

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

