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January 25, 2024

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, the 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 [redacted]
JUROR [redacted]

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]

January 29, 2024.

SWORN TO before me this 29th day of January, 2023.

Elizabeth Gutes

Notary Public for South Carolina
My Commission Expires: 12/7/25

EXHIBIT L

(Order Denying Motion for New Trial)

STATE OF SOUTH CAROLINA COUNTY OF COLLETON State of South Carolina v. Richard Alexander Murdaugh, Defendant.	)	IN THE COURT OF GENERAL SESSIONS FOR THE FOURTEENTH JUDICIAL CIRCUIT Case No.: 2022-GS-15-00592 2022-GS-15-00593 2022-GS-15-00594 2022-GS-15-00595 **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