THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

COLLETON COUNTY
Court of General Sessions

The Honorable Jean Hoefer Toal, Chief Justice (Ret.)

Case No. 2024-000576

THE STATE, ... RESPONDENT,

v.

RICHARD ALEXANDER MURDAUGH, ... APPELLANT.

INITIAL BRIEF OF APPELLANT

Richard A. Harpootlian, SC Bar No. 2725
Phillip D. Barber, SC Bar No. 103421
Andrew R. Hand, SC Bar No. 101633
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, SC 29202
(803) 252-4848
rah@harpootlianlaw.com
pdb@harpootlianlaw.com
arh@harpootlianlaw.com

James M. Griffin, SC Bar No. 9995
Margaret N. Fox, SC Bar No. 76228
GRIFFIN HUMPHRIES, LLC
4408 Forest Drive (29206)
Post Office Box 999
Columbia, South Carolina 29202
(803) 744-0800
jgriffin@griffinhumphries.com
mfox@griffinhumphries.com

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES Page(s)

CONSTITUTIONS, STATUTES, AND RULES

STATEMENT OF ISSUES ON APPEAL

1. Is prejudice to the defendant's right to a fair trial presumed when a state official[1] secretly advocates a guilty verdict in the jury room during a criminal trial?

2. Is prejudice to a defendant's right to a fair trial proven when it is found that a state official tampered with the jury and a juror testifies the jury tampering influenced her verdict?

3. Is secret advocacy for a guilty verdict in the jury room by a state official during a criminal trial a structural error in the trial?

STATEMENT OF THE CASE

Richard "Alex" Murdaugh is a disgraced former attorney and drug addict. Once a prominent member of the Bar, Mr. Murdaugh stole millions from his law firm, from his clients, and from others who trusted him. His law firm confronted him about his thievery on September 3, 2021. He resigned from the firm and, after a failed suicide attempt assisted by his drug dealer, entered drug rehabilitation. He was arrested immediately upon leaving a rehabilitation facility and has been incarcerated ever since.

Three months earlier, on June 7, 2021, Mr. Murdaugh's wife, Maggie Murdaugh, and younger son, Paul Murdaugh, were brutally murdered at the dog kennels on their rural family property in Colleton County. Mr. Murdaugh was indicted for the murders and for related firearms offenses on July 14, 2022, and the jury trial commenced on January 23, 2023. The Honorable Clifton B. Newman presided. The State claimed Mr. Murdaugh was confronted at his law firm

[1] In trial court proceedings the State has objected to referring to former Colleton County Clerk of Court Rebecca Hill as a "state official." Mr. Murdaugh does not mean that her improper motives or conduct should be imputed to the prosecution or law enforcement in this case. But it is inarguable that Ms. Hill acted in this case as an official of the State of South Carolina: She held an elected office created by Section 24 of Article V of the South Carolina Constitution, her duties included summoning, impaneling, and managing the jury (*see* S.C. Code tit. 14 ch. 7), and she was able to interact with the jurors in Mr. Murdaugh's murder trial only by virtue of her office.

earlier that day about missing attorney's fees, and that he came home and killed his wife and son to distract a bookkeeper investigating those fees and to reduce his financial exposure in a negligent entrustment suit filed over two years earlier regarding a boat which Paul allegedly operated while intoxicated, resulting in the horrible death of a young woman. Mr. Murdaugh has admitted all allegations of theft, but vehemently denies murdering his family.

After six weeks of trial, the case was submitted to the jury at about 3:45 pm on March 2, 2023. The verdict was returned early that evening. Jurors' television interviews indicate the actual deliberations took less than one hour. Mr. Murdaugh timely appealed the verdict. That appeal is separate from the instant appeal. *State v. Murdaugh*, Appellate Case No. 2023-000392.

On August 1, 2023, the then-Colleton County Clerk of Court, Rebecca Hill, published a book, *Behind the Doors of Justice*, about Mr. Murdaugh's trial. She had been planning to write a book about the trial even before it began. Evid. Hr'g Tr. 181:11–183:19. She repeatedly said that a guilty verdict would sell more books, and that she needed to sell books because "she needed a lake house." *Id.* 181:20–183:1. The book caused some jurors to come forward to describe Ms. Hill's efforts to obtain her desired guilty verdict through jury tampering during trial. Jurors stated that after the State rested and the defense began its case, Ms. Hill entered the jury rooms often, telling jurors not to let the defense "throw you all off," or "distract you or mislead you," and telling them "not to be fooled" by Mr. Murdaugh's testimony in his own defense. *Id.* 52:7–18, 203:18–25, 209:25–210:18; Mot. New Trial Ex. A (Juror 630 Aff., Aug. 14, 2023) & Ex. H (Juror 785 Aff., Aug. 13, 2023); Juror 741 Aff., Jan. 29, 2024.

On September 5, 2023, Mr. Murdaugh filed a motion to suspend his appeal and for leave to file a motion for a new trial based on the evidence of Ms. Hill's jury tampering. The Court granted the motion and Mr. Murdaugh filed his motion for a new trial on October 27. On

November 1, he petitioned the Supreme Court for a writ of prohibition to prohibit Judge Newman from adjudicating the new trial motion, based on public statements Judge Newman made after the jury returned guilty verdicts. On November 15, the Supreme Court denied the petition as moot because Judge Newman recused himself from hearing the new trial motion. On December 18, the Chief Justice appointed retired Chief Justice Jean H. Toal to serve as the circuit judge hearing Mr. Murdaugh's motion for a new trial.

The trial court ordered an evidentiary hearing, and the parties submitted extensive briefing in advance of the hearing. The trial court held a "prehearing procedure" on January 16, 2024, to determine, *inter alia*, "[w]ho has the burden of proof in this matter, and what must be shown to meet that burden of proof, and what must then be shown to contest what has been shown and proved?" Prehearing Hr'g Tr. 3:1–2, 5:22–25. At this initial hearing, the trial court ruled that Mr. Murdaugh bears the burden to prove actual prejudice in the verdict rendered. *Id.* 21:9–20. It further ruled Mr. Murdaugh would not be permitted to call any witnesses, including eyewitnesses to Ms. Hill's jury tampering, or to examine any jurors called by the court. *Id.* 51:9–54:2. Instead, the trial court would call and itself examine each juror; the only other witness would be Ms. Hill and any cross-examination of her would be strictly limited. *Id.* 41:22–42:2, 43:3–45:14, 46:25–51:7, 49:22–23.

On January 24, 2024, the trial court communicated its proposed questions to jurors to the parties. Mr. Murdaugh's counsel objected to the questions and to the rulings made at the hearing by letter dated January 25, 2024. Ltr. from R. Harpootlian to Ret. Chief Justice Toal, Jan. 25, 2024. The trial court reconsidered its prior rulings and allowed Mr. Murdaugh to call the alternate juror and Barnwell County Clerk Rhonda McElveen and allowed the parties an opportunity for cross-examination of witnesses who were not deliberating jurors.

The evidentiary hearing was held on January 29, 2024. A single juror testified one business day earlier, on January 26, to accommodate a scheduling conflict. The jurors (identified by anonymous letters) testified as follows:

Jurors C, F, L, E, O, Y, W, Q, and K testified that they did not hear Ms. Hill comment on the merits of the case before the verdict.

Juror P testified that he heard Ms. Hill tell jurors, regarding Mr. Murdaugh's decision to testify in his own defense, to "watch his body language." Evid. Hr'g Tr. 77:22–78:7. Juror P testified the comment did not affect his verdict.

Juror X testified that she heard Ms. Hill comment, regarding Mr. Murdaugh's decision to testify in his own defense, that it was rare for a defendant to testify in a criminal case and that "this is an epic day." *Id.* 23:9–24:3. Juror X testified the comments did not affect her verdict.

Juror Z testified that she heard Ms. Hill comment, regarding Mr. Murdaugh's decision to testify in his own defense, to watch Mr. Murdaugh's actions and to watch him closely. Juror Z testified that the comments did affect her verdict:

> Q. All right. Was your verdict influenced in any way by the communications of the clerk of court in this case[?]
>
> A. Yes, ma'am.
>
> Q. And how was it influenced?
>
> A. To me, it felt like she made it seem like he was already guilty.
>
> Q. All right, and I understand that, that that's the tenor of the remarks she made. Did that affect your finding of guilty in this case?
>
> A. Yes, ma'am.

Id. 46:6–15. The trial court then examined Juror Z regarding her affidavit attached to Mr. Murdaugh's motion for a new trial, and she affirmed each paragraph therein, including averments that during trial Ms. Hill "told the jury 'not to be fooled' by the evidence presented by Mr.

Murdaugh 's attorneys, which I understood to mean that Mr. Murdaugh would lie when he testified," and that Ms. Hill "instructed the jury to 'watch him [Mr. Murdaugh] closely' immediately before he testified, including 'look at his actions' and 'look at his movements,' which I understood to mean that he was guilty." Mot. New Trial Ex. A ¶¶ 2–3.

The trial court then asked,

> Juror Z, I asked you previously was your verdict on March 2, 2023, influenced in any way by communications from Becky Hill, the clerk of court. You answered that question yes. In light of what you said in the affidavit, which is:
>
> > I had questions about Mr. Murdaugh's guilt but voted guilty because I felt pressured by the other jurors.
>
> Is that answer that I just read a more accurate statement of how you felt?
>
> MR. HARPOOTLIAN: Object to the form, Your Honor.
>
> THE COURT: Overruled.
>
> A. Yes, ma'am.
>
> Q. All right. So, you do stand by the affidavit?
>
> A. Yes, ma'am.
>
> Q. Very good.

Evid. Hr'g Tr. 55:1–56:7. After Juror Z left the courtroom, Mr. Murdaugh's counsel objected:

> MR. HARPOOTLIAN: Your Honor, we objected to the questioning because this juror gave two statements under oath, one in an affidavit and one here to you today. The one here to you today was Becky Hill influenced her verdict.
>
> THE COURT: Yes.
>
> MR. HARPOOTLIAN: The one she gave in an affidavit six months ago was based on jurors. It could be both. Your Honor picked out the one in the affidavit from six months ago and said is that a more accurate statement. That presupposes and suggests to her what she should say. And we believe that this, this juror's testimony -- and, Your Honor, I'm afraid what you're going to say is, well, she said the

> affidavit was more accurate than what she testified under oath here today and, therefore, I'm not going to consider her testimony, and I think that's where we're heading here.
>
> I'd ask you to bring her back in, explain to her there's nothing wrong with it both being true.
>
> THE COURT: I decline to do that and overrule the objection.

Id. 58:2–22. Later during the hearing, Juror Z, through her own counsel, provided an affidavit averring,

> 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.

Juror Z Aff., January 29, 2024. Although the trial court introduced Juror Z's prehearing affidavit into evidence on its own motion, it refused to allow Juror Z's affidavit of that day into evidence or to allow any further testimony from Juror Z.

Ms. Hill testified after the jurors. She denied engaging in any jury tampering. She also denied stating that she wanted a guilty verdict to promote book sales. She admitted she plagiarized portions of her book and that her profits from its sale in the six months before it was withdrawn from publication because of her plagiarism were approximately $100,000. Evid. Hr'g Tr. 133:8–12. She admitted the book contained unfounded statements included for "poetic license" or "literary ease." *Id.* 125:18–20, 137:17–19. Examination by the trial court revealed that Ms. Hill's denial, during direct examination, of questioning a juror during the murder trial was not truthful, and that she did want a guilty verdict. *Id.* 146:18–159:3.

Barnwell County Clerk of Court Rhonda McElveen testified next to rebut Ms. Hill's denial that she wanted a guilty verdict to promote book sales. Ms. McElveen was assisting in the courtroom during the murder trial. She testified,

> Q. And did she discuss with you -- what, if anything, did she discuss with you about how she felt the verdict should turn out to be in the Murdaugh trial vis a vis in reference to the book, what would help the book?
>
> A. A guilty verdict.
>
> Q. Tell the judge and, and me what exactly she said to you that you remember. This is prior to the trial.
>
> A. Okay. Well, first of all, she said we might want to write a book because she needed a lake house and I needed to retire, and from then, further conversation was that a guilty verdict would sell more books, and we left it at that. This was before even in December.
>
> Q. And, and when, when -- did she ever say that again to you during this -- the, the weeks you spent there?
>
> A. Several times. It could be said -- it was, you know, amongst friends in her office or we might be having dinner, that kind of stuff, but that's about it.
>
> Q. That she needed a guilty verdict to sell more books?
>
> A. That would be the best way to sell books, yes, sir.
>
> Q. The best way to sell books.
>
> Now, during this -- during this process, did she ever express to you an opinion on whether or not, in fact, was Mr. Murdaugh guilty of the murders of his son and his, his wife?
>
> A. Yes, sir.
>
> Q. Tell me. Tell me what she said and if you remember when.
>
> A. I don't exactly remember when. I know it's over half of the trial had already happened, but the evidence was coming forth that it looked like he might be guilty. She made a comment that guilty verdict would be better for the sale of books.

Id. 181:20–183:1. She also testified that Ms. Hill made comments to her, like "'[d]on't be fooled by the evidence presented by Mr. Murdaugh's attorneys," identical to statements reported by some jurors. *Id.* 184:25–185:18. And she testified that Ms. Hill insisted on allowing a book writer (who wrote the forward to Ms. Hill's book) to sit in the well of the court during trial, where she could see sealed exhibits, under the subterfuge of being a Sunday school teacher. *Id.* 186:12–190:10.

The final witness was the alternate juror, Juror 741. She testified that Ms. Hill told jurors "the defense is about to do their side" and "[t]hey're going to say things that will try to confuse you" but "[d]on't let them confuse you or convince you or throw you off." *Id.* 203:18–204:3.

At the conclusion of the hearing, the trial court ruled from the bench:

> Did Clerk of Court Hill make comments to any juror which expressed her opinion what the verdict would be? Ms. Hill denies [doing so] and so the question becomes was her denial credible.
>
> I find that the clerk of court is not completely credible as a witness. Ms. Hill was attracted by the siren call of celebrity. She wanted to write a book about the trial and expressed that as early as November 2022, long before the trial began. She denies that this is so, but I find that she stated to the clerk of court Rhonda McElveen and others her desire for a guilty verdict because it would sell books. She made comments about Murdaugh's demeanor as he testified, and she made some of those comments before he testified to at least one and maybe more jurors.
>
> . . .
>
> The clerk of court allowed public attention of the moment to overcome her duty.

Id. 251:13–252:1, 23–24.

The trial court nevertheless denied the motion for a new trial, reasoning that there is no presumption of prejudice from tampering with jurors during a trial about the matter pending before the jury and Mr. Murdaugh failed to prove that Ms. Hill's comments changed the jury's verdict. The trial court discounted the testimony Juror Z, who said Ms. Hill's comments did affect her verdict, because she "was ambivalent in her testimony." *Id.* 252:13. In a State-drafted written

order entered 66 days after the ruling from the bench, the trial court further ruled in passing that "this Court also find[s] that any possible presumption of prejudice was overcome," without any reference to any evidence presented at the evidentiary hearing. Order 24, Apr. 4, 2024. Mr. Murdaugh timely appealed the order on April 11, 2024.

On March 25, 2024, Ms. Hill resigned from office. In May 2024 it was reported that the State Ethics Commission had referred ethics complaints against her for criminal prosecution.

STANDARD OF REVIEW

"The decision whether to grant a new trial rests within the sound discretion of the trial court" and is reviewed for an abuse of discretion. *State v. Mercer*, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009). "An abuse of discretion arises in cases in which the judge issuing the order was controlled by some error of law or where the order, based upon factual, as distinguished from legal, conclusions, is without evidentiary support." *Stewart v. Floyd*, 274 S.C. 437, 440, 265 S.E.2d 254, 255 (1980).

When it is asserted the trial court's order was controlled by an error of law, "a question of law is presented" and the "standard of review is plenary" and "without deference to the trial court." *State v. Cochran*, 369 S.C. 308, 312–13, 631 S.E.2d 294, 297 (Ct. App. 2006) (Kittredge, J.) (citing S.C. Const. art. V, § 5 & 9; S.C. Code §§ 14-3-320, 14-3-330, & 14-8-200); *Crossmann Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 47, 717 S.E.2d 589, 592 (2011).

When reviewing the trial court's decision, the appellate court may not make its own findings of fact if the trial court's findings are "reasonably supported by the evidence." *Cochran*, 369 S.C. at 312–13, 631 S.E.2d at 297. "The appellate court does not re-evaluate the facts based on its own view of the evidence but simply determines whether the trial judge's ruling is supported

by any evidence." *State v. Kirton*, 381 S.C. 7, 23, 671 S.E.2d 107, 114 (Ct. App. 2008). But "[i]n reviewing mixed questions of law and fact, where the evidence supports but one reasonable inference, the question becomes a matter of law for the court." *State v. Moore*, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000).

ARGUMENT

The trial court found Ms. Hill tampered with the jury during Mr. Murdaugh's murder trial. Evid. Hr'g Tr. 251:13–252:1, 23–24. The only evidence the State presented contradicting sworn testimony describing the tampering was Ms. Hill's own denial, which the trial court found not credible. *Id.* The trial court found she was motivated by a desire to sell books. *Id.* The trial court found she was "attracted by the siren call of celebrity" and she "allowed public attention of the moment to overcome her duty." *Id.* And one juror testified that Ms. Hill's tampering did influence her verdict. *Id.* 46:6–15.

But the trial court nonetheless denied the motion for a new trial, by committing legal error and by abusing its discretion. The trial court erred when it refused to presume jury tampering during trial, by a state official advocating a guilty verdict, is prejudicial to the right of the accused to a fair trial. The trial court abused its discretion when finding that the jury's verdict was not affected by Ms. Hill's tampering despite a juror's uncontradicted testimony that her verdict was affected. And the trial court erred when it held that deliberate jury tampering by a state official seeking a guilty verdict was harmless because, in its opinion, the correct verdict was rendered regardless. The Court therefore should reverse the trial court's order denying Mr. Murdaugh's motion for a new trial, vacate Mr. Murdaugh murder and firearms convictions, and remand for a new trial.

I. THERE IS AN IRREBUTTABLE PRESUMPTION OF PREJUDICE WHEN A STATE OFFICIAL SECRETLY ADVOCATES A GUILTY VERDICT IN THE JURY ROOM DURING A CRIMINAL TRIAL.

The trial court identified the wrong legal standard to decide Mr. Murdaugh's motion for a new trial. When a state official communicates with jurors about a criminal case during trial, the law presumes the tampering was prejudicial to the defendant's right to a fair trial, unless the communication was completely innocuous. The burden shifts to the state show the communication was harmless. The State can meet that burden by, for example, showing the communication did not concern the merits of the case, that it was favorable to the defendant, or that it never reached a deliberating juror—but not by a counterfactual argument that some hypothetical trial without the jury tampering would have had the same verdict. But where it is proven there was an improper communication by a court official to jurors about the merits of the case before them—*ex parte* advocacy by a state official—the presumption is irrebuttable. *State v. Cameron*, 311 S.C. 204, 207–08, 428 S.E.2d 10, 12 (Ct. App. 1993) (Where "'[t]here was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained . . . a new trial *must* be granted unless it clearly appears that the *subject matter* of the communication was harmless and could not have affected the verdict.'" (quoting *Holmes v. United States*, 284 F.2d 716, 718 (4th Cir. 1960)) (emphasis added)).

The trial court, however, rejected the correct legal standard and applied an erroneous standard of its own invention: that Mr. Murdaugh, in addition to proving that Ms. Hill did tamper with the jury about the merits of his case during trial, must also prove what the verdict would have been but for that tampering. The Court should hold that in so doing, the trial court abused its discretion. Identification of the correct legal standard is a question of law subject to the Court's plenary review and Justice Toal's legal error is entitled to no deference.

A. The U.S. Supreme Court holds that in a criminal case jury tampering is presumptively prejudicial.

The trial court erred by ruling that South Carolina courts should disregard binding precedent of the U.S. Supreme Court that requires it to presume jury tampering is prejudicial to the defendant. In *Remmer v. United States*, the U.S. Supreme Court held, unanimously,

> In a criminal case, any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial, if not made in pursuance of known rules of the court and the instructions and directions of the court made during the trial, with full knowledge of the parties. The presumption is not conclusive, but the burden rests heavily upon the Government to establish, after notice to and hearing of the defendant, that such contact with the juror was harmless to the defendant.

347 U.S. 227, 229 (1954). The Fourth Circuit holds *Remmer* is still "clearly established federal law." *Barnes v. Joyner*, 751 F.3d 229, 243 (4th Cir. 2014). The trial court, however, instead ruled that *State v. Green*, 432 S.C. 97, 851 S.E.2d 440 (2020), directs South Carolina courts to ignore *Remmer*:

> THE COURT: [The] South Carolina Supreme Court said very clearly we do not go by the guidance of the 1950s case of *US v. Remmer*.
>
> MR. HARPOOTLIAN: That's -- we do not believe that's what Justice Kittredge has said in [*State v. Green*] ---
>
> THE COURT: He said it straight out as clear as a bell can be, but I've ruled on that.

Evid. Hr'g Tr. 100:19–25.

Our Supreme Court however has not split with the Fourth Circuit to instruct South Carolina courts to disregard *Remmer*. In *Green* our Supreme Court merely "decline[d] to adopt the *Remmer* presumption of prejudice in every instance of an inappropriate bailiff communication to a juror" because "not every inappropriate comment by a bailiff to a juror rises to the level of constitutional error," including the inappropriate comments at issue in *Green*, which "did not touch the merits,

but dealt only with the procedural question of how the judge might handle a jury impasse that apparently never materialized." 432 S.C. at 100–01, 851 S.E.2d at 44. *Green* accords perfectly with recent Fourth Circuit authority: Under *Remmer* "any private communication, contact, or tampering directly or indirectly, with a juror during a trial about the matter pending before the jury is deemed presumptively prejudicial," but "[t]o trigger this presumption, a defendant must introduce 'competent evidence of extrajudicial juror contacts' that are 'more than innocuous interventions.'" *United States v. Elbaz*, 52 F.4th 593, 606 (4th Cir. 2022) (Richardson, J.) (internal quotation marks omitted), *cert. denied*, 144 S. Ct. 278 (2023).

If the *Remmer* presumption of prejudice ever applies, it must apply where, as here, an elected state official advocates for a guilty verdict in the jury room during trial so that she can personally profit from selling books about a guilty verdict. That is not an "innocuous intervention."

But the trial court nevertheless held that when there is tampering with a juror during a trial about the matter pending before the jury, prejudice is never presumed but instead always must be proven by the defendant. Prehearing Hr'g Tr. 20:25–21:20; Order 4–5. In doing so, the trial court adopted the State's argument that *Remmer* was abrogated by *Smith v. Phillips*, 455 U.S. 209 (1982), and *United States v. Olano*, 507 U.S. 725 (1993). Resp't's 2d Br. 6–7.

The trial court agreed, ruling from the bench:

> I am not conducting a *Remmer* hearing. *Remmer* is a 1954 decision of the United States Supreme Court that deals with question of influence of the jury and a motion for a new trial on the basis of after-discovered evidence of that influence. I rely on the South Carolina decision of our Supreme Court authored by Justice Kittredge, *State v. Green*, and the *Green* decision specifically says that *Remmer* is not the guidance that South Carolina trial judges should look to in conducting hearings on after-discovered evidence.

Prehearing Hr'g Tr. 11:1–10; *see also* Evid. Hr'g Tr. 100:19–21 ("[The] South Carolina Supreme Court said very clearly we do not go by the guidance of the 1950s case of *US v. Remmer*."). Its

State-drafted order entered months after the evidentiary hearing, however, hides its reasoning, stating only that "Murdaugh argues . . . prejudice must be presumed under *Remmer*" while the State "argues that the overwhelming weight of South Carolina case law is clear that . . . the burden is on the defendant to show not only that the improper influence occurred but also resulting prejudice." Order 4–5. The trial court's order then proceeds to review South Carolina cases, some of which are arguably irrelevant (*e.g.*, cases dealing with external influences not touching on the merits of the case before the jury or alternate jurors participating in deliberations) and some of which are inarguably irrelevant (*e.g.*, cases dealing with internal jury influences),[2] without attempting to explain why *Remmer* is not good law. *Id.* 5–8.

To be sure, the continued viability of *Remmer* is not universally agreed. There is a three-way federal circuit split on the issue. The majority position, adopted by the First, Second, Third, Fourth, Seventh, Ninth, Eleventh, and D.C. Circuits and at least 28 states presume prejudice under *Remmer*, although many, like the Fourth Circuit (and as our Supreme Court did in *Green*) decline to apply it categorically to "innocuous" contacts with jurors. *E.g.*, *United States v. Pagán-Romero*, 894 F.3d 441, 447 (1st Cir. 2018); *United States v. Greer*, 285 F.3d 158, 173 (2d Cir. 2002); *United States v. Claxton*, 766 F.3d 280, 299 (3d Cir. 2014); *Barnes*, 751 F.3d at 245; *United States v. Turner*, 836 F.3d 849, 867 (7th Cir. 2016); *Godoy v. Spearman*, 861 F.3d 956, 968 (9th Cir. 2017); *Ward v. Hall*, 592 F.3d 1144, 1180 (11th Cir. 2010); *United States v. Gartmon*, 146 F.3d 1015, 1028 (D.C. Cir. 1998). The Fifth,[3] Sixth, and Tenth Circuits and at least fourteen states decline to apply

[2] The *Remmer* presumption does not apply to internal influences on the jury, *Barnes*, 751 F.3d at 245–46, and Mr. Murdaugh has not sought any relief based on any alleged improper internal influence on the jury.

[3] The Fifth Circuit may have since moved back to the majority position. *See United States v. Jordan*, 958 F.3d 331, 335 (5th Cir. 2020) ("To be entitled to a new trial based on an extrinsic

Remmer and instead require defendants to prove prejudice, as the trial court held. Eighth Circuit and at least seven states leave the question entirely to judicial discretion.

As the State argued, the question driving the split is whether *Remmer* was narrowed or overruled by *Smith v. Phillips* and *United States v. Olano*. *See, e.g.*, *United States v. Sylvester*, 143 F.3d 923, 934 (5th Cir. 1998) ("We agree that the Remmer presumption of prejudice cannot survive *Phillips* and *Olano*."). The Court should decline the State's invitation to join the minority position on that question for three reasons.

First, the argument that *Olano* or *Phillips* abrogated *Remmer* is unpersuasive—which may explain why that argument remains the minority position 30 and 40 years after those decisions, respectively. In *Phillips*, a juror applied for employment with the district attorney's office during trial, but the prosecution did not disclose the fact until after the trial. 455 U.S. at 213–14. In *Olano*, the trial court permitted alternate jurors to attend but not to participate in jury deliberations. 507 U.S. at 728–29. In each case the Supreme Court held that a new trial was not required. But neither case involved an "external" influence on the jury from anyone other than alternate jurors. Both cases cited *Remmer* with approval. *Olano*, 507 U.S. at 738; *Phillips*, 455 U.S. at 215. *Olano* even stated "[t]here may be cases where an intrusion should be presumed prejudicial," citing *Turner v. Louisiana*, 379 U.S. 466 (1965), as an example of such a case. 507 U.S. at 739. In *Turner*, prejudice was presumed where the jury was in the charge of sheriff's deputies who were also prosecution witnesses, a fact pattern with a close similarity to the present case.[4] 379 U.S. at 474.

---

influence on the jury, a defendant must first show that the extrinsic influence likely caused prejudice" and "[t]he government then bears the burden of proving the lack of prejudice.")

[4] Like the deputies in *Turner*, Ms. Hill had the jury in her charge. She was not a prosecution witness, but like a prosecution witness she made statements to the jury advocating a guilty verdict.

Second, only the U.S. Supreme Court can decide whether it has overruled its decision in *Remmer*: "'[I]t is this Court's prerogative alone to overrule one of its precedents.'" *Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) (quoting *United States v. Hatter*, 532 U.S. 557, 567 (2001)). This Court cannot decide that the U.S. Supreme Court has overruled a precedential decision by implication from later decisions that appear to use inconsistent reasoning: "'Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality.'" *Id.* (quoting *Hohn v. United States*, 524 U.S. 236, 252–53 (1998)).

Third, the Court should defer to the Fourth Circuit's interpretation of a question of federal constitutional law, especially when it adopts the majority position, *see Limehouse v. Hulsey*, 404 S.C. 93, 108–09, 744 S.E.2d 566, 575 (2013),[5] and the Fourth Circuit's position is clear:

> Some courts have suggested that post-*Remmer* developments—*Smith v. Phillips*, 455 U.S. 209, 215 (1982), *United States v. Olano*, 507 U.S. 725, 738–39 (1993), and Federal Rule of Evidence 606(b)—narrowed or overturned *Remmer*'s presumption of prejudice. *See, e.g.*, *United States v. Sylvester*, 143 F.3d 923, 934 (5th Cir. 1998) ("[T]he *Remmer* presumption of prejudice cannot6 survive *Phillips* and *Olano*."). But the Fourth Circuit continues to adhere to a *Remmer* presumption when the contact goes beyond the innocuous.

Elbaz, 52 F.4th at 606 n.9; *see also United States v. Johnson*, 954 F.3d 174, 179–80 (4th Cir. 2020) (holding that where "an unauthorized contact was made" with jurors "of such a character as to reasonably draw into question the integrity" of the trial proceedings, the defendant "is entitled under *Remmer*: (1) to a rebuttable presumption that the external influence prejudiced the jury's

[5] Moreover, while South Carolina's courts are not subject to the mandate of the Fourth Circuit, they must follow what the Fourth Circuit says is "clearly established" federal law regarding the rights of criminal defendants in this State or writs of habeas corpus may be granted. *See* 28 U.S.C. § 2254(d)(1) (providing for a habeas writ where state court proceedings "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States").

ability to remain impartial" (internal quotation marks omitted)); *Barnes*, 751 F.3d at 243 (holding *Remmer* is "clearly established federal law"); *United States v. Lawson*, 677 F.3d 629, 642 (4th Cir. 2012) ("At issue in this debate are the Supreme Court's decisions in *Smith v. Phillips* and *United States v. Olano* . . . . This Court's decisions addressing such external influences on a jury's deliberations reflect that the *Remmer* rebuttable presumption remains [a]live and well in the Fourth Circuit." (citations omitted)). "To determine whether a contact with a juror is innocuous or triggers the *Remmer* presumption we look to whether there was (1) any private communication; (2) any private contact; (3) any tampering; (4) directly or indirectly with a juror during trial; (5) about the matter before the jury." *Elbaz*, 52 F.4th at 607 (internal quotation marks omitted).

Two years before the Fourth Circuit's *Elbaz* decision (its most recent published decision affirming *Remmer*), our Supreme Court in *Green* considered a case in which a juror asked a bailiff what would happen if the jury deadlocked, and the bailiff responded that the judge probably would give an *Allen* charge and ask them to stay later. The Court held,

> The trial court questioned each juror and the bailiff, which proved "there was no reasonable possibility the [bailiff's] comments influenced the verdict." Our unwillingness to categorically apply the *Remmer* presumption of prejudice stems from our view that not every inappropriate comment by a bailiff to a juror rises to the level of constitutional error. In *Remmer*, a juror was approached by a "person unnamed" and told "that [the juror] could profit by bringing in a verdict favorable to the [defendant]." The federal district court, without holding a hearing, denied the defendant's motion for a new trial. Ultimately, the Supreme Court recognized the presumption of prejudice from the highly improper juror contact and remanded to the federal district court "to hold a hearing to determine whether the incident complained of was harmful to the [defendant]."
>
> The attempted bribery of a juror in *Remmer*—conduct which goes to the heart of the merits of the case on trial—is a far cry from the circumstances presented in this case. The bailiff's actions here—though improper—did not touch the merits, but dealt only with the procedural question of how the judge might handle a jury impasse that apparently never materialized.

432 S.C. at 100, 851 S.E.2d at 441 (2020) (citations omitted). The trial court read that language to hold that South Carolina courts never apply the *Remmer* presumption of prejudice in any circumstances. Prehearing Hr'g Tr. 11:1–10; Evid. Hr'g Tr. 100:19–21.

Green is the only reported South Carolina appellate decision discussing *Remmer*,[6] and the trial court's reading of it plainly erroneous. "While we decline to adopt the *Remmer* presumption of prejudice in every instance of an inappropriate bailiff communication to a juror" does not mean "we decline to adopt the *Remmer* presumption of prejudice in *any* instance of inappropriate communication to a juror," nor does "[o]ur unwillingness to categorically apply the *Remmer* presumption of prejudice stems from our view that not every inappropriate comment by a bailiff to a juror rises to the level of constitutional error" mean "no inappropriate comment to a juror ever rises to the level of constitutional error." *Green*, 432 S.C. at 100–01, 851 S.E.2d at 441. A more reasonable reading is that our Supreme Court's opinion is identical to the Fourth Circuit's opinion expressed in *Elbaz* two years later: prejudice is presumed unless the contact is "innocuous" or does not "touch the merits." *Compare* 52 F.4th at 606 *with Green*, 432 S.C. at 100, 851 S.E.2d at 441.

That is also consistent with the earlier opinion of this Court in *Cameron*, which held,

> In this case, there was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained. When there has been such a communication, a new trial must be granted unless it clearly appears that the subject matter of the communication was harmless and could not have affected the verdict.

311 S.C. at 208, 428 S.E.2d at 12. The trial court refused even to consider *Cameron* because it is a Court of Appeals decision, Prehearing Hr'g Tr. 21:25–22:3 ("I do not regard *State v. Cameron* as the guidance that needs to be used by me in making a determination about this case. It's a Court

[6] The only other South Carolina appellate case citing *Remmer* is *State v. Bryant*, 354 S.C. 390, 395, 581 S.E.2d 157, 160 (2003), which cites *Remmer* once in a string citation without any discussion.

of Appeals case."), and because, in its view, the later *Green* decision held *Remmer* is no longer good law, *id.* 22:3–10.

Similarly, in *Bryant*, the only South Carolina case other than *Green* to cite *Remmer*, our Supreme Court held the defendant must prove "actual juror bias," which he did by proving "the questioning of jurors' family members by Horry County Police detectives in a case in which the victim was a Horry County Police Department Officer was, at minimum, an attempt to influence the jury" that "could have been perceived as an attempt to intimidate jurors." 354 S.C. at 395, 581 S.E.2d at 160–01 (2003). That jury intimidation was the actual prejudice the defendant had the burden to prove. There was no suggestion that having proven law enforcement officers engaged in jury intimidation, the defendant then needed to prove what the verdict would have been but for the intimidation.

Moreover, there is nothing in the *Bryant* opinion that even suggests that jurors should be queried regarding the effect the improper contact had on their verdict. Although the jurors were questioned in *Green*, this voir dire occurred before the jurors reached their verdict, not after, and the questions posed concerned whether the jurors could continue to deliberate without being influenced by the bailiff's misconduct. In this case, Murdaugh objected to the trial court even questioning the deliberating jurors regarding the impact Mrs. Hill's improper communications had on their verdict. The trial court's questioning of the jurors in this regard was clearly erroneous. *Infra*. at 30.

B. <u>The presumption of prejudice is irrebuttable when a state official tampers with the jury during a criminal trial about the merits of the case.</u>

Having proven that Ms. Hill communicated with at least one deliberating juror about the evidence presented during his murder trial, Mr. Murdaugh has established that he is entitled to a new trial. "A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an

impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influence." *State v. Johnson*, 302 S.C. 243, 250, 395 S.E.2d 167, 170 (1990) (internal quotation marks omitted). Where "[t]here was the private communication of the court official to members of the jury, an occurrence which cannot be tolerated if the sanctity of the jury system is to be maintained . . . a new trial must be granted unless it clearly appears that the subject matter of the communication was harmless and could not have affected the verdict." *Cameron*, 311 S.C. at 207–08, 428 S.E.2d at 12 (internal quotation marks omitted). This Court requires the "subject matter" of the communication between an official and a juror to be harmless—clearly harmless. *Id.* Otherwise, a new trial must be granted.

When, as here, it is proven that a state official has told jurors not to believe the defendant when he testifies, the State cannot rebut the presumption of prejudice by arguing what the outcome would have been without that tampering. Ms. Hill was a state official who used her official authority to obtain private access to jurors so she could argue the merits of the evidence outside of the presence of the court, the Defendant, and his counsel. This is, fortunately, a rare event, but it is one that requires a new trial. The Court's distinction in *Cameron* between the communication itself being harmless and the subject matter of the communication being harmless and its requirement that a new trial be granted unless the latter is established recognizes that deliberate jury tampering by a court official cannot be cured or excused by the strength of the evidence presented at trial.

The U.S. Supreme Court addressed this exact issue almost sixty years ago when it held the Sixth Amendment right to a trial before an impartial jury is incorporated to the states via the Fourteenth Amendment. In *Parker v. Gladden*, a bailiff told a juror in a murder trial "that wicked fellow, he is guilty." 385 U.S. 363, 363 (1966) (per curiam). The Supreme Court of Oregon held

the statement did not require a new trial because it was not shown the statement changed the outcome of the trial. The U.S. Supreme Court reversed, holding "[t]he evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel," and "[w]e have followed the undeviating rule, that the rights of confrontation and cross-examination are among the fundamental requirements of a constitutionally fair trial." *Id.* at 364–65 (internal quotation marks and citations omitted).

In *Parker,* the state also argued that the bailiff's statement was harmless because ten members of the jury never heard his statement and Oregon law at that time allowed a guilty verdict by ten affirmative votes of the twelve jurors. The State of Oregon argued, as the State does here, that the jury tampering did not require a new trial because the defendant did not show the verdict would have been different but for the improper communication. In *Parker*, that was almost mathematically certain—ten jurors never heard the communication at issue and the vote of ten jurors was at that time enough to convict. *Id.* at 365.

Yet the Supreme Court rejected that reasoning, and, after questioning whether the factual record supported that argument, stated that in "any event, petitioner was entitled to be tried by 12, not 9 or even 10, impartial and unprejudiced jurors." *Id.* at 366. That reasoning accords with the reasoning in *Cameron* 27 years later—the right being protected is not the right to a "correct" verdict but the constitutional right to trial before a fair and impartial jury free from state officials' improper influences.

Our Supreme Court more recently touched on this point in *Green*. This Court held the bailiff's comments were presumptively prejudicial because of his official position, but that the State rebutted that presumption by showing for various reasons that the remark did not in fact

influence the outcome of the jury's deliberations. *State v. Green*, 427 S.C. 223, 236, 830 S.E.2d 711, 717 (Ct. App. 2019), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020) (citation omitted). Our Supreme Court affirmed but modified the decision to correct this Court's reasoning. The communication was not prejudicial not because it did not in fact change the verdict, instead, it was not prejudicial because the subject matter of the communication was harmless: "The bailiff's actions here—though improper—did not touch the merits, but dealt only with the procedural question of how the judge might handle a jury impasse that apparently never materialized." *Green*, 432 S.C. at 100, 851 S.E.2d at 441. A bailiff presuming to tell the jury that if it is deadlocked, the judge will instruct them to keep deliberating is improper but likely harmless because the subject matter is procedural or logistical, rather than to the merits of the case. Here, by contrast, the extensive, deliberate, and self-interested jury tampering which it has been proven Ms. Hill committed far exceeds the simple bailiff mistakes that forced a retrial in *Cameron*, where "a bailiff's misleading response to a juror's question about sentencing options compromised the jury's impartiality because it left the impression that their verdict could not affect the trial court's sentencing discretion," or in *Blake by Adams v. Spartanburg General Hospital*, where a bailiff told a juror "that the trial judge 'did not like a hung jury, and that a hung jury places an extra burden on taxpayers.'" *See State v. Green*, 427 S.C. at 237, 830 S.E.2d at 717–18 (citing 311 S.C. at 208, 428 S.E.2d at 12 and quoting 307 S.C. 14, 16, 413 S.E.2d 816, 817 (1992)).

Finally, state and federal courts have "found the authority of the speaker to be relevant to Sixth Amendment analyses" of improper external communications with jurors during trial. *Utah v. Soto*, 513 P.3d 684, 695 (2022). In *Parker*, the U.S. Supreme Court noted that the state's argument that no harm could have resulted from a bailiff's comments on the merits "overlooks the fact that the official character of the bailiff—as an officer of the court as well as the State—beyond

question carries great weight with a jury which he had been shepherding for eight days and nights." 385 U.S. at 365. For that reason, "undue contact with a juror by a government officer almost categorically risks influencing the verdict." *Tarango v. McDaniel*, 837 F.3d 936, 947 (9th Cir. 2016). Here, the improper communications about the merits of the case did not come from a bailiff acting as a security guard or as a message courier. They came from an *elected official*—someone whose name nearly every one of the jurors presumably had seen on the same ballot that they used to vote for the President of the United States[7]—holding an office established by the state constitution. It was the very person who summoned the jurors to serve, who impaneled them and administered their oath, who administered the oath to the witnesses presented to them for their consideration, who told when and where to report for each day of their service, and who read their verdict in the courtroom.

The trial court committed legal error by not presuming Mr. Murdaugh's right to a fair trial was prejudiced by Ms. Hill's jury tampering. Applying the correct legal standard, the evidence—that an elected state official deliberately advocated for a guilty verdict in the jury room during trial so she could personally profit from it—supports only one reasonable inference—the presumption of prejudice to Mr. Murdaugh's right to a fair trial is irrebuttable. The Court therefore should reverse the trial court and vacate Mr. Murdaugh's convictions.

C. The trial court's "finding" that Ms. Hill's comments to jurors that were "not overt as to opinion" is unsupported by and contrary to the evidence in the record.

At the evidentiary hearing the trial court examined Juror Z about her affidavit describing Ms. Hill's jury tampering, and she testified,

[7] Ms. Hill was elected in 2020; the voter turnout in the 2020 general election in Colleton County was over 73% of all registered voters. *2020 Statewide General Election Results*, S.C. Election Comm'n, https://www.enr-scvotes.org/SC/Colleton/ 106517/Web02.264677/#/.

> [The Court] Q. Very good. The second -- the first paragraph, of course, is the statement that you were in the case. Second paragraph says:
>
> > Toward the end of the trial, after the Presidents' Day break but before Mr. Murdaugh testified, the clerk of court, Rebecca Hill, told the jury, quote, not to be fooled, unquote, by the evidence presented by Mr. Murdaugh's attorneys, which I understood to mean that Mr. Murdaugh would lie when he testifies.
>
> Is that what your recollection is of that statement?
>
> [Juror Z] A. Yes, ma'am.
>
> Q. Is there anything in the statement that on reflection you think is not correct?
>
> A. No, ma'am.

Evid. Hr'g Tr. 5:4–18. When ruling from the bench that same day, the trial court ruled:

> Did Clerk of Court Hill make comments to any juror which expressed her opinion what the verdict would be? Ms. Hill denies, A, and so the question becomes was her denial credible.
>
> I find that the clerk of court is not completely credible as a witness. . . . I find that she stated to the clerk of court Rhonda McElveen and others her desire for a guilty verdict because it would sell books. She made comments about Murdaugh's demeanor as he testified, and she made some of those comments before he testified to at least one and maybe more jurors.

Id. 251:13–252:1.

That seems clear enough. But the State-drafted order the trial court entered months later slips in the statement "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 . . . ." Order 22. That offhand finding is unsupported by and, indeed, contradicted by, the evidence in the record and it contradicts the ruling the trial court from the bench the same day it received the juror's testimony. Juror Z testified that Ms. Hill said "not to be fooled" by evidence presented in Mr. Murdaugh's defense. Evid. Hr'g Tr. 5:4–18. The alternate juror testified that Ms. Hill told jurors "the defense is about to do their side" and "[t]hey're going to say things that will try to confuse you" but "[d]on't let them confuse you or convince you or throw you off." *Id.* 203:18–204:3. No

reasonable person can say those statements are "not overt as to opinion." Certainly, that is not what Justice Toal said when ruling on the motion for a new trial later that same day.[8]

Allowing the State to insert a "finding" contradicted by all evidence in the record and by the trial court's own ruling from the bench, simply to shore up its position on appeal, was an abuse of discretion by the trial court. The Court therefore should disregard the finding that Ms. Hill's statements were not "overt as to opinion." *See State v. Simmons*, 279 S.C. 165, 167, 303 S.E.2d 857, 859 (1983) (holding the trial court abused its discretion when denying a motion for a new trial where its decision was based on a factual finding but "the record is in all respects void of evidence to support [that] finding"). Ms. Hill's statements as set forth in sworn testimony, uncontroverted by anyone except Ms. Hill (whom the trial court found not credible), speak for themselves. To the extent it is necessary to characterize those statements in a legal analysis, it is a mixed question of law and fact and "[i]n reviewing mixed questions of law and fact, where the evidence supports but one reasonable inference, the question becomes a matter of law for the court." *Moore*, 343 S.C. at 288, 540 S.E.2d at 448. The only reasonable inference here is that Ms. Hill's statements to jurors overtly expressed her opinion that Mr. Murdaugh should be found guilty.

D. Even if the presumption of prejudice were rebuttable, the State did not rebut—or even attempt to rebut—any presumption of prejudice in this case.

At the evidentiary hearing, the State failed to meet its burden to overcome the presumption that Ms. Hill's conduct was prejudicial to Mr. Murdaugh's right to a fair trial before an impartial jury that considers only the evidence and argument presented in open court. It was impossible to

[8] Mr. Murdaugh concedes the statements were "limited in subject"—the subject of his testimony in his own defense at trial. The trial court does not identify any other subject to which the statements purportedly were "limited." *See* Order 22.

do so, so it did not even try to argue any presumption was overcome. *See, e.g.*, Evid. Hr'g Tr. 230:18–239:19 (closing argument of S. Creighton Waters for the State).

Nevertheless, the trial court nonetheless held that Ms. Hill's jury tampering could not "in any way undermine the fairness and impartiality of [the] six-week trial with its extensive evidentiary presentations, arguments from counsel, and instructions from the trial court" and that "any possible presumption of prejudice was overcome by these facts." Order 24. That finding is unsupported by any evidence in the record. The trial court does not cite or refer to any evidence presented at the evidentiary hearing to support that finding—for which the State did not even argue.

The evidence presented at the hearing was that nine jurors testified that they did not hear Ms. Hill comment on the merits of the case before the verdict, three jurors (P, X, and Z) and the alternate juror testified that Ms. Hill commented to the jury about Mr. Murdaugh's testimony in his own defense, one deliberating juror and the alternate juror testified that Ms. Hill told jurors not to believe or be fooled by the defense—and that deliberating juror testified that Ms. Hill's comments influenced her decision on the verdict, and the Barnwell County Clerk of Court who participated in the trial nearly every day testified that Ms. Hill made similar comments to her and that Ms. Hill repeatedly stated that a guilty verdict would help her book sales. Statement of the Case, *supra*, at 4–8. Further, the trial court did not examine Juror 785, who was impaneled from the start of the murder trial until the very last day, even though she was at the courthouse and available to testify. Evid. Hr'g Tr. 173:11–19. Juror 785 has also given a sworn statement that she too heard Ms. Hill say that jurors should not be "fooled by" the defense. Mot. New Trial Ex. H ¶ 2.

That record provides no support whatsoever for a finding that the State overcame any presumption of prejudice. Based on the trial court's commentary in same paragraph of order in

which it presents this finding about the "six-week trial with its extensive evidentiary presentations" (Order 24) and its unusual action to summon the gallery back to the courtroom after the adjournment of the evidentiary hearing to proclaim, "I agree that the evidence was overwhelming and the jury verdict not surprising" (Evid. Hr'g Tr. 254:3–16, 255:19–20), it appears that its finding that "any possible presumption of prejudice was overcome" is based solely on its own opinion that the correct verdict was rendered at trial. That was an abuse of discretion. Because no evidence supports the trial court's finding that "any possible presumption was overcome," this Court should disregard it.

Finally, the throwaway line in the state-drafted order that "any comments [from Ms. Hill to jurors] that occurred were cured by the trial court's extensive instructions," Order 22, has no merit whatsoever. During trial, Judge Newman was unaware of Ms. Hill's jury tampering so of course he gave no curative instructions regarding her tampering. He only gave the usual jury instructions given in every trial—do not discuss the case with anyone, do not seek outside information or watch news reports about the case, and consider only the evidence presented in the courtroom when deliberating. Order 22–23. Jury instructions given to every jury, from a trial judge unaware that any jury tampering is taking place, cannot "cure" jury tampering by a state official going into the jury room to advocate for a guilty verdict so she can sell books about it. *See Remmer*, 347 U.S. at 229 (jury tampering in a criminal case is presumptively prejudicial); *Cameron*, 311 S.C. at 207-08, 428 S.E.2d at 12 (holding "the private communication of the court official to members of the jury" means "a new trial must be granted unless it clearly appears that the subject matter of the communication was harmless"). The trial court's citation to *State v. Grovenstein*, 335 S.C. 347, 517 S.E.2d 216 (1999), in support of its conclusion that the standard jury instruction not to consider external influences cures all jury tampering, known or unknown,

is completely off-point. *Grovenstein* involved a curative instruction specific to the external influence at issue given by the trial judge to the jury after he learned of the external influence—which was nothing more than the alternate juror remaining with the jury for 20 or 30 minutes after the case was submitted. 335 S.C. at 353, 517 S.E.2d at 219.

Because the undisputed evidence admits only one reasonable inference, that no presumption was (or could have been) overcome, this Court should hold the presumption of prejudice to Mr. Murdaugh's right to a fair trial was not rebutted, vacate his convictions, and remand for a new trial.

II. PREJUDICE WAS PROVEN AT THE EVIDENTIARY HEARING.

As noted above, in *Parker v. Gladden* the U.S. Supreme Court held that the Supreme Court of Oregon erred in holding a bailiff's statement to a juror that the defendant "is guilty" did not require a new trial because the defendant did not prove the comment affected the verdict. 385 U.S. at 366. The Supreme Court ruled "'the "evidence developed" against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel.'" *Id.* at 364 (quoting *Turner*, 379 U.S. at 472–473). It further ruled the state's argument that the defendant did not show the comment prejudiced him ignored the "official character of the bailiff—as an officer of the court as well as the State." *Id.* at 365. Here, Mr. Murdaugh's motion for a new trial asserted a much higher-ranking official made equally direct comments (and more of them) to jurors during a criminal trial. *Parker* therefore would seem to control if the comments were made. The State's prehearing brief implicitly admitted this point:

> Finally, Murdaugh cites to *Parker v. Gladden*, 385 U.S. 363 (1966), and argues it represents that the statement of "that wicked fellow, he is guilty" cannot be harmless. However, *Parker* is factually distinguishable because he was able to do what Murdaugh cannot: 'one of the jurors testified that she was prejudiced by the statements[.]' . . . In this case, Murdaugh has presented an affidavit from a single

> juror who deliberated, and that juror prescribed her verdict to pressure from other jurors—not anything Clerk Hill allegedly said.

Resp't's 2d Prehearing Br. 10.

That point blew up at the evidentiary hearing.[9] Not only did Mr. Murdaugh prove the comments were made, but a juror also testified they influence the verdict. In *Parker*, the juror only testified, regarding the bailiff's statement, that "all in all it must have influenced me. I didn't realize it at the time." *Parker*, 385 U.S. at 366 n.3. At the evidentiary hearing, Juror Z gave much more definitive testimony:

> Q. All right. Was your verdict influenced in any way by the communications of the clerk of court in this case[?]
>
> A. Yes, ma'am.
>
> Q. And how was it influenced?
>
> A. To me, it felt like she made it seem like he was already guilty.
>
> Q. All right, and I understand that, that that's the tenor of the remarks she made. Did that affect your finding of guilty in this case?
>
> A. Yes, ma'am.

Evid. Hr'g Tr. 46:6–15. In *Parker*, the juror testified "it must have influenced me," but in this case the juror testified "it *did* influence me."

Parker therefore controls this case. If a bailiff stating, "that wicked fellow, he is guilty," to a juror who later testifies that statement "must have influenced me," requires a new trial, then a much more senior court official telling a juror not to be "fooled by" evidence presented by the

[9] That was not the only instance in which the State's return to the motion was overtaken by events. In its return, the State also claimed Mr. Murdaugh's allegations that Ms. Hill committed wrongdoing were not "even remotely plausible" and that he was merely "projecting his own calculating, manipulative psyche onto a dedicated public servant"—ironically referring to Ms. Hill. State's Return to Mot. New Trial 18. After that filing, Ms. Hill's ethics commissions complaints were referred for criminal prosecution, her book was withdrawn for publication due to plagiarism, and she resigned from office in disgrace.

defense and not to believe the defendant when he testifies to a juror who later testifies those statements "did influence me," must require a new trial. The prejudice is proven. And there is no question about the continued viability of *Parker*—it is a landmark case that incorporated the Sixth Amendment right to an impartial jury to the states. 385 U.S. at 364.

Although Mr. Murdaugh's counsel argued *Parker* in, *inter alia*, his pretrial brief, his second pretrial brief, his reply pretrial brief, and his written objections to the trial court's proposed questions to the jurors, the trial court studiously avoided it entirely. Instead, the trial court erroneously required that Mr. Murdaugh, in addition to proving that Ms. Hill did tamper with the jury about the merits of his case during trial, must also prove that tampering affected the deliberating jurors' subjective decision to vote for a guilty verdict.

Of course, questioning jurors about what motivated them to vote in a certain way when rendering their verdict is improper, and the defense objected. *E.g.*, Ltr. from R. Harpootlian to Ret. Chief Justice Toal, Jan. 24, 2024, at 1–2; Evid. Hr'g Tr. 49:9–51:3. Rule 606(b) of the South Carolina Rules of Evidence provides,

> 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.

"Thus, juror testimony or affidavits are admissible to prove an allegation of extraneous information or influence," *State v. Zeigler*, 364 S.C. 94, 110, 610 S.E.2d 859, 867 (Ct. App. 2005), but not to prove the "effect" of that information "upon that or any other juror's mind or emotions as influence the juror to assent to or dissent to the verdict," Rule 606(b), SCRE. "[I]nquiry into the motives of individual jurors and conduct during deliberations is *never* permissible; any investigation must

focus solely on whether the jury was exposed to external influences and, *from an objective perspective*, whether such influence was likely to have affected the jury's verdict." (emphasis added) (construing substantively identical federal Rule 606(b)); *see also Minnesota v. Cox*, 322 N.W.2d 555, 559 (Minn. 1982) ("Therefore, the proper procedure for reviewing a jury verdict is to determine from juror testimony what outside influences were improperly brought to bear upon the jury and then estimate their probable effect on a hypothetical average jury." (citing *United States ex rel. Owen v. McMann*, 435 F.2d 813, 820 (2d Cir. 1970) & *Massachusetts v. Fidler*, 385 N.E.2d 513, 519 (Mass. 1979)).

There is no doubt that the "probable effect on a hypothetical average jury" of being told not to believe the defendant when he testifies in his own defense, by the elected official who administered the oath to them when they were impaneled, is to be prejudiced against the defendant. So, the State requested the trial court instead ask jurors whether Ms. Hill's comments affected their decision to vote guilty in this case. The State requested this because it thought it knew what the answer would be, as evident by the statement in its prehearing brief that "*Parker* is factually distinguishable because he was able to do what Murdaugh cannot: 'one of the jurors testified that she was prejudiced by the statements[.]'" Resp't's 2d Prehearing Br. 10.

But when Juror Z unexpectedly testified that she was prejudiced by Ms. Hill's statements, the State was cornered. Even under the incorrect legal standard adopted by the trial court, Mr. Murdaugh prevailed. He proved the verdict was influenced by Ms. Hill's jury tampering. One deliberating juror did testify that her verdict was influenced by Ms. Hill's jury tampering. And no evidence was presented to controvert Juror Z's testimony or to show any bias or motive for falsehood.

The only way out was for the trial court to decide that Juror Z's uncontroverted testimony in open court about her own state of mind and her own mental processes was not credible:

> Juror Z, I asked you previously was your verdict on March 2, 2023, influenced in any way by communications from Becky Hill, the clerk of court. You answered that question yes. In light of what you said in the affidavit, which is:
>
> > I had questions about Mr. Murdaugh's guilt but voted guilty because I felt pressured by the other jurors.
>
> Is that answer that I just read a more accurate statement of how you felt?
>
> MR. HARPOOTLIAN: Object to the form, Your Honor.
>
> THE COURT: Overruled.
>
> A. Yes, ma'am.
>
> Q. All right. So, you do stand by the affidavit?
>
> A. Yes, ma'am.
>
> Q. Very good.

Evid. Hr'g Tr. 55:1–56:7. After Juror Z left the courtroom, Mr. Murdaugh's counsel objected that there was no inconsistency with being influenced both by Ms. Hill's comments during the presentation of evidence at trial and by other jurors during deliberations. *Id.* 58:2–22. Juror Z attempted to make this point herself, but the trial court would not permit any further testimony or examination of her. So, through her own counsel, she provided an affidavit that day averring,

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.

Juror Z Aff., January 28, 2024. The trial court nevertheless held "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." Order 21.

Because the trial court elected to disregard Rule 606(b), we do not have an objective inquiry into whether Ms. Hill's comments likely would have affected *a* jury, but instead have a credibility determination about whether those comments affected *this* jury. That determination is based on a court-conducted, inquisitorial inquiry into a juror's own internal mental processes, a subject the trial court was forbidden by law to inquire into, and based on the strange reasoning that if a juror testifies she was influenced by external tampering, she has violated her oath to follow the judge's instructions not to based her verdict on anything but the evidence presented in court, and therefore her testimony that she was influenced should be disregarded. *See* Order at 20–21. Or that if she testifies that she was influenced by other deliberating jurors during deliberations, any testimony that she also was influenced by events that happened during trial before deliberations should be disregarded. *Id.*

This is a bizarre and legally untenable result. Juror Z, who has direct knowledge of her own mental processes, said those mental processes were influenced by Ms. Hill's comments that she should not be fooled by the defense. The trial judge—who knows nothing of Juror Z's mental processes other than how Juror Z describes them—presumed to tell Juror Z that she was mistaken, and that Ms. Hill did not influence her. It is extraordinary that the trial judge believed she knew Juror Z's mental processes better than Juror Z.

Juror Z did not ask to be placed in this situation. She sat in a courtroom, isolated from her normal life and work, for six weeks because someone she did not know was accused of committing a crime that had nothing to do with her. That is a tremendous public service for which she has not

been compensated in any meaningful way. She has maintained her anonymity. She has not "cashed-in" with media appearances. She is not, as the State has scurrilously argued, an ally or advocate for Mr. Murdaugh. *See* Resp't's 2d Prehearing Br. 18 (accusing Juror Z's lawyer of being "an agent of Murdaugh"). She voted to convict him of murder. She has no reason to lie. She has simply been honest about what Ms. Hill did during the trial and the effect it had on her own deliberations.

It was an abuse of discretion for the trial court to disregard Juror Z's testimony about her own mental processes simply because her testimony met a legal standard the State thought that Mr. Murdaugh could not possibly satisfy. The trial judge's characterization of her testimony as "ambivalent" is unsupported by any evidence in the record. When asked, "Was your verdict influenced in any way by the communications of the clerk of court in this case[?]" she answered, "Yes, ma'am." Evid. Hr'g Tr. 46:6–14. When asked, "And how was it influenced?" she answered, "To me, it felt like she made it seem like he was already guilty." *Id.* When asked, "Did that affect your finding of guilty in this case?" she answered "Yes, ma'am." *Id.* No reasonable person can say that is "ambivalent" testimony.

The only reasonable inference from the record is that Ms. Hill's jury tampering did influence at least one juror's decision to vote for a guilty verdict. The Court therefore should reverse the trial court and vacate the murder and firearms convictions.

III. SECRET ADVOCACY FOR A GUILTY VERDICT IN THE JURY ROOM DURING A CRIMINAL TRIAL BY A STATE OFFICIAL IS A STRUCTURAL ERROR IN THE TRIAL THAT CANNOT BE HARMLESS.

Sustaining a conviction based on the Court's opinion the strength of the evidence against the accused regardless of improper external influences on the jury from court officials about the merits of the case is effectively a directed verdict for the prosecution—a statement that whatever happened at trial simply does not matter because the evidence can admit only one result regardless.

That would be structural error. *Cf. Neder v. United States*, 527 U.S. 1, 34 (1999) (Scalia, J., concurring in part) (noting that even if "the judge certainly reached the 'right' result," "a directed verdict against the defendant . . . would be *per se* reversible *no matter how overwhelming the unfavorable evidence*," because "[t]he very premise of structural-error review is that even convictions reflecting the 'right' result are reversed for the sake of protecting a basic right" (emphasis in original)).

When the jury returned guilty verdicts in this case, the trial court congratulated the jury that "certainly the verdict that you have reached is supported by the evidence, circumstantial evidence, direct evidence, all of the evidence pointed to only one conclusion, that's the conclusion you all have reached. So, I applaud you all for . . . coming to a proper conclusion." Trial Tr. 5877:17–23. Even before Ms. Hill's misconduct was known, the trial court foreshadowed the outcome of the "harmless error" analysis it applied to Mr. Murdaugh's new trial motion: The trial court held that Ms. Hill's jury tampering could not "in any way undermine the fairness and impartiality of [the] six-week trial with its extensive evidentiary presentations, arguments from counsel, and instructions from the trial court" and "any possible presumption of prejudice was overcome by these facts." Order 24.

But the prejudice at issue, whether it is presumed or must be proven, is not an incorrect verdict. Jury tampering is prejudicial if it denies the accused a fair trial. The strength of the State's evidence against the accused cannot cure the denial of his right to a fair trial. *See, e.g.*, *Parker*, 385 U.S. at 363–65. Thus, the rule for deciding whether to grant Mr. Murdaugh a new trial is not whether the trial court believes the outcome of the trial would have been the same had Ms. Hill's jury tampering not occurred. If that were the case, the trial court should deny a motion for a new trial even if she paid the jury to vote guilty, because, in the trial court's opinion, "all of the evidence

pointed to only one conclusion"—the guilt of the accused. As explained above, Rule 606(b) forbids asking jurors to give their own opinions as to whether jury tampering influenced them and then basing a decision for a new trial on that testimony. Courts instead must determine what tampering occurred and then undertake an objective analysis of whether that tampering would bias a jury. *See, e.g.*, *Manley v. AmBase Corp.*, 337 F.3d 237, 252 (2d Cir. 2003) ("[C]ourts must apply an 'objective test,' . . . focusing on two factors: (1) 'the nature' of the information or contact at issue, and (2) 'its probable effect on a hypothetical average jury.'"); *United States v. Lloyd*, 269 F.3d 228, 238 (3d Cir. 2001) ("[W]e must conduct 'an objective analysis by considering the probable effect of the allegedly prejudicial information on a hypothetical average juror.'"); *Haugh v. Jones & Laughlin Steel Corp.*, 949 F.2d 914, 917 (7th Cir. 1991) ("The proper procedure therefore is for the judge to limit the questions asked the jurors to whether the communication was made and what it contained, and then, having determined that the communication took place and what exactly it said, to determine—without asking the jurors anything further and emphatically without asking them what role the communication played in their thoughts or discussion—whether there is a reasonable possibility that the communication altered their verdict."). Courts cannot avoid that analysis by speculating that an unbiased jury would come to the same verdict as a biased one.[10]

[10] Additionally, the trial court's belief that the evidence against Mr. Murdaugh is "overwhelming" is unsupported by the record. There was no direct evidence of Mr. Murdaugh's guilt; during the trial the trial court stated this is a circumstantial case. Trial Tr. 2191:4–5. The State's evidence against Mr. Murdaugh was his proximity to his family near the time they were murdered, actions and behaviors by him after the murders that cast suspicion on him, and his bad character as an admitted thief and drug addict. Crime scene and cell phone forensic evidence strongly suggests other persons were involved in committing the murders that night. But argument regarding the weight of the evidence presented at the six-week trial is appropriately made in the direct appeal from that trial and not in this appeal from the one-day evidentiary hearing on the collateral issue of Ms. Hill's jury tampering. No argument or evidence was presented to Justice Toal in the evidentiary hearing proceedings regarding the strength of the evidence presented at trial.

The issue here is not whether a juror engaged in misconduct, not whether some member of the public engaged in misconduct, not whether a defendant engaged in misconduct, nor even whether a bailiff made an improper statement. The issue is whether an elected state official using the power of her office to enter the jury room during trial to advocate against the defendant to promote her own interests is a structural error in the conduct under the trial, under the principle that all evidence and argument presented to the jury must be presented in the courtroom. *See Turner*, 379 U.S. at 472–73 ("In a constitutional sense, trial by jury in a criminal case necessarily implies at the very least that the 'evidence developed' against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel."). That would necessarily bias a jury against the defendant. It was an abuse of discretion for the trial court instead to reason that it does not matter whether that happened because any jury, biased or unbiased, would reach the same verdict in this case. The right at issue is the constitutional right to trial before an unbiased jury, not a right to a correct verdict.

The undisputed evidence and findings from the evidentiary hearing are that Ms. Hill did engage in jury tampering. Three jurors and the alternate juror testified that Ms. Hill made comments to them regarding the merits of Mr. Murdaugh's testimony in his own defense. Statement of the Case, *supra*, at 4–8. One juror and the alternate testified that she told them not be "fooled by" the defense. *Id.* The only witness to contradict any of that testimony was Ms. Hill, whom the trial court found to be not credible. *Id.* One juror even testified that Ms. Hill's conduct did influence her decision to vote guilty. *Id.*

It has long been held to be a structural error for a state actor to engage in *ex parte* advocacy to the jury during trial. "The requirement that a jury's verdict must be based upon the evidence

developed at the trial goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury." *Turner*, 379 U.S. 466, 472 (1965) (internal quotation marks omitted). "The evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel . . . ." *Parker*, 385 U.S. at 364. In *Simmons v. South Carolina*, the U.S. Supreme Court similarly held it is unconstitutional for the defendant to receive the death penalty "on the basis of information which he had no opportunity to deny or explain." 512 U.S. 154, 161 (1994) (internal quotation marks omitted).

> The principle is ancient and foundational to our system of trial by jury:
>
> > In the ultimate analysis, only the jury can strip a man of his liberty or his life. In the language of Lord Coke, a juror must be as 'indifferent as he stands unsworne.' His verdict must be based upon the evidence developed at the trial. This is true, regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life which he occupies. It was so written into our law as early as 1807 by Chief Justice Marshall in 1 Burr's Trial 416 (1807).

Irvin v. Dowd, 366 U.S. 717, 722 (1961) (citations omitted). What is now called the *Remmer* presumption is far older than the 1954 *Remmer* decision. "Private communications, possibly prejudicial, between jurors and third persons, or witnesses, or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear." *Mattox v. United States*, 146 U.S. 140, 150 (1892).[11] Likewise,

[11] *Maddox* was superseded in 1975 by Rule 606(b) of the Federal Rules of Evidence on a separate issue regarding the admissibility of juror testimony to impeach the verdict. But it is still currently cited by federal appellate courts for the principle that when state officials communicate *ex parte* with the jury about the merits of the case during trial, a new is required. *E.g.*, *Tarango*, 837 F.3d at 947 ("*Mattox* and its progeny further establish that undue contact with a juror by a government officer almost categorically risks influencing the verdict.").

> It is well settled, that it is not necessary to show that the minds of the jury, or of any member of it, were influenced. It is sufficient to show that intermeddling did take place, to set aside the verdict. Too much strictness cannot be exercised in guarding trials by jury from improper influence. It has been said that, "this strictness is necessary to give confidence to parties in the results of their causes; and every one ought to know that, for any, even the least, intermeddling with jurors, a verdict will always be set aside."- *Knight v. Freeport*, 13 Mass. 220.
>
> This is the language of the Supreme Court of Massachusetts in a civil cause. How much more important is it, to guard the purity of jury trials, against improper influence, when the matter at stake is the life or liberty of a prisoner.
>
> The authorities upon this point all agree; and, as they are very numerous . . . .

Pope v. Mississippi, 36 Miss. 121, 124 (Miss. Err. & App. 1858). For an even older example,

> An officer is sworn to keep the jury, without permitting them to separate, or any one to converse with them; for no man knows what may happen; although the law requires that honest men should be returned upon juries, and, without a known objection, they are presumed to be *probi et legales homines*, yet they are weak men, and perhaps may be wrought upon by undue applications. The evil to be guarded against, is improper influence; and when an exposure to such an influence is shown, and it is not shown that if failed of effect, then the presumption is against the purity of the verdict.

Lord Delamere's Case, 4 Harg. St. T. 232 (Eng. 1685).

Contrary to the State's position before the trial court, our Supreme Court has not abrogated or abandoned this foundational principle that when the State's officials engage in *ex parte* communications with the jury during trial about the merits of the case, a new trial is required. Nor has the U.S. Supreme Court opened a door that could allow states to abandon that principle. All that has happened is a sensible restriction of the principle to exclude improper communications that do not bear on the merits of the issue before the jurors. *See Green*, 432 S.C. at 100, 851 S.E.2d at 441.

In the trial court, the State complained that this sort of tampering happens so commonly that it "cannot overstate the impossibility" of considering it a structural error. Resp't's 2d Br. 12. That exactly reverses the issue. Nothing like Ms. Hill's conduct has ever happened before this

case. Most likely it will never happen again. The impossibility is found in excusing Ms. Hill's conduct with *post hoc* reasoning that her tampering probably did not change the outcome of the trial (even though one juror said it did). If Ms. Hill's misconduct is excused, then truly anything goes.

The public rightly sees Mr. Murdaugh's downfall as an exposé of privilege and corruption in South Carolina's legal system and the citizens of South Carolina need more from this case than confirmation of their own social-media-fed ideas about the details of a crime they did not witness. They need to see that their legal system actually works. Satisfying public desire to see a hated man punished is not why we have a legal system. If Mr. Murdaugh is to be convicted of murder, the citizens of South Carolina need to see him convicted by a process they would agree is fair if they were the defendants. No reasonable man would agree, if he were on trial for his life, that having the clerk of court secretly advocate against him in the jury room so she can sell books about his conviction would be a fair trial. Providing Mr. Murdaugh with the fair trial that every citizen of South Carolina would expect for himself is necessary assure all that no one—powerful or humble, innocent or guilty, hated or beloved—is proscribed from due process and the equal protection of the law.

CONCLUSION

Any person accused of a crime—even Alex Murdaugh—has a constitutional right to a fair trial. When a fair trial is denied, he is entitled to a new, fair trial—he is not required to earn it by proving he would have been acquitted had he been given a fair trial the first time. Judges' opinions regarding the strength of the State's evidence against the accused are not a substitute for the presentation of that evidence at a fair trial. The Court therefore should follow clearly established

federal constitutional law and reverse the trial court's denial of Mr. Murdaugh's motion for a new trial and vacate his murder and firearms convictions.

s/Phillip D. Barber
Richard A. Harpootlian, SC Bar No. 2725
Phillip D. Barber, SC Bar No. 103421
Andrew R. Hand, SC Bar No. 101633
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, SC 29202
(803) 252-4848
rah@harpootlianlaw.com
pdb@harpootlianlaw.com
arh@harpootlianlaw.com

James M. Griffin, SC Bar No. 9995
Margaret N. Fox, SC Bar No. 76228
GRIFFIN HUMPHRIES LLC
4408 Forest Drive (29206)
Post Office Box 999
Columbia, South Carolina 29202
(803) 744-0800
jgriffin@griffinhumphries.com
mfox@griffinhumphries.com

Attorneys for Appellant Richard Alexander Murdaugh

Columbia, South Carolina
August 12, 2024.