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Apr 11 2024

SC Court of Appeals

Exhibit 1

Order Denying Motino for a New Trial,
April 4, 2024

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SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF GENERAL SESSIONS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

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State of South Carolina)
v.)
Richard Alexander Murdaugh,)
Defendant.)

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

**ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL**

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

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 is 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