

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

State of South Carolina,

v.

Richard Alexander Murdaugh,

Defendant.

**COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

Indictment Nos. 2022-GS-15-00592, -593,
-594, and -595

**RESPONSE IN OPPOSITION TO
MOTION FOR PROTECTIVE ORDER**

INTRODUCTION

Defendant Richard Alexander Murdaugh (Murdaugh), through his undersigned counsel, hereby responds to the State’s request for a blanket protective order restricting the Defendant and his counsel’s use of evidence and other material to which he is entitled to receive pursuant Rule 5, SCRPC, Brady v. Maryland and its progeny.

DISCUSSION

Rule 5(d) SCRPC authorizes the court “upon a sufficient showing” to enter an “order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate.”¹ *Id.* There are no published South Carolina decisions addressing the type of showing that is required to obtain a protective order under Rule 5. However, to obtain a protective order in the civil context, the moving party must establish “good cause” by alleging that a particularized harm will result. Hamm v. S.C. Pub. Serv. Comm’n, 312 S.C. 238, 241, 439 S.E.2d 852, 854 (1994) (“The person requesting protection from the court or commission must initially

¹ Rule 5(d) does not apply to Brady material or other information the State is constitutionally obligated to disclose.

show good cause by alleging a particularized harm which will result if the challenged discovery is had. The allegations of a particularized harm are usually in the form of a motion, either for a protective order or a return to a motion to compel production.” (citation omitted)). Similarly, under the federal criminal rules, the government must establish “good cause” to obtain a protective order restricting a defendant’s use or disclosure of discovery. In United States v. Wecht, the Third Circuit Court of Appeals ruled that “[b]road allegations of harm, unsubstantiated by specific examples or articulate reasoning do not support a good cause showing.” 484 F.3d 194, 211 (3d Cir. 2007) (internal quotation marks omitted). Rather, the government must make a particularized showing of harm that will result from the disclosure without the entry of the proposed protective order. *Id.*

The Attorney General’s motion for a protective order is woefully inadequate in its allegation of harm that will allegedly result if the State produces discovery without restrictions. Distilled to its core, the Attorney General’s motion simply alleges that “evidence in the case contains sensitive information which should remain protected unless and until it is used in court.” Such tautological reasoning fails to establish any harm whatsoever that might result from the unrestricted release of discovery to the defense, which is done in practically every criminal case in South Carolina, other than State Grand Jury cases.

The motion also refers to the publicity that this case has garnered, and the Attorney General claims that the request for a protective order is not intended to prevent hearings and the trial of this case to be conducted in public. In addition, the Attorney General hypocritically alleges that the motion is only intended to prevent the dissemination of any evidence in this case except as is necessary for the State and defense to prepare for and litigate any hearings and trial in this case.

For months on end, the State's prosecutors have selectively leaked information about evidence obtained through sealed search warrants to various media outlets. There have been stories written in the media about an audio recording obtained from Paul Murdaugh's cell phone that allegedly places Alex Murdaugh at the scene of the murders. Any search of Paul Murdaugh's phone would have been the result of a search warrant issued under seal. According to the lead prosecutor, Creighton Waters, the orders sealing the search warrants signed by Judge Newman and other judicial officers also prohibit the disclosure of information obtained from these searches.

Yet defense counsel first learned that agents obtained information from a search of Paul's phone through news articles. Defense counsel has confirmed the existence of a video and audio recording from the search of Paul's phone that were first reported by the media. On Wednesday, August 17, 2022, SLED agents, acting at the direction of the Attorney General's office, played portions of a video and audio recording obtained from Paul's phone to Murdaugh's family members. It is believed that this was done without obtaining an order authorizing the disclosure of this information to potential witnesses or third parties.

In any event, on the recording Paul is taking a video of his friend's dog, who Paul was concerned about. Apparently, a conversation between Maggie, Paul and Alex is also captured on this recording. Family members report that Maggie, Paul, and Alex are having a convivial conversation about the behavior of their own dog, Bubba. There is absolutely no indication of a disagreement or dispute between Paul, Maggie, and Alex, according to family members who viewed the recording. However, the State contends that within minutes after this convivial, light-hearted conversation, Alex murdered both Maggie and Paul for no apparent reason.

The news story about this recording did not include any information about the convivial nature of the conversation and how incongruent the tone and tenor of the conversation is to the

State's theory of the case. Perhaps this crucial information was intentionally omitted from the media leak to portray Alex Murdaugh in the worst possible light. Regardless, the State has disclosed this information in violation of this Court's order sealing the search warrant application and the materials obtained from the searches. But now that the time has come for the Attorney General to produce the "mountain of evidence" against Murdaugh, as has been described in the media, to the defense, the Attorney General refuses to comply with his discovery obligations until the Court imposes a gag order and other restrictions on the Defendant and his counsel.

Lastly, the State continues to use the material, which should have been disclosed to the defense already, in witness interviews and to otherwise prepare its case for trial, while Alex's counsel are reduced to motion practice begging to see the evidence to be used against him. This conduct is grossly unfair to the defense and a violation of Alex's constitutional rights to due process of law and a fair trial.

CONCLUSION

The Attorney General has failed to make an adequate showing of good cause for a blanket protective order over all the material covered under Rule 5. The Court should therefore deny the State's request for a protective order and grant Murdaugh's motion to compel.

Respectfully submitted,



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August 22, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON)

The State of South Carolina,

 Plaintiffs,

vs.

Richard Alexander Murdaugh,

 Defendant.

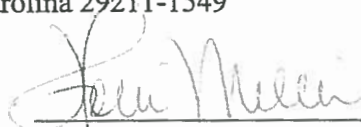
Indictment Nos. 2022GS1500592 – 00595

CERTIFICATE OF SERVICE

I, Holli Miller, paralegal to the attorney for the Defendant, Richard A. Harpootlian, P.A., with offices located at 1410 Laurel Street, Columbia, South Carolina 29201, hereby certify that on August 22, 2022 I did serve by placing in the U.S. mail, first class postage affixed thereto (with a courtesy copy sent electronically), the following document to the below mentioned person:

Document: Response in Opposition to Motion for Protective Order

Served: Creighton Waters, Esquire
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Holli Miller