

Criminal Defense Attorney Questions if Alex Murdaugh Should Have Testified

Former trial lawyer given two life sentences for double murder after taking the stand to testify in his defense. by Christopher Hazlehurst, J.D.

OXNARD, CALIFORNIA, UNITED STATES, March 16, 2023 /EINPresswire.com/ -- A week before attorney Alex Murdaugh was convicted of murdering his family and sentenced to life in prison, he took the stand in his defense. Did that testimony help his case, or seal his fate? Should criminal defendants normally testify on their own behalf?

On March 2, a jury found disgraced personal injury lawyer Alex Murdaugh guilty of murdering his wife and son after a six-week trial that captured the nation's attention. The jury deliberated just three hours before handing down its verdict, for which Murdaugh will serve life in prison without parole. According to the prosecution, Murdaugh killed his family in order to garner sympathy and gain additional time to build a defense against allegations of myriad financial crimes--he still faces more than 100 charges for allegedly stealing millions of dollars from clients, committing tax evasion, and many other criminal acts.

As part of his defense, Murdaugh elected to testify on his own behalf. In the practice of criminal law, deciding whether the defendant should testify is always a tough choice. There are advantages and disadvantages, even setting aside whether Murdaugh could have escaped his fate regardless.

Criminal defendants have the right, but not the obligation, to take the stand in their defense. State and federal constitutional law provides that criminal defendants cannot be compelled to act as a witness or take the stand in their cases. Defendants have the right to remain silent and the right not to answer any questions that could lead to self-incrimination. However, defendants can choose to waive that right and give testimony.



Paul Tyler, California Criminal Defense Lawyer

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*Paul Tyler, California Criminal
Defense Attorney*

Choosing not to testify has its drawbacks. Juries are not meant to hold a defendant’s refusal to testify against them, given that the defendant has a constitutional right to remain silent. A judge cannot highlight the defendant’s refusal in court. In practice, however, many jurors wonder why a defendant would not take the opportunity to speak on their own behalf. They may wonder if the defendant has something to hide. Surely if the defendant believed their defense argument, they would want the jury to hear it

from themselves, in their own words?

Testifying, however, opens its own can of worms. The jury might not like the way a defendant looks or talks; they might find the defendant lacks credibility or appears fake. Defendants are also likely to be flustered or emotional when dealing with the realities of a criminal trial, and skilled prosecutors know how to exploit a witness’s emotional state to trip them up and undermine their testimony. Witness testimony, including a defendant’s own testimony, is only helpful if the jury finds the witness believable.

Moreover, once a defendant takes the stand, the prosecution can use any and all relevant evidence to undermine the defendant’s testimony and general credibility. The prosecution can bring up the defendant’s prior bad acts, criminal record, inconsistent statements, and other harmful facts. This type of evidence can only be introduced once the defendant takes the stand because it goes to the defendant’s credibility as a witness as opposed to their likelihood of guilt.

It’s very difficult, of course, for a jury to keep that nuanced separation in mind when rendering a verdict. If the defendant chooses not to testify, the jury will be focused on the prosecution’s case; if the defendant does testify, jurors may narrow their focus to simply whether they believe the defendant.

For Murdaugh, it’s hard to say whether any defense argument or trial testimony could have changed the jury’s mind. There is, however, reason to believe Murdaugh’s testimony did him no favors. After the trial concluded, several jurors appeared on NBC’s “Today” show to discuss the case. They pointed out how one of the prosecution’s key pieces of evidence--a video taken by his son proving that Murdaugh was present at the time of the murder--directly contradicted Murdaugh’s story. The video depicted Murdaugh’s voice, which the jury could now compare live as he spoke in his defense.

Jurors also found Murdaugh lacked credibility. For example, one juror said that they found Murdaugh’s tears on the stand unbelievable. They didn’t find his emotional breakdown to be “genuine” because he “turned it on and off.”

For criminal defendants, the decision as to whether to testify often weighs heavy. [Paul Tyler](#), a criminal defense attorney based in Oxnard, California, says that, under most circumstances, testifying does more harm than good for defendants. "Testifying opens the door for the prosecution to bring out prior bad acts of the defendant, including past convictions," Tyler explains. "Exposing the fact that a defendant has a criminal record can be incredibly damaging to a case," he says, "regardless of what the prior conviction was and whether it has any bearing on the current case."

For defendants who worry that not taking the stand will make them look guilty, Tyler explains that the judge will give the jury a very strong instruction that the defendant has an absolute constitutional right not to testify. "Jurors are instructed not to consider for any reason the fact that a defendant did not testify," says Tyler, "and not to let that fact influence the jurors' decision in any way."

Attorney Tyler explains that being a good witness includes not just being credible and likable, but also being able to withstand the pressure of cross-examination. Oftentimes, defendants will want to testify on their behalf, believing they will make a good witness. Although the decision is ultimately left to the defendant, Tyler often counsels his clients against this move, knowing the risks involved.

"As an accomplished trial lawyer who is comfortable in the courtroom, Alex Murdaugh probably believed he would make a good witness," says Tyler. It appears, however, that such was not the case.

Paul Tyler
Law Office of Paul Tyler
+1 805-889-9000
[email us here](#)

Visit us on social media:

[Facebook](#)
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