

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.<sup>3</sup> **{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}**.

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<sup>3</sup> 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.<sup>4</sup> This

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<sup>4</sup> 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.

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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.<sup>5</sup>

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<sup>5</sup> 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).

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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

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**Jul 10 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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COLLETON COUNTY  
Court of General Sessions  
The Honorable Jean Hoefler Toal, Chief Justice (Ret.)

Appellate Case No. 2024-000576

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Richard Alexander Murdaugh.....Appellant,

v.

The State of South Carolina.....Respondent.

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**PROOF OF SERVICE**

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I certify that on July 10, 2024, I served Appellant Richard Alexander Murdaugh’s Motion for Certification Under Rule 204(b), SCACR, by emailing it to its attorney of record with the South Carolina Attorney General’s Office, Creighton Waters (CWaters@scag.gov).

Respectfully submitted,

s/ Richard A. Harpootlian  
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July 10, 2024

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**Jul 10 2024**

**SC Court of Appeals**

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Re: State v. Richard A. Murdaugh  
Appellate Case No. 2024-000576

Dear Ms. Kitchings,

Please find attached for filing Appellant Richard Alexander Murdaugh's Motion for Certification Under Rule 204(b), SCACR.

With warm personal regards, I am

Sincerely,

s/Richard A. Harpootlian  
Richard A. Harpootlian

/hm

Enclosure

cc: Creighton Waters, Esquire