

**STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON**

**COURT OF GENERAL SESSIONS  
FOURTEENTH JUDICIAL CIRCUIT**

State of South Carolina,

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

v.

Richard Alexander Murdaugh,

**MOTION TO COMPEL**

Defendant.

Defendant Richard Alexander Murdaugh, through undersigned counsel, pursuant to Rule 5(d)(2) of the South Carolina Rules of Criminal Procedure, hereby moves to compel the State to produce all information required material to the preparation of his defense or intended for use by the prosecution as evidence.

**I. BACKGROUND**

On June 7, 2021, Alex Murdaugh's wife Maggie and son Paul were brutally murdered near the dog kennels at a family home on Moselle Road in Colleton County. The State immediately decided Alex was the prime suspect, before anyone collected, investigated, or reviewed any evidence. For over a year the Attorney General has used a State Grand Jury investigation of alleged white-collar crimes involving Murdaugh as a device to find evidence justifying the State's blind guess that Alex murdered his wife and son. Finally, on July 14, 2022, the Attorney General, responding to intense public interest in this case, obtained indictments from the Colleton County Grand Jury charging Murdaugh with the murders. The Attorney General leaked news of the indictments to national news media two days before the grand jury even voted.

The next day, Murdaugh served his *Brady* Motion and Rule 5 Motion for Disclosure, Motion for Production of Search Warrants and Related Documents, and Motion for a Speedy Trial. On July 20th, the Court held an arraignment and bond hearing in which Murdaugh's counsel

reminded the State that under Rule 5 its discovery responses were due on August 15th. Murdaugh's counsel also requested a speedy trial as early as October; the State responded that it could be ready for trial in January and the Court suggested a special term of court perhaps could be set in January.<sup>1</sup> The State agreed it would comply with its discovery obligations in a timely manner which would not imperil Murdaugh's right to a speedy trial.

At the hearing, defense counsel would agree to application of the standard protective order in State Grand Jury (SGJ) cases as to all evidence in this case if a pretrial publicity order were also in place. Defense counsel's intent was to stop the Attorney General's year-long campaign of surreptitious leaks of purported evidence against Murdaugh, and to force him instead to try this case in a courtroom. Defense counsel was also concerned the Attorney General will continue his campaign by using court filings as a device to selectively release prejudicial material to the public in advance of jury selection. The Court however declined to sign a pretrial publicity order, ruling that the South Carolina Rules of Professional Conduct provide adequate protection against prejudicial extra-judicial statements. (Order Regarding Extra-Judicial Statements and Sealing of Filings, Aug. 1, 2022.)

Nonetheless, on Friday, August 12 at 4:02 pm, the Attorney General's lead prosecutor, SGJ Section Chief S. Creighton Waters, emailed counsel for Murdaugh a proposed "Protective Order" nearly identical to the standard SGJ protective order. Email from S. Creighton Waters to James M. Griffin (Aug. 12, 2022) (attached as **Exhibit B**). Mr. Waters strongly implied the State would refuse to comply with its duty to disclose evidence unless Murdaugh agreed to the protective order.

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<sup>1</sup> Murdaugh has requested the Chief Justice set a special term of court in January 2023 for the trial of this case. Letter from Richard A. Harpootlian to Robert L. McCurdy (Aug. 15, 2022) (attached as **Exhibit A**).

*Id.* (stating agreement to the protective order “ASAP” was necessary “to keep discovery on track”). Counsel for Murdaugh objected to the proposed order in a reply email sent at 5:15 pm on the same day, noting that no “rule of criminal procedure or statute” allows the State to so condition its duty to disclose under Rule 5. Email from James M. Griffin to S. Creighton Waters (Aug. 12, 2022) (attached as **Exhibit C**).

Mr. Waters did not respond. Instead, at 3:07 pm on Monday, August 15th—*late afternoon on the day the State’s disclosures were due*—Mr. Waters emailed the judge assigned to hear pretrial matters in this case, the Honorable Clifton B. Newman, an unfiled request for a Protective Order indicating that the State will produce discovery only after such an order is entered. Email from S. Creighton Waters to the Hon. Clifton B. Newman (Aug. 15, 2022) (attached as **Exhibit D**). The purported basis was that Murdaugh’s defense counsel would otherwise publicize gruesome crime scene and autopsy photographs of Murdaugh’s murdered wife and son or gratuitously publicize sensitive personal information regarding innocent persons. *Id.* Counsel for Murdaugh responded shortly thereafter, noting it is the Attorney General, not defense counsel, who has relentlessly leaked purported evidence to the media in this case. Email from Richard A. Harpootlian to the Hon. Clifton B. Newman (Aug. 15, 2022) (attached as **Exhibit E**). Murdaugh’s counsel further noted:

The State’s purported justification that the Order is needed to protect against disclosures of sensitive crime scene and autopsy photos does not warrant a blanket protective order. I have handled hundreds if not thousands of criminal cases, either as a prosecutor or defense lawyer, and not once have I ever been accused of leaking sensitive crime scene photos to the media.

I can also state with 100% confidence that Mr. Murdaugh does not want pictures of his murdered wife and son with him at the Alvin S. Glenn detention center. To use this as an excuse to prevent us from leaving discovery produced in this case for his review, and requiring someone to sit with Mr. Murdaugh while he reviews the discovery produced in this case under normal circumstances is absurd. With the

current staffing and visitation issues at the Alvin S Glenn Detention Center, this request is beyond absurd.

Lastly, we have just learned that SLED recently contacted our client's family members and requested that the family members not to listen to an audio recording that is being produced to us in discovery. SLED wanted to schedule a time in the next week or so to play these recordings to the family members instead. SLED claims that we, as attorneys for Alex Murdaugh, would somehow influence the family member's assessment of this audio recording. SLED thought the recording was being produced to us today. This revelation certainly sheds additional light on the State's 11th hour delay tactic. Also, equally troubling is the fact that SLED had not reached out to the family to review this audio recording before charging our client with murder.

*Id.* This motion followed.

## II. DISCUSSION

Under Rule 5 of the South Carolina Rules of Criminal Procedure, the State must produce, within 30 days of receiving a request, all evidence "material to the preparation of his defense or are intended for use by the prosecution as evidence." Rule 5(a)(1), SCRCrimP. Rule 5 provides that if the State "has failed to comply with this rule, the court may order [the State] to permit the discovery or inspection, grant a continuance, or prohibit the [State] from introducing evidence not disclosed." Rule 5(d)(2), SCRCrimP. Introduction of evidence in violation of Rule 5 is reversible error if prejudice is shown. *State v. Landon*, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006).

On July 15, 2022, Murdaugh served a Rule 5 a request upon the Attorney General. The State was required to provide the defense the requested discovery on Monday, August 15, 2022. The State has refused to comply with this requirement. Instead, the Attorney General has engaged in impudent stall tactics meant to hinder Murdaugh's ability to prepare for trial by January 2023. There is no authority permitting Mr. Waters to impose unilaterally SGJ secrecy statutes on a murder case in Colleton County. To the contrary, Rule 5 provides that "[u]pon a sufficient showing the *court* may at any time order that the discovery or inspection be denied, restricted, or deferred,

or make such other order as is appropriate.” Rule 5(d)(1), SCRCrimP (emphasis added). If Mr. Waters believes some materials required to be disclosed under Rule 5 should be subject to a protective order, he must file a motion. *Id.* That is why Rule 5 gives him 30 days to respond to a request for disclosure—to give him time to state what precisely needs to be protected and why, and to file a motion stating the grounds for such an order while producing everything else.

But Mr. Waters did not file a motion. Of course, if he genuinely felt there was a need for a protective order regarding some particular evidence, he would have filed a motion. Or mentioned the issue before 3 p.m. on the day his disclosures were due. Or at least tried to state something resembling good cause in his late-afternoon email to the judge. Instead, Mr. Waters makes a couple of glib comments about defense counsel publicizing crime scene photos or leaving them laying around the jail. Perhaps this is because Mr. Waters is accustomed to litigating SGJ indictments under SGJ secrecy laws. Although prosecuting a murder case in Colleton County in lieu of the solicitor’s office understandably may be outside his comfort zone, the State’s obligation to disclose evidence is in no way contingent upon the prosecutor’s comfort. Rule 5 is not an opening bid in a negotiation. Rule 5 is a requirement with which both the State and defense must strictly comply.

Instead of filing a motion for a protective order, Mr. Waters sat on his hands for the full 30 days before emailing the judge to say he refuses to produce anything unless the Court enters his preferred protective order over Murdaugh’s objections. But to obtain a protective order, Mr. Waters must show of good cause to *persuade* the Court of its necessity. Rule 5(d)(1), SCRCrimP. He cannot be permitted to *coerce* the Court by refusing to comply with binding rules unless he gets the protective order he is accustomed to in his SGJ cases—especially given the Court had already ruled that restricting the use of evidence beyond the limitations of the Rules of Professional

Conduct was unnecessary. Mr. Waters must abide the ruling of the Court and immediately disclose evidence in accordance with the Rules of Criminal Procedure.

**III. CONCLUSION**

Murdaugh therefore respectfully requests the Court order the State to fully respond to the Defendant's Rule 5 disclosure immediately.

Respectfully submitted,



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Richard A. Harpootlian, SC Bar No. 2725  
RICHARD A. HARPOOTLIAN, P.A.  
1410 Laurel Street (29201)  
Post Office Box 1090  
Columbia, South Carolina 29202  
(803) 252-4848  
rah@harpootlianlaw.com

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

Attorneys for Richard Alexander Murdaugh

August 16, 2022  
Columbia, South Carolina

AUG 16 2022 PM3:28  
COLLETON CO GS, REBECCA H. HILL

*State of South Carolina v. Richard Alexander Murdaugh*  
Indictment Nos. 2022-GS-15-00592, -593, -594, and -595  
Motion to Compel

# EXHIBIT A

(Letter from D. Harpootlian to R. McCurdy,  
August 15, 2022)

AUG 16 2022 PM3:28  
COLLETON CO SS, REBECCA H. HILL



**HARPOOTLIAN**  
ATTORNEYS AT LAW

**RICHARD A. HARPOOTLIAN**  
RAH@HARPOOTLIANLAW.COM

**CHRISTOPHER P. KENNEY**  
CPK@HARPOOTLIANLAW.COM

**PHILLIP D. BARBER**  
PDB@HARPOOTLIANLAW.COM

**OFFICE**  
1410 LAUREL STREET  
COLUMBIA, SC  
29201

**MAILING ADDRESS**  
POST OFFICE BOX 1090  
COLUMBIA, SC  
29202

**DIRECT CONTACT**  
TELEPHONE (803) 252-4848  
FACSIMILE (803) 252-4810  
TOLL FREE (866) 706-3997

**ONLINE**  
HARPOOTLIANLAW.COM

August 15, 2022  
*VIA EMAIL & FIRST CLASS MAIL*

Robert L. McCurdy, Deputy Director  
Trial Court Services  
South Carolina Court Administration  
1220 Senate Street, Ste 200  
Columbia, South Carolina 29201  
rmccurdy@sccourts.org

Re: State v. Richard Alexander Murdaugh  
Indictment Nos. 2022-GS-15-00592, -593, -594, and -595

Dear Mr. McCurdy,

Jim Griffin and I represent Richard Alexander Murdaugh who is charged with the murder of his wife Margaret (Maggie) Murdaugh and son Paul Murdaugh.

Pursuant to an Order entered by Chief Justice Beatty on September 28, 2021, the Honorable Clifton Newman was granted concurrent jurisdiction to handle all pre-trial matters relating to any criminal charges arising from the investigation into Maggie and Paul's deaths. However, Judge Beatty's Order does not designate Judge Newman to be the trial judge and to our knowledge there is not a trial judge assigned to this case.

We filed a motion for speedy trial on behalf of Mr. Murdaugh in this case. At the bond hearing conducted in Colleton County, the State indicated that they would be prepared to try this case in January 2023. Currently, Judge Carmen Mullen is the Chief Administrative Judge for General Sessions Court in the Fourteenth Judicial Circuit. However, Judge Mullen has recused herself from all matters pertaining to Mr. Murdaugh.

I am therefore writing to request that Justice Beatty schedule a special term of court in January 2023 for the trial of this case.<sup>1</sup> I have agreed to waive legislative protection for the month of January to accommodate the trial. If the trial is not scheduled in January, my legislative obligations may prevent this case from being tried until the Fall of 2023.

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<sup>1</sup> Justice Beatty also authorized Judge Newman to issue search warrants in conjunction with this investigation. We are not sure if Judge Newman would be able to serve as the trial judge since he would likely be placed in the position of ruling on the validity of search warrants he issued.



I appreciate your assistance with scheduling of a trial in this case.

With warm personal regards, I am

Sincerely,

A small, handwritten mark resembling a stylized 'R' or a flourish, positioned above the signature line.

Richard A. Harpootlian

cc: (via email only)  
Creighton Waters, Esquire  
Don Zelenka, Esquire  
Jim Griffin, Esquire

**From:** [Dick Harpootlian](#)  
**To:** [rmccurdy@sccourts.org](mailto:rmccurdy@sccourts.org)  
**Cc:** [jgriffin@griffindavislaw.com](mailto:jgriffin@griffindavislaw.com); [Don Zelenka](#); [Creighton Waters](#); [Jaime Harmon](#); [Carly Jewell](#); [Holli Miller](#)  
**Subject:** State v. Richard Alexander Murdaugh  
**Date:** Monday, August 15, 2022 5:05:57 PM  
**Attachments:** [2022-08-15 Ltr to Robert McCurdy.pdf](#)

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Mr. McCurdy – Please find attached a letter concerning Mr. Murdaugh’s case.

Thank you.

Dick Harpootlian

*State of South Carolina v. Richard Alexander Murdaugh*  
Indictment Nos. 2022-GS-15-00592, -593, -594, and -595  
Motion to Compel

# EXHIBIT B

(Email from C. Waters to J. Griffin, August  
12, 2022)

AUG 16 2022 PM3:28  
COLLETON CO GS, REBECCA H. HILL

## Jim Griffin

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**From:** Creighton Waters <CWaters@scag.gov>  
**Sent:** Friday, August 12, 2022 4:02 PM  
**To:** Jim Griffin  
**Cc:** Don Zelenka; Dick Harpootlian (rah@harpootlianlaw.com); Maggie Fox; holli@harpootlianlaw.com; Jaime Harmon; Carly Jewell  
**Subject:** Order unsealing SW and protective order  
**Attachments:** Murdaugh, Alex- Proposed Order to Unseal SW.Protective Order.2022-08-12 (03074205xD2C78).docx

Dick and Jim,

Please find attached a proposed order unsealing the S/W and a protective order as discussed. Please review ASAP as I would like to get it to Judge Newman for consideration to keep discovery on track.

Regards,

Creighton

**S. Creighton Waters**

Chief Attorney, State Grand Jury Division  
Office of the South Carolina Attorney General  
803-734-3693  
P.O. Box 11549 | Columbia, SC 29211  
[cwaters@scag.gov](mailto:cwaters@scag.gov)



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Both parties desire a conditional order that unseals the search warrants, as well as a protective order generally applicable to the evidence in the murder cases. The Attorney General represents that materials recovered pursuant to the search warrants are relevant to the indictments against Defendant and should be disclosed to his attorneys consistent with Defendant's constitutional and statutory rights. However, the Attorney General additionally notes that circumstances continue to persist such that conditions of disclosure should remain in place in order to ensure fair adjudication. The State notes that there is no intent to keep litigation of the case secret from the public, but that this order is to protect the process and ensure that the evidence only comes out in a public courtroom as is necessary to litigate the case. The State warrants that the evidence also contains sensitive information that could amount to an invasion of privacy and be unduly distressing to victims if it was disseminated outside of the normal process to litigate the case. The defense agrees with this request.

This Court generally disfavors such restrictions but understands the State's desire to ensure that an impartial jury can be selected and a fair trial can be had by all parties to the case. This Court also agrees that sensitive information does not need to be made public at this stage unless and until it is necessary to fairly litigate the case in the courtroom. This Court also notes that much of the State Grand Jury evidence is relevant to the murders and is already subject to the standard protective order for such cases.

Because Defendant is entitled to discovery under the constitutions of the United States and of the State of South Carolina, as well as under statute and rule, and due to the circumstances of this case as set forth above, the Court **ORDERS** disclosure subject to the following conditions:

1. **IT IS ORDERED** that the Attorney General is authorized to disclose to the attorney(s) for Defendant the search warrants, any underlying materials related thereto, and any materials recovered in the execution thereof to the extent that the materials must be disclosed under normal circumstances of criminal discovery in preparation for a trial. The search warrants and related materials are to be provided only for the purposes of the trials of the above-listed indictments, and any other use or disclosure by an attorney or defendant subject to this Order is strictly prohibited. The search warrants and related materials, as well as any discovery provided in SLED Investigation 31-21-0061 or for Indictments 2022-GS-15-00592 to -00595, given by the State to the defense and not otherwise subject to a State Grand Jury Protective Order, are not to be shown by the defense to anyone with the exception of the defendant, his attorney(s), and necessary staff employed within the attorneys' office(s).
2. **IT IS FURTHER ORDERED** that any necessary staff of the attorney(s) who receive access to or disclosure of the search warrants and related materials, as well as any discovery provided in SLED Investigation 31-21-0061 or for Indictments 2022-GS-15-00592 to -00595 given by the State to the defense and not otherwise subject to a State Grand Jury Protective Order, are prohibited from showing them to anyone other than the defendant, the attorney, and other necessary staff employed within the attorney's office, and necessary staff of the attorney are similarly subject to the provisions of this Order. It is the responsibility of the attorney to ensure any staff to whom disclosure is made is aware of and complies with the provisions of this Order.

This Order does not limit the attorney from discussing the case with other attorneys for co-defendants (if applicable and if the codefendants' attorneys have also been provided the same evidence pursuant to a similar protective order). However, subject to the provisions below, the information provided through discovery cannot be photocopied, scanned, digitized, etc. and disseminated even to other co-defendants or their attorneys.

3. **IT IS FURTHER ORDERED** that Defendant and his attorney(s) are prohibited from photocopying, scanning, digitizing, etc. and disseminating copies of the search warrants and related materials that may be disclosed, as well as any discovery provided in SLED Investigation 31-21-0061 or for Indictments 2022-GS-15-00592 to -00595 given by the State to the defense and not otherwise subject to a State Grand Jury Protective Order, except for internal use by the attorney(s) and necessary employees of the attorneys' office(s) or for submission to the Court during a trial or other hearing. Further, unless otherwise ordered by this Court, all material disclosed pursuant to this Order and all copies of such material must remain in the secured custody and control of defense counsel, not Defendant, at all times, and, absent order of the court, must be retained in a secure location by defense counsel unless and until it is destroyed pursuant to any applicable rule regarding file retention.<sup>1</sup>
4. **IT IS FURTHER ORDERED** that if defense counsel should intend to use or involve

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<sup>1</sup> For purposes of this Order defense counsel may secure physical copies of this protected material by keeping the material in his or her actual possession or by keeping the material in the attorney's law office in a place and manner to ensure that the material is only accessible by the attorney and necessary employees of the attorney's office. Digital copies of protected material are to be secured by placing passwords on all devices containing such material so that only the attorney and necessary employees of the attorney's office will have access to said material.



any experts, investigators, or other consultants in the defense to any of the above-listed charges, counsel may distribute copies of the necessary materials as needed for the purposes of that individual. However, counsel must first provide a copy of this Order to and obtain a signed, written agreement from such experts, investigators, or consultants that these individuals will not disclose or disseminate any of the discovery materials without explicit permission from this Court. All experts, investigators, and consultants to whom defense counsel discloses discovery materials shall be bound by this Order to the same extent as defense counsel. It is the responsibility of the attorney to ensure any expert, investigator, or other consultant to whom disclosure is made is aware of and will comply with the provisions of this Order. FURTHER, defense counsel must notify the Court of any individuals to whom counsel intends to disclose protected materials prior to any disclosures. This notification may be accomplished by *ex parte* communication with the Court.

5. **IT IS FURTHER ORDERED** that individuals, whether they be attorneys; defendants; necessary staff of attorneys; or experts, investigators, or consultants used by attorneys; who receive disclosure of the search warrants and related materials pursuant to this Order, are all bound by the secrecy provisions of this Order and subject to contempt of court for any willful violation of these secrecy provisions.
6. The State similarly shall not disclose the search warrants and related materials that may be disclosed, as well as any discovery provided in SLED Investigation 31-21-0061 or for Indictments 2022-GS-15-00592 to -00595 not otherwise subject

to a State Grand Jury Protective Order, except as is necessary to fairly investigate, prepare, and litigate the case. This Order shall not be interpreted to prohibit attorneys and law enforcement personnel from communicating with witnesses and potential witnesses, and their representatives, in order to prepare for trial. Nor shall this Order be construed as prohibiting the State from continuing to interview witnesses, obtain evidence, by subpoena, warrant, or any other means, or prepare and present grand jury testimony for investigative purposes relating to this case, or any other matter involving the Defendant. This Order does not prohibit the State or the defense from communicating with representatives of witnesses or representatives of entities which may possess relevant evidence. This Order does not in any way prohibit the State, prosecutors, law enforcement, and their victim advocates from discussing all aspects of the case and consulting with victims and their representatives consistent with the spirit of the State's constitutional and statutory obligations pursuant to S.C. Const. Art. I § 24 and S.C. Code § 16-3-1505 *et. seq.*

7. Nothing in this Order prevents any part from using or referring to any of the search warrants and related materials that may be disclosed, as well as any discovery provided in SLED Investigation 31-21-0061 or for Indictments 2022-GS-15-00592 to -00595, given by the State to the defense and not otherwise subject to a State Grand Jury Protective Order, in witness preparation, investigation, pleadings, and as necessary to litigate any issue for Indictments 2022-GS-15-00592 to -00595 or related criminal cases in the courtroom.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
HONORABLE CLIFTON NEWMAN  
Presiding Judge

\_\_\_\_\_, South Carolina

I SO MOVE:

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S. Creighton Waters  
Chief Attorney, State Grand Jury

\_\_\_\_\_, 2022

I SO MOVE:

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Attorney for Defendant

\_\_\_\_\_, 2022

*State of South Carolina v. Richard Alexander Murdaugh*  
Indictment Nos. 2022-GS-15-00592, -593, -594, and -595  
Motion to Compel

# EXHIBIT C

(Email from J. Griffin to C. Waters, August  
12, 2022)

AUG 16 2022 PM 3:28  
COLLETON CO GS, REBECCA H. HILL

**From:** [Jim Griffin](#)  
**To:** [Creighton Waters](#)  
**Cc:** [Don Zelenka](#); [Dick Harpootlian](#); [Maggie Fox](#); [Holli Miller](#); [Jaime Harmon](#); [Carly Jewell](#)  
**Subject:** RE: Order unsealing SW and protective order  
**Date:** Friday, August 12, 2022 5:15:35 PM  
**Attachments:** [image001.png](#)

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Creighton

I just spoke with Dick about the proposed edits and he and I both agree that on second thought that this entire order is inappropriate. We will obviously agree to abide by the standard protective order for state grand jury materials. But as to discovery in the murder case, that did not originate from the State Grand Jury investigation, we object to being restricted on our use of the materials. There is no rule of criminal procedure or statute that restricts the Defendant's use of evidence and information obtained pursuant to Rule 5.

We will be happy to discuss this with you Monday morning if you wish.

Have a great weekend.

Jim

**From:** Jim Griffin  
**Sent:** Friday, August 12, 2022 5:00 PM  
**To:** Creighton Waters <[CWaters@scag.gov](mailto:CWaters@scag.gov)>  
**Cc:** Don Zelenka <[DZelenka@scag.gov](mailto:DZelenka@scag.gov)>; Dick Harpootlian ([rah@harpootlianlaw.com](mailto:rah@harpootlianlaw.com)) <[rah@harpootlianlaw.com](mailto:rah@harpootlianlaw.com)>; Maggie Fox <[MFox@griffindavislaw.com](mailto:MFox@griffindavislaw.com)>; [holli@harpootlianlaw.com](mailto:holli@harpootlianlaw.com); Jaime Harmon <[JHarmon@griffindavislaw.com](mailto:JHarmon@griffindavislaw.com)>; Carly Jewell <[CarlyJewell@scag.gov](mailto:CarlyJewell@scag.gov)>  
**Subject:** RE: Order unsealing SW and protective order

Creighton

Our edits to the proposed order are redlined on the attached document.

**From:** Creighton Waters <[CWaters@scag.gov](mailto:CWaters@scag.gov)>  
**Sent:** Friday, August 12, 2022 4:02 PM  
**To:** Jim Griffin <[JGriffin@griffindavislaw.com](mailto:JGriffin@griffindavislaw.com)>  
**Cc:** Don Zelenka <[DZelenka@scag.gov](mailto:DZelenka@scag.gov)>; Dick Harpootlian ([rah@harpootlianlaw.com](mailto:rah@harpootlianlaw.com)) <[rah@harpootlianlaw.com](mailto:rah@harpootlianlaw.com)>; Maggie Fox <[MFox@griffindavislaw.com](mailto:MFox@griffindavislaw.com)>; [holli@harpootlianlaw.com](mailto:holli@harpootlianlaw.com); Jaime Harmon <[JHarmon@griffindavislaw.com](mailto:JHarmon@griffindavislaw.com)>; Carly Jewell <[CarlyJewell@scag.gov](mailto:CarlyJewell@scag.gov)>  
**Subject:** Order unsealing SW and protective order

Dick and Jim,

Please find attached a proposed order unsealing the S/W and a protective order as discussed. Please review ASAP as I would like to get it to Judge Newman for consideration to keep discovery on

## Jim Griffin

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**From:** Creighton Waters <CWaters@scag.gov>  
**Sent:** Monday, August 15, 2022 3:07 PM  
**To:** rah@harpootlianlaw.com; Newman, Clifton  
**Cc:** Jim Griffin; Newman, Clifton Secretary (Katherine Sabb); Newman, Clifton Law Clerk (Gabrielle Williams); Don Zelenka; Maggie Fox; holli@harpootlianlaw.com; Jaime Harmon; Carly Jewell; Alan Wilson  
**Subject:** Proposed Protective Order and Order Unsealing Search Warrants  
**Attachments:** Murdaugh, Alex.Protective Order Draft.2022-08-15 (03075648xD2C78).docx

Judge Newman,

I hope you have had a good weekend. The State is prepared and has uploaded a substantial amount of discovery for the murder cases, but two issues need to be addressed before we can click send. First, we need an order unsealing the various search warrants that were sealed by judges primarily during the early part of the investigation. Both parties are in agreement with this.

Second, there was discussion by both parties at the bond hearing as to a protective order on the murder evidence. The State Grand Jury evidence is already subject to the standard protective order, and some of it is relevant to the murder. It makes sense to have a similar order in place for the remaining murder evidence so the same rules apply to all. The defense originally on Friday was in agreement and had sent some proposed changes to my draft, which the Attorney General has generally accepted. However, late Friday the defense advised me that on second thought they did not want a protective order at all on the murder evidence. The defense's position is that while they accept the typical SGJ protective order, such orders are not the norm in a regular murder case. The defense also states that they have no intention of disclosing any evidence outside of what is necessary to interview witnesses and prepare their case for trial.

We wish to be clear that the Attorney General has every intention that this case be tried in the light of day, and none of this is meant to preclude appropriate public observation of the process. And none of this is to suggest that any lawyers involved would violate their ethical obligations regarding pretrial publicity. However, this case has received a lot of pretrial publicity which continues – and the murder discovery contains very sensitive materials such as crime scene photos and PII. Having this discovery left in Alvin S Glenn does not seem a good idea. The State would submit that putting the same expectations in place for all people involved on the prosecution and defense sides is a good idea.

The State has its obligation to the process and therefore out of an abundance of caution we feel obligated to present the attached proposed protective order to you. Again, to be clear the defense does not agree with it. We do however both agree that we need an order unsealing the search warrants. Once these issues are addressed the State can immediately share the link with discovery with the defense.

Regards,

Creighton Waters

**S. Creighton Waters**

Chief Attorney, State Grand Jury Division  
Office of the South Carolina Attorney General  
803-734-3693  
P.O. Box 11549 | Columbia, SC 29211  
[cwaters@scag.gov](mailto:cwaters@scag.gov)



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**From:** Weeks, Maya J. <mweeks@sccourts.org>  
**Sent:** Monday, August 1, 2022 4:39 PM  
**To:** Creighton Waters <CWaters@scag.gov>; rah@harpootlianlaw.com  
**Cc:** JGriffin@griffindavislaw.com; Newman, Clifton <CNewmanJ@sccourts.org>; Newman, Clifton Secretary (Katherine Sabb) <CNewmanSC@sccourts.org>; Newman, Clifton Law Clerk (Gabrielle Williams) <CNewmanLC@sccourts.org>; Don Zelenka <DZelenka@scag.gov>; MFox@griffindavislaw.com; holli@harpootlianlaw.com; Hill, Becky <rhill@colletoncounty.org>; JHarmon@griffindavislaw.com; Carly Jewell <CarlyJewell@scag.gov>  
**Subject:** RE: Order Regarding Extra-Judicial Statements and Sealing of Filings - Murdaugh

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Judge Newman indicates he will wait 24 hours for additional comments and will consider issuing an amended order that more clearly represents the State's position.

**Maya J. Weeks, Esq.**  
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South Carolina Judicial Branch  
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Columbia, SC 29201  
(803) 734-0833  
[mweeks@sccourts.org](mailto:mweeks@sccourts.org)  
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Regards,

Creighton Waters

**S. Creighton Waters**

Chief Attorney, State Grand Jury Division  
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803-734-3693  
P.O. Box 11549 | Columbia, SC 29211  
[cwaters@scag.gov](mailto:cwaters@scag.gov)



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Thank you,

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*State of South Carolina v. Richard Alexander Murdaugh*  
Indictment Nos. 2022-GS-15-00592, -593, -594, and -595  
Motion to Compel

# EXHIBIT E

(Email from D. Harpootlian to Hon. Clifton  
B. Newman, August 15, 2022)

AUG 16 2022 PM3:28  
COLLETON CO GS, REBECCA H. HILL

## Jim Griffin

---

**From:** Dick Harpootlian <rah@harpootlianlaw.com>  
**Sent:** Monday, August 15, 2022 5:57 PM  
**To:** Creighton Waters; Newman, Clifton  
**Cc:** Jim Griffin; Newman, Clifton Secretary (Katherine Sabb); Newman, Clifton Law Clerk (Gabrielle Williams); Don Zelenka; Maggie Fox; Holli Miller; Jaime Harmon; Carly Jewell; Alan Wilson  
**Subject:** RE: Proposed Protective Order and Order Unsealing Search Warrants

Dear Judge Newman

I find this process of communication with you by email about substantive matters concerning this case in violation of your order of August 1. The original proposed protective order furnished last Friday at 4:30 PM would have required Mr Griffin and I to make an *ex parte* application every time we wanted to show a non-grand jury document to an expert or a witness. You have made it clear you want this case litigated like any other case and this effort by the Attorney General would treat it far differently than any other murder case.

It is close of business on the 30th day after our motion for discovery and yet not one shred of paper has been turned over. The Attorney General waited the entire 30 days he has had to try to delay providing discovery materials with this off the record effort. If affidavits are sealed, motions should be filed. If he wants to hide material behind a "protective order" he should file a motion.

We do not object to adhering to the protective order entered in the State Grand Jury cases as to any evidence produced in those cases which the State intends to use in the prosecution of the murder case. But we do not know of any criminal rule of procedure or statute that allows the State to restrict the use and disclosure of discovery materials to prepare for trial, that are not protected by the State Grand Jury Act.

Our previous suggestion for a protective order which we made at the bond hearing was primarily driven by the desire to address how to protect against potentially prejudicial material from being made public through court filings. We initially proposed filing everything under seal, and received pushback from the State and the Court. We then sought to reach an agreement whereby we would give the other party advance notice of any filing and an opportunity to request that the filing be made under seal. This apparently was not acceptable to the State because it was left out of the proposed order submitted to you.

In any event, once the Court rejected our proposed pre-trial publicity order, in our view there is no longer any need to have a protective order in place at all, much less the one proposed by the State which is even more cumbersome than the standard discovery order for State Grand jury cases. In fact, the order the State proposes limits the defense' disclosure of evidence but does not refrain the State's use of it.

As the Court's recent order makes clear, we are all bound by the ethical obligations pertaining to pre-trial publicity, including the disclosure of anticipated evidence. We fully intend to comply with Rule 3.6 governing pre-trial publicity, including comment 5, which specifically precludes attorneys and those working with them in criminal cases from disclosing to the media the "the identity or nature of physical evidence expected to be presented." I would note that if there is any truth to the Fitsnews story that the State has physical evidence putting Alex in proximity to the murders, in the form of high velocity spatter, then someone working on this case on behalf of the State appears to have already violated Rule 3.6. We hope this isn't the case.

The State's purported justification that the Order is needed to protect against disclosures of sensitive crime scene and autopsy photos does not warrant a blanket protective order. I have handled hundreds if not thousands of criminal cases,

either as a prosecutor or defense lawyer, and not once have I ever been accused of leaking sensitive crime scene photos to the media.

I can also state with 100% confidence that Mr. Murdaugh does not want pictures of his murdered wife and son with him at the Alvin S. Glen detention center. To use this as an excuse to prevent us from leaving discovery produced in this case for his review, and requiring someone to sit with Mr. Murdaugh while he reviews the discovery produced in this case under normal circumstances is absurd. With the current staffing and visitation issues at the Alvin S Glenn Detention Center, this request is beyond absurd.

Lastly, we have just learned that SLED recently contacted our client's family members and requested that the family members not to listen to an audio recording that is being produced to us in discovery. SLED wanted to schedule a time in the next week or so to play these recordings to the family members instead. SLED claims that we, as attorneys for Alex Murdaugh, would someone influence the family members assessment of this audio recording. SLED thought the recording was being produced to us today. This revelation certainly sheds additional light on the State's 11<sup>th</sup> hour delay tactic. Also, equally troubling is the fact that SLED had not reached out to the family to review this audio recording before charging our client with murder.

We respectfully ask the Court to file Mr. Waters' email and our response with the Clerk of Court as contemplated by your August 1 Order.

We still have no discovery materials.

Sincerely

Dick Harpootlian

**From:** Creighton Waters <CWaters@scag.gov>

**Sent:** Monday, August 15, 2022 3:07 PM

**To:** Dick Harpootlian <rah@harpootlianlaw.com>; Newman, Clifton <cnewmanj@sccourts.org>

**Cc:** JGriffin@griffindavislaw.com; Newman, Clifton Secretary (Katherine Sabb) <CNewmanSC@sccourts.org>; Newman, Clifton Law Clerk (Gabrielle Williams) <CNewmanLC@sccourts.org>; Don Zelenka <DZelenka@scag.gov>; MFox@griffindavislaw.com; Holli Miller <holli@harpootlianlaw.com>; JHarmon@griffindavislaw.com; Carly Jewell <CarlyJewell@scag.gov>; Alan Wilson <agwilson@scag.gov>

**Subject:** Proposed Protective Order and Order Unsealing Search Warrants

Judge Newman,

I hope you have had a good weekend. The State is prepared and has uploaded a substantial amount of discovery for the murder cases, but two issues need to be addressed before we can click send. First, we need an order unsealing the various search warrants that were sealed by judges primarily during the early part of the investigation. Both parties are in agreement with this.

Second, there was discussion by both parties at the bond hearing as to a protective order on the murder evidence. The State Grand Jury evidence is already subject to the standard protective order, and some of it is relevant to the murder. It makes sense to have a similar order in place for the remaining murder evidence so the same rules apply to all. The defense originally on Friday was in agreement and had sent some proposed changes to my draft, which the Attorney General has generally accepted. However, late Friday the defense advised me that on second thought they did not want a protective order at all on the murder evidence. The defense's position is that while they accept the typical SGJ protective order, such orders are not the norm in a regular murder case. The defense also states that they have no

intention of disclosing any evidence outside of what is necessary to interview witnesses and prepare their case for trial.

We wish to be clear that the Attorney General has every intention that this case be tried in the light of day, and none of this is meant to preclude appropriate public observation of the process. And none of this is to suggest that any lawyers involved would violate their ethical obligations regarding pretrial publicity. However, this case has received a lot of pretrial publicity which continues – and the murder discovery contains very sensitive materials such as crime scene photos and PII. Having this discovery left in Alvin S Glenn does not seem a good idea. The State would submit that putting the same expectations in place for all people involved on the prosecution and defense sides is a good idea.

The State has its obligation to the process and therefore out of an abundance of caution we feel obligated to present the attached proposed protective order to you. Again, to be clear the defense does not agree with it. We do however both agree that we need an order unsealing the search warrants. Once these issues are addressed the State can immediately share the link with discovery with the defense.

Regards,

Creighton Waters

**S. Creighton Waters**

Chief Attorney, State Grand Jury Division  
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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 )  
COUNTY OF COLLETON ) FOURTEENTH JUDICIAL CIRCUIT

The State of South Carolina,

Plaintiffs,

vs.

Richard Alexander Murdaugh,

Defendant.

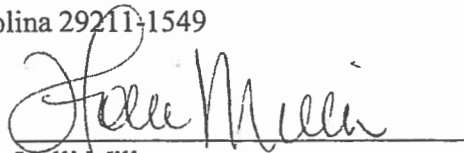
Indictment Nos. 2022GS1500592 – 00595

**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 16, 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: Motion to Compel

Served: Creighton Waters, Esquire  
Office of The Attorney General  
Rembert C. Dennis Building  
Post Office Box 11549  
Columbia South Carolina 29211-1549  
cwaters@scag.gov

  
Holli Miller

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