doughty
3 and I'm very close friends with her younger sister.

4 THE COURT: Close friends with who?

5 THE JUROR: With her younger sister Allie.

6 THE COURT: And your juror number one more time?

7 THE JUROR: 55.

8 THE COURT: 55, and would that affect your ability to
9 be fair and impartial?

10 THE JUROR: Possibly.

11 THE COURT: All right. We will speak with you
12 further.

13 Yes, ma'am?

14 THE JUROR: 16. Tavera was the police chief when I
15 was serving as counsel. It would not affect me.

16 THE COURT: Thank you.

17 Yes, sir?

18 THE JUROR: Yes, sir. 26. I know Jerry Cord. I know
19 a few of them. Jason Chapman. It definitely would affect
20 my ability to be impartial.

21 THE COURT: Thank you.

22 THE JUROR: Yes, sir.

23 THE COURT: Yes, sir?

24 THE JUROR: Juror Number 181. I've been in
25 plaintiff's on -- a couple months with Mr. Norris Laffitte

1 and Mark Tinsley years ago. I would not be partial -- I
2 mean, I --

3 THE COURT: Would not affect your ability to be fair
4 and impartial?

5 THE JUROR: That would not affect my ability to serve.

6 THE COURT: All right. Thank you.

7 THE JUROR: Number 58. There's two officers that are
8 customers at my place of employment, and it will not affect
9 my ability.

10 THE COURT: Thank you.

11 THE JUROR: Number 162. I think you said the name
12 Jordan James. That's -- his sister's married to my son,
13 and, no, that won't affect me.

14 THE COURT: Thank you.

15 THE JUROR: Juror Number 80. I'm a plaintiff with
16 Richard Harvey through work, and that would not affect me.

17 THE COURT: Thank you.

18 And, ladies and gentlemen, having gone through this
19 whole battery of questions, at this point in time, in
20 reflecting on all of the questions I've asked you, if you
21 know of any reason why you cannot serve as a fair and
22 impartial juror, please stand.

23 (No one stood.)

24 THE COURT: Any additional questions proposed by the
25 State or the defense?

1 MR. WATERS: None from the State, Your Honor.

2 MR. HARPOOTLIAN: Nothing from Mr. Murdaugh, Your
3 Honor.

4 THE COURT: All right. Thank you.

5 So, this panel is now qualified. The question then is
6 what next with this group?

7 MR. GRIFFIN: May we approach, Your Honor?

8 THE COURT: Yes.

9 (A bench conference was held.)

10 THE COURT: We need Juror Number 43 to come forward,
11 Juror Number 55 to come forward.

12 Any other jurors?

13 Number 26 to come forward, and if you all will come
14 forward and just, just stay where you are for a moment
15 there. We just want to identify you.

16 All the other jurors, you are qualified. We're going
17 to excuse you for the remainder of this day. We need you
18 to call in to the number that the Clerk, Becky Hill, and
19 her staff has provided for you to use.

20 I didn't fully introduce all the Clerk, the Clerk and
21 her staff. Becky Hill, the Clerk Of Court is here in
22 Colleton County, and Lori -- is that Wiese? Where is she?

23 THE CLERK: She just went back downstairs.

24 THE COURT: Oh, is she the one doing the calling
25 sitting right there, Ms. Lori Wiese? Sherrie Robinson

1 right here. Our court reporter is Elizabeth Harris, who
2 takes down everything that's being said. She's over here,
3 as well as Mike Watkins over here.

4 If you have questions or issues, you address them to
5 clerks, the Clerk's staff, or bailiffs designated to
6 respond to questions, but do not engage in any way with any
7 of the lawyers or any of the witnesses or participants in
8 the case.

9 So, we will have you -- we have several groups coming
10 in just like your group. We have three or four groups
11 coming, and we hope at the end of that process of going
12 through all of the groups to come up with one final group
13 out of which we will select the jury.

14 So, we need you all to call back after 6 p.m. today.
15 Not before 6 p.m. After 6 p.m. There will be a message on
16 the recorded line telling you what time to call back
17 tomorrow or what time to come back tomorrow. It's our hope
18 that you might be able to come back around 4 p.m. tomorrow.
19 We don't know that. That's why we need to have you call in
20 to find out whether you need to come back about 4 tomorrow
21 or the next day. We'll have a message for you giving you
22 further information.

23 Thank you very much for all of your cooperation.
24 Aside from the jurors I mentioned, the rest of you are
25 excused.

1 Mr. Waters, before you go, yes.

2 MR. WATERS: Your Honor, I apologize. I believe in
3 going through the, the colloquy we just did, also 124 was
4 one that you mentioned that we wanted to have a discussion
5 with. And additionally, the State would also request that
6 Juror Number 221 remain behind for a discussion with Your
7 Honor.

8 THE COURT: So far I have 43, 55, 26, 221, 224.

9 Any requested by the defense?

10 MR. HARPOOTLIAN: No, Your Honor. Nothing further.

11 THE COURT: All right, and aside from those jurors, we
12 will see the others of you later. Thank you very much.
13 Have a good day.

14 Yes, sir.

15 One moment, jurors.

16 MR. GRIFFIN: Would you mind instructing them about
17 reading?

18 THE COURT: Yes. Thank you.

19 Yes, ladies and gentlemen, once you have become a part
20 of the jury pool, then you are to not engage in any form of
21 personal investigation, exposure. You're not to read,
22 discuss, seek to inquire, any information concerning this
23 case, and you are not to discuss it with any other jurors
24 or anyone else, and we will give you a greater, more
25 detailed instruction concerning that should you be selected

1 on the jury.

2 Anything else requested?

3 MR. GRIFFIN: No, Your Honor.

4 THE COURT: Thank you all.

5 (The remaining jury panel left the courtroom.)

6 THE COURT: Out of the jurors that we had to stay with
7 us, we want you all to come up one at a time. First, Juror
8 Number 26.

9 (At this time, individual voir dire was conducted with
10 the following jurors outside the courtroom. Discussion
11 with Juror Number 26 began before court reporter was in
12 place.)

13 THE JUROR: -- personal injury.

14 MR. HARPOOTLIAN: And that was a case you were
15 involved in?

16 THE JUROR: I was.

17 MR. HARPOOTLIAN: So, you were arrested?

18 THE JUROR: I was. Voluntarily, Chapman kind of
19 testified against me falsely. It didn't stick, didn't get
20 prosecuted, but I knew the man personally and after that,
21 it became personal.

22 MR. WATERS: And you think that's going to --

23 Sorry, Your Honor.

24 THE JUROR: I haven't talked to him since 2015
25 obviously since then. Yeah, yeah.

1 THE COURT: But you believe it would affect your
2 ability to be ---

3 THE JUROR: If he's vital in this case, it probably
4 will.

5 MR. WATERS: He, he was -- well, he was the
6 supervising Colleton officer on the scene.

7 MR. MEADORS: Judge, I thought I heard his response
8 saying I could never be fair when you said his name.
9 That's what, what I heard earlier. That would be a
10 problem. I thought that was his initial response.

11 THE JUROR: I would be absolutely impartial with
12 anything Chapman said.

13 MR. WATERS: And he was in charge of the scene until
14 it was released to SLED.

15 THE COURT: People mix up that word sometimes.

16 MS. FOX: Yeah.

17 THE COURT: So, I want to be absolutely ---

18 THE JUROR: I will be impartial with just Chapman. I
19 will be.

20 THE COURT: Okay. Is that the right word? Is it
21 impartial or partial?

22 THE JUROR: I will be partial. Excuse me, Judge, yes.

23 THE COURT: You'll be partial, and that would be
24 partial against anything he said?

25 THE JUROR: Yes, sir.

1 THE COURT: Okay.

2 All right. Anything else for this witness?

3 MR. GRIFFIN: No, sir.

4 MR. WATERS: No questions, Your Honor.

5 THE COURT: All right. We usually have them stand in
6 a corner while we talk about them.

7 THE JUROR: I can step down the stairs.

8 MR. HARPOOTLIAN: I don't think we have any objection.

9 THE COURT: Okay, we're not going to put you through
10 that. Thank you very much.

11 THE JUROR: Yes, sir.

12 THE COURT: We will release you from jury duty. You
13 can mosey on.

14 THE JUROR: Thank you, Your Honor.

15 THE COURT: Good luck to you.

16 (End of voir dire with this juror.)

17 THE COURT: Bring the next one, 43.

18 THE BAILIFF: Number 43.

19 (Juror Number 43 entered the room.)

20 THE COURT: Okay. Yes, sir?

21 THE JUROR: I didn't say it earlier. My family is
22 involved with the lawsuit with the Murdaugh suit. Mallory
23 Beach was my cousin.

24 THE COURT: You don't think this is a good case for
25 you to be a juror on?

1 THE JUROR: Oh, it might. I ain't going to say yeah,
2 no.

3 THE COURT: So, your family is suing the Murdaughs?

4 THE JUROR: She was in the boat wreck, the one that
5 got killed, Mallory.

6 THE COURT: And how close a cousin is she to you?

7 THE JUROR: I was more closer with her daddy and
8 brother and his brothers.

9 THE COURT: Right.

10 Any ---

11 MR. HARPOOTLIAN: We wouldn't object to excusing him.

12 MR. WATERS: I'll leave that to the court's
13 discretion, Your Honor.

14 THE COURT: We'll excuse you. We have plenty of
15 people so far. All right, thank you very much for coming.

16 THE JUROR: All right, sir.

17 (End of voir dire with this juror.)

18 THE COURT: Next one, 55.

19 THE BAILIFF: 55.

20 (Juror Number 55 entered the room.)

21 THE COURT: Come on in the center, let's talk to you.

22 THE JUROR: Hey.

23 THE COURT: All right, how are you? How old are you?

24 THE JUROR: Nineteen.

25 THE COURT: Nineteen. Okay. You stood up and said

1 you were related to somebody or something. What did you
2 say?

3 THE JUROR: I went to -- I went to the same school
4 Morgan Doughty went to. I'm really close with Morgan's
5 younger sister Allie.

6 THE COURT: Morgan's younger sister?

7 MR. WATERS: Morgan was ---

8 MR. HARPOOTLIAN: Oh.

9 THE JUROR: She also has a lawsuit.

10 THE COURT: Okay, and so you're pretty closely
11 connected with the people who were affected?

12 THE JUROR: Yes, sir.

13 THE COURT: You believe that would affect your being
14 able to be on this jury?

15 THE JUROR: Yes, sir.

16 THE COURT: You nervous?

17 THE JUROR: Yeah.

18 THE COURT: You've never done this before. You're
19 nineteen. That's understandable.

20 MR. WATERS: We would accept ---

21 MR. HARPOOTLIAN: After she just said she couldn't
22 most likely --

23 THE COURT: All right, I'm not going to put you
24 through that. We'll let you go.

25 THE JUROR: Okay.

1 THE COURT: Thank you very much. I'll excuse you.

2 (End of voir dire with this juror.)

3 THE BAILIFF: 124.

4 (Break in proceedings.)

5 (Juror Number 124 entered the room.)

6 THE COURT: All right, Number 124, how are you doing?

7 THE JUROR: All right.

8 THE COURT: All right. We want to ask you some
9 questions concerning whether or not you should be a juror.
10 You said that you were previously ---

11 THE JUROR: Your Honor. The Capers family is
12 affiliated with the Murdaugh family, and this incident
13 happened 2 and a half miles from my house, so they know my
14 family real good.

15 THE COURT: You live in Islandton?

16 THE JUROR: Yes.

17 THE COURT: And do you believe you're too closely
18 connected to be a fair and impartial juror or what's your
19 thinking?

20 THE JUROR: Really, it could have some effect because
21 I know Buster, Randolph Murdaugh, and all those. I know
22 them all, and my grandmother used to babysit them.

23 THE COURT: Used to babysit all of them?

24 THE JUROR: The children, yeah, yeah. I think so,
25 yeah.

1 MR. HARPOOTLIAN: Your Honor. I think the question is
2 -- I mean, this is a small community. In spite of that,
3 could he be fair? Could he put all that out and base his
4 verdict on what he hears in the courtroom and, and the law
5 as you give it to him. That's basically the question.

6 MR. WATERS: Which I think he just said, just like the
7 one we had in here just a minute ago. He, he said that.

8 THE COURT: You think you can put aside all that
9 history that you just cited and decide the case solely
10 cased on what you hear in the courtroom?

11 THE JUROR: I, I can. I can.

12 THE COURT: You think you can?

13 THE JUROR: I can. I could do that.

14 MR. HARPOOTLIAN: Did he say he can or can't?

15 MS. FOX: He can.

16 MR. HARPOOTLIAN: Okay. The mask, I couldn't him.

17 MS. FOX: Yeah.

18 MR. HARPOOTLIAN: I'm sorry, and I'm a little deaf.

19 THE COURT: Do you believe despite all the
20 relationships and all you can be fair and impartial?

21 THE JUROR: Yeah.

22 THE COURT: You can?

23 THE JUROR: I can.

24 THE COURT: All right, any other questions for this
25 juror?

1 MR. WATERS: None from the State, Your Honor.

2 THE COURT: All right. Thank you very much. Call in
3 after 6.

4 THE JUROR: Okay.

5 (End of voir dire with this juror.)

6 THE COURT: Next one, 221. So after we do this --
7 after this, we've got this other group we're going to have
8 come in, do a half an hour worth of talking to.

9 MR. HARPOOTLIAN: Yes, sir.

10 THE COURT: Barely enough time to maybe do the roll
11 call.

12 (Juror Number 221 entered the room.)

13 THE COURT: Yes, sir, how are you doing?

14 THE JUROR: Good. How are you.

15 THE COURT: All right. I think you -- did you say you
16 were related to the Murdaughs or someone? Megan?

17 THE JUROR: She ain't related. They just got the same
18 last name. They ain't in the same family.

19 THE COURT: Megan Murdaugh is not related to you at
20 all?

21 THE JUROR: Yes. Yeah.

22 THE COURT: And do you know of any reason you cannot
23 be a fair and impartial juror?

24 THE JUROR: No, sir.

25 THE COURT: On the question of whether you've ever

1 been arrested by, charged with anything by Colleton County
2 Sheriff's Office, SLED, anyone.

3 THE JUROR: I've been arrested by, not charged.

4 THE COURT: Arrested?

5 THE JUROR: They didn't charge me with it at court.
6 The court got dismissed, and it got taken off my record.

7 THE COURT: You got it expunged?

8 THE JUROR: Yes, sir.

9 THE COURT: Let's see what you got here.

10 MR. WATERS: Look on the second page. Second page.
11 Can I ask you what year that was? Is that okay?

12 THE JUROR: Not a hundred percent sure. I don't
13 remember.

14 MR. WATERS: Four or five years ago, something like
15 that?

16 THE JUROR: Maybe even longer than that.

17 THE COURT: And that charge, was it here in this town?
18 Was that Walterboro?

19 THE JUROR: Cottageville.

20 THE COURT: Cottageville. Did you have to come to
21 court?

22 THE JUROR: I did come to court but ---

23 THE COURT: Right here in this courtroom?

24 THE JUROR: Yeah, but then they ain't never had a
25 session. They just did, like, roll call.

1 THE COURT: Do you know who your prosecutor was?

2 THE JUROR: I have no idea.

3 THE COURT: You had a roll call?

4 THE JUROR: Yeah. I've been to, like, three roll
5 calls.

6 THE COURT: Three roll calls, and then the charges
7 were dismissed?

8 THE JUROR: Yes, sir.

9 THE COURT: Then you got it expunged?

10 THE JUROR: Yes, sir. It's supposed to be expunged.

11 THE COURT: The charge was CSC with a minor?

12 THE JUROR: Yes, sir.

13 THE COURT: And do you know of any reason you cannot
14 be fair and impartial in this case?

15 THE JUROR: No, sir.

16 THE COURT: And any other questions?

17 MR. HARPOOTLIAN: No, sir.

18 MR. WATERS: Nothing further from the State, Your
19 Honor.

20 THE COURT: All right, I need you to call back after 6
21 to find out what time to come back.

22 THE JUROR: All right. Thank you.

23 (End of voir dire with this juror.)

24 THE COURT: All right.

25 MR. GRIFFIN: That's it?

1 MR. HARPOOTLIAN: That's it.

2 THE COURT: I guess we'll come back in there.

3 (All parties returned to the courtroom.)

4 (Break in proceedings.)

5 JURY PANEL TWO

6 THE COURT: Good afternoon. Ladies and gentlemen, I
7 am Clifton Newman, and I am presiding in court here this
8 week. You've been summoned here for jury duty in this case
9 of *State v. Richard Alexander Murdaugh*.

10 Mr. Murdaugh, if you will stand and face the jury
11 panel. Thank you very much.

12 Ladies and gentlemen, in order to serve on jury duty,
13 you must be qualified to serve. We are running behind
14 schedule due to the volume, the number of people we're
15 dealing with. So, what we're going to do is to do the roll
16 call, then take a break for lunch, then come back, and
17 there are a lot of questions I need to ask you all to
18 determination your qualifications to serve and
19 determination who will be in the pool of jurors that we'll
20 be selecting the jury from.

21 As part of the roll call process, it's necessary that
22 an oath be administered to you. Then once you've been
23 called and brought into court on jury duty, you're not
24 allowed to talk with each other or anybody else about the
25 case. You must give complete and truthful responses to all

1 questions you are asked during this process.

2 We're going to proceed with the roll call so that we
3 can then take lunch. If you will give the Clerk your
4 attention, your very fine Clerk of Court here in Colleton
5 County, Ms. Becky Hill. She is ably assisted by her deputy
6 clerks, Ms. Sherrie Robinson, Ms. Lori Wiese.

7 And we'll proceed, Ms. Hill.

8 THE CLERK: Thank you for coming, for waiting, for
9 being here ready, willing to serve.

10 I'm going to call your jury number out. Do not call
11 out any names, and when I call your number out, just stand.
12 If you have a mask on, please take it off for that
13 particular time that you're going to be talking. You need
14 to speak loudly, speak slowly, and if we still can't hear,
15 I will ask you to come up to the podium up here. So,
16 please, if you want to stay where you are, then speak
17 loudly for me.

18 (Whereupon, the Clerk called the roll.)

19 THE COURT: Ladies and gentlemen, we're going to break
20 for lunch, have you come back at 2:30.

21 And the juror who is here for 4:30, I believe, are you
22 disabled?

23 THE CLERK: Yes.

24 THE COURT: So, you will -- you will not -- do not
25 need to come back during the 4:30, disabled, (YES).

1 And the juror in the back, what is your disability,
2 sir?

3 THE JUROR: I've had a kidney transplant. I've had a
4 kidney transplant.

5 THE CLERK: He's had a kidney transplant.

6 THE COURT: And you are disabled and can't serve on
7 jury duty?

8 THE JUROR: I, I need to do blood work --

9 THE CLERK: If you could take your mask --

10 THE JUROR: I'm missing --

11 THE CLERK: -- down, sir.

12 THE JUROR: -- blood work to be here.

13 MR. WATERS: He said he's missing blood work to be
14 here.

15 THE COURT: We're going to excuse you as well. The
16 two of you will not have to come back.

17 Have you got his juror number?

18 Any other, any other disabled jurors?

19 Yes, sir?

20 THE JUROR: I'm currently on disability. This is a
21 notice for my back, but the more significant issue is that
22 I have narcolepsy.

23 THE COURT: All right. Your juror number is?

24 THE JUROR: 383.

25 THE COURT: All right, Number 383, you will not have

1 to come back.

2 Yes, sir?

3 THE JUROR: On disability, but I'm also the primary
4 caregiver for my eighty-five year-old mother.

5 THE CLERK: And what's your number, sir?

6 THE COURT: Your juror number?

7 THE JUROR: 284.

8 THE COURT: Okay, number 284 will not have to come
9 back.

10 We'll break for lunch. All other jurors need to be
11 back at 2:30. Please do not discuss the case at all with
12 any -- or engage with anyone else connected with the case.

13 (The jury panel exited the courtroom.)

14 (A break was taken.)

15 THE COURT: Sir, come on now.

16 MR. WATERS: Now what's the number, Your Honor?

17 THE JUROR: 363.

18 THE CLERK: 363.

19 MR. WATERS: Yes, sir, we have him marked as a DQ on
20 the rap.

21 THE JUROR: I'm a primary caregiver for my elderly
22 parents, and I'm also a convicted felon. Do I need to come
23 back?

24 THE COURT: No.

25 THE JUROR: Thank you.

1 (A lunch break was taken.)

2 THE COURT: Ladies and gentlemen, when you're given a
3 time to return, it's not an estimated time. You need to
4 adhere to the Court's instructions. You were to return at
5 2:30. We've got three jurors late.

6 (Whereupon, jury venire was conducted.)

7 JURY VOIR DIRE - PANEL TWO

8 THE COURT: Okay, ladies and gentlemen, I have some
9 more specific questions that I'll ask you pertaining
10 specifically to this case.

11 The defendant, Alex Murdaugh, also Richard Alexander,
12 also known as Richard Alexander Murdaugh, has been charged
13 with murdering his wife, Maggie Murdaugh, and son, Paul
14 Murdaugh, on June 7, 2021, outside their home located at
15 4147 Moselle Road, Islandton, South Carolina. If you have
16 heard about this case, read about this case, or know
17 anything about this case, please stand. If you have heard
18 anything about this case, know anything about this case,
19 please stand.

20 All right, and just give me your juror numbers and
21 then you may be seated. Starting here.

22 THE JUROR: 349.

23 THE COURT: When you give it, you may be seated.

24 Yes?

25 THE JUROR: 303.

1	THE JUROR:	294.
2	THE JUROR:	394.
3	THE JUROR:	240.
4	THE JUROR:	228.
5	THE JUROR:	306.
6	THE JUROR:	439.
7	THE JUROR:	441.
8	THE JUROR:	403.
9	THE JUROR:	337.
10	THE JUROR:	251.
11	THE JUROR:	254.
12	THE JUROR:	319.
13	THE JUROR:	257.
14	THE JUROR:	358.
15	THE JUROR:	351.
16	THE JUROR:	282.
17	THE JUROR:	343.
18	THE JUROR:	338.
19	THE JUROR:	390.
20	THE JUROR:	226.
21	THE JUROR:	266.
22	THE JUROR:	384.
23	THE JUROR:	446.
24	THE JUROR:	398.
25	THE JUROR:	278.

1 THE JUROR: 346.

2 THE JUROR: 370.

3 THE JUROR: 367.

4 THE JUROR: 249.

5 THE JUROR: 255.

6 THE JUROR: 397.

7 THE JUROR: 432.

8 THE JUROR: 396.

9 THE COURT: If you did not stand in response to the
10 last question, please stand. Meaning if you have, have not
11 heard anything about this case, read anything about this
12 case, or know anything about this case, if so please stand
13 and tell us your juror numbers.

14 THE JUROR: 244.

15 THE JUROR: 374.

16 THE JUROR: 258.

17 THE JUROR: 400.

18 THE JUROR: 336.

19 THE JUROR: 326.

20 THE COURT: All right, thank you.

21 For those of you who have indicated that you've heard
22 something, read something, or know something about this
23 case, I need to know the source of your information. And I
24 don't need any details from you concerning anything other
25 than to tell me whether you heard or know something about

1 the case based on news articles, television, radio,
2 podcast, personal conversation, or the like. So, tell
3 me -- if you'll stand, give me your juror number, and tell
4 me your source of information about this case.

5 Yes, ma'am?

6 THE JUROR: 349. I watched a documentary on *Dateline*,
7 and I also saw something on Fox Network. And just
8 regular -- the evening news basically.

9 THE COURT: All right, thank you.

10 THE JUROR: 303. Just local newspaper and evening
11 news.

12 THE COURT: Thank you.

13 THE JUROR: It was just a -- not really conversation,
14 but my mom mentioned the name. I heard that name before.

15 THE COURT: And your juror number is?

16 THE CLERK: 294.

17 THE COURT: It's on your tag. 294.

18 THE JUROR: 394. Just on the news.

19 THE COURT: Thank you.

20 THE JUROR: 258. Someone called me on the phone and
21 asked me if I know anything and I said I did not.

22 THE COURT: You told them you did not know anything
23 about it?

24 THE JUROR: Did not know.

25 THE COURT: And you didn't stand before, so you still

1 don't know anything about him?

2 THE JUROR: Sir?

3 THE COURT: I said you did not stand before --

4 THE JUROR: Oh, I'm sorry.

5 THE COURT: -- so you have not -- you said you didn't
6 know or hadn't heard anything about it. Now you're
7 standing and saying someone called you about it. Is that
8 right?

9 THE JUROR: They called and asked me if I knew
10 anything and I said no.

11 THE COURT: I understand. Thank you.

12 Over on this side.

13 THE JUROR: 240. Just local news headlines, et
14 cetera.

15 THE COURT: All right.

16 THE JUROR: 228. News and family members.

17 THE JUROR: 306. News.

18 THE JUROR: 439. My husband had the documentary on TV
19 while I was fixing dinner, so I know that --

20 THE COURT: I don't need to know what you know, just
21 tell me what you know, the source of information.

22 THE JUROR: Documentary and gossip at work, and --

23 THE COURT: All right, thank you.

24 THE JUROR: 249. Personal conversation and podcast.

25 THE COURT: All right, thank you.

1 Anyone else on this side?

2 THE JUROR: 441. The news.

3 THE JUROR: 255.

4 THE COURT: Okay. Just a moment. Let's start on the
5 front and then go from one row heading back.

6 THE JUROR: 403. Just news articles and the evening
7 news.

8 THE JUROR: 337. News.

9 THE JUROR: 251. Just news and computer.

10 THE JUROR: 254. Documentary.

11 THE JUROR: 319. Friends and family.

12 THE JUROR: 257. Local news and personal
13 conversation.

14 THE JUROR: 358, news.

15 THE JUROR: 351. TV news.

16 THE JUROR: 282. Local TV and news.

17 THE JUROR: 343. The local news and the podcast.

18 THE JUROR: 338. Local news, national news, and
19 personal conversations.

20 THE JUROR: 390. News, Facebook articles, and
21 podcast.

22 THE JUROR: 266. News.

23 THE JUROR: 384. Local news and various documentaries
24 on YouTube.

25 THE JUROR: 446. Facebook, podcast, documentaries,

1 and word of mouth.

2 THE JUROR: 398. Documentaries and local news.

3 THE JUROR: 278. News, local paper.

4 THE JUROR: 346. News.

5 THE JUROR: 370. The news.

6 THE JUROR: 367. News.

7 THE JUROR: 255. News.

8 THE JUROR: 397. The documentary, news, word of
9 mouth.

10 THE JUROR: 432. News, word of mouth.

11 THE JUROR: 396. Facebook articles and personal
12 conversation.

13 THE COURT: Considering everything that you have read,
14 heard, and conversations with others, if you have formed an
15 opinion as to the guilt or innocence of Mr. Murdaugh
16 regarding the murder charges of which he's on trial, if you
17 have formed an opinion concerning his guilt or innocence,
18 if you have, please stand and tell me your juror numbers.

19 Yes?

20 THE JUROR: 439.

21 THE JUROR: 403.

22 THE JUROR: 337.

23 THE JUROR: 251.

24 THE JUROR: 254.

25 THE JUROR: 343.

1 THE JUROR: 266.

2 THE JUROR: 370.

3 THE JUROR: 367.

4 THE JUROR: 249.

5 THE JUROR: 255.

6 THE JUROR: 397.

7 THE JUROR: 396.

8 THE COURT: Ladies and gentlemen, jurors can decide
9 cases based on evidence presented in court, applying the
10 law as given it -- to you by the judge, by me. Having
11 formed an opinion as to the guilt or innocence of the
12 defendant, if you will be unable, not capable of setting
13 aside that -- those opinions and deciding the case solely
14 based on the evidence presented in the court and the law as
15 I give it to you, if so, please stand. If you -- your
16 opinion is so fixed that you've formed that you'll be
17 unable to decide the case solely based on the evidence
18 presented, that you'll decide it based on the opinion you
19 already have, if that's your case, please stand.

20 All right, and tell us your juror numbers if you're
21 standing.

22 THE JUROR: 439.

23 THE JUROR: 249.

24 THE COURT: And if you all will remain standing. 439.

25 THE JUROR: 249.

1 THE COURT: 249. We start at the front and go back.

2 THE JUROR: 403.

3 THE COURT: 403.

4 THE JUROR: 251.

5 THE JUROR: 266.

6 THE JUROR: 397.

7 THE JUROR: 255.

8 THE JUROR: 249.

9 THE COURT: Are there any objections to those jurors
10 being excused?

11 MR. WATERS: May we approach, Your Honor?

12 THE COURT: Yes.

13 (A bench conference was held.)

14 THE COURT: All right. Thank you all, ladies and
15 gentlemen. We will have you remain with us, and we will
16 speak further with you in a bit.

17 If any member of the jury panel is personally
18 acquainted with the defendant, Alex Murdaugh, you've been
19 represented by him in the past, you're a personal
20 acquaintance or friend of his, if so, please stand.

21 And tell me your juror number, please.

22 THE JUROR: 446.

23 THE COURT: And, ma'am, would that fact affect your
24 ability to be fair and impartial?

25 THE JUROR: I think so.

1 THE COURT: Okay. Any objection to this juror being
2 excused?

3 MR. WATERS: None from the State, Your Honor.

4 MR. HARPOOTLIAN: Your Honor, I think you should treat
5 this juror the same way as the group we just talked about.

6 THE COURT: All right. We'll speak with you further,
7 ma'am.

8 MR. HARPOOTLIAN: Thank you.

9 THE COURT: Backing up. Ladies and gentlemen, both
10 the State and the defense are represented by counsel and we
11 would have them introduce themselves.

12 MR. WATERS: Good afternoon, everybody. My name is
13 Creighton Waters. I'm from the Attorney General's Office,
14 and I'll be the lead prosecutor in the case against Alex
15 Murdaugh over there. With me is a team of prosecutors.
16 Right here I have David Fernandez. Next to him is Savannah
17 Goude. Next to her is Johnny James. Sitting over there in
18 the bench we have John Conrad. We have my boss, Don
19 Zelenka. We have John Meadors back in the back row. But
20 that will be the prosecutorial team that you may hear from
21 if you get selected to serve in this case.

22 Thank you, Your Honor.

23 MR. HARPOOTLIAN: Please the Court, Your Honor? My
24 name is Dick Harpootlian; I'm a lawyer in Columbia. I will
25 be defending Alex Murdaugh, along with Jim Griffin, also an

1 attorney in Columbia. With us also is Phillip Barber in
2 Columbia, he works in my firm, and Margaret Fox, who
3 practices with Jim Griffin. Thank you for being here
4 today.

5 THE COURT: If any juror is related by blood or
6 marriage, or socially acquainted with, or have any type
7 relationship with any of the lawyers, or have been
8 represented by any of the lawyers currently or in the past,
9 if so, please stand. If any member of the jury panel or
10 your -- any member of your immediate family or significant
11 other is employed with, or has ever been employed with a
12 Colleton County Sheriff's Department, the State Law
13 Enforcement Division, SLED, solicitor's office for the
14 Fourteenth Circuit, or the Attorney General's Office of the
15 State of South Carolina, if so please stand.

16 Yes, sir, tell me your juror number.

17 THE JUROR: 280.

18 THE COURT: And tell me why you're standing.

19 THE JUROR: I have a family member with SLED and
20 Colleton County.

21 THE COURT: All right. Would that fact affect your
22 ability to be fair and impartial if your -- the agency
23 which your family member is employed with should testify?

24 THE JUROR: Yeah.

25 THE COURT: You said it --

1 THE JUROR: Yes.

2 THE COURT: It would affect your ability?

3 THE JUROR: Yes.

4 THE COURT: All right. Do you believe that you could
5 be a fair and impartial juror?

6 THE JUROR: Yeah.

7 THE COURT: All right. Thank you. If you'll stay
8 with us.

9 THE JUROR: 390. My husband was employed with
10 Colleton County Sheriff's Office in 2010.

11 THE COURT: Thank you.

12 THE JUROR: Number 338. I have a family member who is
13 currently employed with the Colleton County Sheriff's
14 Department and is going to be testifying in the trial.

15 THE COURT: And that person's name is?

16 THE JUROR: Sergeant Daniel Greene.

17 MR. WATERS: Your Honor, this -- yeah, this particular
18 juror is related to a witness in the trial, and because of
19 that connection, the State would recognize the fact that
20 she needs to be excused in this case.

21 Thank you for coming.

22 THE JUROR: What did he say? And I didn't hear what
23 you said.

24 THE COURT: Don't worry, ma'am.

25 Yes, what says the defense?

1 MR. GRIFFIN: We agree, Your Honor. She was on our
2 agreed upon list previously.

3 THE COURT: All right. Ma'am, you are excused. Thank
4 you.

5 THE JUROR: 446. My mom worked for Mr. Randolph that
6 worked for the Fourteenth Circuit Solicitor's Office.

7 THE COURT: Your mother worked where?

8 THE JUROR: Fourteenth Circuit Solicitor's Office for
9 Mr. Randolph.

10 THE COURT: Is currently or formerly?

11 THE JUROR: She did.

12 THE COURT: When was that?

13 THE JUROR: About ten years maybe.

14 THE COURT: And you believe that would affect your
15 ability to be fair and impartial?

16 THE JUROR: Yes.

17 THE COURT: All right, and juror number one more time,
18 ma'am?

19 THE JUROR: 446.

20 THE COURT: All right. 446 is excused.

21 Yes, ma'am?

22 THE JUROR: Juror Number 398. My mother worked with
23 the Fourteenth Judicial Solicitor's Office, and she is the
24 Clerk of Court here.

25 THE COURT: She's the what?

1 THE JUROR: Clerk of Court.

2 THE COURT: The Clerk of Court.

3 THE CLERK: She would make a good juror, Judge. We
4 don't talk a whole lot.

5 THE COURT: Do you believe that would affect your
6 ability to be a fair an impartial juror?

7 THE CLERK: No, sir.

8 THE COURT: All right. Then stay with us at this
9 time.

10 If you or any member of your immediate family or
11 significant other is employed with, has ever been
12 investigated by, or arrested and charged by, or prosecuted
13 by the Colleton County Sheriff's Department, SLED,
14 solicitor's office in the Fourteenth Circuit, or the
15 Attorney General's Office, if so, please stand. If any of
16 you or any immediate family members of yours or significant
17 others worked for, investigated by, arrested by, charged
18 by, or prosecuted by the Colleton County Sheriff's
19 Department, SLED, solicitor's office, or Attorney General's
20 Office, if so, please stand.

21 All right, tell me your juror number and the basis for
22 your standing. Yes, sir?

23 THE JUROR: 282. My daughter, who was involved with
24 drugs, and child endangerment. As part of that, DSS got
25 involved.

1 THE COURT: Do you believe that would affect your
2 ability to be fair and impartial in this case?

3 THE JUROR: No, sir.

4 THE COURT: All right, thank you.

5 Yes, ma'am?

6 THE JUROR: My son was charged in Colleton County as a
7 juvenile.

8 THE COURT: Do you believe that would affect your
9 ability to be fair and impartial in this case?

10 THE JUROR: No, sir.

11 THE COURT: And what is your juror number?

12 THE JUROR: 390.

13 THE COURT: Thank you.

14 Yes, sir?

15 THE JUROR: I was investigated for armed robbery.
16 Juror 432.

17 THE COURT: Say that juror number loud and clear.

18 THE JUROR: Juror 432.

19 THE COURT: 432. Do you believe that would affect
20 your ability to be a fair and impartial juror?

21 THE JUROR: Yeah, pretty much.

22 THE COURT: Sir?

23 THE JUROR: Yeah.

24 THE COURT: Based on your experience, are you telling
25 me you cannot be a fair and impartial juror?

1 THE JUROR: Honestly, no.

2 THE COURT: You're kind of mumbling. You have to talk
3 loud for me.

4 THE JUROR: Honestly, no.

5 THE COURT: You cannot be fair and impartial. Is that
6 right?

7 THE JUROR: Yes.

8 THE COURT: All right. So, Juror Number 432 is
9 excused. Thank you.

10 Yes, sir?

11 THE JUROR: Number 403. When I was in law
12 enforcement, another officer did something he shouldn't
13 have on a case that we were working, and I ended -- I was
14 questioned by SLED. The case was not directed towards me.

15 THE COURT: Do you believe that would affect your
16 ability to be fair and impartial?

17 THE JUROR: No, not that.

18 THE COURT: Thank you for telling us.

19 If any of you or any member of your immediate family
20 or significant others have been employed by law firm of
21 Peters, Murdaugh, Parker, Eltzroth, Detrick, or the Parker
22 Law Group, if so, please stand.

23 (No one stood.)

24 THE COURT: If any juror has been represented by
25 Peters, Murdaugh, Parker, Eltzroth, Detrick, or Parker Law

1 Group, or have been sued or is being sued, or has ever been
2 sued by someone working for those law groups, if so, please
3 stand. If you have ever attended any function, events,
4 parties, giveaways, raffles, gatherings, or any related
5 activities sponsored by Alex Murdaugh, or the law firm of
6 Peters, Murdaugh, Parker, Eltzroth, and Detrick, or if you
7 have any personal or professional relationship with
8 Mr. Murdaugh, or his family, or the firms, if so, please
9 stand.

10 (No one stood.)

11 THE COURT: If you have any religious belief or
12 otherwise that would prevent you from determining the guilt
13 or the innocence of the defendant based on the evidence
14 presented in court, if so, please stand.

15 All right, yes, sir. Tell me the basis for -- your
16 juror number, and tell me why you're standing.

17 THE JUROR: 249. And it's a personal belief that I
18 don't feel like I have the right to judge a stranger --

19 THE COURT: All right, and your juror number?

20 THE JUROR: 249.

21 THE COURT: 249. All right. We'll speak further with
22 you in a few minutes.

23 Based on the questions asked thus far, if you know of
24 any reason why you cannot serve as a fair and impartial
25 juror in this case and give both the State and the

1 defendant a fair trial, if so, please stand. All right.

2 No one is standing.

3 Ladies and gentlemen, there are a long list of people
4 who may testify as witnesses in this case, so I need you to
5 listen closely and tell me if you are familiar with any of
6 these witnesses.

7 MR. HARPOOTLIAN: Your Honor, may Mr. Waters and I
8 approach?

9 (A bench conference was held.)

10 THE COURT: Ladies and gentlemen, I will need to know
11 if you know any of these prospective witnesses, have had
12 any association with them, and the like. Daniel Greene
13 from the Colleton County Sheriff's Office. Chad McDowell,
14 sheriff's office. William Cody Pruitt, sheriff's office.
15 Tinish Bryson-Smith, Hampton County Dispatch. Angela
16 Stallings, Colleton County dispatcher. Dathan Varnadoe,
17 sheriff's office. Charlie Jones. Barry McRoy, the county
18 fire and rescue. From SLED, Melinda Worley. Thomas
19 Darnell. Rachel Nguyen. Paul Griffin. Madison Willis.
20 Julia Begeman. Olivia Cartwright. Rachel Noelle Johnson.
21 Christine Dadabo. Norris Laffitte. Laura Rutland from the
22 sheriff's office. Jeff Croft from SLED. Katie McCallister
23 from SLED. Claude C.B. Rowe. Roger Dale Davis. Mushelle
24 Shelley Smith. From SLED, Christian Moore. Jennifer
25 Nates. Then Belinda Rast. MaeLynn Haynes. Barbara Mixon.

1 From SLED, Sara Zapata. Kukila KiKi Wallace from SLED.
2 Megan Fletcher from SLED. Britt Dove from SLED. Jonathan
3 VanHouten from the US Secret Service. Paul McManigal from
4 the Charleston County Sheriff's Office. Rebecca Gregg from
5 SLED. Bobby Bancroft from SLED. Dylan Hightower from the
6 Fourteenth Circuit Solicitor's Office. Dwight Falkofske
7 from the FBI. Brian Hudak from SLED. Tom Bevel. John
8 Bedingfield. Nathan Tuten. Nolen Tuten. Willis Wills
9 Chapman. Marian Proctor. Todd Schenk SLED. Chris Wilson,
10 attorney. Attorney Lee Cope. Attorney Mark Tinsley.
11 Carson Burney from the Attorney General's Office. Attorney
12 Michael Gunn. Attorney Johnny Parker.

13 I said attorney Michael Gunn. Is he a lawyer?

14 MR. WATERS: No, sir, Your Honor.

15 THE COURT: Michael Gunn is not a lawyer. Thank you.

16 Jan Malinowski. Carey Sauls. Eric Harriott. Ryan
17 Kelly with SLED. Andrew Farmer and Charles Long, formerly
18 of Hampton County EMS. Curtis Eddie Smith. Attorney Mark
19 Ball. Matt Wright with SLED. Attorney Ronnie Crosby.
20 Attorney Danny Henderson. Representative -- custodial
21 records representative at Savannah Hospital. Jessica
22 Dunivan, a registered nurse at Savannah Hospital. Tommy
23 Robertson from SLED. Kenneth Martin, BGA.

24 What's that?

25 MR. WATERS: Bevel, Gardner, and Associates, Your

1 Honor.

2 THE COURT: Sydney Freeman. Hunter Wilson. Bailey
3 Wilson. Anthony Russell, sheriff's office. Joshua Duerkp,
4 SLED. Lynn Black from SLED. Blanca Turrubiate-Simpson.
5 Kenny Hughes. Rogan Gibson. Will Loving. Bart Proctor.
6 Randy Murdaugh. Jeannie Seckinger. Annette Griswold.
7 Peter Rudofski of SLED. Alfred Johnson from JLA
8 Investigations. David Grubbs from the Attorney General's
9 Office. Demi Garvin from the Forensic Science Network.
10 Kenny Kinsey Orangeburg County Sheriff's Department. From
11 SLED, Dave Owens. Charles Ghent. Ryan Neill. Oswaldo
12 Toledo from the Attorney General's Office. Jason Cook --
13 Jason Chapman, sheriff's office. Greg Cook from SLED.
14 Courtney Adams. Jomar Albayalde. Mitchell Altman. Alice
15 Hazel, CPA. Mark Altman, IT, PSB. Steven Bechtold, SLED.
16 Eric Bland, attorney. Matt Brown, SLED. Frank Chapman.
17 Charles Chapman. Dalila Cirencione from SLED. Timothy
18 Collier, Sr., SLED. John Conley, Highway Patrol. Tyrone
19 Corbin, Varnville Fire Department. Keith Crosby from the
20 sheriff's office. Gary Davis. MaryAnn Dempsey. Richard
21 Dixon. Morgan Doughty. With the sheriff's office, Richard
22 Haley. Nancy Drawdy. David Drawdy, deputy corner. Donna
23 Eason. Ashlynn Gantt. Haley Godley from SLED, and Jamie
24 Hall from SLED. Virginia Hadwin. Scott Harriott. Richard
25 Harvey from the sheriff's office. Laura Hash and Bailey

1 Haynes with SLED. Michael Hazel. William Headden.
2 Adrienne Hefney from SLED. Gray Lafitte Henderson.
3 Kendrell Henderson from the Hampton County Sheriff's
4 Office. Marcus Heyward from SLED. Guerry Buddy Hill,
5 sheriff's office. Tommy Hines, SLED. Jonathan Holdbrook,
6 SLED. Chandler Horney, SLED. Jennifer Huntun, SLED.
7 Steven Hudson. Graham Owens -- Graham Holmes, sorry.
8 William Hutto. Jessea James, Highway Patrol. Kristi
9 Jarrell. Hannah Jefferson from SLED. Blake Jefferson from
10 SLED. Bryan Jones from SLED. Blake Johnson from SLED.
11 Pat Keegan from SLED. Tommy Kinard. Tonya King, Wayne
12 Kirby, III, from SLED. Richard Kneece, Jr. Mark Labreche
13 from FBI. Henry Laffitte. Rebecca Laffitte. Attorney
14 Paul LaRosa from SLED. Stacey Loadholt from the sheriff's
15 office. David Long from the sheriff's office. Elizabeth
16 Laffitte Malinowski. Vera Martinez, SLED. Linda
17 McAlhaney. William McElveen. Leigh McGuinness -- Leigh
18 Ann McGuinness. Jaclynn McKay, SLED. Haley Moody. John
19 Nelson from SLED. Haley Nelson from SLED. John Peters.
20 William Polk from the sheriff's office. Captain Samuel
21 Reighley from SLED. Kashyap Patel. Emily Reinhart, SLED.
22 Dr. Ellen Riemer, MUSC, pathologist. George Rioux,
23 sheriff's office. Major Tommy Robertson, SLED. Diane
24 Rowe. Walter Salisbury. Anthony Sampson from SLED.
25 Christopher Sarine from the fire and rescue. Michael

1 Satterfield. Jerry Smith from SLED. Caleigh Smoak. From
2 SLED also, James Tallon, III. Dana Temple. Phillip
3 Turner. Russell Vernali. Dr. Luis Vega. Courtney Thomas.
4 Caleigh Smoak. Tammy Weber. Glen Welcker. Chad
5 Westendorf. Samuel White from the Hampton County Sheriff's
6 Office. Lawrence Wiggins, formerly with SLED. Matt Wild
7 from the FBI. David Williams from SLED. Matthew Williams
8 from fire and rescue. Madison Willis from SLED. From the
9 Savannah Memorial Hospital, various employees, including
10 Dr. William Bromberg. Caitlyn Bowman. Dr. Karie Jeter.
11 Alice Dionne. Dr. Brandon Runyan. Dr. Brenna Casey. Dr.
12 James Mitchell. Dr. Brittany Matthews. From SLED, Lesa
13 Chapman. Bailey Morgan. Margaret Pauli. Haley Fiorucci.
14 Jennifer Hunton. David Weaver. Al Jarvis. Lonnie Nelson
15 (sic) from the sheriff's office. Christopher Anderson.
16 Arthur Badger. Johnny Bush. James Randall Drawdy. Angel
17 Gary. Jordan Jinks. Damien Risher. Eleese Taylor
18 Mallory. Deon Martin. Thomas Moore. Pamela Pinckney.
19 Natarsha Thomas. Buster Murdaugh. John Marvin Murdaugh.
20 Liz Murdaugh. Kennedy Branstetter. Terry Branstetter.
21 Marian Branstetter. Russell Laffitte. Jay McGill. Joseph
22 Dingle. Scott O'Quinn. Charles Laffitte, II, and III.
23 Harold Trey O. Mathisen, III. Meagan Kimbrell. Terry
24 Haynes. Kyna Treherme. Attorney Amy Bower. Stephanie
25 Stanley of SLED. Dr. Robin Cotton. Dr. Jonathan

1 Eisenstat, pathologist. Tim Palmbach, crime scene. Mike
2 Sutton, crime scene. Kenneth Zerci, crime scene. Jim
3 Persinger, computer forensics. Chip Johnson, computer
4 forensics. William Tobin, GSR firearms and ballistics.
5 Micah Sturgis, Cellebrite digital evidence. Dr. Amy
6 Brodner. Lynn Murdaugh Goettee. Dr. Donna
7 Schwartz-Maddox. Elizabeth (sic) Robinson. Kyla Robinson.

8 And you gave me another name earlier?

9 MR. GRIFFIN: Yes, Your Honor. Phillip Strother.

10 THE COURT: Phillip Strother.

11 MR. GRIFFIN: Strother, yes.

12 THE COURT: Those are the lists of possible witnesses
13 in this case. If any juror knows any of them, or you have
14 any relationship with any of them, or personal or business
15 dealing with any of them, please stand.

16 Yes, sir. Tell me, your juror number and why you're
17 standing.

18 THE JUROR: Juror 367. I used to work with Sergeant
19 Brown with the Colleton County Sheriff's Department at the
20 Department of Correction for six years.

21 THE COURT: All right, and would that fact prevent you
22 from being a fair and impartial juror should he testify?

23 THE JUROR: No, sir.

24 THE COURT: Thank you.

25 MR. GRIFFIN: What was his number, please? I'm sorry.

1 THE JUROR: 319. Rogan Gibson, he's my mom's first
2 cousin.

3 THE COURT: And so would that affect your right to be
4 a -- your ability to be a fair and impartial juror should
5 your first cousin testify?

6 THE JUROR: Yes, sir, I think it would.

7 THE COURT: Do you believe you would be adversely
8 affected, you would be biased one way or the other if your
9 first cousin testified?

10 THE JUROR: I think I would go with whatever he says.

11 THE COURT: Pardon?

12 THE JUROR: I would go with whatever he says.

13 THE COURT: Okay. All right.

14 Any objection to excusing number 319?

15 MR. WATERS: None from the State, Your Honor.

16 MR. GRIFFIN: Your Honor, can we have further inquiry
17 later?

18 THE COURT: Yes, sir.

19 We'll speak with you further in a little bit.

20 Yes, sir?

21 THE JUROR: 257. Barry McRoy. I was a volunteer with
22 the fire department, so I know him. Terry Polk. Jason
23 Chapman. Buddy Hill. I just know them from growing up in
24 Walterboro.

25 THE COURT: Should they be witnesses, would that

1 affect your ability to be fair and impartial?

2 THE JUROR: No, sir.

3 THE COURT: All right, thank you.

4 Yes, sir?

5 THE JUROR: 282. Buddy Hill. Jerry Polk.

6 THE COURT: And should he testify, would that affect
7 your ability to be fair and impartial?

8 THE JUROR: No, sir.

9 THE COURT: All right. Thank you.

10 THE JUROR: 384. There were several people on the
11 list that I knew. I also knew Barry McRoy because we
12 worked together on some projects at my school. I know
13 Donna Eason as a friend on Facebook, but we've not
14 discussed any aspects of this case. Jason Chapman, I know
15 him; he was a high school student at Colleton County High
16 School, Walterboro High School. Keith Crosby, I worked
17 with him when he was a SRO at the high school and I was
18 principal. Mr. Curtis Eddie Smith, back in the 1990s I was
19 part of an athletic organization called the Walterboro Dark
20 League, and he was one of my acquaintances on that.

21 THE COURT: Okay, and those acquaintances that you
22 have mentioned, would that affect your ability to be fair
23 and impartial?

24 THE JUROR: No, sir, it will not.

25 THE COURT: All right, thank you.

1 Yes?

2 THE JUROR: 255. I have a working relationship with
3 Michael Satterfield.

4 THE COURT: And would that affect your ability to be a
5 fair and impartial juror?

6 THE JUROR: No, sir.

7 THE COURT: Thank you.

8 If you know of any other reason why you should not be
9 selected to be on this jury, please stand at this time if
10 you know of any reason why you should not be selected to be
11 on the jury.

12 (No one stood.)

13 THE COURT: Any additional questions proposed by the
14 State or the defense?

15 MR. WATERS: None from the State, Your Honor.

16 MR. HARPOOTLIAN: None for Mr. Murdaugh, Your Honor.

17 THE COURT: All right, ladies and gentlemen, we're
18 going to -- there are a number of jurors we need to stand
19 and we'll speak with you a little bit, in a little bit
20 later.

21 Juror Number 258 -- if you'll stand as I call your
22 name. 258. 439. 403. 251. 266. 249. 255. 397. I
23 called -- is that 270? I think I called -- 279 and 249.
24 And 319. When I excuse the other jurors for the day, I
25 will need to have you all remain to ask you some questions.

1 Any other jurors to be included on the list?

2 MR. GRIFFIN: Yes, Your Honor. Based on some of the
3 responses to the questionnaire, I have a few more that we
4 would like to be talked with.

5 THE COURT: Tell me who they are and I'll --

6 MR. GRIFFIN: Number 336.

7 THE COURT: Number 336, stand, please.

8 MR. GRIFFIN: Number 390.

9 THE COURT: 390.

10 MR. GRIFFIN: Number 430.

11 THE COURT: 430.

12 MR. GRIFFIN: And 439.

13 THE COURT: And 439.

14 And additional ones from the State?

15 MR. WATERS: 439 we had. I think 446, as they just
16 said. I think the defense have both of mine as well.

17 THE COURT: All right, thank you. All right.

18 So, ladies and gentlemen, those of -- you may be
19 seated. I just want you to know when the others leave,
20 you'll need to stay for a little bit, so you may be seated.

21 So, ladies and gentlemen, except for those jurors we
22 just identified, you are qualified as jurors. We have four
23 separate panels of jurors, and we have another panel, I
24 think, that will be here around 3:00 that we will, again,
25 speak with in a little bit. We're going to excuse you all

1 for the balance of the day. We need you to call after
2 6:00 p.m. to the number that was provided to you by the
3 clerk. Is there anyone who does not have that number to
4 call?

5 We have some jurors who don't have the number. How is
6 that?

7 We need you to call back after 6:00 p.m. for a message
8 telling you what time to return. I anticipate it will
9 either be late tomorrow afternoon or early Wednesday, but
10 we will not know for sure because we have to deal with some
11 of the other jury -- jury panels, so we need you to call
12 back not before 6:00, but after 6:00 p.m.

13 You're still on jury duty. Please do not discuss this
14 case at all with anyone: fellow jurors, family members, or
15 anyone. Please do not engage in any form of social media,
16 research or communications. And do not look at anything
17 through the media. Remember, you're under oath, and we
18 need you to maintain that oath, the sanctity of the oath
19 that you have taken, and we look to see you all either late
20 tomorrow or on Wednesday. Thank you very much. Those
21 jurors are excused.

22 The last juror -- hello -- Madame Bailiff, I said just
23 a moment. Sir, were you told to stand? What's your juror
24 number?

25 THE JUROR: 384. I was not told to stand back up.

1 THE COURT: 384?

2 THE JUROR: 384.

3 THE JUROR: 226.

4 THE COURT: Okay. You were supposed to stay.

5 THE JUROR: Okay.

6 (Part of the jury panel exited the courtroom.)

7 THE COURT: All right, ladies and gentlemen, those of
8 you who were asked to stay, we're going to ask you all some
9 additional questions, so we'll call you back one at a time
10 and speak with you for a short period of time. You'll be
11 given further instructions at that time. So, we'll be in
12 recess in court while we speak with those jurors, the first
13 juror being 258.

14 (At this time, individual voir dire was conducted with
15 the following jurors outside the courtroom.)

16 THE COURT: Bring number 258 in here.

17 (Juror Number 258 entered the room.)

18 THE COURT: Right in the center. All right. How are
19 you doing?

20 THE JUROR: Okay.

21 THE COURT: All right. You said you don't have a
22 ride?

23 THE JUROR: No, sir.

24 THE COURT: What part of town do you live in?

25 THE JUROR: I live on the other side about maybe 20 or

1 30 minutes from here on Madison.

2 THE COURT: 20 or 30 minutes?

3 THE JUROR: Yes, sir, Madison Street.

4 THE COURT: Okay.

5 THE JUROR: And a family member dropped me off. She
6 lives in Berkeley.

7 THE COURT: Okay.

8 THE JUROR: Yes, sir.

9 THE COURT: Okay, and did you say something else about
10 someone called you and asked you about the case?

11 THE JUROR: Yes, sir. An individual over in Columbia,
12 she's my sister. She called and asked me if I knew about
13 the case.

14 THE COURT: And you told her --

15 THE JUROR: I told her no, sir.

16 THE COURT: What did you tell her?

17 THE JUROR: I did not know.

18 THE COURT: And what did she ask you?

19 THE JUROR: If I heard anything about the Murdaugh
20 guy, you know, about the murder, you know, in Walterboro,
21 and I told her, no, I did not.

22 THE COURT: Okay. So, she lives 20 or 30 minutes away
23 in a town called --

24 THE JUROR: My sister lives -- she live in Columbia.

25 THE COURT: No, where you live.

1 THE JUROR: Me? Yes, sir, I live on Madison Street.

2 THE COURT: 20 or 30 miles away?

3 THE JUROR: No, about 20 or 30 minutes from here.

4 THE COURT: Is it in the town limits of Walterboro?

5 THE JUROR: It should be. It's on the other side

6 by --

7 THE COURT: Other side of the county or in the city?

8 THE JUROR: I'm in the county.

9 THE COURT: You're in the county.

10 THE JUROR: Yes, sir.

11 THE COURT: All right, and so, you know, when jurors
12 don't have rides, either we have to send a sheriff to pick
13 them up and give them transportation, or if the
14 circumstance does not fit that scenario, we excuse them.

15 So, questions by the State or the defense?

16 MR. WATERS: No further questions, Your Honor.

17 MR. HARPOOTLIAN: If a sheriff's deputy were to pick
18 you up every day, you would be more than willing to serve?

19 THE JUROR: Yes, sir.

20 MR. HARPOOTLIAN: Your Honor, I mean, I just think
21 that she's willing to serve, and if she gets picked -- of
22 course that's a big if -- we ought to accommodate her wish
23 to be on the jury.

24 MR. WATERS: The State is happy to have her as well.

25 THE COURT: All right, thank you. So, you'll need to

1 call back after 6:00 p.m. and find out when to come back.

2 Your phone is working?

3 THE JUROR: Yes, sir.

4 THE COURT: Okay. Call back and find out when you
5 need to come back.

6 THE JUROR: Okay. Thank you.

7 (End of voir dire with this juror.)

8 THE COURT: 439 is next. This will be 439 coming in.

9 (Juror Number 439 entered the room.)

10 THE COURT: Hi there. How are you doing?

11 THE JUROR: Fine.

12 THE COURT: And I think you might have said that you
13 had formed an opinion --

14 THE JUROR: Yes, sir.

15 THE COURT: -- already? And that opinion you believe
16 is that -- would you be able to set aside that opinion and
17 decide the case based on the evidence presented in the
18 courtroom?

19 THE JUROR: Unfortunately, sir, I do not believe that
20 I could be swayed differently. I feel that strongly about
21 it.

22 THE COURT: All right.

23 Questions by the State or the defense?

24 MR. WATERS: Just real quick. Obviously this is the
25 kind of case where there's probably been a lot of

1 publicity --

2 THE JUROR: Yes, sir.

3 MR. WATERS: -- and, you know, of course, a big part,
4 as the Judge said, as serving as a juror is to put all of
5 that aside and try to just focus on the evidence that's in
6 the courtroom. But that being said, you don't think that's
7 anything you can do to just --

8 THE JUROR: No, I don't, sir.

9 MR. WATERS: Okay. Nothing further from the State.

10 MR. HARPOOTLIAN: I don't have any further questions.

11 THE COURT: Any objection to Ms. 439 being excused?

12 MR. WATERS: No, sir.

13 MR. HARPOOTLIAN: No, sir.

14 THE COURT: You're not going to ask her what her
15 opinion is?

16 MR. WATERS: No.

17 (End of voir dire with this juror.)

18 THE BAILIFF: 403.

19 (Juror Number 403 entered the room.)

20 THE COURT: Yes, sir. I think you said that you had
21 formed an opinion?

22 THE JUROR: Yes, sir.

23 THE COURT: And that you would not be able to set that
24 opinion aside?

25 THE JUROR: Judge, I would be hard pressed, and it

1 would have to be some very compelling evidence to change my
2 mind.

3 THE COURT: All right. So, as a juror you're sworn to
4 decide the case based on the evidence presented in court --

5 THE JUROR: Uh-huh.

6 THE COURT: -- and apply the law as I give it to you.

7 THE JUROR: Yes, sir.

8 THE COURT: I'm not saying you can do that, but that's
9 what jurors are supposed to do.

10 THE JUROR: Yes, sir, I understand that. I've been in
11 law enforcement twenty-five years. I understand that.

12 THE COURT: All right. How does that register on your
13 scale?

14 THE JUROR: Like I said, I would be hard pressed to
15 change my mind, I really would. I would have to try,
16 but --

17 THE COURT: No guarantees.

18 THE JUROR: No guarantees, no, sir. I'm just being
19 honest.

20 THE COURT: You're under oath, in addition you're
21 being an honorable man.

22 THE JUROR: Yes, sir.

23 MR. WATERS: No questions from the State, Your Honor.

24 MR. HARPOOTLIAN: We don't object to you excusing him.
25 I have one question after that, though.

1 THE COURT: You're excused. Thank you very much.

2 (End of voir dire with this juror.)

3 MR. GRIFFIN: Judge, 336 was a mistake. I had written
4 down the wrong number.

5 THE COURT: We don't want 336?

6 MR. GRIFFIN: No, sir, I apologize.

7 THE COURT: 256 will be next, I think.

8 (Juror Number 251 entered the room.)

9 THE JUROR: 251.

10 THE COURT: 251, I'm sorry. Why did I have you come
11 back? What did you say?

12 THE JUROR: Well, I had already had a opinion about
13 the case, and it really hasn't un-wavered. I kind of -- I
14 had my suspicions when I first heard about it, and they're
15 still the same, to be honest with you.

16 THE COURT: Your suspicions?

17 THE JUROR: Yes.

18 THE COURT: And so do you believe you would be able to
19 set aside your opinion and decide the case based on what's
20 presented in court?

21 THE JUROR: I really don't think so because I already
22 formed my opinion. I kind of -- based on what I heard, I
23 just think -- what I base on that.

24 THE COURT: All right.

25 THE JUROR: I'm just being honest.

1 THE COURT: All right.

2 MR. WATERS: Obviously this is the kind of case where
3 there's been a lot of publicity and everything as -- and
4 obviously a juror has an obligation to try to do exactly
5 that. This case is unusual in that there's been so much
6 publicity. But you don't think you could put that aside
7 and focus just on the evidence in the courtroom?

8 THE JUROR: I can't make that promise, to be honest,
9 I'm just going to be honest.

10 MR. WATERS: Absolutely. We appreciate that. Thank
11 you.

12 No further questions, Judge.

13 MR. HARPOOTLIAN: No objection to excusing her.

14 THE COURT: All right. The State agrees?

15 MR. WATERS: Yes, sir. Is that 251?

16 THE JUROR: Yes.

17 THE COURT: All right, thank you. We'll excuse you.
18 You don't have to come back.

19 (End of voir dire with this juror.)

20 THE BAILIFF: 266.

21 (Juror Number 266 entered the room.)

22 THE COURT: 266. Yes, sir, how are you doing?

23 THE JUROR: Good.

24 THE COURT: All right. What caused you to get back
25 here?

1 THE JUROR: I'm -- basically the media have me
2 undecided. I don't want to make the wrong decisions. And
3 then on top of that, Monday I'm scheduled for surgery.

4 THE COURT: Scheduled for surgery Monday?

5 THE JUROR: Yeah.

6 THE COURT: What kind of surgery?

7 THE JUROR: Naval umbilical hernia repair.

8 THE COURT: Naval umbilical hernia repair. It's
9 pretty serious? Is it pretty painful?

10 THE JUROR: Right now it is, yeah.

11 MR. HARPOOTLIAN: It will be fine after he has it,
12 Judge --

13 THE JUROR: Yeah, after a few days.

14 MR. HARPOOTLIAN: -- after a few days. They're going
15 to put him under general anesthesia.

16 MR. WATERS: It's clearly a health issue. No
17 objection from the State, Your Honor.

18 THE COURT: Have you had it scheduled for awhile?

19 THE JUROR: Like three weeks. I put it off and on,
20 off and on, but --

21 THE COURT: You got to go in now?

22 THE JUROR: Yeah. If you touch it, I go, no, no,
23 stop.

24 THE COURT: Any objection with him being excused?

25 MR. WATERS: None from the State, Your Honor.

1 MR. HARPOOTLIAN: Perhaps less painful than if he
2 stays here with us. No objection.

3 THE COURT: All right. Well, thanks for coming in.
4 You're excused.

5 (End of voir dire with this juror.)

6 MR. HARPOOTLIAN: 249, Judge. 249.

7 (Juror Number 249 entered the room.)

8 THE COURT: Yes, sir, how are you doing?

9 THE JUROR: I'm doing good. How are you doing?

10 THE COURT: Tell me about what you were thinking back
11 out there.

12 THE JUROR: Which part?

13 THE COURT: I don't know. You gave us -- you stood up
14 for two things, didn't you?

15 THE JUROR: It was on the personal beliefs that I
16 don't feel like I have the power to judge somebody to that
17 extent.

18 THE COURT: Okay. You don't believe in the jury
19 system?

20 THE JUROR: No. I don't believe in me having that
21 right to do it.

22 THE COURT: You believe someone else should do it.

23 THE JUROR: And the first one is I had a personal
24 conversation before knowing that I was on jury duty or
25 anything, and so I have biased opinions formed already.

1 THE COURT: Okay, and do you believe you can get rid
2 of all of that bias and decide the case based on what's
3 presented in court?

4 THE JUROR: No, sir.

5 THE COURT: You're pretty locked in with your opinion?

6 THE JUROR: Yes, sir. I had a very good conversation
7 about it, and I don't know what's facts or --

8 THE COURT: You had a conversation with who?

9 THE JUROR: One my friends, like, roughly around the
10 time when it happened.

11 THE COURT: All right. Okay. That's it?

12 MR. WATERS: That personal belief that you don't want
13 to sit in judgment on anyone, that's pretty strong? That's
14 not anything that's ever changed or that you can put aside?

15 THE JUROR: I don't feel comfortable making a decision
16 to that extent.

17 MR. WATERS: Okay. I understand that.

18 Nothing further from the State, Your Honor.

19 MR. HARPOOTLIAN: No objection to excusing him, Your
20 Honor.

21 MR. WATERS: State agrees. Thank you for coming.

22 THE COURT: Thanks for coming.

23 THE JUROR: I appreciate it, y'all have a good one.

24 (End of voir dire with this juror.)

25 THE BAILIFF: 255.

1 (Juror Number 255 entered the room.)

2 THE COURT: 255. Why did you come back?

3 THE JUROR: I believe that I've already formed an
4 opinion based on the news that I've watched, so I didn't
5 want to not have -- to have a fair -- but not have a fair
6 trial based on what I've already decided.

7 THE COURT: You believe that you are -- that what
8 you've heard would prevent him -- what you've decided would
9 prevent him from having a fair trial?

10 THE JUROR: Based on what I've seen in the news, yes.
11 I haven't been presented anything other than that, so I
12 can't --

13 THE COURT: Well, do you believe you can set aside
14 your belief and decide it not on the news but on the --
15 based on what comes up in court?

16 THE JUROR: Yes, I can. But I only have what I have
17 from the news right now, so -- but yes. The answer is yes.

18 THE COURT: You haven't heard anything about the case.

19 THE JUROR: Yeah.

20 THE COURT: Do you believe that your -- what you've
21 heard cannot be overcome? Or can you set aside that and
22 decide the case based on what's presented in court?

23 THE JUROR: Yes, I can set aside.

24 THE COURT: All right.

25 Well, by the State?

1 MR. WATERS: No. I think she said she can set it
2 aside, so --

3 MR. HARPOOTLIAN: I think she's qualified.

4 THE COURT: All right. I think you're qualified,
5 Number 255.

6 THE JUROR: Okay.

7 THE COURT: So, we need you to call after 6:00 to find
8 out when the time is to come back.

9 THE JUROR: Okay.

10 THE COURT: All right.

11 (End of voir dire with this juror.)

12 THE BAILIFF: 397.

13 (Juror Number 397 entered the room.)

14 THE COURT: All right, Number 397, why did you come
15 back to see us?

16 THE JUROR: I just don't know that I can be impartial.
17 I've heard too much stuff. I'm a manager at Waffle House
18 and I've heard a lot --

19 THE COURT: Manager at a Waffle House.

20 THE JUROR: But I've heard a lot of things and I just
21 don't know that I can be --

22 THE COURT: So, y'all have decided the case in
23 Walmart? I mean, Waffle House?

24 THE JUROR: Well, we've talked about it, you know,
25 it's been talked about and stuff, so --

1 THE COURT: All right. From the State?

2 MR. WATERS: So, this case obviously has had a lot of
3 publicity --

4 THE JUROR: Right.

5 MR. WATERS: -- and what jurors have to do is put all
6 of that aside and base it just on the evidence in the
7 courtroom. But that's something you've heard so much that
8 you just don't think you can do?

9 THE JUROR: I just don't think so. No, I don't think
10 I can be. Sorry.

11 MR. WATERS: Thank you. The defense may have some
12 questions.

13 (Break in proceedings.)

14 MR. HARPOOTLIAN: Yeah. Since she won't give me the
15 secret recipe, I don't have any problem with her being
16 excused.

17 MR. WATERS: 397?

18 THE COURT: Thank you. You're excused.

19 (End of voir dire with this juror.)

20 (Juror Number 319 entered the room.)

21 THE COURT: Yes, sir, come right in. What brings you
22 back here?

23 THE JUROR: Y'all told me to come back here.

24 THE COURT: Did you say something out here?

25 THE JUROR: Yes, sir.

1 THE COURT: Did you say something out there that --

2 MR. HARPOOTLIAN: He is kin to --

3 MR. WATERS: Rogan Gibson.

4 MR. HARPOOTLIAN: -- Rogan Gibson who --

5 MS. FOX: His mom's first cousin.

6 THE COURT: His mom's first cousin is a witness in the
7 case. Have you discussed the case with him?

8 THE JUROR: Not much with him, but with other people.

9 THE COURT: Okay. Based on all of that, have you
10 formed an opinion as to the guilt or innocence of the
11 defendant?

12 THE JUROR: I don't know. I mean, I haven't really
13 talked to Rogan about it, but I know he was close friends
14 with the family, real close friends, so I would have to go
15 with whatever he says.

16 THE COURT: So, whatever he says is what you're going
17 by.

18 THE JUROR: Yes.

19 THE COURT: All right. You know, one of the things
20 that you have to do as a juror obviously is put aside
21 things like that and base any decision you make on the
22 evidence in the courtroom. Do you think you can do that
23 despite your connection with Rogan?

24 THE JUROR: I would.

25 THE COURT: How old are you?

1 THE JUROR: I'm nineteen.

2 THE COURT: Nineteen. Are you still in school or
3 graduated or --

4 THE JUROR: I graduated high school, went and got my
5 welding certification, graduated from that, and then I'm
6 about to start with a CDL.

7 THE COURT: Okay.

8 MR. WATERS: Do you have any questions?

9 MR. HARPOOTLIAN: He may.

10 MR. GRIFFIN: No. I'm -- there's a point about Mr.
11 Gibson. I don't think anyone is really going to -- his
12 testimony, I don't believe, is controversial.

13 MR. WATERS: No. Can we suggest that he step out so
14 we can talk about it? That's how it works for --

15 THE COURT: Okay. If you'll stand right outside by
16 clerk, we'll have you come back.

17 (End of voir dire with this juror.)

18 MR. WATERS: Do you mind if I talk with my team real
19 quick?

20 THE COURT: All right.

21 (Break in proceedings.)

22 MR. WATERS: I think after discussion, the problem is
23 he says, of course, that he is going to go with whatever
24 that witness says, and Jim is arguing, well, I don't know
25 if there's much dispute, but we don't know how a trial is

1 going to go. So, given that he's been strong on that, I
2 think we would submit that he should be excluded.

3 MR. HARPOOTLIAN: And, Your Honor, I think he has one
4 issue with one witness that there's no dispute about his
5 testimony, and they're not -- apparently they haven't
6 talked about it. They're not close. And, I mean, he -- we
7 think he's qualified, so it's up to you, I suspect. Not
8 suspect. I know.

9 MR. WATERS: The bottom line is he says he's going to
10 believe whatever a witness says regardless of the fact
11 that --

12 MR. HARPOOTLIAN: He's your witness. What's the
13 problem with that?

14 MR. WATERS: I mean, I think --

15 MR. MEADORS: We would say the same if it was yours
16 out of fairness. If you believe one person either way then
17 you can't be swayed.

18 MR. HARPOOTLIAN: Right. No.

19 THE COURT: All right. Well, let's bring him back one
20 more time.

21 (Juror Number 319 reentered the room.)

22 THE COURT: All right. Juror number 319. Okay. Do
23 you believe that you could be a fair and impartial juror?

24 THE JUROR: I do, but I'm not going to promise I can.

25 THE COURT: Are you sort of leaning where you can't,

1 or leaning where you can?

2 THE JUROR: Kind of leaning more I can't.

3 THE COURT: All right, and I'm going to excuse the
4 juror.

5 MR. WATERS: Thank you for coming, sir.

6 (End of voir dire with this juror.)

7 THE COURT: Is 336 out there?

8 MR. GRIFFIN: Yeah. That was a mistake.

9 THE COURT: We don't need to talk with him?

10 MR. HARPOOTLIAN: No, sir.

11 MR. GRIFFIN: No, sir.

12 (Juror Number 336 entered the room.)

13 THE COURT: Well, you were about to hear anyway -- you
14 didn't hear us when we called your name to stay?

15 THE JUROR: I got confused, so I assumed -- I thought
16 I had to go and then you said number again. I said -- and
17 then I just stayed.

18 THE COURT: All right, and -- so, are you good to
19 serve on the jury duty -- on the jury?

20 THE JUROR: I'm not really sure because normally -- I
21 came today is because my brother, he's getting ready to be
22 interviewed by Stanley Steamer again and go back to work,
23 and that's the only vehicle I've got right now. And my mom
24 works at the school as well, so I won't have any real means
25 of transportation to get over there.

1 THE COURT: How far away do you live?

2 THE JUROR: Like where -- probably where my grandma
3 stay right now on the other side of -- I want to say, you
4 know, that gas station past -- not a gas station, but it's
5 high school, you go all the way past down there and it's,
6 like, a trailer park --

7 THE COURT: How many miles away is that?

8 THE JUROR: I would say from here to there, I want to
9 say, like, at least a 20 minute drive.

10 THE COURT: Oh goodness. It's out in the county, or
11 out in the country?

12 THE JUROR: Yes, sir.

13 THE COURT: All right. So, how do you plan to get
14 here?

15 THE JUROR: I'll find a way. Where there's a will
16 there's a way if I've got to serve.

17 THE COURT: All right. Do you have any other problem
18 with serving?

19 THE JUROR: I take care of my grandma. That's about
20 it. But if I have to serve, I'll serve.

21 THE COURT: You say you take care of her?

22 THE JUROR: Yes, sir. I take care of her during the
23 mornings.

24 THE COURT: How old is she?

25 THE JUROR: She's, like, in her seventies. She has a

1 bad knee. My auntie and my uncle, they had me watch her
2 until one of them get off.

3 THE COURT: What time do you normally take care of
4 her?

5 THE JUROR: I take care of her from 9:00 in the
6 morning all the way until, like, 5:00 in the afternoon
7 because my uncle works. But he used to work for SC&G, but
8 then he stopped. But my aunt, she normally comes and takes
9 care of her once she's off from work. She used to be a
10 nurse.

11 THE COURT: Do you have a job, or you don't work?

12 THE JUROR: I do not work currently.

13 THE COURT: When is the last time had you a job?

14 THE JUROR: Last year.

15 THE COURT: And where was that?

16 THE JUROR: Kelly Services as a substitute custodian.
17 I used to work for the school.

18 THE COURT: Okay. So, you said you -- the reason you
19 were able to come was somebody brought you today?

20 THE JUROR: Yes, sir.

21 THE COURT: All right. So, when I said that if anyone
22 has an exemption that you care for someone who is elderly
23 or incapacitated, did you hear that question?

24 THE JUROR: No, sir, because I was in the far back.

25 THE COURT: You couldn't hear?

1 THE JUROR: No, sir, because I asked the people beside
2 me if he heard the question. He was, like, I don't know.
3 I was asking people questions.

4 THE COURT: Well, if somebody is a caretaker of
5 someone who's elderly or incapacitated, then they can be
6 excused to care for that person. And that's what you say
7 you do during the day.

8 THE JUROR: Yes, sir.

9 THE COURT: Is that the reason why you're not working
10 or --

11 THE JUROR: It's part of the reason. Because, like --
12 it's part of the reason, but the other part is that I
13 didn't really have a vehicle at that time. Because, like,
14 my brother was working at Stanley Steamers, but he's
15 getting reinterviewed and hired again. And then also a
16 death was in the family. So, like, a combination of
17 multiple things was going on at the time. That's why I
18 stopped working last year.

19 THE COURT: All right. Any other questions for --

20 MR. WATERS: None from the State, Your Honor. Thank
21 you.

22 MR. HARPOOTLIAN: No, Your Honor.

23 THE COURT: Hold on for a moment. Y'all want him to
24 stay or want him to go?

25 MR. HARPOOTLIAN: Your Honor, I think he meets the

1 statutory requirements to be excused if no one is there to
2 take care of grandmom who is in her seventies.

3 MR. GRIFFIN: We know how old that is.

4 MR. HARPOOTLIAN: We do. He probably ought to be
5 allowed the statutory exemption.

6 MR. WATERS: Certainly I'm okay if he needs to take
7 care of his grandmother.

8 MR. HARPOOTLIAN: Seventy what?

9 THE JUROR: Early seventies.

10 THE COURT: Early seventies.

11 MR. HARPOOTLIAN: Seventy-three? Seventy-four?

12 THE JUROR: I want to say, like, seventy-three or
13 seventy-four. I'm not too close to my grandma's side.
14 Like, I'm not trying to make excuses, but it's, like, like,
15 it's a lot of family issues that goes on in the background
16 that makes me kind of distant towards them, but I do it for
17 my -- I take care my grandma for the sake of my grandma.

18 MR. HARPOOTLIAN: And she's old.

19 THE JUROR: Yeah.

20 THE COURT: We'll excuse you. You don't have to come
21 back.

22 (End of voir dire with this juror.)

23 MR. GRIFFIN: Judge, before they bring the next juror
24 in, on the questionnaire, this juror just says that she
25 gets her information from the *Murdaugh Murder Podcast*. I

1 don't know if you've listened to the podcast, but they
2 spend an inordinate amount of time criticizing Dick,
3 criticizing me. They've already convicted Mr. Murdaugh
4 over and over and over again.

5 MR. HARPOOTLIAN: Demonizing me, it's not criticizing
6 me.

7 MR. WATERS: There's plenty criticizing of the State
8 as well. And y'all have spoken to the media whereas I have
9 not.

10 (Break in proceedings.)

11 THE COURT: You mention that to say that the juror
12 should --

13 MR. GRIFFIN: Well, I just want to question her as to
14 whether -- you know, the things that she's heard and can
15 she set it aside.

16 MR. HARPOOTLIAN: Not just him, but his lawyers.

17 (Juror Number 390 entered the room.)

18 THE COURT: Yes, ma'am. How are you doing?

19 THE JUROR: Well. Yourself?

20 THE COURT: All right. I'm not sure whether you stood
21 up on any of the questions or not. Did you stand up to say
22 whether or not you had formed an opinion?

23 THE JUROR: Oh, no. I did not form an opinion.

24 THE COURT: Okay, and so have you formed an opinion as
25 to the guilt or innocence of --

1 THE JUROR: No.

2 THE COURT: And I think you have indicated through the
3 information that you have listened to some --

4 THE JUROR: I have.

5 THE COURT: -- podcast?

6 THE JUROR: Uh-huh. They've left more questions than
7 answers, so I can say that I have not done them for, you
8 know, innocent or guilty. It's just been more keeping up
9 with a current event that was going on in our local town.

10 THE COURT: All right. Any questions by the State?

11 MR. WATERS: So, just along the lines with what the
12 Judge said, obviously this case is so different and there's
13 been so much publicity, but a juror obviously needs to put
14 all of that aside and just base their decision based on
15 what happens in the courtroom. Do you feel you can do
16 that?

17 THE JUROR: Yes.

18 MR. WATERS: Nothing further, Your Honor. Thank you.

19 MR. GRIFFIN: Just briefly. The podcast, have you
20 listened -- was it critical of Mr. Murdaugh's lawyers,
21 particular Mr. Harpootlian or myself?

22 THE JUROR: I'll be honest with you. When I have
23 listened to it, it's usually background noise for me. So,
24 I've listened to bits and pieces. I have not listened to
25 every detail of it, so I couldn't even give you a full

1 timeline of the whole thing.

2 MR. GRIFFIN: Okay. Thank you.

3 THE COURT: All right. So, any questions about this
4 juror?

5 MR. WATERS: None from the State, Your Honor.

6 MR. HARPOOTLIAN: No, Your Honor. We think she's
7 qualified.

8 THE COURT: So, we need you to call back after 6:00
9 p.m. to find out when to come back.

10 MR. WATERS: What's your number again, ma'am?

11 THE JUROR: 390.

12 MR. WATERS: Thank you very much.

13 THE JUROR: You're welcome. Thank you.

14 (End of voir dire with this juror.)

15 THE CLERK: So, we had five runners. They didn't
16 stay. They left us.

17 MR. WATERS: Well, 438 had already been excused.

18 THE CLERK: So, we had 279 that didn't stay, 249 that
19 didn't stay. 430, 439, and 284.

20 (Break in proceedings.)

21 MR. WATERS: 430 was already excused, so you can cross
22 that one off.

23 MS. FOX: 249 we excused. 439 was excused, too. So,
24 384 is the only one.

25 MR. HARPOOTLIAN: Had 384 made up her mind? His mind?

1 MR. WATERS: Y'all asked for 384. That's the retired
2 teacher.

3 MR. HARPOOTLIAN: Was it their questionnaire?

4 MS. FOX: Jim listed three numbers. That wasn't one
5 of them.

6 THE CLERK: So, we're good. All right. The clerk
7 needs coffee.

8 THE COURT: Okay. So, we're not missing anyone.

9 (All parties returned to the courtroom.)

10 (Break in proceedings.)

11 JURY PANEL THREE

12 THE COURT: Ladies and gentlemen, I am Clifton Newman,
13 and I am the presiding judge for court this week. You were
14 summoned here for jury duty in the case of *The State v.*
15 *Richard Alexander Murdaugh*.

16 Mr. Murdaugh, if you will stand and face the jury
17 panel.

18 THE DEFENDANT: Good afternoon.

19 THE COURT: Thank you.

20 Ladies and gentlemen, we have four panels of juries.
21 You're panel number three. We have one more panel after
22 your panel. We are selecting a jury to try this case.

23 Mr. Murdaugh was indicted and charged with murdering
24 his wife, Maggie Murdaugh, and son Paul Murdaugh on June 7,
25 2021, outside their home located at 4047 Moselle Road,

1 Islandton, South Carolina. He's pled not guilty to this
2 charge and is presumed to be not guilty, and that is the
3 purpose for the trial, to see whether the State can prove
4 beyond a reasonable doubt that he's guilty.

5 The first part of the process is to have a roll call.
6 So, we need you to stand and be placed under oath so that
7 we can proceed with the roll call.

8 Madame Clerk.

9 (Roll Call was followed by jury venire.)

10 JURY VOIR DIRE - PANEL THREE

11 THE COURT: Ladies and gentlemen, I now have some
12 additional questions specific to this case. As I
13 indicated, the defendant is charged with murdering his
14 wife, Maggie Murdaugh, and son, Paul Murdaugh, on June 7,
15 2021, outside of their home at 4147 Moselle Road,
16 Islandton, South Carolina. If any member of the jury panel
17 has heard, read, or know anything about this case, or the
18 defendant, Richard Alexander Murdaugh, if so, please stand.
19 If you've heard, read, or know anything about this case,
20 please stand. And what I want you to do is give me your
21 juror number, and then you may be seated.

22 Yes, sir?

23 THE JUROR: 781. Newspaper --

24 THE COURT: Just -- at the moment just stand and give
25 me your juror number. Thank you. You may be seated.

1 Yes?

2 THE JUROR: 887.

3 THE JUROR: 886.

4 THE COURT: Couldn't hear you, ma'am.

5 THE JUROR: 886.

6 THE CLERK: 886.

7 THE JUROR: 695.

8 THE JUROR: 715.

9 THE JUROR: 684.

10 THE JUROR: 888.

11 THE JUROR: 845.

12 THE JUROR: 730.

13 THE JUROR: 864.

14 THE JUROR: 821.

15 THE JUROR: 808.

16 THE JUROR: 856.

17 THE JUROR: 810.

18 THE JUROR: 776.

19 THE JUROR: 893.

20 THE JUROR: 711.

21 THE JUROR: 735.

22 THE JUROR: 778.

23 THE JUROR: 705.

24 THE JUROR: 704.

25 THE COURT: All right. Thank you. If you did not

1 stand in response to that question, meaning you have not
2 read, heard, or know anything about this case, or Mr.
3 Murdaugh, if you did not stand in response to that
4 question, please stand and give me your juror number.

5 THE JUROR: 741.

6 THE JUROR: 816.

7 THE JUROR: 826.

8 THE JUROR: 799.

9 THE JUROR: 763.

10 THE JUROR: 685.

11 THE JUROR: 752.

12 THE JUROR: 784.

13 THE JUROR: 785.

14 THE JUROR: 732.

15 THE JUROR: 737.

16 THE JUROR: 727.

17 THE JUROR: 694.

18 THE JUROR: 729.

19 THE JUROR: 803.

20 THE COURT: All right, and back to the first group who
21 stood indicating that you had read, heard, or know
22 something about this case, or Mr. Murdaugh, I need you to
23 stand. And without explaining it in great detail, I need
24 to know the source of your information, either the podcast,
25 news articles, TV shows, documentaries, newspapers, or the

1 like. If you will, stand again and tell me the nature or
2 the source of the information. Then you may be seated.

3 Yes, sir?

4 THE JUROR: 781. Local newspaper and TV.

5 THE COURT: All right.

6 THE JUROR: Seen an Internet article that popped up on
7 the screen.

8 THE COURT: We need to know your juror numbers.

9 THE JUROR: 887.

10 THE COURT: Thank you.

11 THE JUROR: 886. I read a newspaper article a couple
12 of years ago.

13 THE COURT: Thank you.

14 THE JUROR: 695. I work in a cafeteria with women,
15 you know, minimal gossip, but nothing that I have ever
16 read, published material.

17 THE COURT: Conversations with people in the café.

18 THE JUROR: Overhear. I didn't -- I don't engage.

19 THE COURT: All right. Thank you.

20 THE JUROR: 715. I just overheard gossip, you know,
21 in town. And I've scrolled Facebook and seen pictures pop
22 up, but that's about it.

23 THE COURT: All right. Thank you.

24 THE JUROR: 684. Social media, news, newspaper,
25 documentaries.

1 THE COURT: Okay. Thank you.

2 THE JUROR: 888. News and social media.

3 THE COURT: Thank you.

4 Yes, sir?

5 THE JUROR: 845. Television and conversations.

6 THE COURT: Thank you.

7 Yes, ma'am?

8 THE JUROR: 730. The news.

9 THE COURT: All right. Thank you.

10 Yes, ma'am?

11 THE JUROR: 864. The news, and social media.

12 THE JUROR: 821. The news, social media, TV.

13 THE JUROR: 808. Various news outlets, social media.

14 THE COURT: Thank you.

15 THE JUROR: 856. On TV. Like, two documentaries.

16 THE COURT: Okay. Thank you.

17 THE JUROR: 810. News, and social media.

18 THE JUROR: 766. News, and conversations.

19 THE JUROR: 893. Just background noise. My wife

20 watched local news and I could hear it in my office.

21 That's about it.

22 THE COURT: All right. Thank you.

23 THE JUROR: 711. Newspaper, and TV.

24 THE COURT: All right.

25 Yes, sir?

1 THE JUROR: 735. The news.

2 THE JUROR: 778. News, and documentaries.

3 THE JUROR: 705. Social media. I work at the fire
4 and rescue, and also transported people involved in this
5 case.

6 THE COURT: So, you work at fire and rescue?

7 THE JUROR: Yes, sir.

8 THE COURT: And transported people --

9 THE JUROR: I've treated with --

10 THE COURT: You treated --

11 THE JUROR: Yes, sir.

12 THE COURT: I understand. And, sir, do you believe
13 that would affect your ability to be fair and impartial as
14 a juror?

15 THE JUROR: Yes.

16 THE COURT: All right, and you're juror number is?

17 THE JUROR: 705.

18 THE COURT: All right.

19 Any objection to this juror being excused?

20 MR. WATERS: We would request additional inquiry, Your
21 Honor.

22 MR. HARPOOTLIAN: We would agree, Your Honor.

23 THE COURT: All right, thank you. Yes, sir, we'll get
24 with you.

25 Yes, sir?

1 THE JUROR: 704. Internet, television, documentaries,
2 social media. Pretty much all of it.

3 THE COURT: All right, thank you. Considering what
4 you have read, heard, talked to others about, if you have
5 formed an opinion as to the guilt or the innocence of the
6 defendant regarding the murder charges for which he's on
7 trial, please stand. If you have formed an opinion as to
8 the guilt or innocence of the defendant based on what
9 you've seen, read, heard, or talked about, if you've formed
10 an opinion as to his guilt or innocence, please stand.

11 All right, and tell me your juror number.

12 THE JUROR: My juror number is 821.

13 THE COURT: 821. All right, thank you.

14 THE JUROR: 776.

15 THE COURT: 776. Thank you. No matter that -- what
16 you -- opinion you may have formed or -- about this, or
17 based on what you've seen or heard, if you can put all that
18 aside and decide the case only on the evidence received in
19 court, and follow the law and decide this case in a fair
20 and impartial manner, please stand. As it relates to those
21 who have formed an opinion, if you can put all of that
22 aside and decide this case only on the evidence you receive
23 in court, follow the law that I give you, and decide the
24 case in a fair and impartial manner, if you can do that,
25 please stand.

1 All right, and that's juror number?

2 THE JUROR: 776.

3 THE COURT: 776.

4 And the other jurors -- thank you very much. The
5 other jurors who have formed an opinion, stand, please,
6 again.

7 THE JUROR: Yes, sir.

8 THE COURT: And based on the opinions that you've
9 formed, are you convinced that you cannot be a fair and
10 impartial juror?

11 THE JUROR: Oh, yeah, I cannot.

12 THE COURT: Sir?

13 THE JUROR: No, I cannot be fair.

14 THE COURT: All right.

15 Any objection to this juror being excused?

16 MR. WATERS: I'm sorry, what was the number again,
17 Your Honor?

18 THE CLERK: 821.

19 MR. WATERS: No objection, Your Honor.

20 MR. HARPOOTLIAN: No objection, Your Honor.

21 THE COURT: All right. Thank you. You're excused,
22 sir.

23 If any member of the jury panel is related by blood or
24 marriage, or socially acquainted with the victims, Margaret
25 Maggie Murdaugh, or Paul Murdaugh, or if you or any family

1 member, or significant other is related by blood or
2 marriage, or socially acquainted with the defendant, Alex
3 Murdaugh, if so, please stand.

4 All right, and tell me your juror number and the basis
5 for your standing.

6 THE JUROR: 778. I was friends with Paul Murdaugh.

7 THE COURT: All right, and would that fact affect your
8 ability to be a fair and impartial juror?

9 THE JUROR: Yes, sir, I would think so.

10 THE COURT: All right, thank you. If you'll be seated
11 for the time being.

12 Yes, sir?

13 THE JUROR: 803. The Murdaugh side of the family is
14 on my mom's side. I don't know if we're closely related or
15 what, but I was putting it out there.

16 THE COURT: And do you believe that that family
17 relationship would affect your ability to be a fair and
18 impartial juror?

19 THE JUROR: It's a possibility.

20 THE COURT: All right, and so we'll speak with you
21 further after awhile. Stay with us. We'll talk further
22 with you.

23 And, ladies and gentlemen, taking a step back. The
24 parties are represented by counsel, the State through the
25 State Attorney Generals and the defense through defense

1 attorneys. I will have them introduce themselves at this
2 time.

3 MR. WATERS: Good afternoon, everybody. My name is
4 Creighton Waters. I'm from the Attorney General's Office,
5 and I will be the lead prosecutor in the prosecution
6 against Alex Murdaugh. With me is another attorney, David
7 Fernandez. Savannah Goude. Johnny James. John Conrad.
8 John Meadors. And then my boss, Don Zelenka over there.
9 Thank you very much.

10 MR. HARPOOTLIAN: Please the Court?

11 Ladies and gentlemen, my name is Dick Harpootlian; I'm
12 an attorney from Columbia. My much smaller team includes
13 Jim Griffin, an attorney from Columbia. Phillip Barber,
14 who practices with my firm. Margaret Fox, who practices
15 with Jim's firm. Thank you very much.

16 THE COURT: If any member of the jury panel has ever
17 been represented by any of the lawyers, if you're related
18 to any of the lawyers by blood or marriage, or have some
19 social acquaintance or relationship with any of the
20 lawyers, if so, please stand.

21 (No one stood.)

22 THE COURT: If any of you, or any immediate family of
23 yours, or significant other is employed with the Colleton
24 County Sheriff's Department, the State Law Enforcement
25 Division, the solicitor's office for this circuit, or the

1 Attorney General's Office of South Carolina, if so, please
2 stand. Friends or relatives employed by the Colleton
3 County Sheriff's Office, Attorney General's Office,
4 solicitor's office, and SLED, if so, please stand.

5 Yes, ma'am?

6 THE JUROR: 684.

7 THE COURT: And who are -- who are you related to?

8 THE JUROR: Sergeant Varnadoe.

9 THE COURT: Sergeant -- his name again?

10 THE JUROR: Varnadoe.

11 THE COURT: Varnadoe, and what relation are you to
12 him?

13 THE JUROR: First cousin.

14 THE COURT: Okay, and should he testify in this case,
15 would that fact affect your ability to be a fair and
16 impartial juror?

17 THE JUROR: It would.

18 THE COURT: Pardon?

19 THE JUROR: It would.

20 THE COURT: Is he on the witness list?

21 MR. WATERS: Yes, sir, he is, Your Honor.

22 THE COURT: And the fact that he might -- he's on the
23 witness -- the list to be a witness, would that prevent you
24 from being a fair and impartial juror?

25 THE JUROR: I think it would.

1 THE COURT: Okay. Any objection to this witness being
2 excused?

3 MR. WATERS: We would request further inquiry, Your
4 Honor.

5 THE COURT: All right, and we'll speak with you
6 further during --

7 Yes, ma'am?

8 THE JUROR: 685, and I know Tavera Edwards.

9 THE COURT: What's the name again?

10 THE JUROR: Tavera Edwards.

11 THE COURT: And who is Tavera Edwards?

12 THE JUROR: She's police for Colleton County.

13 THE COURT: And the fact that that agency is involved,
14 or may be involved in this case, would that prevent you
15 from being a fair and impartial juror?

16 THE JUROR: Yes, sir.

17 THE COURT: All right. Juror number is?

18 THE JUROR: 685.

19 THE COURT: All right. We'll speak with you a little
20 bit later.

21 If any juror or any member of your immediate family or
22 significant other is employed by, or has ever been employed
23 by the law firm of Peters, Murdaugh, Parker, Eltzroth,
24 Detrick, or the Parker Law Group, or if you've ever been
25 sued, or if someone from your immediate family has ever

1 been sued or represented by Peters, Murdaugh, Parker,
2 Eltzroth, or the Parker Law Group, or Alex Murdaugh, if so,
3 please stand.

4 (No one stood.)

5 THE COURT: If you have ever attended any functions,
6 events, parties, giveaways, raffles, gatherings, or any
7 other similar activity hosted by Peters, Murdaugh, Parker,
8 Eltzroth, or Alex Murdaugh, or his family, if so, please
9 stand.

10 All right. Yes, sir?

11 THE JUROR: Yes, Your Honor. As a lawyer, I've been
12 to a few functions through the Colleton County Bar that was
13 over in Hampton. We used to have --

14 THE COURT: And tell me your juror number.

15 THE JUROR: 704.

16 THE COURT: 704, and would that fact affect your
17 ability to be a fair and impartial juror?

18 THE JUROR: No, Your Honor.

19 THE COURT: All right. Thank you.

20 Yes, sir?

21 THE JUROR: Juror 705.

22 THE COURT: Yes, sir?

23 THE JUROR: I actually shot skeet with Mr. Murdaugh's
24 brother last summer.

25 THE COURT: Do you believe that fact would affect your

1 ability to be fair and impartial?

2 THE JUROR: No, sir.

3 THE COURT: Thank you.

4 Do you have any beliefs, religious or otherwise, that
5 would preclude you from sitting on a jury and deciding
6 whether the defendant is guilty or not guilty based on the
7 law and the evidence? If you have any religious or other
8 beliefs that would prevent you from serving, please stand.
9 All right. No one is standing.

10 We have a long list of prospective witnesses, and I
11 need you to listen closely to this rather extensive list of
12 the prospective witnesses, and at the end I need to know if
13 you know any of them, have had any relationship with any of
14 them, and we need your acquaintance with them if you are
15 familiar with them. Daniel Greene of the Colleton County
16 Sheriff's Office. Chad McDowell with the sheriff's office.
17 William Cody Pruitt, formerly of the sheriff's office.
18 Tinish Bryson-Smith, with the county dispatch of Hampton.
19 Angela Stallings from the Colleton County -- Colleton
20 County dispatcher. The other one was Hampton County
21 dispatchers. Dathan Varnadoe from the sheriff's office.
22 Charlie Jones, fire and rescue. Barry McRoy, fire and
23 rescue. Melinda Worley with SLED. Laura Rutland of the
24 sheriff's office. Thomas Darnell of SLED. Rachel Nguyen
25 of SLED. Paul Greer of SLED. Madison Willis of SLED.

1 Julia Begeman of SLED. Octavia (sic) Cartwright of SLED.
2 Rachel Noelle Johnson of SLED. Christine Dadabo of SLED.
3 Norris Laffitte. Jeff Croft of SLED. Katie McCallister of
4 SLED. Kristin Moore of SLED. Jennifer Nates of SLED.
5 Sara Zapata of SLED. Kukila KiKi Wallace of SLED. Megan
6 Fletcher of SLED. Britt Dove of SLED. Rebecca Gregg of
7 SLED. Bobby Bancroft of SLED. Brian Hudak of SLED. Todd
8 Schenk, S-c-h-e-n-k, of SLED. Claude C.B. Rowe. Roger
9 Dale Davis. Mushelle Shelley Smith. Belinda Rast.
10 MaeLynn Haynes. Barbara Mixon. Jonathan VanHouten of the
11 Secret Service. Paul McManigal, Charleston County
12 Sheriff's Office. Dylan Hightower, Fourteenth Circuit
13 Solicitor's Office. Dwight Falkofske of the FBI. Tom
14 Bevel. John Bedingfield. Nathan Tuten. Nolen Tuten.
15 Willis Chapman. Marian Proctor. Chris Wilson, attorney.
16 Attorney Lee Cope. Attorney Mark Tinsley. Attorney Johnny
17 Parker. Carson Burney from the Attorney General's Office.
18 Michael Gunn. Jan Malinowski. Carey Sauls. Eric
19 Harriott. Ryan Kelly of SLED. Andrew Farmer, and Charles
20 Long, former Hampton County EMS workers. Curtis Eddie
21 Smith. Attorney Mark Ball. Matt Wright of SLED. Attorney
22 Ronnie Crosby. Attorney Danny Henderson. Savannah
23 Memorial Hospital records custodian. Jessica Dunivan,
24 Registered Nurse at Savannah Hospital. Tommy Robertson of
25 SLED. Kenneth Martin, BGA. Sydney Freeman. Hunter Smith.

1 Bailey Wilson. Anthony Russell of the Clarendon --
2 Colleton County Sheriff's Office. Joshua Duerkp of SLED.
3 Lynn Black of SLED. Blanca Turrubiate-Simpson. Kenny
4 Hughes. Rogan Gibson. Will Loving. Bart Proctor. Randy
5 Murdaugh. Jeannie Seckinger. Annette Griswold. Paul
6 (sic) Rudofski of SLED. Alfred Johnson of JLA. David
7 Grubbs of the Attorney General's Office. David Garvin,
8 Forensic Science Network. Kenny Kinsey from the Orangeburg
9 Sheriff's Department. Dave Owens of SLED. Charles Ghent
10 of SLED. Ryan Neill of SLED. Oswald Toledo of the
11 Attorney General's Office. Jason Chapman, sheriff's
12 office. Greg Cook. Courtney Adams of SLED. Jomar
13 Albayalde of SLED. Alice Hazel, CPA. Mitchell Altman of
14 SLED. Mark Altman, IT, PSB. Steven Bechtold of SLED.
15 Attorney Eric Bland. Matt Brown of SLED. Frank Chapman.
16 Charles Chapman. Dalila Cirencione of SLED. Timothy
17 Collier, Sr., SLED. John Conley, Highway Patrol. Tyrone
18 Corbin. Varnville Fire Department. Keith Crosby of the
19 sheriff's office. Gary Davis. Mary Dempsey. Richard
20 Dixon. Morgan Doughty. Richard Haley of the sheriff's
21 office. Nancy Drawdy. David Drawdy from the coroner's
22 office. Donna Eason. Ashlynn Gantt. Hallie Godley of
23 SLED. Virginia Hadwin. Jamie Hall of SLED. Scott
24 Harriott. Richard Harvey of the sheriff's office. Laura
25 Hash of SLED. Bailey Haynes of SLED. Michael Hazel.

1 William Headden. Adrienne Hefney of SLED. Gray Laffitte
2 Henderson. Kendrell Henderson from the Hampton County
3 Sheriff's Office. Marcus Heyward of SLED. Guerry Buddy
4 Hill from the sheriff's office. Tommy Hines from SLED.
5 Jonathan Holdbrook from SLED. Graham Holmes. Chandler
6 Horney from SLED. Steven Hudson. Jennifer Huntun from
7 SLED. William Hutto. Jessea James, Highway Department.
8 Kristi Jarrell. Hannah Jefferson from SLED. Blake
9 Johnson, SLED. Bryan Jones of SLED. Pat Keegan of SLED.
10 Tommie Kinard. Tanya King. Wayne Kirby, III, SLED.
11 Richard Kneece. Mark Labreche from the FBI. Henry
12 Laffitte. Rebecca Laffitte. Paul LaRosa of SLED. Stacey
13 Loadholt of the sheriff's office. David Long, sheriff's
14 office. Elizabeth Laffitte Malinowski. Vera Martinez of
15 SLED. Linda McAlhaney. William McElveen. Leigh Ann
16 McGuinness. Jaclynn McKay of SLED. Haley Moody. John
17 Nelson of SLED. Haley Nelson, SLED. John Peters. William
18 Polk of the sheriff's office. Captain Samuel Reighley of
19 SLED. Kashyap Patel. Emily Reinhart of SLED. Dr. Ellen
20 Riemer from MUSC Pathologist. George Rioux, sheriff's
21 office. Major Tommy Robertson of SLED. Diane Rowe.
22 Walter Salisbury. Anthony Sampson of SLED. Christopher
23 Sarine of fire and rescue. Michael Tony Satterfield.
24 Jeremy Smith from SLED. Caleigh Smoak. James Tallon, III,
25 of SLED. Dana Temple of SLED. Courtney Thompson. Chelsea

1 Townsend from DHEC. Phillip Turner from SLED. Dr. Luis
2 Vega. Russell Vernali from SLED. Tammy Welcker. Glenn
3 Welcker. Chad Westendorf. Samuel White from the Hampton
4 Sheriff's Office. Lawrence Wiggins, formerly of SLED.
5 Matt Wild of the FBI. David Williams of SLED. Matthew
6 Williams, CCFR, the fire and rescue. Madison Willis of
7 SLED. A list of doctors. Dr. William Bromberg, Savannah
8 Hospital. Caitlyn Bowman, Savannah Memorial Hospital.
9 Dr. Karie Jeter, hospital. Alice Dionne, a nurse at the
10 hospital. Brandon Runyan, doctor at the hospital. Brenna
11 Casey, a doctor at Savannah Memorial. Dr. James Mitchell,
12 Savannah Memorial. Dr. Brittany Matthews, Savannah
13 Memorial. And from SLED, Lesa Chapman, Bailey Morgan,
14 Margaret Pauli. Also from SLED, Haley Fiorucci. Jennifer
15 Hunton. Lonnie Nelson (sic) with the sheriff's office.
16 David Weaver of SLED. Al Jarvis of SLED. Christopher
17 Anderson. Arthur Badger. Johnny Bush. James Randall
18 Drawdy. Angel Gary, and Jordan Jinks. Damien Risher.
19 Eleese Taylor Mallory. Deon Martin. Thomas Moore. Pamela
20 Pinckney. Natarsha Thomas. Buster Murdaugh. John Marvin
21 Murdaugh. Liz Murdaugh. Kennedy Branstetter. Terry
22 Branstetter. Marian Branstetter. Russell Laffitte. Jay
23 McGill. Joseph Dingle. Scott O'Quinn. Charles Laffitte,
24 II and III. Howard Trey O. Mathisen, III. Meagan
25 Kimbrell. Terry Haynes. Kyna Treherme. Attorney Amy

1 Bowers. Stephanie Stanley of SLED. Dr. Robin Cotton, neck
2 surgeon, Dr. Jonathan Eisenstat, pathologist. Tim
3 Palmbach, crime scene. Mike Sutton, crime scene. Kenneth
4 Zerci, crime scene. Jim Persinger, computer forensics.
5 Chip Johnson, computer forensics. William Tobin, GSR,
6 firearms, and ballistics. Micah Sturgis, Cellebrite
7 digital evidence. Dr. Amy Brodeur. Lynn Murdaugh Goettee.
8 Dr. Donna Schwartz-Maddox. Eric Robinson. Kyla Robinson.
9 Philip Strother.

10 If you're a friend, relative, associate, acquaintance
11 of any of those witnesses, please stand and tell me about
12 it. We'll start on this side.

13 Yes, sir, juror number?

14 THE JUROR: 781.

15 THE COURT: 781. Yes, sir?

16 THE JUROR: Officer Varnadoe I go to church with.
17 Anybody that's a fire fighter, EMT, or paramedic in
18 Colleton or Hampton County, I work at the State Division of
19 EMS, regulations and certifications, gives me access to any
20 of their records or --

21 THE COURT: Do you believe that would affect your
22 ability to be a fair and impartial juror?

23 THE JUROR: No, sir.

24 THE COURT: All right. Thank you, sir.

25 Yes, ma'am?

1 THE JUROR: 684. Sergeant Varnadoe, first cousin.

2 THE COURT: All right, and do you believe that would
3 affect your ability to be a fair and impartial juror?

4 THE JUROR: I do.

5 THE COURT: All right, thank you.

6 THE JUROR: 808. Carey Sauls is my sister.

7 THE COURT: All right. Would that affect your ability
8 to be fair and impartial should she testify?

9 THE JUROR: No, sir.

10 THE COURT: Thank you.

11 Yes, ma'am?

12 THE JUROR: 694. Angel Stoles. I go to the same
13 church with her.

14 THE COURT: All right. Would that affect your ability
15 to be fair and impartial?

16 THE JUROR: No, sir.

17 THE COURT: Back row. Yes, sir?

18 THE JUROR: 778. Buster Murdaugh, Wills Chapman,
19 Frank Chapman, Charles Chapman, Will Loving. Richard
20 Kneece. All really good friends. I work with Michael
21 Hazel. I can't remember the last one.

22 THE COURT: All right. Would that affect your ability
23 to be fair and impartial?

24 THE JUROR: No, sir.

25 THE COURT: All right. Thank you.

1 THE JUROR: 803. I think I'm related somehow to --

2 THE COURT: To the Murdaughs?

3 THE JUROR: Yes, sir.

4 THE COURT: All right, thank you.

5 Yes, sir?

6 THE JUROR: 705. Being a paramedic with fire and
7 rescue, I work along side all of the fire and rescue
8 individuals. They will be witnesses as well. The
9 sheriff's office, I work along side them.

10 THE COURT: And do you believe that would affect your
11 ability to be a fair and impartial juror?

12 THE JUROR: No, sir.

13 THE COURT: All right. Thank you.

14 All right. As I indicated to you all, this is a trial
15 that may go two or three weeks or so. If based on the
16 length of the trial, or any of the factors that have not
17 been considered, if you know of any reason, including those
18 other factors, why you should not be selected to be a
19 juror, if so, please stand.

20 All right. Yes, ma'am?

21 THE JUROR: Juror number 763. My daughter is
22 currently in the hospital.

23 THE COURT: Any objection to that juror being excused?

24 MR. HARPOOTLIAN: None from Mr. Murdaugh.

25 MR. WATERS: None from the State, Your Honor.

1 THE COURT: All right. Thank you. Yes, ma'am, you're
2 excused.

3 Yes, ma'am?

4 THE JUROR: Number 684. I work at Eden at Gracefield,
5 where I'm pretty sure that some of the attorneys are
6 staying, and I just feel like it would be a conflict of
7 interest.

8 THE COURT: All right.

9 MR. GRIFFIN: Could you ask the juror to clarify where
10 she works again?

11 THE COURT: What's the name of the place, again,
12 ma'am?

13 THE JUROR: Eden at Gracefield. I work for Paul and
14 Nora Walker.

15 THE COURT: Eden at Gracefield.

16 MR. WATERS: I believe that's where the defense is
17 staying.

18 THE COURT: Okay. Any objection to this juror being
19 excused?

20 MR. WATERS: No objection from the State, Your Honor.

21 THE COURT: Thank you, ma'am. Based on all of the
22 reasons you stood up, you're excused.

23 Any additional voir dire questions proposed by the
24 State or the defense?

25 MR. WATERS: Not from the State, Your Honor.

1 MR. HARPOOTLIAN: None from Mr. Murdaugh, Your Honor.

2 THE COURT: All right. Ladies and gentlemen, as I
3 indicated, we have -- you're panel number three. We have
4 one more to go in the morning, then we'll compile a list
5 from which we will select a jury in this case. I
6 anticipate selecting eighteen people to serve. We need
7 jurors who are available to serve. We don't want to put
8 you on a jury and then have you give us a reason and cannot
9 serve. The reason I'm asking questions now is so that you
10 can tell me if there is -- there are any reasons why you
11 should not be selected to serve. If you know of any
12 reason, please stand.

13 (No one stood.)

14 THE COURT: All right, and the following jurors --
15 we're going to let you all go in a minute, but I need the
16 following to stay: Juror Number 814, 737 -- if you'll stand
17 if I call your number. Number 814. Is 814 here? 737.
18 885. 885. 735.

19 MR. WATERS: I believe he was dismissed as well.

20 THE COURT: 735. 735.

21 Are they still checking on the habitual offender?

22 Still checking?

23 MR. WATERS: Yes, sir. I think we need to address
24 that back there if we could, Your Honor.

25 THE COURT: Number 888. 685. 705. 776. 778. 803.

1 Are there any additional jurors?

2 MR. GRIFFIN: Number 680, Your Honor.

3 THE COURT: Number 680. Who is 680? Is 680 here?

4 MR. GRIFFIN: I'm sorry.

5 THE COURT: Strike that. And who else?

6 MR. WATERS: I believe that's all, Your Honor.

7 THE COURT: All right. So, ladies and gentlemen, when
8 we want you all to -- well, it's already after 6:00.

9 (Break in proceedings.)

10 THE COURT: Ladies and gentlemen, we told the others
11 to call after 6:00. We want you to call after 8:00. There
12 will be a message there telling you what time to come back.
13 It will either be late tomorrow or Wednesday morning.
14 You're still on jury duty. You must report as instructed.
15 It will either be late tomorrow, 4:00 or so, or Wednesday
16 morning. We hope we'll have a definitive time for you to
17 return after we have finished screening for the jury panel
18 tomorrow morning. You call back at the number that the
19 clerk provides, and the bailiff will have those numbers as
20 you exit if you don't already have them. And you all are
21 free to go. Thank you very much.

22 Please do not discuss the case with anyone, discuss
23 anything about the case, do any research, engage in any
24 social media, or any other means of ascertaining
25 information about the case, and we'll see y'all later.

1 Thank you.

2 The jurors who stood, we need you all to remain and
3 we'll have you come back here.

4 (At this time, individual voir dire was conducted with
5 the following jurors outside the courtroom.)

6 (Juror Number 737 entered the room.)

7 THE COURT: Your number is?

8 THE JUROR: 737.

9 THE COURT: And why did we bring you back here?

10 THE JUROR: I had an assault charge in '91 back in
11 Michigan.

12 THE COURT: And what was the penalty?

13 THE JUROR: I served thirteen months out of --

14 THE COURT: Oh, you served thirteen months. Okay.
15 Well, that would disqualify you.

16 Any additional questions about it?

17 MR. HARPOOTLIAN: No, sir.

18 MR. WATERS: Nothing from the State, Your Honor.

19 Thank you.

20 THE COURT: Thank you. You're excused. You don't
21 have to come back here.

22 (End of voir dire with this juror.)

23 THE BAILIFF: Number 888.

24 (Juror Number 888 entered the room.)

25 THE COURT: All right, Number 888, tell me where you

1 work again.

2 THE JUROR: Peoples Plumbing and Gas.

3 THE COURT: All right, and why did we bring you back?

4 THE JUROR: Because I get paid by commission. I don't
5 get paid time off, and when I miss work, I don't get paid.

6 THE COURT: Can't afford to be here.

7 THE JUROR: No, sir.

8 THE COURT: All right, and so you are paid solely by
9 commission?

10 THE JUROR: Yes, sir, only commission.

11 THE COURT: Any questions of this juror?

12 MR. WATERS: No questions. No objection, Your Honor.

13 MR. HARPOOTLIAN: No objection.

14 THE COURT: All right, thank you. We'll -- I didn't
15 want to start a floodgate of people saying I can't afford
16 to be here.

17 THE JUROR: I can give you my bossman's number, too,
18 if you need it.

19 THE COURT: No, you're good.

20 (End of voir dire with this juror.)

21 THE BAILIFF: Number 685.

22 (Juror Number 685 entered the room.)

23 THE COURT: All right. Number 685.

24 THE JUROR: How are you doing?

25 THE COURT: How old are you?

1 THE JUROR: Twenty-two.

2 THE COURT: What do you for a living?

3 THE JUROR: I work at Sam's Club Merchandise.

4 THE COURT: Sam's Club. In North Charleston?

5 THE JUROR: Yes.

6 THE COURT: And you pick up someone. Who are you
7 saying?

8 THE JUROR: My niece. Me and my mom actually have
9 custody of her, so we go back and forth picking up and
10 taking her.

11 THE COURT: And how old is she?

12 THE JUROR: She's three.

13 THE COURT: A three year old niece that you and your
14 mother have custody of.

15 THE JUROR: Yes, sir.

16 THE COURT: And y'all alternate picking her up from
17 school?

18 THE JUROR: Yes, sir.

19 THE COURT: All right. Any question that she's
20 entitled to be exempted?

21 MR. GRIFFIN: No, Your Honor.

22 MR. WATERS: None from the State, Your Honor.

23 Thank you for coming.

24 THE COURT: Okay.

25 (End of voir dire with this juror.)

1 THE BAILIFF: Number 735.

2 (Juror Number 735 entered the room.)

3 THE COURT: 735. How are you doing?

4 THE JUROR: I'm doing all right.

5 THE COURT: Tell me about your case you had.

6 THE JUROR: Basically it was a little minor speeding
7 ticket, you know what I mean?

8 THE COURT: A minor speeding ticket?

9 THE JUROR: Yes, sir.

10 THE COURT: Well, and your license was suspended at
11 the time?

12 THE JUROR: Yes, sir.

13 THE COURT: And how many times were you charged with
14 driving with a suspended license?

15 THE JUROR: Over three times. This is the third one
16 right here.

17 THE COURT: So, is that pending or have you have
18 been --

19 THE JUROR: Basically I'm on the ticket right now.
20 It's still pending.

21 THE COURT: A habitual offender?

22 THE JUROR: No. That right there is in Summerville.
23 This is Walterboro. I just got driving under suspension
24 third.

25 THE COURT: And you're under suspension for tickets or

1 not paying fines or drunk driving or what?

2 THE JUROR: Oh, no, not paying fines.

3 THE COURT: So, why did you stand up saying that you
4 were a habitual offender?

5 THE JUROR: Oh because to be honest, I already did two
6 and a half months of a habitual offender charge for that
7 driving for the fourth time, but this right here --

8 THE COURT: Did they drop the habitual offender
9 charge?

10 THE JUROR: Yes, sir. Once my two and a half months
11 was done with time served.

12 THE COURT: Okay. So, you never went to big court for
13 it.

14 THE JUROR: I went to general sessions.

15 THE COURT: You went to general sessions. And the
16 penalty -- the sentence was -- you pled guilty to habitual
17 offender?

18 THE JUROR: Yes, sir.

19 THE COURT: Okay.

20 THE JUROR: It was, like, a plea deal.

21 THE COURT: I know. But you plead guilty -- you could
22 have gotten five years.

23 THE JUROR: That's what they say.

24 THE COURT: Okay. Well, who said that?

25 THE JUROR: The judge.

1 THE COURT: The judge.

2 THE JUROR: Yes, sir.

3 THE COURT: When she was taking your plea, she said
4 you can receive a sentence of up to five years?

5 THE JUROR: Yes, sir.

6 THE COURT: But we're going to give you time served?

7 THE JUROR: Uh-huh. With my two and a half months.

8 Me being a juror, this is not me. Well, this ain't
9 me.

10 THE COURT: Why is that?

11 THE JUROR: Because, to be honest, I don't want jail
12 on anybody. In these situations, I don't want prison. I
13 don't wish that on nobody. I know how it is to be in a
14 cage, so --

15 THE COURT: To be locked up? Yeah, it's tough, huh?

16 THE JUROR: If you ain't strong. But I rather it be
17 somebody else because I've got money to make, you know what
18 I mean? I would rather be at work.

19 THE COURT: I understand. Everybody out there would
20 rather not be here.

21 Any question, though, on his being not qualified based
22 on his convictions?

23 THE JUROR: I mean, I'll be here if I got to be here.

24 MR. WATERS: I'm looking at the rap. I think I need
25 to look at the public index. But no objection to his

1 excusing, Your Honor.

2 MR. GRIFFIN: Yeah, I mean, it is five years habitual.

3 THE COURT: Who was the judge?

4 THE JUROR: I don't remember, but if I got to be here,
5 I'll be here.

6 THE COURT: Was it in Moncks Corner or Walterboro?

7 THE JUROR: No, down here.

8 THE COURT: Oh, in Colleton?

9 THE JUROR: Yes, sir.

10 THE COURT: A female judge?

11 THE JUROR: Yes, sir.

12 THE COURT: You don't remember her name?

13 THE JUROR: I done seen many judges. Trust me.

14 THE COURT: Sound like you're excused. Thanks for
15 coming.

16 THE JUROR: Yes, sir.

17 (End of voir dire with this juror.)

18 THE BAILIFF: Number 776.

19 (Juror Number 776 entered the room.)

20 THE JUROR: How are you doing?

21 THE COURT: Doing good, 776. What did you answer to
22 that caused me to want you to come back here?

23 THE JUROR: Not being fair.

24 THE COURT: What did you tell us?

25 THE JUROR: Can I speak freely?

1 THE COURT: Yeah, please.

2 THE JUROR: My opinion comes from prior to this case.
3 Mallory Beach was my coworker's daughter. And from all
4 that went on from there, how he was feeling, what I went
5 through with him, and it just -- my opinion of the family
6 is not good.

7 THE COURT: Okay.

8 THE JUROR: And I have family on Moselle Road, and I
9 couldn't believe all of this was happening on Moselle Road.
10 But it is mainly because of the Mallory Beach incident.
11 And I developed -- I don't know, I just developed an
12 opinion about them. Even though I don't know these people,
13 I have developed an opinion about it.

14 THE COURT: You believe that the opinion you have is a
15 fixed opinion that won't change?

16 THE JUROR: It would take a lot to change it. I'm
17 kind of just -- I don't agree with them on the -- account
18 of how it was handled, you know, after the boating
19 accident, covering it up and stuff. It really put a sore
20 thumb in me.

21 THE COURT: He works with Mallory Beach's --

22 THE JUROR: Yeah. I was working with him during that
23 period, but we still communicate back and forth.

24 THE COURT: What kind of work were y'all doing?

25 THE JUROR: Georgia Pacific up in Fairfax.

1 THE COURT: You worked with Mallory Beach's father?

2 THE JUROR: Yes.

3 MR. WATERS: Your Honor, could we have a moment with
4 you outside the presence of the juror very briefly?

5 THE COURT: All right. If you'll stand right outside
6 the door there one more time, we'll right back with you.

7 (End of voir dire with this juror.)

8 MR. WATERS: Your Honor, I think he's got a DQ of
9 embezzlement by mail by an officer or employee, so I think
10 he's a DQ anyway.

11 THE COURT: He was convicted of embezzlement by an
12 employee?

13 MR. WATERS: That's what his rap sheet reflects, yes,
14 sir, so if you want to ask him that. I would rather you
15 ask than me.

16 MR. HARPOOTLIAN: And, Your Honor, if that doesn't
17 work, I think we would ask you to excuse him for cause.

18 THE COURT: Okay. Well, bring him back.

19 What year was that?

20 MR. WATERS: Your Honor, I apologize. I don't have
21 that with me. I can get it. This was 776.

22 THE COURT: That's okay. We'll ask.

23 (Juror Number 776 reentered the room.)

24 THE COURT: In addition to all of that, did you have a
25 criminal conviction?

1 THE JUROR: Back in, what was it 2000, with the post
2 office back and forth with the postmaster and all, it was
3 more or less -- it was a bunch went on it, but they
4 convicted me of mishandling a mail matter. They said I
5 mishandled a mail matter, this and that.

6 THE COURT: How much time could you have gotten for
7 that?

8 THE JUROR: I think it was three years, and they put
9 me -- sent me to Aspen Prison Camp, yeah, for four months.

10 THE COURT: I think all of that would disqualify you
11 anyway. You're good to go.

12 (End of voir dire with this juror.)

13 THE BAILIFF: Number 778.

14 (Juror Number 778 entered the room.)

15 THE COURT: Number 778. How is it going?

16 THE JUROR: Good, sir. How are you?

17 THE COURT: You stood up a few times. What was the
18 first time?

19 THE JUROR: Honestly, I can't even remember.

20 MS. FOX: Friends with Paul.

21 THE JUROR: Yeah. Friends with Paul, yes, sir.

22 THE COURT: Are you the same age, or --

23 THE JUROR: No, sir, he's younger than I am. But we
24 had a lot of mutual friends, and we met in Edisto.

25 MR. WATERS: Some of the names that he mentioned are

1 on the State's witness list.

2 THE COURT: Do you think all of that would prevent you
3 from being fair and impartial, knowing all of these --

4 THE JUROR: I think it --

5 THE COURT: -- some of the people involved?

6 THE JUROR: I think it would have a play, yeah. I
7 mean, I would try my best, but I think it would definitely
8 be some pulling some way, some how.

9 THE COURT: Have you formed an opinion as to whether
10 you think he's guilty or not guilty?

11 THE JUROR: No, sir. I don't have all of the facts.

12 THE COURT: Question by the State or the defense?

13 MR. WATERS: Yes, sir, just very quickly. Obviously
14 this case has gotten a lot of publicity and it's a small
15 community, and, you know, the obligation of a juror, of
16 course, is to try to put all of that aside and just base
17 their decision on the facts in the courtroom.

18 THE JUROR: Right.

19 MR. WATERS: So, that's really the question is whether
20 or not you think you could put away all of that and just
21 focus on the evidence that comes in --

22 THE JUROR: I don't think I could. It's as simple as
23 that.

24 MR. HARPOOTLIAN: What did he say?

25 MR. WATERS: He said he didn't think he could.

1 MR. HARPOOTLIAN: Could not base on the facts?

2 MR. WATERS: That's correct.

3 No, objection, Your Honor.

4 MR. HARPOOTLIAN: No objection.

5 MR. WATERS: Thank you, sir.

6 THE COURT: No objection to him being excused?

7 MR. HARPOOTLIAN: No objection.

8 THE COURT: Okay. Thank you, sir.

9 (End of voir dire with this juror.)

10 THE BAILIFF: Number 705.

11 (Juror Number 705 entered the room.)

12 THE COURT: 705. Yes, sir. It sounded like you knew
13 more people than anyone else. What is your job now?

14 THE JUROR: I'm a paramedic in Colleton County Fire
15 and Rescue.

16 THE COURT: And did you have some involvement
17 treating --

18 THE JUROR: I actually treated an individual that I
19 believe you mentioned as a witness. Not during his trial,
20 but I believe he's going to be called as a witness in part
21 of this.

22 THE COURT: Do you know what his name is?

23 THE JUROR: I do know his name. Can I say that?
24 That's not HIPAA?

25 THE COURT: Sure.

1 THE JUROR: It was Fast Eddie.

2 THE COURT: You treated Fast Eddie?

3 THE JUROR: Yes, sir, I did.

4 THE COURT: Do you know him by that name?

5 THE JUROR: That was the name that I was told it was.

6 THE COURT: Okay.

7 THE JUROR: I don't remember his legal name.

8 MR. MEADORS: Didn't you also know someone that was
9 related to --

10 THE JUROR: I shot skeet with Mr. Murdaugh's brother
11 last summer. He actually wasn't -- he didn't throw the
12 skeet shoot. He came up after the fact and was on his golf
13 cart and talked with everybody. But if he walked up right
14 now, I wouldn't recognize him.

15 MR. HARPOOTLIAN: I think the question, Judge, is
16 whether he could be fair or whether he has already made up
17 his mind.

18 THE COURT: All right. You can ask him.

19 MR. HARPOOTLIAN: Have you already expressed an
20 opinion about the guilt or innocence of Alex Murdaugh?

21 THE JUROR: I believe everybody has a right to a
22 fair trial. I have worked with fire rescue, so you hear
23 things all the time, and I feel that if evidence is
24 produced, I will be able to judge based off of the evidence
25 provided.

1 MR. HARPOOTLIAN: So, you've not expressed an opinion.

2 THE JUROR: No.

3 MR. HARPOOTLIAN: And you could base your verdict on
4 what you hear in the courtroom and the law as the Judge
5 tells you?

6 THE JUROR: Yes, sir.

7 MR. HARPOOTLIAN: That's all I've got.

8 THE COURT: Anything from the State?

9 MR. WATERS: The juror has been clear in every answer
10 that he can be fair and impartial, so the State has no
11 questions.

12 MR. HARPOOTLIAN: We would say seat him -- or put him
13 back in the pool.

14 MR. WATERS: We agree, yes, sir.

15 THE COURT: Okay. Thank you. So, you'll call after
16 8:00 to find out what time you need to come back.

17 THE JUROR: Yes, sir. Thank you.

18 (End of voir dire with this juror.)

19 THE CLERK: We have an 803, Joseph Teal, who is not
20 here. He did not stay, but he is related to the Murdaughs.

21 MR. WATERS: Yeah. He was sitting in the back; he was
22 in the very back.

23 THE COURT: Yeah.

24 MR. WATERS: He stood up every chance he got, says
25 he's related to the Murdaughs, so we would move he be

1 stricken for cause.

2 MR. HARPOOTLIAN: Is that the only one left? Is there
3 another one?

4 THE CLERK: Yes, sir.

5 MR. HARPOOTLIAN: Well, Judge, why don't we just wait
6 for them to come back, and whenever they come back tomorrow
7 we can pull that one out rather than having him arrested.

8 THE COURT: Let's see if he calls or comes back.

9 MR. HARPOOTLIAN: 9:30 tomorrow?

10 THE COURT: Yes.

11 (Whereupon, the case was at ease.)

12 TUESDAY, JANUARY 24, 2023

13 (Court resumed at 9:48 a.m.)

14 JURY PANEL FOUR

15 THE COURT: Good morning. Welcome, ladies and
16 gentlemen. You are here for jury selection, or jury
17 qualification, that is, in the case of *The State v. Richard*
18 *Alexander Murdaugh*. I am Clifton Newman. I am the
19 presiding judge. The Clerk of Court here, Ms. Becky Hill,
20 accompanied by a number of her colleagues and associates,
21 will be helping us with jury qualifications.

22 The first part of the jury qualification is the roll
23 call, which we will do in a few minutes and which you will
24 be placed under oath to give truthful, give complete and
25 truthful responses to all questions you're asked and to

1 provide truthful information.

2 THE CLERK: If you will ---

3 THE COURT: Hold on ma'am.

4 THE CLERK: Oh, I'm sorry.

5 THE COURT: If you don't mind.

6 THE CLERK: I'm sorry.

7 THE COURT: So, the defendant, Mr. Richard Alex
8 Murdaugh, if you will please stand.

9 THE DEFENDANT: Good morning.

10 THE COURT: Thank you.

11 Mr. Murdaugh is charged with the offense of murder.
12 He is accused of murdering his wife, Maggie Murdaugh, and
13 son Paul Murdaugh on June 7, 2021, outside their home
14 located at 4147 Moselle Road, Islandton, South Carolina.
15 He's pled not guilty to that charge. He's presumed to be
16 not guilty, and the purpose of a jury trial is to determine
17 whether the State can prove him guilty beyond a reasonable
18 doubt.

19 We will proceed now with the administration of the
20 oath and the roll call with those of you who are here.

21 THE CLERK: If you would stand and raise your right
22 hand, please.

23 (At this time, the jury panel was sworn.)

24 (Roll call was followed by jury venire.)

25 JURY VOIR DIRE - PANEL FOUR

1 THE COURT: All right, ladies and gentlemen, we will
2 move now to questions more specific to this case.

3 As I stated, Mr. Murdaugh is charged with murdering
4 his wife, Maggie Murdaugh, and Paul, and son Paul Murdaugh
5 on June 7, 2021, outside their home at 4147 Moselle Road,
6 Islandton, South Carolina. Has any member of the jury
7 panel read, heard, or know anything about this case or
8 about Mr. Murdaugh? If so please stand.

9 And I would like for you to give me your juror number
10 only, and then you may be seated, starting here, the lady
11 in black, and remove your mask so we can hear you.

12 THE JUROR: 580.

13 THE COURT: All right. Thank you.

14 THE JUROR: 509.

15 THE COURT: And after giving the information, be
16 seated. 509?

17 THE JUROR: Yes, sir.

18 THE COURT: Thank you.

19 THE JUROR: 470.

20 THE JUROR: 522.

21 THE JUROR: 556.

22 THE JUROR: 476.

23 THE JUROR: 674.

24 THE COURT: 6 --

25 THE JUROR: 5 --

1 THE COURT: Just a moment. Just one moment. We're
2 going to go in an order. Next in order is the gentleman on
3 the row with the -- what kind of colored shirt is that?
4 Plaid? Yes, sir, you.

5 THE JUROR: 535.

6 THE COURT: No, just a moment. The one that everyone
7 is pointing to. You, yes, sir. Yes, sir.

8 THE JUROR: 556.

9 THE COURT: All right. No, no. 556 is behind you.
10 Come on, in front here.

11 THE JUROR: 669.

12 THE COURT: 669. Thank you.

13 THE JUROR: 651.

14 THE COURT: 651.

15 THE JUROR: 515.

16 THE COURT: 515.

17 Yes, sir.

18 THE JUROR: 575.

19 THE COURT: 575. You may be seated.

20 And going front to back, not mixed in. Yes, sir.

21 THE JUROR: 658.

22 THE COURT: 658.

23 Yes.

24 THE JUROR: 495.

25 THE COURT: 495.

1 Yes.

2 THE JUROR: 601.

3 THE COURT: 601. Thank you.

4 THE JUROR: 674.

5 THE COURT: 674. Thank you.

6 The guy in the blue shirt, yes.

7 THE JUROR: 5 --

8 THE COURT: Just a moment. The guy in the blue shirt
9 with the mask. If you will pull your mask down?

10 THE JUROR: 556.

11 THE COURT: 556. Thank you.

12 Yes, sir.

13 THE JUROR: 668.

14 THE COURT: 668. Thank you.

15 THE JUROR: 609.

16 THE COURT: 609.

17 THE JUROR: 568.

18 THE COURT: 568.

19 THE JUROR: 557.

20 THE COURT: 557.

21 THE JUROR: 471.

22 THE COURT: 471.

23 THE JUROR: 655.

24 THE COURT: 655.

25 THE JUROR: 548.

1 THE COURT: 548.

2 THE JUROR: 508.

3 THE COURT: 508.

4 And on this side from the --

5 THE JUROR: 588.

6 THE COURT: 588.

7 THE JUROR: 555.

8 THE COURT: 555.

9 THE JUROR: 573.

10 THE COURT: 573.

11 THE JUROR: 571.

12 THE COURT: 571.

13 THE JUROR: 650.

14 THE COURT: 650.

15 THE JUROR: 545.

16 THE COURT: 545.

17 THE JUROR: 482.

18 THE COURT: 482.

19 THE JUROR: 589.

20 THE COURT: 589.

21 THE JUROR: 533.

22 THE COURT: 533.

23 THE JUROR: 593.

24 THE COURT: 593.

25 THE JUROR: 583.

1 THE COURT: 885.
2 THE JUROR: 596.
3 THE COURT: 596.
4 THE JUROR: 524.
5 THE COURT: 524.
6 THE JUROR: 528.
7 THE COURT: 528. 528.
8 THE JUROR: 615.
9 THE COURT: 5.
10 THE JUROR: 564.
11 THE COURT: 564.
12 THE JUROR: 595.
13 THE COURT: 595.
14 THE JUROR: 567.
15 THE COURT: 567.
16 THE JUROR: 667.
17 THE COURT: 667.
18 THE JUROR: 558.
19 THE COURT: 558.
20 THE JUROR: 612.
21 THE COURT: 612.
22 THE JUROR: 663.
23 THE COURT: 663.
24 THE JUROR: 463.
25 THE COURT: 463.

1 THE JUROR: 648.

2 THE COURT: 640 -- 648.

3 THE JUROR: 585.

4 THE COURT: 585.

5 THE JUROR: 630.

6 THE COURT: 630.

7 THE JUROR: 595.

8 THE COURT: 595.

9 THE JUROR: 670.

10 THE COURT: 670.

11 THE JUROR: 530.

12 THE COURT: 530.

13 THE JUROR: 518.

14 THE COURT: 518.

15 THE JUROR: 582.

16 THE COURT: 582. Thank you.

17 If you did not stand to the previous question, meaning
18 that you have not read, heard, or know anything about this
19 case, if you have not read, heard, or know anything about
20 this case, please stand, and give me your juror numbers in
21 like fashion.

22 Yes, sir.

23 THE JUROR: 460.

24 THE COURT: 460. All right, you may be seated.

25 THE JUROR: 578.

1 THE COURT: 578.

2 THE JUROR: 654.

3 THE COURT: Six-five?

4 THE JUROR: 4.

5 THE COURT: 654.

6 Front row, lead row.

7 THE JUROR: 675.

8 THE COURT: Pardon?

9 THE JUROR: 675.

10 THE COURT: Thank you.

11 THE JUROR: 644.

12 THE COURT: 644.

13 THE JUROR: 474.

14 THE COURT: 474.

15 THE JUROR: 572.

16 THE COURT: 572.

17 THE JUROR: 534.

18 THE COURT: 534.

19 THE JUROR: 544.

20 THE COURT: 544.

21 THE JUROR: 550.

22 THE COURT: 550. All right. Thank you.

23 Now I need to know the source of the information that
24 you have received concerning this case. For those of you
25 who have indicated that you either read, heard, or know

1 something about this case, I need to know the source of the
2 information that you have received, either through a news
3 article, podcast, TV, TV, radio, personal conversations
4 with other people. I need to know the source of your
5 information.

6 Starting again on this side, those of you who know or
7 heard something about the case, if you could all stand
8 again on this side first, and tell me the source of your
9 information, starting with that row and then going back.

10 Yes, ma'am.

11 THE JUROR: Local news, Internet, and conversations.

12 THE COURT: All right, tell me your juror numbers and
13 then that information.

14 THE JUROR: 580.

15 THE COURT: All right. Thank you.

16 THE JUROR: 509. Facebook, local news, television,
17 radio, personal conversations.

18 THE COURT: All right. Thank you.

19 Yes, ma'am.

20 THE JUROR: 470. Social media, news.

21 THE COURT: Thank you.

22 Yes, sir, in the black.

23 THE JUROR: 575. Local news.

24 THE COURT: Thank you.

25 And behind him.

1 THE JUROR: 658. Internet news stories.

2 THE COURT: Thank you.

3 THE JUROR: 515. Just talking to people and news.

4 THE COURT: All right. Thank you.

5 THE JUROR: 651. Talking to people and Facebook
6 headlines.

7 THE COURT: All right. Thank you.

8 THE JUROR: 669, my wife.

9 THE COURT: All right. Thank you.

10 Yes, ma'am, in the gold.

11 THE JUROR: 522. National news, listening to
12 podcasts. I just heard something along the way, and Apple
13 News on the phone.

14 THE COURT: All right. Thank you.

15 Yes, sir.

16 THE JUROR: 556. Local news.

17 THE COURT: Thank you.

18 THE JUROR: 476. Facebook, and talking to people, and
19 the news.

20 THE JUROR: 604. Social media.

21 THE COURT: All right.

22 THE JUROR: 601. *Post and Courier*. My wife used to
23 teach at Wade Hampton High School. *FitsNews*.

24 THE COURT: All right. Thank you.

25 THE JUROR: I'm 495. Friends and family, podcasts,

1 TV, listening to the news, social media, articles.

2 THE COURT: Okay. Thank you.

3 Yes, ma'am, in the black.

4 THE JUROR: 471. Internet and the news.

5 THE COURT: Okay.

6 THE JUROR: 557, and the local news.

7 THE COURT: Thank you.

8 THE JUROR: 568. News articles and my husband.

9 THE JUROR: 609. Local television from Charleston.

10 THE JUROR: 668. Local news, Internet, talking to
11 friends.

12 THE COURT: All right. Thank you.

13 THE JUROR: Local news, TV shows, *Dateline*. That's
14 it.

15 THE COURT: And juror number as well.

16 THE JUROR: 655.

17 THE COURT: Thank you.

18 THE JUROR: 548. Local news.

19 THE JUROR: 508. All of the above.

20 THE COURT: All right. Thank you.

21 We'll move to this side. If you all will stand and
22 provide the same information, starting with the gentleman
23 --

24 THE JUROR: 588. Radio.

25 THE JUROR: 565. Pretty everything about this:

1 YouTube, podcasts. I live in the area. I've talked to
2 locals.

3 THE COURT: All right. Thank you.

4 THE JUROR: 573. Podcasts, word of mouth.

5 THE COURT: All right. Thank you.

6 Yes, ma'am.

7 THE JUROR: 571. Rumors and news articles and a
8 documentary.

9 THE COURT: All right. Thank you.

10 Next. Yes, ma'am.

11 THE JUROR: 650. Local media, podcasts, word of
12 mouth.

13 THE COURT: All right. Thank you.

14 THE JUROR: 545. National news, local news, talked
15 with friends.

16 THE COURT: All right. Thank you.

17 THE JUROR: 482, local news.

18 THE JUROR: 589. Local news.

19 THE COURT: All right.

20 THE JUROR: 533. Local news.

21 THE JUROR: 593. All of the above.

22 THE COURT: All right.

23 THE JUROR: 553. Television, local news.

24 THE COURT: All right. Thank you.

25 THE JUROR: 519. Podcasts.

1 THE COURT: Thank you.

2 THE JUROR: 524. Just from hearing of it, just talk.

3 THE JUROR: 558. Local news, social media, and
4 podcasts.

5 THE JUROR: 615. Local news and podcasts.

6 THE JUROR: 564. Local news, social media, and word
7 of mouth.

8 THE JUROR: 599. Social media and family.

9 THE JUROR: 567. Just local news.

10 THE JUROR: 667. Local news, newspaper, Internet.

11 THE JUROR: 558. Local news, social media, talking
12 with people.

13 THE JUROR: 612. Local news and personal
14 conversations.

15 THE JUROR: 663. Local news.

16 THE JUROR: 463. Personal conversations, social
17 media, local news.

18 THE JUROR: 348. News and gossip.

19 THE JUROR: 585. Social media, local news, and
20 personal conversations.

21 THE JUROR: 630. News, social media.

22 THE JUROR: 595. Local news, Facebook, Internet.

23 THE JUROR: 670. Local news.

24 THE JUROR: 530. Internet and conversations.

25 THE JUROR: 518. National Public Radio news, *Wall*

1 *Street Journal.*

2 THE JUROR: 582. Local newspaper, social media, and
3 gossip.

4 THE COURT: All right, those of you who have heard,
5 read, or stated others -- or have talked with others about
6 it, have you formed an opinion as to the guilt or innocence
7 of the defendant regarding the murder charges? If you have
8 formed an opinion as to guilt or innocence of the
9 defendant, please stand.

10 And we'll take the juror numbers of those of you who
11 have formed an opinion as to the guilt or the innocence of
12 the defendant.

13 THE JUROR: 580.

14 THE COURT: 580.

15 THE JUROR: 509.

16 THE COURT: 509.

17 THE JUROR: 515.

18 THE COURT: 515.

19 THE JUROR: 558.

20 THE JUROR: 471.

21 THE JUROR: 655.

22 THE JUROR: 555.

23 THE JUROR: 573.

24 THE JUROR: 545.

25 THE JUROR: 593.

1 THE JUROR: 605.

2 THE JUROR: 667.

3 THE JUROR: 558.

4 THE JUROR: 463.

5 THE JUROR: 648.

6 THE JUROR: 585.

7 THE JUROR: 670.

8 THE COURT: All right, ladies and gentlemen, the law
9 and practice requires that jurors decide cases based on the
10 evidence presented during the course of a trial and the law
11 as explained to you by the court. No matter what you may
12 have heard or seen or what opinions that you may have
13 formed, the question I have for you is that whether or not
14 you can put all that aside and decide this case only on the
15 evidence you receive in court, followed by the law, and
16 decide the case in a fair and impartial manner. If you can
17 do that, please stand.

18 THE JUROR: You said can I?

19 THE COURT: Pardon?

20 THE JUROR: You said if I can?

21 THE COURT: If you can decide the case based on the
22 law and the evidence as presented in court regardless of
23 what you previously heard, please stand. If you can decide
24 the case based on the law and the evidence -- those of you
25 who have previously formed an opinion, as it relates to

1 those of you who have previously formed an opinion, the
2 same folks who were standing after the last question who
3 have indicated that they've formed an opinion, if all those
4 folks would stand again who have previously formed an
5 opinion? All right, this question is directed to all of
6 you who have formed an opinion.

7 As relates to you all, aside from the opinion you have
8 formed, can you put aside all of that and decide the case
9 solely based on the law and the evidence presented in
10 court? If you can do that, remain standing. If you
11 cannot, please be seated.

12 From the jurors who are -- remain standing who
13 indicate that they can decide the case on a fair and
14 impartial basis despite what they previously thought or may
15 currently be thinking, those jurors are juror number?

16 THE JUROR: 522.

17 THE COURT: 522.

18 THE JUROR: 515.

19 THE COURT: 515.

20 THE JUROR: 585.

21 THE COURT: 585. All right. Thank you all.

22 Now, those jurors who --

23 You may be seated.

24 Those jurors who have a fixed opinion that will not
25 change or cannot change based on what is presented in

1 court, please stand again and give me those juror numbers.

2 Yes.

3 THE JUROR: 580.

4 THE COURT: 580.

5 THE JUROR: 509.

6 THE COURT: 509.

7 THE JUROR: 476.

8 THE COURT: 476.

9 THE JUROR: 471.

10 THE COURT: 471.

11 THE JUROR: 655.

12 THE COURT: 655.

13 THE JUROR: 555.

14 THE COURT: 555.

15 THE JUROR: 573.

16 THE COURT: 573.

17 THE JUROR: 545.

18 THE COURT: 545.

19 THE JUROR: 593.

20 THE COURT: 593.

21 THE JUROR: 605.

22 THE COURT: 605.

23 THE JUROR: 667.

24 THE COURT: 667.

25 THE JUROR: 558.

1 THE COURT: 558.

2 THE JUROR: 463.

3 THE COURT: 463.

4 THE JUROR: 648.

5 THE COURT: 648.

6 THE JUROR: 670.

7 THE COURT: 670.

8 Are there any objections to those jurors being
9 excused?

10 MR. HARPOOTLIAN: None from the defendant, Your Honor,
11 no objection.

12 (Break in proceedings.)

13 THE COURT: Ladies and gentlemen, we'll stand and
14 stretch for a moment.

15 (Break in proceedings.)

16 THE COURT: Thank you.

17 Says the State?

18 MR. WATERS: Your Honor, no objection.

19 THE COURT: All right, those jurors, those jurors will
20 be excused. Confirm the list that I'm -- you all have
21 noted: Juror Number 580, 580, Number 509.

22 If you all will stand.

23 Number 580, you're excused. Yes, you may leave.
24 509.

25 THE JUROR: This is 580. I'm 509.

1 THE COURT: Yes. Good. Thank you.

2 476, 471.

3 Let's see, two folks. Just a moment. What is your
4 number?

5 THE JUROR: 571.

6 THE COURT: And you're 476?

7 THE JUROR: 471.

8 THE COURT: I said 476 and 471.

9 THE JUROR: Oh. I apologize.

10 THE COURT: 471, 655, 555, 573, 545, 593, 605, 667,
11 558, 463, 648, and 670.

12 The next question. Were you or any family member of
13 yours or significant other related by blood or marriage or
14 social acquaintance with the victims Margaret, Maggie,
15 Murdaugh and Pearl -- Paul Murdaugh? If you're related by
16 blood or some significant other is related by blood,
17 marriage, or social acquaintance with them, either or any
18 of them, please stand.

19 And tell me your juror number.

20 THE JUROR: 583.

21 THE COURT: And your acquaintance?

22 THE JUROR: We're related down the line.

23 THE COURT: You're related to?

24 THE JUROR: We're related down the line, blood.

25 THE COURT: And you're related to Ms. Murdaugh, Mr.

1 Murdaugh?

2 THE JUROR: Mr. Murdaugh.

3 THE COURT: All right. With the defendant, Alex
4 Murdaugh?

5 THE JUROR: Yes.

6 THE COURT: And his son, and what degree of
7 relationship? You said down the line?

8 THE JUROR: Yes, sir. I was told we were related down
9 the line.

10 THE COURT: All right, and would that affect your
11 ability to be fair and impartial?

12 THE JUROR: Possibility there.

13 THE COURT: Sir?

14 THE JUROR: Yes, sir.

15 THE COURT: It would? And your juror number is?

16 THE JUROR: 583.

17 THE COURT: 583.

18 Any objection to him being excused?

19 MR. WATERS: None from the State, Your Honor.

20 MR. GRIFFIN: Your Honor, we would like further
21 inquiry.

22 THE COURT: All right, if you'll stay with us for a
23 bit, Mr. 583.

24 Yes, sir?

25 THE JUROR: 582. We're about seventh or eighth

1 cousins to Mr. Alex Murdaugh.

2 THE COURT: And would that affect your ability to be
3 fair and impartial?

4 THE JUROR: No, it would not, Your Honor.

5 THE COURT: All right. Thank you.

6 Yes, ma'am?

7 THE JUROR: I'm 585, and I married into a family, and
8 I just heard that they were distantly related.

9 THE COURT: And would that fact affect your ability to
10 be fair and impartial?

11 THE JUROR: No.

12 THE COURT: Thank you.

13 If you are personally acquainted with Mr. Richard
14 Alexander Murdaugh, related to him, have any type
15 relationship with him currently or in the past, if so
16 please stand.

17 Yes, sir, juror number.

18 THE JUROR: 668.

19 THE COURT: Yes, sir.

20 THE JUROR: Can I approach, Your Honor?

21 THE COURT: Yes, sir. We'll have you approach at the
22 end of the process. Thank you, and thank you, sir.

23 Any other jurors who wish to approach and make any
24 statement outside the presence of everyone else, that is
25 certainly fine.

1 Now, moving a step backwards to the lawyers involved,
2 both sides are represented by counsel and would like for
3 them to introduce themselves at this time.

4 MR. WATERS: Good morning, everyone. My name is
5 Creighton Waters. I'm from the Attorney General's Office
6 in Columbia, and I will be the lead prosecutor in the case
7 against Alex Murdaugh. With me is some other prosecutors.
8 Savannah Goude right here. Next to her is Johnny James.
9 Next to Johnny is Don Zelenka. That's David Fernandez
10 right there, John Conrad is right there, and then finally
11 John Meadors in the back. Thank y'all.

12 MR. HARPOOTLIAN: Please the Court, Your Honor?

13 THE COURT: Yes, sir.

14 MR. HARPOOTLIAN: I'm Dick Harpootlian, and I'm a
15 member of a much smaller team representing Mr. Murdaugh.
16 This is Jim Griffin, who has his own practice in Columbia;
17 we're working together on this case. Phil Barber, who's
18 not here this morning, and Margaret Fox, who is with Jim's
19 office, we will be representing Mr. Murdaugh here during
20 this proceeding. Thank you.

21 THE COURT: If you've ever been represented by any of
22 the lawyers or sued by any of the lawyers involved, or if
23 you have any acquaintance with any of the lawyers involved
24 or any members of their respective law firms or agency, if
25 so please stand.

1 All right, yes, ma'am.

2 THE JUROR: 585. I'm not sure if -- 585. I don't
3 know if this is -- answers the questions, but my husband's
4 uncle works in the same law firm.

5 THE COURT: Which law firm is that?

6 THE JUROR: PMPE.

7 THE COURT: Oh. We haven't gotten to asking about
8 that firm, but you can tell us while you're telling us.
9 Your --

10 THE JUROR: My husband's uncle works in the same law
11 firm.

12 THE COURT: And what is your husband's uncle -- he's a
13 lawyer?

14 THE JUROR: Yes, sir.

15 THE COURT: And what is his name?

16 THE JUROR: My husband's uncle?

17 THE COURT: Yes.

18 THE JUROR: Steven Murdaugh.

19 THE COURT: All right. All right. Thank you.
20 Yes, sir.

21 THE JUROR: 583. I had a -- when it was Peters,
22 Parker, I had a lawsuit in magistrate's court.

23 THE COURT: All right. Thank you, and would that
24 affect your ability to be fair and impartial?

25 THE JUROR: No.