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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
STATE OF SOUTH CAROLINA,)
Plaintiff,)
-versus-)
MICHAEL COLUCCI,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT
INDICTMENT NUMBER: 2016-GS-08-02603
WARRANT NUMBER: 2016A0810400692

**MOTION TO EXPAND JURY VOIR DIRE
BY USE OF PRE-TRIAL JURY VENIRE
QUESTIONNAIRE**

2025 APR 10 PM12:53
CLERK OF COURT
BERKELEY COUNTY, SC

FILED
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Michael Colucci (Colucci) respectfully requests this Court to utilize a written voir dire as an initial procedural step to protect his South Carolina and United States Constitutional rights to have his case heard by a fair and impartial jury.

BACKGROUND

Colucci is charged in Indictment Number 2016-GS-08-02603 with one count of Murder alleging that he murdered his wife, Sara Lynn Colucci on or about May 20, 2015. He was arrested on May 4, 2016. He was tried in December of 2018, but the jury was unable to reach a unanimous verdict. Colucci's re-trial is scheduled to commence on June 16, 2025.

Media coverage of the incident, Colucci's subsequent arrest, his bond hearing, and his two-week trial in December of 2018 was unrelenting. His initial trial was broadcast live on a national television network and remains available for viewers to watch until this day. The trial has been covered by every national network including FOX, NBC, CBS and ABC. News programs including Dateline and 48 Hours have provided extensive coverage. Social media coverage has been as extensive including websites and blogs totally dedicated to this event and there have been podcasts, which are ongoing, about the case.

GS 4/10/25
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On social media, opinions of the circumstances surrounding the manner of Sara's death have been ubiquitous. Rare is there a report or statement that is factually accurate.

RELIEF SOUGHT

In light of the pervasive media accounts and the multitude of opinions offered regarding the circumstances of Sara's death, Colucci is submitting a request for *voir dire* which is tailored to discover whether any juror has been exposed to experiences or information which might affect their ability to be fair and impartial. Our traditional South Carolina jury selection practice requires each juror to respond to a limited number of court-initiated questions while standing in open court. The facts of this case call for a delicate inquiry of each juror's knowledge, source of knowledge and opinions about Sara Lynn's death and Colucci's purported responsibility. Colucci proposes that the most effective, honest and reliable means of obtaining this critical information would be by use of a juror questionnaire. The questionnaires will allow the summoned jurors to respond thoughtfully and candidly without fear of public embarrassment or retribution.

Colucci proposes that the Clerk of Court distribute the questionnaire, attached hereto as Exhibit "A," to all prospective jurors contemporaneously with the delivery of a summons. Colucci proposes that this be accomplished by mailing this questionnaire to each member of the jury panel who is to appear for the term of General Sessions Court in which Michael Colucci will be tried. It is further suggested that counsel for the State and the Defense be provided a copy of each completed questionnaire as they are returned, but not later than ten (10) days prior to the commencement of the selected term of Court. This procedure has precedent in the Ninth Judicial Circuit as well as other Circuits in South Carolina, and has been uniformly employed in both civil and criminal matters tried

in Federal Courts throughout the District of South Carolina for more than twenty (20) years. Such a procedure will promote judicial economy while assuring the preservation of Colucci's State and Federal Constitutional right to a full and fair *voir dire* examination.

Assuming the Court approves the written questionnaire, the panel is given an opportunity to answer the questionnaire, and the attorneys have a reasonable opportunity to review the juror's answers before jury selection, Colucci would then request the Court to individually question the panel members in accordance with the questions proposed in Defendant's Proposed *Voir Dire* submission.

ARGUMENT

A JUROR QUESTIONNAIRE IN ADVANCE OF TRIAL IS WARRANTED AND APPROPRIATE IN THIS HIGH-PROFILE AND SENSITIVE CASE

It is recognized that the scope of *voir dire* and the manner in which it is conducted are generally left to the sound discretion of the trial court. *State v. Bixby*, 388 S.C. 528, 542, 698 S.E. 2d 572, 579 (2010); *State v. Stanko*, 376 S.C. 571, 575, 658 S.E. 2d 94, 96 (2008); see S.C. Code Ann. § 14-7-1020. Although research located few reported South Carolina cases addressing the use of juror questionnaires in advance of trial, cases have, at least implicitly, approved their use. For example, in *Bixby*, the court referred to the extensive juror questionnaires completed by each potential juror and the fact that the questionnaires were "designed to elicit general, personal information, and probe for bias and predisposition." 388 S.C. at 541, 698 S.E.2d at 579; see also *State v. Norris*, 285 S.C. 86, 90, 328 S.E.2d 339, 341 (1985) (court observed that three weeks prior to trial, trial court granted defendant's request to submit a detailed questionnaire to all prospective jurors), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 822 (2009); *Stanko*, 376 S.C. at 576-77, 658 S.E.2d at 97 (prior to trial, jurors completed a questionnaire that included questions about their bias and prejudice).

When a defendant's State and Federal Constitutional rights merge, our State Courts, when confronted with procedural questions, often look to our Federal Courts for guidance. In this case, because there is no State Criminal Procedural rule on point, guidance may be found in the South Carolina District Court's local rules:

Federal Court Local Rule 47.02 provides for the permissive use of Juror Questionnaires:

The Court may require potential jurors to respond to written questionnaires and may make the responses available to counsel or parties with cases on the relevant trial roster seven (7) days prior to jury selection. Counsel of any other persons obtaining juror questionnaire responses must ensure that the information contained therein is utilized solely for the purpose of evaluating potential jurors for a pending case and is not disseminated for any other purpose. The Clerk of Court shall institute procedures to draw these requirements and responsibilities to the attention of persons obtaining the questionnaire responses by completing the Juror Questionnaire/List Request form. Any person desiring to obtain the information for any other purpose must petition the Court so that an appropriate hearing can be conducted.

Courts in other jurisdictions and commentators have approved the use of such questionnaires and recognized their efficacy, particularly in high-profile or sensitive cases such as this one. For example, the *ABA Standards for Criminal Justice* 15-2.2 (Juror Questionnaires) (3d ed. 1996) encourages the use of a basic questionnaire before *voir dire* begins, as well as a specialized questionnaire in appropriate cases. The commentary to this Standard states:

It is beneficial both to the system as a whole and to the attorneys involved in the particular case to use a questionnaire to obtain information from prospective jurors, and then, prior to *voir dire*, to furnish counsel with a list of prospective jurors and the jurors' responses to pretrial questions. Use of a questionnaire shortens the time necessary for juror selection and permits both the court and counsel to make considered decisions about the exercise of challenges during the jury selection process.

This standard provides for two types of questionnaires: a basic questionnaire to be returned by the prospective jurors in all cases and a specialized questionnaire to be returned by prospective jurors when appropriate.

Standard 15-2.2 commentary.

The commentary further states:

Basic Questionnaire

The purpose of the basic questionnaire is to shorten the time required for the *voir dire*, and thereby streamline the trial process. This questionnaire should be mailed to all prospective jurors well in advance of trial, to be returned either by mail before the day of trial or when the juror arrives at the courthouse. In any case, it should be returned in sufficient time to permit timely use by counsel. Basic questionnaires currently in use vary significantly as to length and intrusiveness of the questions proposed. Counsel should be able to acquire sufficient information without engaging in overly intrusive questioning. The Federal Judicial Center has recommended an extensive, yet not overly intrusive questionnaire.

Specialized Questionnaires

Specialized questionnaires are designed to obtain information more directly related to the issues in a particular case. They are designed, as are the basic questionnaires, to permit the court and counsel to gain information needed for effective *voir dire* in an efficient manner. There are several benefits to providing the questionnaire to counsel before trial. First, repetitive *voir dire* questioning can be minimized. Second, prospective jurors may be more willing to divulge sensitive information on the written form than to discuss the same information in open court. Third, the questionnaires, by providing relevant information early, permit the court and counsel to conduct a more focused *voir dire*.

Id. (footnotes omitted).

The requested *Voir Dire* has been successfully employed in Federal District Courts for over twenty-five (25) years. District Court Judge Barbara M.G. Lynn of the Northern District of Texas, in an article entitled "A Case for Jury Questionnaires," states that she uses a standard questionnaire in every civil and criminal case she tries. 33 No. 4 Litigation 3 (Summer 2007), 2007 WL 2601614. In lengthy or high-profile cases, the judge typically mails the questionnaire to potential jurors in advance of trial and, if there is a large enough panel to do so, allows the lawyers for the parties, based on the responses, to agree on the striking of certain jurors before the venire is required to appear, so that the prospective jurors need not appear. *Id.* The judge also rules on motions to strike

for cause based on the questionnaire responses, for the same reason. *Id.* The judge also discusses the various logistical issues to consider and the questions typically used in the standard questionnaire.

Id.

The judge explains that in her experience, a questionnaire provides a much more comfortable means than does oral examination for potential jurors to provide information to the parties and the court. *Id.*

Questionnaire responses also provide more information, in a faster and more organized way, than could be gathered in a reasonable amount of time by questioning in court, and mitigate the very real problem of jurors miming one another's answers, which often occurs in *voir dire*. See generally G. Thomas Munsterman *et al.*, *Jury Trial Innovations* (2d ed. 2006). The responses give counsel and the court substantial information on which a challenge under *Batson v. Kentucky*, 476 U.S. 79 (1986), or *J.E.B. v. Alabama*, 511 U.S. 127 (1994), can be asserted and evaluated, and also tend to limit stereotyping as a basis for jury selection based on a juror's appearance.

2007 WL 2601614, at *4-5.

The judge concludes:

Confidential juror questionnaires are an invaluable tool for ensuring both the integrity of the jury system for litigants—especially criminal defendants—and the improvement of jurors' experiences with that system. They allow attorneys to learn a significant amount about potential jurors, without significantly compromising jurors' interests in maintaining their privacy in truly personal matters, yet allow the press sufficient access to report on trials and our jury system. In these ways, jury questionnaires serve the fundamental goal of maintaining the viability of the jury trial—a critical part of our system of justice.

Id. at *9.

In 6 Wayne R. LaFare *et al.*, *Criminal Procedure* § 22.3(b) (4th ed. 2015 & Westlaw database updated Dec. 2015), the authors observe that an increasing number of courts in criminal cases use questionnaires that venire members fill out in advance of jury selection.

In *United States v. Skilling*, 561 U.S. 358 (2010), a high-profile case, the Supreme Court spoke approvingly of the use of questionnaires. The district court judge in that case submitted a 14-page questionnaire to the prospective jurors, giving six weeks to respond. The questionnaire was drafted in large part by Skilling. *Id.* at 388. "That survey," according to the Supreme Court, "helped to identify prospective jurors excusable for cause and served as a springboard for further questions put to the remaining members of the array." *Id.* The Court further noted that in "other Enron-related prosecutions; . . . District Courts, after inspecting venire members' responses to questionnaires, completed the jury-selection process within one day." *Id.* at 388-89.

For more than thirty years, South Carolina trial courts, including those in the Ninth Judicial Circuit, have used written questionnaires where there has been extensive pretrial publicity. See *State v. Charpia*, 94-GS-10-1039, *State v. Nyhan*, 2004-GS-10-2496; *State v. Duffy*, 1997-GS-08-837, *State v. Slager*, 2015-GS-10-3466, and *Lancaster v. Fielder*, 305 S.C. 418, 409 S.E.2d 375 (1991)).

Numerous other courts have also used written questionnaires as a method for detecting bias, especially where there has been extensive pretrial publicity concerning the particular defendant or charges. See, e.g., *United States v. Taveras*, 584 F. Supp. 2d 535, 538 (E.D.N.Y. 2008); *United States v. Sattar*, 395 F. Supp. 2d 66, 70 (S.D.N.Y. 2005), *aff'd*, 590 F.3d 93 (2d Cir. 2009), *cert. denied*, 559 U.S. 1031 (2010); *United States v. Potter*, 394 F. Supp. 2d 475, 477-78 (D.R.I. 2005); *United States v. Fastow*, 292 F. Supp. 2d 914, 915-16, 919-21 (S.D. Tex. 2003); *State v. Howard*, 2013 ND 184, ¶ 20, 838 N.W.2d 416, 421; *State v. Parker*, 282 P.3d 643, 649 (Kan. Ct. App. 2012).

CONCLUSION

Based on the foregoing authority, a pretrial jury questionnaire is warranted and should be

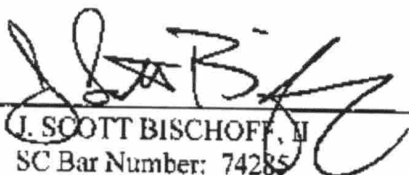
used in this case. Given the high-profile and sensitive nature of the case and the extensive pretrial publicity it has generated, the use of a jury questionnaire mailed out to prospective jurors in advance of trial would be the most efficient and effective method of receiving honest answers and eliminating biased jurors while ensuring the defendant a fair trial by an impartial jury. Accordingly, the defendant's Motion to Expand Jury *Voir Dire* by Use of Pretrial Jury Venire Questionnaire should be granted.

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April 10, 2025