

**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

**MOTION FOR DEFENDANT TO BE
UNSHACKLED IN THE COURTROOM**

Defendant Richard Alexander Murdaugh, through undersigned counsel, hereby moves for an order requiring the State to unshackle him during courtroom proceedings in which news media are present with video cameras.

The U.S. Supreme Court forbids shackling criminal defendants during trial absent a special need: “The law has long forbidden routine use of visible shackles during the guilt phase [of a criminal trial]; it permits a State to shackle a criminal defendant only in the presence of a special need.” *Deck v. Missouri*, 544 U.S. 622, 626 (2005). Because shackling is an “inherently prejudicial practice,” it “should be permitted only where justified by an essential state interest specific to each trial.” *Id.* at 628 (quoting *Holbrook v. Flynn*, 475 U.S. 560, 568–69 (1986)). This rule also applies to jury selection. *State v. Heyward*, 432 S.C. 296, 323, 852 S.E.2d 452, 466 (Ct. App. 2020), *reh’g denied* (Jan. 15, 2021) (“We agree the trial court abused its discretion in denying Heyward’s motion to remove his shackles during jury selection . . .”).

There is no specific, special need to shackle Mr. Murdaugh in the courtroom. He has not—and is not alleged to have—engaged in any behavior suggesting he is a threat to the courtroom or will somehow escape from it. “[S]ecurity measures should be adopted to prevent disruption of the trial, harm to those in the courtroom, escape of the accused, and prevention of other crimes.” *State v. Tucker*, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995). “In all the cases in which shackling has

been approved, there has also been evidence of disruptive courtroom behavior, attempts to escape from custody, assaults or attempted assaults while in custody, or a pattern of defiant behavior toward corrections officials and judicial authorities.” *Duckett v. Godinez*, 67 F.3d 734, 749 (9th Cir. 1995).

The fact that Mr. Murdaugh is charged with murder cannot be a special need justifying shackling. If it could, every murder defendant would always be shackled every time he is in a courtroom. But that is not the law. Most of the cases holding defendants cannot be shackled at trial absent special need were murder prosecutions—*Deck* was a murder prosecution, so was *Heyward*, so was *Tucker*, so was *Duckett*. Even after a murder conviction in capital case, the defendant may not be shackled in the courtroom before jury proceedings are complete, absent a specific need. *Deck*, 544 U.S. at 633 (“[C]ourts cannot routinely place defendants in shackles or other physical restraints visible to the jury during the penalty phase of a capital proceeding.”); *see also, e.g., Utah v. Young*, 853 P.2d 327, 350–51 (Utah 1993) (“The mere fact that a jury convicted a defendant of first degree murder is not a sufficient basis for a decision to shackle him during the penalty phase.”).

“Before a presumptively innocent defendant may be shackled, the court must make an individualized decision that a compelling government purpose would be served and that shackles are the least restrictive means for maintaining security and order in the courtroom.” *United States v. Sanchez-Gomez*, 859 F.3d 649, 661 (9th Cir. 2017) (en banc), *vacated and remanded on mootness grounds*, 200 L. Ed. 2d 792, 138 S. Ct. 1532 (2018). On this point, the decision by Judge Newman regarding shackling the defendant in *State v. Mahdi* is instructive. *Mahdi* was a capital murder case in which the defendant had embarked upon a four-state crime spree. *Mahdi v. Stirling*, No. CV 8:16-3911-TMC, 2018 WL 4566565, at *1 (D.S.C. Sept. 24, 2018), *aff’d*, 20 F.4th 846

(4th Cir. 2021). After fleeing police at a gas station in Calhoun County, murdered a law enforcement officer at his home, then fled law enforcement again while armed with a semiautomatic rifle. *Id.* During the prosecution, a functioning, homemade handcuff key was found in the defendant’s pocket, which he had smuggled into the courtroom in his mouth. *Id.* at *12. The prosecutor and sheriff therefore asked the court to have the defendant’s hands shackled. *Id.* Even with that specific threat of escape, the court declined to have the defendant’s hands shackled, reasoning that the sheriff was aware of the issue and would be able to keep the defendant from escaping without shackling his hands:

Judge Newman asked for input from both the solicitor and defense counsel. Solicitor Pascoe agreed with the sheriff and endorsed shackling Mahdi’s hands and legs and using “any means possible to make sure the courthouse is secure.”

...

Judge Newman then instructed the sheriff:

Sheriff, at this point, I will certainly agree that security is imperative

I believe that if you would use the leg irons, in addition to the chains, but, at this point, I would not want to have him shackled in the presence of the jury with his shackles being visible due to the effect that it may have on his right to a fair trial. We’ll step up the measures and if anything further happens, I’m sure you’ll be on top of it and we can address it from there. Thank you very much.

Id. There is no apparent reason why a more stringent rule should apply to Mr. Murdaugh, who has not evaded law enforcement, attacked law enforcement, attempted to escape from law enforcement, or engaged in any activity threatening law enforcement or court personnel. Mr. Murdaugh surrendered when first charged with crimes, and when he was released on bond he complied with every condition of his release. He has threatened no one and no one had to search for him. Thus, in this case, shackles are not “the least restrictive means for maintaining security

and order in the courtroom” and “no compelling government purpose would be served” by Mr. Murdaugh him the courtroom.

In opposition to this Motion, the State will argue murder defendants in South Carolina are always shackled in pretrial court appearances and that Mr. Murdaugh should be no different. It is true murder defendants here are typically shackled in pretrial hearings, but that is irrelevant. Most murder defendants do not have TV crews filming every pretrial hearing. Those who do, like Mr. Murdaugh, have a constitutional right to be unshackled unless there is an articulatable security issue specific to the individual defendant. The issue is how the Court allows the defendant in this case to be displayed to the jury pool in advance of jury selection, not evenhandedness regarding the relative physical comfort of criminal defendants across South Carolina.

Respectfully submitted,



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November 30, 2022

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