

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT

State of South Carolina,

v.

Richard Alexander Murdaugh,

Defendant.

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

**DEFENDANT'S SUPPLEMENTAL
MEMORANDUM IN OPPOSITION TO
THE STATE'S MOTION FOR
PROTECTIVE ORDER**

Defendant Richard Alexander Murdaugh, through undersigned counsel, hereby submits this supplemental memorandum in response to the State's motion for a protective order.

I. Background

The day after he was indicted, Richard Alexander Murdaugh served his *Brady* and Rule 5 Motion for Disclosure, Motion for Production of Search Warrants and Related Documents, and Motion for a Speedy Trial. Under Rule 5 of the South Carolina Rules of Criminal Procedure, the State was required to disclose its evidence to Murdaugh's counsel by August 15, 2022. But the State never produced any discovery whatsoever. Instead, three days after the deadline the State moved for a protective order seeking to impose grand jury secrecy rules on all discovery in this matter, permanently, excepting only those materials actually used at trial. The State's two-page motion provided no supporting argument other than the conclusory statement, "Evidence in this case contains sensitive information which should remain protected unless and until it is used in court."

Murdaugh submitted a memorandum in opposition to the State's motion on Monday, August 22nd. The Court then set the issue for a hearing on Monday, August 29th, at 10 a.m. The State thereafter submitted its supporting memorandum after the close of business on Friday,

August 26th. Murdaugh submits this supplemental memorandum to respond to the State's late-filed initial supporting memorandum.

II. Legal Standard

Rule 5(d)(1) of the South Carolina Rules of Criminal Procedure provides, in part, 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.” No published South Carolina decisions address the standard for a showing sufficient to obtain a protective order under Rule 5. The nearly identical corresponding federal rule provides, in part, “the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.” Fed. R. Crim. P. 16(d)(1). The only appellate decision addressing the required standard for a protective order under the federal rule holds the party seeking a protective order bears the burden of showing “good cause,” which

is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity. Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing.

United States v. Wecht, 484 F.3d 194, 211 (3d Cir. 2007) (internal quotation marks and citations omitted). Federal district courts around the country apply the standard set in *Wecht* when determining whether good cause exists for a protective order over discovery produced by the prosecution. *E.g.*, *United States v. Griswold*, No. 19-00032-01-CR-W-DGK, 2021 WL 4342333, at *1 (W.D. Mo. Sept. 23, 2021); *United States v. Sittenfeld*, No. 1:20-CR-142, 2021 WL 1438300, at *3 (S.D. Ohio Apr. 15, 2021); *United States v. Betancourt*, No. CR 17-30022-TSH, 2019 WL 1767396, at *2 (D. Mass. Apr. 22, 2019); *United States v. Parker*, No. CR 12-59 (EGS), 2014 WL 12916902, at *1 (D.D.C. Nov. 24, 2014); *United States v. Calderon*, No. CR14-103-CAS, 2014

WL 1401941, at *3 (C.D. Cal. Apr. 8, 2014); *United States v. Smith*, 985 F. Supp. 2d 506, 523 (S.D.N.Y. 2013).

III. Argument

A. The State's opening argument in support of its motion appears directed more to the gallery than the Court.

The issue before the Court is the State's demand for an order constraining how Murdaugh and his counsel may use evidence the State was required to produce weeks ago, under a rule allowing such an order "[u]pon a sufficient showing." Rule 5(d)(1), SCRCrimP. Yet the state opens with an attempt to appease imagined news media concerns: "While [a protective order] may be frustrating to media members who want to get the information now and scoop their competitors, the State's only obligation is to protecting the process and ensuring the parties and the Court can successfully complete a trial." (Mem. Supp. Mot. 2.) The State then extensively quotes *United States v. Smith*, a federal decision summarizing well-established law holding the constitutional right of media access to judicial documents under the First Amendment and the common law right to such access rooted in our centuries-old tradition of public court proceedings apply only to materials *used* in court proceedings, either by being introduced into evidence, exhibited or discussed in support of argument to the Court, or cited by the Court as grounds supporting its rulings. (*Id.* 3–4 (quoting F. Supp. 2d at 519–35).)

The issues before the Court however are the requirements of Rule 5 of the South Carolina Rules of Criminal Procedure, not the Attorney General's media relations. Rule 5 requires the State to show good cause for the protective order it seeks. *Cf. Smith*, 985 F. Supp. 2d at 523. The

State has the burden of persuasion. The State does nothing to meet this burden when it argues its desired protective order at least does not violate the Constitution.¹

B. Instead of the “specific examples or articulated reasoning” “showing that disclosure will work a clearly defined and serious injury” required for a protective order under Rule 5, the State offers a brainstorming session.

1. The State fails to identify any legitimate privacy rights of any third parties needing protection.

To obtain a protective order under Rule 5, the State must provide “specific examples or articulated reasoning” “showing that disclosure will work a clearly defined and serious injury.” *Wecht*, 484 F.3d at 211. Examples of privacy rights justifying a protective order regarding evidence produced to the defense would be details of sex crimes, *e.g.*, *United States v. Torres*, No. 20-CR-00418, 2020 WL 4500046, at *4 (D.N.J. Aug. 5, 2020) (finding good cause for a protective order where “[t]he Government has proffered that discovery materials will include explicit photographs taken without the alleged victims’ consent, intimate statements, and detailed information about events that allegedly humiliated and horrified the victims”), or crimes involving children, *e.g.*, *United States v. Tsosie*, No. CR 18-0738 JB, 2018 WL 2745114, at *4 (D.N.M. June 6, 2018), or confidential trade secrets, *e.g.*, *United States v. Fei Ye*, 436 F.3d 1117, 1119 (9th Cir. 2006).

The State argues privacy rights of third parties justify a protective order in this case as well, but instead of offering such specific examples, the State engages in free association of hypotheticals overgeneralized beyond the point of absurdity. For example, the State offers: “There is information from professionals who may suffer unwarranted embarrassment because of their

¹ While the State’s proposed protective order is not itself unconstitutional—it is merely unjustified under Rule 5—the State’s use of the proposed protective order as an excuse to refuse Murdaugh access to the evidence to be used against him (including *Brady* materials) is an unconstitutional violation of his rights to a fair trial and to due process of law.

association with the case or involved parties.” (Mem. Supp. Mot. 4.) Some professionals have undoubtedly suffered some embarrassment from proceedings involving Murdaugh, but it beggars belief that the State thinks this could justify imposing special constraints on the defense in a murder case. No court would grant a protective order in a civil case on that basis.

Most of the State’s examples of purported privacy concerns assume the defense would publish irrelevant information, in violation of Rule 3.6 of the Rules of Professional Conduct, for no purpose beyond justifying the State’s demand for a protective order. The State knows the defense is not going to publish telephone dumps, or crime scene or autopsy photographs, or personal identifying information like Social Security numbers. Such information is produced in nearly every major criminal case without any suggestion that it requires imposition of grand jury secrecy rules on the defense. If the state has some actual concern regarding a legitimate third-party privacy interest, Murdaugh would not object to a protective order regarding that information. But that is not what the State wants. The State wants to impose grand jury secrecy rules—permanently. It is difficult to imagine *any* legitimate privacy concern that could justify such an order. Legitimate privacy concerns can be protected by an order specifically identifying information which should remain private.

But one item from the State’s brainstorming session is unintentionally revealing: “There is identification and evidence relating to excluded suspects who could suffer embarrassment and harassment if identified outside of appropriate litigation.” (Mem. Supp. Mot. 4.) Of course, evidence excluding a person as a suspect would not subject the person to embarrassment and harassment. There is nothing embarrassing about *not* being at the scene at the time of the murders. What the Attorney General really means is that there *are* alternative suspects who are *not* obviously

“excluded” by the evidence, and that identification of those suspects could undermine the weak circumstantial case against Alex Murdaugh.

2. *The State’s reference to “ongoing investigation” apparently means “ongoing prosecutorial misconduct.”*

Astoundingly, the State argues a protective order is needed because it has not finished its investigation of the murders of Maggie and Paul. The State took over a year to investigate the murders before indicting Alex Murdaugh. The passage of years does not make murders easier to solve. The State has collected all possible forensic evidence and spoken to all possible witnesses. So what the Attorney General apparently means is that he is using the State Grand Jury to hunt for a motive for the murders. (Mem. Supp. Mot. 5 (“While the murder case has been indicted, there are ongoing related investigations.”).) That would be consistent with his desire to impose State Grand Jury secrecy rules on this murder case. That would also be prosecutorial misconduct. “Although the courts firmly safeguard the investigatory power of the grand jury, it is the *universal rule* that prosecutors cannot utilize the grand jury solely or even primarily for the purpose of gathering evidence in pending litigation.” *United States v. Moss*, 756 F.2d 329, 332 (4th Cir. 1985) (emphasis added). “For example, the government may not use the grand jury to improve its case in an already pending trial by preserving witness statements, locking in a witness’s testimony, pressuring potential trial witnesses to testify favorably, or otherwise employing the grand jury for pretrial discovery.” *United States v. Alvarado*, 840 F.3d 184, 189 (4th Cir. 2016). Whatever role the State Grand Jury had in this murder case is over.

3. *Considerations justifying a protective order in State Grand Jury proceedings are not relevant to this murder case.*

In its next argument, the State argues that because it used the State Grand Jury to investigate the murders, “the standard protective order entered in all State Grand Jury cases” should be applied to all evidence in this murder case, regardless of whether the evidence has any association with

the State Grand Jury. (Mem. Supp. Mot. 5.) The purported reason is that “it simply makes good sense to have similar rules apply to all information.” Murdaugh agrees. The disagreement is what rules should apply. The State argues public interest in this case means grand jury secrecy rules should uniquely be applied to this case even after indictment. *Cf. Evans v. State*, 363 S.C. 495, 507, 611 S.E.2d 510, 516 (2005) (“Although maintaining secrecy is essential while a matter is under deliberation by the grand jury, such concerns diminish following issuance of a true bill of indictment.”). Murdaugh argues the rules that apply in *every other murder case* should apply here: Rule 5 of the Rules of Criminal Procedure, which requires the State to produce its evidence so the defense can prepare for trial, and Rule 3.6 of the Rules of Professional Conduct, which prevents both sides from litigating the merits of the case outside the courtroom.

Further, there is no statutory basis for imposing a protective order on State Grand Jury materials produced to the defense under South Carolina Code § 14-7-1700. The only basis is courts’ discretion under Rule 5, which courts exercise to enter protective orders in State Grand Jury cases because the State Grand Jury typically investigates complex multidefendant conspiracies but is required to produce transcripts of its proceedings to indicted defendants. *See* S.C. Code § 14-7-1700. This requirement relaxes the need to plead facts in the indictment to give the defendant proper notice of the charges. *See State v. Gunn*, 313 S.C. 124, 130, 437 S.E.2d 75, 78 (1993) (holding an indictment was not fatally vague because under the State Grand Jury’s “specialized procedure, a defendant is permitted to review, and to reproduce, the transcript of the testimony of the witnesses who appeared before the Grand Jury”). That concern is not relevant here. Murdaugh is not accused of conspiring with anyone to murder his wife and son. According

to the State, Murdaugh stole money by fraud like *millions* of other white-collar criminals,² but in him that uniquely spawned the sociopathic urge to murder his wife and son (with different guns, for some reason) immediately following a friendly family moment at the dog kennels. He then had a pleasant telephone conversation with a friend before calling 911 to report the murders. This is the theory the State has chosen to prove. It is time for the State to prove it.

Finally, contrary to the State's assertion, the U.S. District Court for the District of South Carolina has no "standing protective order as to all cases" for criminal cases. See <http://www.scd.uscourts.gov/StandingOrders/index.asp> (list of all districtwide standing orders).

4. *The Attorney General's "fair trial" argument is nothing more than a cheap ad hominem attack on defense counsel.*

The State next argues a protective order is needed because "this discovery is worth six if not seven figures to an unscrupulous person." (Mem. Supp. Mot. 5.) By this the Attorney General means defense counsel, Richard A. Harpootlian and James M. Griffin, would sell the discovery in this case absent a court order prohibiting it. Lacking stiffness of spine to stand by his insult, the Attorney General unctuously hurries to claim he "does not cavalierly throw around ethical allegations" and his "concern is not defense counsel." (*Id.*) Of course his concern is defense counsel. He is arguing against disclosure *to defense counsel*. To whom else could the Attorney General be referring? He does not say. Later in the brief, Senior Assistant Deputy Attorney General S. Creighton Waters states he "has repeatedly tried to turn down the temperature" in this case. (*Id.* 7.) It takes much gall to say that *after* claiming the State needs a protective order to keep defense counsel from *selling* evidence for "six if not seven figures."

5. *The State wants a protective order to limit the defense's ability to respond to its leaks.*

² See Cynthia Barnett, FBI, The Measurement of White-Collar Crime Using Uniform Crime Reporting (UCR) Data tbl. 2 (2000), available at https://ucr.fbi.gov/nibrs/nibrs_wcc.pdf.

The State's final argument for a protective order is that it would not do "anything to limit the defense's ability to prepare and litigate its case." (*Id.* 6.) As explained in detail below, the State has been engaged in a campaign of selective and deceptive leaks of evidence to news media to convince the public that Murdaugh is guilty before he is tried, in repeated and willful violations of Rule 3.6(a) (providing a lawyer participating in a litigation "shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter") and Rule 3.8(f) (providing the prosecutor shall "refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused") of the Rules of Professional Conduct. The State seeks a protective order to prevent Murdaugh from responding to the Attorney General's extrajudicial statements, as otherwise expressly permitted by Rule 3.6(c) of the Rules of Professional Conduct:

Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

C. It is improper and hypocritical for the Attorney General to seek a protective order gagging the defense while his office tries the case in the news media by selectively leaking evidence.

The Attorney General denies leaking anything. As detailed below, the evidence says otherwise. At first, the leaks may have come from the South Carolina Law Enforcement Division (SLED). On June 9, 2021, FITSNews reported,

sources familiar with the inquiry told me late Tuesday that there are 'credible concerns' related to the timeline of the shootings. They are also probing what one source described as "possible manipulation of the crime scene" – although, again, they declined to provide any details regarding that facet of the inquiry.

One cryptic detail was provided . . .

“In our current age, technology makes it very difficult for people to hide their movements,” a law enforcement source familiar with the inquiry told me.

Will Folks, *Law Enforcement Sources: Alex Murdaugh ‘Person Of Interest’ In South Carolina Double Homicide Investigation*, FITSNews (June 9, 2021).³ Then, on June 23rd,

A source close to the investigation confirmed with FITSNews that the phone was discovered by law enforcement with the assistance of a family member on the day after the murders.

Mandy Matney, *Murdaugh Murders: Maggie’s Phone Discovered Along Rural Road, Sources Say*, FITSNews (June 23, 2021). But leaks from SLED were short-lived. On July 15, 2021, FITSNews reported,

According to my sources, SLED’s top officials – led by chief Mark Keel – have been engaged in a daily battle to suppress the flow of unauthorized information related to the status of this ongoing inquiry, which has attracted international attention given the savagery of the crime and the prominence of the family involved.

As a result, what began as a babbling brook of information (and informed speculation) about the investigation has slowed to a veritable trickle.

If that.

“Keel shut down the information stream,” one of my sources told me earlier this week.

“I got nothing,” another responded bluntly when asked about any information related to the inquiry.

“It’s a total blackout,” another source said.

“Keel has thrown a blanket over it,” yet another source said.

Sources close to the investigation have told me this hastily-erected wall of secrecy shouldn’t come as any surprise given Keel’s no-nonsense, by-the-book reputation.

“I don’t think anyone with knowledge of the chief would find it earth-shattering that he expects SLED agents and SLED employees to do their job, do it well and do it without leaking confidential case information to anyone so that an

³ Quotations from FITSNews omit sometimes extensive italicization in the original.

investigation is not tainted,” one source with direct knowledge of the status of the inquiry told me.

Good ...

Wait a minute ... did I just say “good?” Surely that was a typo, right? Surely I am pissed off that information related to such a significant investigation – news which brings readers to this website in droves – is being suppressed by those in the know?

Will Folks, *Murdaugh Murders: SLED Plugs The Leaks*, FITSNews (July 15, 2021). The reason Mr. Folks was pleased SLED “plug[ed] the leaks” was that he had sources in the Attorney General’s office, so SLED’s discipline about preventing leaks only hurt his competitors. This is seen in the deluge of leaks FITSNews received after the leaks from SLED stopped:

Multiple sources close to the ongoing investigation have told FITSNews that physical, forensic evidence directly ties Alex Murdaugh to the double homicide — one of seven active criminal investigations involving the disgraced 53-year-old attorney.

We’ve been told that this evidence is substantial and serious — directly linking Murdaugh to this gruesome crime.

While law enforcement has released little information about its investigation – and has actively sought to plug leaks of information – here is what we know so far about the evidence found on scene.

- At least one of the weapons used in the double homicide belonged to the Murdaugh family, a source told FITSNews.
- Law enforcement impounded a 2021 Chevy Suburban registered to the Murdaugh law firm from the scene.
- Deputies found shell casings at the scene, according to the report.
- SLED agents requested that Colleton County Sheriff’s deputies search the area near the crime scene for video surveillance systems on the morning after the murders.
- On June 16, SLED agents were seen collecting evidence in a swampy area near the Salkehatchie River, approximately two miles south of Moselle.
- Maggie Murdaugh’s cell phone was found along a rural South Carolina road just outside of the family’s 1,700-acre hunting lodge the day after the murder, according to sources close to the investigation.

Mandy Matney, *Physical Evidence Directly Ties Alex Murdaugh To Double Homicide*, *Sources Say*, FITSNews (Jan. 5, 2022).

The presence of this forensic evidence on his clothing “could have only come from one thing,” according to sources close to the investigation.

Sources tell FITSNews that the high-velocity impact spatter is not the only evidence placing Murdaugh at the scene.

Mandy Matney, *High-Velocity Impact Spatter Directly Ties Alex Murdaugh To Double Homicide*, *Sources Say*, FITSNews (Apr. 26, 2022).

Multiple sources close to the investigation have also confirmed to FITSNews that, prior to June 7, and at the time of her death, Maggie Murdaugh was living apart from her husband and alone at her Edisto Beach home.

FITSNews has been unable to independently confirm reports that Maggie met with a divorce attorney prior to the murders. However, a meeting like this would not have been inconsistent with what multiple sources have described as the strained status of their relationship — in part, because of a rumored affair Alex was having with another attorney.

Additionally, on the evening of June 7, Maggie drove to Moselle — the family’s 1,700-acre hunting property in Islandton, S.C. (about an hour and fifteen minutes from their Edisto Beach house) — because Alex had asked her to meet him there.

In other words, Maggie was “lured” to what would be the site of her murder, according to multiple sources with knowledge of the situation.

These same sources say Maggie had expressed her hesitancy to meet with her estranged husband to at least three other people in her life, but ultimately decided it was the right thing to do.

Liz Farrell, Will Folks, & Mandy Matney, *Maggie Murdaugh Was ‘Lured’ To Moselle On The Night Of Her Murder*, *Sources Say*, FITSNews (Apr. 28, 2022).

Audio and video evidence obtained by the South Carolina Law Enforcement Division shows that Alex Murdaugh was *indeed* near the kennels that evening. Before he said he left for Varnville, he not only saw his wife and son, he interacted with Maggie and Paul shortly before they were killed, multiple sources with knowledge of the investigation have confirmed to FITSNews.

Video found on Paul Murdaugh’s now-unlocked phone shows Alex and Maggie talking by the dog kennels the evening of June 7, 2021, according to multiple sources.

Liz Farrell, *Mountain Of Evidence' Piling Up Against Alex Murdaugh In Murder Case, Sources Say*, FITSNews (June 6, 2022). But by this time, the readers were becoming restless. The State's months-long drumbeat of extrajudicial statements telling the public that Murdaugh murdered his own family created irresistible pressure from the public for criminal charges. The June 6th post in FITSNews declaring that a "mountain of evidence" was "piling up against Alex Murdaugh" directly threatened the Attorney General with negative press coverage unless he indicted Murdaugh:

For months, the public waited for someone to be charged.

For months, rumors have circulated that "today's the day" or "this week is the week."

For a while, many believed an announcement would be made on the anniversary of Maggie's and Paul's deaths.

If the totality of evidence implicates Alex Murdaugh in the case, as sources have told FITSNews, why then has there been no arrest?

Is it because Murdaugh is already in jail and therefore not a risk law enforcement needs to consider? Is it because of how hard Murdaugh's attorneys are expected to fight, thereby necessitating a fully shored up prosecutorial plan? Or are investigators waiting on another critical piece of evidence to come back?

No matter the reason, Maggie's and Paul's loved ones have gone a year without answers.

At some point, this will become unacceptable.

Maybe that point has already come.

The Attorney General relented and indicted Murdaugh soon after, on July 14, 2022. The indictment was leaked to news media days before the grand jury returned a true bill. Immediately after the indictment, extensive leaks then began appearing in People magazine:

According to a law enforcement source close to the investigation, Alex told Maggie that his 81-year-old father, Randolph Murdaugh III, was in failing health and that she needed to see him before he died.

According to several sources, Maggie and Alex had hit a rough patch in their marriage, and she was staying at the family's beach house on Edisto Island, approximately an hour away from the family's estate.

The law enforcement source tells PEOPLE that Maggie initially declined to meet Alex at the family home, suggesting instead that they meet at the hospital. Ultimately, she consented to meet at the property, planning to follow Alex to the hospital in her own vehicle.

On her way to the house, Maggie allegedly messaged a friend, saying that something about her husband's behavior felt "fishy," the law enforcement source says. "He's up to something," Maggie allegedly wrote to her friend.

When Maggie arrived at the scene, she left her car running and walked to the dog kennels on the estate where her son, Paul, was taking photos of a dog he was watching for a friend.

Steve Helling, *Alex Murdaugh Allegedly Lured Wife to Cabin On Night She Was Killed — and She Texted Friend It Seemed 'Fishy'*, PEOPLE (July 15, 2022).

While the South Carolina Law Enforcement Division (SLED) would not comment on the charges, a law enforcement source with direct knowledge of the case tells PEOPLE in its latest issue that they have a "mountain of evidence" against Murdaugh — and that they took a year to charge Murdaugh because authorities wanted to properly investigate the murders.

The law enforcement source tells PEOPLE that blood spatter allegedly found on Alex Murdaugh's clothes indicates he was at the scene at the time of the murder, and not visiting his father at the hospital, as he later claimed.

Additionally, the source says that Murdaugh's cell phone, watch, and vehicle GPS also contradict his assertion that he was continually with his father at the hospital.

According to several sources, Maggie and Alex had hit a rough patch in their marriage, and she was staying at the family's beach house on Edisto Island, approximately an hour away from the family's estate. The law enforcement source tells PEOPLE that Maggie initially declined to meet Alex at the family home, suggesting instead that they meet at the hospital. Ultimately, she consented to meet at the property, planning to follow Alex to the hospital in her own vehicle.

On her way to the house, Maggie allegedly messaged a friend, saying that something about her husband's behavior felt "fishy," the law enforcement source says. "He's up to something," Maggie allegedly wrote to her friend.

Perhaps the biggest piece of evidence that law enforcement has is cell phone audio and video that appears to place Murdaugh at the scene, talking with Maggie just moments before she was killed.

Steve Helling, *Inside the 'Mountain of Evidence' that Police Say Proves Alex Murdaugh Killed His Wife & Son*; People (July 20, 2022). The author of the stories reporting these leaks is the host of a television series entitled *Murder Made Me Famous*.

Chief Keel runs a tight ship; he stopped any leaks from SLED over a year ago. The Attorney General's office is the only other possible source of these leaks. Mr. Waters represents he has not leaked anything. Defense counsel have worked with Mr. Waters on previous cases, are familiar with his character and professionalism, and certainly believe that he has not personally leaked anything. Mr. Waters also says he is "unaware" whether any member of his prosecution team has leaked evidence. (Mem. Supp. Mot. 7–8.) Perhaps, but the leaks obviously came from someone who works (or worked) in the Attorney General's office, because of the flood of leaks after Chief Keel put a stop to leaks from SLED, and because SLED agents *told* Maggie and Alex's family that the leaks are coming from the Attorney General's office.

The pattern of the leaks suggests that maybe someone who works (or worked) in Mr. Waters' team wanted Murdaugh to be charged, that Mr. Waters was reticent to bring a weak murder case, and that the leaks were a way to go over Mr. Waters' head to an Attorney General who always panders to public opinion. *Cf.* Brian Hicks, *Alan Wilson and the art of perpetually campaigning for the next job*, Post & Courier (Dec. 15, 2021). But regardless of how we got here, the State should not be permitted to gag the defense from responding to its leaks. It is past time for the State to stop bolstering its case in magazines and blogs and to instead provide Murdaugh's lawyers whatever actual evidence it has.

IV. Conclusion

For the foregoing reasons, the State's motion for a protective order should be denied.

Respectfully submitted,



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August 29, 2022
Columbia, South Carolina.

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COUNTY OF COLLETON

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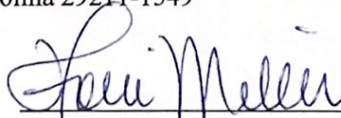
Indictment Nos. 2022GS1500592 – 00595

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 29, 2022, I did serve by placing in the U.S. mail, first class postage affixed thereto (with a courtesy copy emailed), the following document to the below mentioned person:

Document: Defendant's Supplemental Memorandum in Opposition to the State's Motion for Protective Order

Served: Creighton Waters, Esquire
Office of The Attorney General
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Holli Miller

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COLLETON CO GS, REBECCA H. HILL