

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**  
**May 22 2026**  
**SC Court of Appeals**

\_\_\_\_\_  
Appeal from Chester County

Honorable Robert E. Hood, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

JOSEPH LANDRY,

APPELLANT

APPELLATE CASE NO. 2025-000446  
\_\_\_\_\_

INITIAL BRIEF OF APPELLANT  
\_\_\_\_\_

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**STATEMENT OF ISSUE ON APPEAL**

Did the trial court err in denying appellant's request to proffer a juror's testimony who said he felt pressured to render a guilty verdict because the other jurors were "ready to go" because it prevented any inquiry into whether appellant's right to fundamental fairness was violated during deliberations?

## STATEMENT OF THE CASE

Appellant was indicted in Chester County for third-degree criminal sexual conduct with a minor and on February 24, 2025, was tried before the Honorable Robert E. Hood and a jury. Tr. 1. Candace Lively, Julia Soprano-Cesmat, and Jessica Russo represented the State. Tr. 1. Nathan Sheldon represented appellant. Tr. 1. The jury convicted appellant. Tr. 742-43. Judge Hood sentenced appellant to eight years' imprisonment. Tr. 758. The day following the verdict, the court held a hearing regarding the juror issue on appeal and denied appellant's motions, including a request to proffer testimony and for a mistrial. Tr. 759-97. This appeal follows.

## **STANDARD OF REVIEW**

The trial court's decision to deny a proffer of testimony is an issue of law that should be reviewed de novo.

## ARGUMENT

The trial court erred in denying appellant's request to proffer a juror's testimony who said he felt pressured to render a guilty verdict because the other jurors were "ready to go" because it prevented any inquiry into whether appellant's right to fundamental fairness was violated during deliberations.

The day after the verdict in this contentious sexual abuse trial, the trial court held a hearing regarding an unusual communication from one of the jurors. Tr. 759. Defense counsel Nathan Sheldon explained that after the verdict, he went back to his office and an attorney with whom he shared office space told him he needed to speak to him. Tr. 761.

This lawyer relayed that he represented one of the jurors in Sheldon's trial. Tr. 761. The juror came to his attorney's office to pick up a check. Tr. 761. The juror was "in tears, appeared distraught." Tr. 761. Sheldon paraphrased and said the juror had been "persuaded or pressured into changing his verdict from not guilty to guilty." Tr. 762. Sheldon had no direct contact with the juror, called the solicitor, Candice Lively, and sent an email to the court. Tr. 763. Sheldon also told the court that at no point did he share appellant's sentence of eight years with the other attorney in his building. Tr. 765.

At this point, Judge Hood picked up the thread of events. Tr. 763. After the court received Sheldon's email, the juror contacted the clerk's office. Tr. 763. A clerk who talked to the juror said the juror "felt he gave the wrong verdict and was pressured to saying 'guilty' because all the other jurors was ready to go." Tr. 764. The juror said "it was on his heart" and he wanted Judge Hood to know about it. Tr. 764. Judge Hood had the clerk call the juror and tell him to be in court at 11:00 AM the next day for the hearing.

Judge Hood and the attorneys then discussed how to proceed. The judge and the solicitor agreed nothing like this had ever happened to them before. Tr. 766, Tr. 768-69. The solicitor cited Shumpert v. State, 378 S.C. 62, 661 S.E.2d 369 (2008) and Rule 606, SCRE, and argued the juror could not testify about the internal processes of juror deliberations and argued “buyer’s remorse” would not be a reason to make further inquiry. Tr. 769-70. She noted that questioning on outside influence or “something that upsets the idea of fundamental fairness,” like a racial issue, were the only possible subjects on which the court could question the juror. Tr. 769-70. The solicitor and Judge Hood then noted the juror and the defendant were both white males. Tr. 772-73. The solicitor argued that because the juror and the defendant were the same race, nothing should even be mentioned about racial bias. Tr. 774.

Sheldon initially agreed with Lively about the scope of questioning under Rule 606. Tr. 775. He agreed buyer’s remorse was not a proper line of inquiry, but argued no evidence existed that the juror knew appellant’s sentence when he began expressing his concerns. Tr. 776. Sheldon asked for the juror’s testimony to be proffered in a closed setting. Tr. 776-77.

The State opposed a proffer, arguing that courts should never “get into the specifics of jury deliberation.” Tr. 777. Judge Hood said he intended to clear the courtroom and only ask whether there was extraneous prejudicial information or outside influence. Tr. 777-78. Sheldon then said his previous comments were “a specific motion that we proffer his full testimony” and asked for a ruling. Tr. 778. Judge Hood ruled, “I’m going to deny your motion to—to go into a full proffer with him on his thoughts, and his feelings, and all that kind of stuff.” Tr. 778. The judge cited Rule 606, SCRE in support of his ruling. Tr. 778-79. The parties discussed how to define “extraneous prejudicial information” and how to make the juror feel comfortable, after

which appellant renewed his objection to the limited questioning and Judge Hood indicated he believed he had ruled and the objection was preserved for appeal. Tr. 779-84.

Juror 46 entered the courtroom and was sworn. Tr. 786. Judge Hood asked the juror several preliminary questions about his background to put him at ease. Tr. 787-889. He then told the juror that the rules only allowed two kinds of questions about the subject of his communication with the clerk's office. Tr. 789. Judge Hood first asked "whether any extraneous prejudicial information was improperly brought to the jury's attention." Tr. 790. Juror 46 asked for a definition. Tr. 790. Judge Hood defined it as anything outside of the evidence presented at trial and the juror said that had not occurred. Tr. 791. The second question was whether there was any improper outside influence. Tr. 791. The juror said there was not. Tr. 791. Appellant renewed his objection and Judge Hood dismissed the juror and thanked him for bringing the matter to the court's attention. Tr. 792. Appellant again renewed his objection and then moved for a mistrial and those were denied. Tr. 794.

The trial court erred in denying appellant's request to proffer testimony about the reasons Juror 46 changed his verdict. The questioning was far too limited to determine whether the juror's changed verdict deprived appellant of his right to fundamental fairness. The solicitor erroneously advocated a limited view of fundamental fairness that limited it to racial issues and the trial judge unfortunately accepted this view.

Shumpert is not as narrow as was argued by the solicitor. Shumpert was a PCR appeal. In PCR, the defendant attempted to admit the affidavit of a juror. The juror's affidavit stated during deliberations, jurors said that if the defendant was not guilty, he would have testified. Id. The PCR judge refused to admit the affidavit into evidence.

The precise legal issue before the Court in Shumpert was whether the PCR judge erred in refusing to admit the affidavit. Id. The Shumpert Court noted that admitting evidence concerning juror deliberations was highly restricted, but left the door open to admit evidence when required by fundamental fairness. Id. The Court said its decision to uphold the PCR court’s refusal to admit the affidavit should not be interpreted as suggesting that all evidence about jurors improperly considering a defendant’s right to testify does not implicate fundamental fairness. Id. at 68-69, 661 S.E.2d at 372. Nothing in Shumpert limits the fundamental fairness inquiry to racial issues. Compare State v. Gray, 438 S.C. 130, 145, 882 S.E.2d 469, 477 (Ct. App. 2022) (stating that South Carolina recognizes only two allegations implicating fundamental fairness: racial intimidation and premature deliberations).

The Shumpert Court had the juror’s affidavit for review. The Court wrote, “Turning the focus to an analysis of the affidavit offered in the instant case, we find that it was not necessary that the PCR court admit the affidavit in order to ensure fundamental fairness.” Id. at 67, 661 S.E.2d at 371-72. “Though the affidavit is significantly longer than this summary, the affidavit essentially provides that. . . .” Id. The Court’s review of the affidavit would not be possible unless the affidavit had been proffered.

Appellate courts depend on proffers to build a record they can review. By restricting the questioning of the juror, we do not know whether the juror’s concerns were merely buyer’s remorse or amounted to a deprivation of fundamental fairness. Shumpert also states that a defendant must show prejudice from juror misconduct. Id. at n.2. A defendant cannot demonstrate prejudice without a proffer.

The recent case of State v. Murdaugh, \_\_\_ S.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ (May 13, 2026), overruled Ethier v. Fairfield Memorial Hospital, 429 S.C. 649, 842 S.E.2d 355 (2020). Ethier

dealt with premature deliberations. Murdaugh dealt with improper influence by the clerk of court. Murdaugh overruled Ethier “to the extent this case condoned the use of testimony about the jury’s mental processes in reaching their verdict.” Murdaugh, n.12. Murdaugh also recognized the difficulty Rule 606’s limitations impose in determining whether a new trial is warranted. Id.

Murdaugh does not foreclose a limited inquiry to even determine the type of misconduct that occurred. While Murdaugh forbids questioning into the mental processes of the jury, it does not forbid the trial judge from taking a limited proffer to determine the category of problem it faces. And Murdaugh did not overrule Shumpert, in which the Court reviewed a proffer. The trial judge erred in not allowing a limited proffer to determine whether a fundamental fairness concern drove the juror’s concerns. This Court should reverse and remand for a new trial, or, alternatively, for a hearing to determine whether fundamental fairness is implicated by Juror 46’s concerns.

**CONCLUSION**

For the foregoing reasons, appellant's conviction should be reversed and remanded for a new trial, or, alternatively, remanded for a proffer regarding Juror 46.

s/David Alexander  
David Alexander  
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 22nd day of May, 2026.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 22nd day of May, 2026.

s/David Alexander

David Alexander

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