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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

COLLETON COUNTY
Court of General Sessions
The Honorable Clifton B. Newman, Circuit Judge

Appellate Case No. 2023-000392

Juror #785/Myra Crosby, ……...……Petitioner,

Of Which

The State ……Respondent,

v.

Richard Alexander Murdaugh ……Appellant

PETITION FOR REHEARING

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ATTORNEYS FOR THE PETITIONER

PETITION

Petitioner Myra Crosby, pursuant to Rule 221 of the South Carolina Appellate Court Rules, hereby petitions for rehearing of her Petition for Limited Intervention and Motion to Unseal Record in the above-captioned matter, which was denied by Order dated October 31, 2024 (the "Order").

Ms. Crosby is a juror who was removed from the Alex Murdaugh murder trial jury on the afternoon of the day the case was presented to the jury for deliberation and the verdict was rendered, which preceded several alleged highly improper contacts with juror Crosby before the case was submitted to the jury by disgraced former Clerk of Court Rebecca Hill. The circumstances of Ms. Crosby's removal have been extensively discussed in news media and published books, including a book by Ms. Hill that references sealed *in camera* proceedings regarding her removal. Although Ms. Crosby was removed from the jury almost two years ago, the in-camera proceedings which resulted in her removal remain sealed, ostensibly, as articulated by the trial judge, to protect her anonymity.

Ms. Crosby's anonymity, however, is no longer an issue as the circumstances have been much written about and Ms. Crosby in her Petition to Unseal explicitly relinquishes her privacy. Ms. Crosby wishes to rebut public statements by former state officials, journalists, bloggers, and others with access to judicial records regarding her removal. To that end, on September 4, 2024, she filed a petition and motion requesting that the judicial record of her removal—a transcript of *in camera* proceedings—be unsealed. Therein, Ms. Crosby asserted a right to public access to the judicial record under the First Amendment to the United States Constitution. (Mot. Unseal Pet. Intervene 3.)

The State filed a return, in which it argued first that "The correctness of the decision to exclude Juror 758 is likely a matter to be raised in the appeal by the parties," and that any unsealing should not occur until after the appeal is briefed, even though "Appellant Murdaugh's counsel did not except or object to the ruling removing the juror" and even though merely unsealing the trial court record of that decision can have no conceivable impact on the appellate review of that decision. (Return 5–6.) The State argued, second, that Ms. Crosby is estopped from seeking to have the judicial record of her removal unsealed because on November 2, 2023, the trial court granted a consent motion allowing her counsel to view the sealed judicial records on the condition that neither she nor her counsel further disseminate the materials. According to the State, that consent motion allowing her counsel to view sealed records somehow is a "consent decree" that forever estops her from later moving to unseal those records.[1] (Return 6–7.) Finally, in a footnote, the State argued that Ms. Crosby had irrevocably waived her First Amendment rights and therefore she alone lacks the standing to seek access to judicial records that every other American citizen enjoys. (Return 6 n.3.) The State's arguments are, to put it mildly, not colorable.

The bizarre arguments advanced by the State in its return lacked legal force and logic and their legal insufficiency should have been dismissed out of hand. Instead, the Court denied Ms. Crosby's motion with an Order without stated legal basis, stating "The requests to intervene and unseal the record are denied." Because the Order denies Ms. Crosby's assertion of rights under the First Amendment to the United States Constitution, she intends to seek review of the Order by

[1] The State's terminology is mistaken. An interlocutory order of the Court of General Sessions setting conditions on access to sealed records in a criminal case is not a "decree." A "decree" is a final order of a court sitting in equity; traditionally, decrees issued in equity and judgments at common law. Decree, Black's Law Dictionary (12th ed. 2024). Often the word refers to an order granting equitable relief like an injunction, and consent decrees typically impose injunctions entered with the consent of the party being enjoined as a compromise to avoid the risk that further litigation would result in more adverse consequences.

a petition for a writ of certiorari to the United States Supreme Court. The Court's Order did not provide reasoning for its decision and that failure operates as an impediment to appellate review of that decision.

The First Amendment right of access "attaches to any judicial proceeding or record '(1) that has historically been open to the press and general public; and (2) where public access plays a significant positive role in the functioning of the particular process in question.'" *United States ex rel. Oberg v. Nelnet, Inc.*, 105 F.4th 161, 171 (4th Cir. 2024) (quoting *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 326 (4th Cir. 2021)). Transcripts of criminal trials historically are open to the press and public after a verdict is rendered. *See, e.g.*, *Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty.*, 457 U.S. 596, 606–07 (1982) ("But the circumstances under which the press and public can be barred from a criminal trial are limited; the State's justification in denying access must be a weighty one. Where, as in the present case, the State attempts to deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest."); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 578 (1980) ("[A] trial courtroom also is a public place where the people generally—and representatives of the media—have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place."); *see also Press-Enter. Co. v. Superior Ct. of Cal.*, *Riverside Cnty.*, 464 U.S. 501, 512 (1984) ("When limited closure is ordered [due to juror privacy interests], the constitutional values sought to be protected by holding open proceedings may be satisfied later by making a transcript of the closed proceedings available within a reasonable time, if the judge determines that disclosure can be accomplished while safeguarding the juror's valid privacy interests.").

"Whenever a proceeding or document is protected by the First Amendment, access may be restricted only if closure is necessitated by a compelling government interest and the denial of access is narrowly tailored to serve that interest." *Nelnet*, 105 F.4th at 171 (internal quotation marks omitted). "The burden to overcome a First Amendment right of access rests on the party seeking to restrict access, and that party must present specific reasons in support of its position." *Va. Dep't of State Police v. Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004); *see also Press-Enterprise Co. v. Superior Court*, 478 U.S.1, 15 (1986) (holding there is a First Amendment right of access to transcripts of even preliminary hearings in criminal matters and "The First Amendment right of access cannot be overcome by [a] conclusory assertion").

The Court's Order without stated legal basis did not comply with the constitutional requirement to identify a compelling government interest and to explain how keeping a trial transcript under seal years after the verdict is narrowly tailored to serve that interest. Ms. Crosby therefore respectfully requests the Court vacate its Order in favor of a reasoned order, or, in the alternative, issue a memorandum opinion providing the reasoning for the Order.

Respectfully submitted,

/s/ Joseph M. McCulloch

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Columbia, South Carolina
this 15th day of November, 2024