STATE OF SOUTH CAROLINA COUNTY OF COLLETON	)	IN THE COURT OF GENERAL SESSIONS FOR THE FOURTEENTH JUDICIAL CIRCUIT
State of South Carolina, v. Richard Alexander Murdaugh, Defendant.	)	Case Nos: 2022-GS-15-00592 2022-GS-15-00593 2022-GS-15-00594 2022-GS-15-00595 **STATE'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR A BILL OF PARTICULARS; AND STATE'S MOTION TO ADMIT EVIDENCE OF MOTIVE**

While motive is not an element of the case, motive is the most important fact the jury would want to know in understanding why Defendant murdered his own wife and son. To do properly evaluate motive, the jury will need to understand the distinction between who Alex Murdaugh appeared to be to the outside world -- a successful lawyer and scion of the most prominent family in the region – and who he was in the real life only he fully knew -- an allegedly crooked lawyer and drug user who borrowed and stole wherever he could to stay afloat and one step ahead of detection. Proof of years of Alex Murdaugh's unbroken series of misappropriations, lies, loans, debts, and thefts is necessary to explain that distinction to a jury. It is also necessary proof to show how he avoided accountability for allegedly defrauding victims of over $8.7 million for so long, and how he kept this fantasy persona of wealth, respectability, and prominence alive.

Only then can a jury understand that the clouds of Defendant's past were gathering into a perfect storm that was going to expose the real Alex Murdaugh to the world – and which would mean facing real accountability for his life. On June 7, 2021.

The day Defendant murdered Maggie and Paul.

OVERVIEW

Accordingly, the State would respond as follows in opposition to the Defendant's Motion for a Bill of Particulars filed on December 5, 2022, and sets forth the following in support of its motion *in limine* to admit evidence of financial crimes and related offenses in the murder case.

Murdaugh asks this Court to require the State to "file a bill of particulars stating the alleged motive it intends to present at trial[.]" Murdaugh pleads ignorance regarding what it is the State intends to introduce at trial and concern for judicial efficiency – despite the fact that he has access starting in January of 2022 to the State Grand Jury discovery and all the transcripts, which lay out a road map to each one of the charges in the 18 State Grand Jury indictments containing 90 charges against Defendant.

Regardless, a review of the authorities cited by Murdaugh reveals that there is no precedent in modern South Carolina jurisprudence to justify ordering any such "bill of particulars," and that the narrow purpose of its use more than a century ago would be inconsistent with today's jurisprudence regarding notice. Accordingly, the State opposes Murdaugh's Motion in Section I of this filing.

However, while the challenge to the defense of timely reviewing the voluminous evidence results of its own motion for a speedy trial, the State is sensitive to the need for judicial efficiency. Accordingly, as set forth in Section II of this filing, the State moves *in limine* to admit as relevant evidence of Murdaugh's financial wrongdoings committed over the course of the fifteen years leading to his murder of Maggie and Paul Murdaugh, as well as that evidence of the events on the side of Old Salkahatchie Road on September 4, 2021.

I. RETURN IN OPPOSITION TO MOTION FOR BILL OF PARTICULARS

As a "bill of particulars" is an antiquated concept not authorized to modern jurisprudence or practice as governed by the South Carolina Rules of Criminal Procedure and precedent governing the sufficiency of indictments. Such an order would not be appropriate even if it was.

A. The Current Rules Do Not Provide for a Bill of Particulars

There is no provision in the law of South Carolina requiring the presentation or delivery of a bill of particulars. *State v. Wells*, 162 S.C. 509, 161 S.E. 177, 181 (1931). Instead, the notice to which defendants are entitled is based in the rule-guided discovery process and the indictment itself, which can be challenged for sufficiency if the defense believes they have not received adequate notice. *State v. Flood*, 257 S.C. 141, 144-45, 184 S.E.2d 549, 551-52 (1971).

Murdaugh, in his Motion, recognizes that there is no provision in the rules for a "bill of particulars," but nonetheless insists that esoteric and ancient practice would justify the Court in ordering one, despite the fact that to do so would conflict with longstanding precedent on interpretation of court rules by our state supreme court. [1]

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[1] "In interpreting the language of a court rule, [the court applies] the same rules of construction used in interpreting statutes." *Green By & Through Green v. Lewis Truck Lines, Inc.*, 314 S.C. 303, 304, 443 S.E.2d 906, 907 (1994). "If a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced." *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). In *Hodges*, the Supreme Court recognized the canon of construction "*expressio unius est exclusio alterius*" or "*inclusio unius est exclusio alterius.*" *Id.* The Court explained it holds that "to express or include one thing implies the exclusion of another, or of the alternative." *Id.* at 86, 533 S.E.2d at 582.

In this case, Rule 5 of the South Carolina Rules of Criminal Procedure Rule 5(a)(1), S.C.Crim.P contains no requirement of a "bill of particulars". Where the State exceeds its obligations and turns over additional records, there has never been a requirement that the State must identify which of the records disclosed are intended to be used at trial. Rule 5(a)(1)(C), S.C.Crim.P.; *Flood*, 257 S.C. at 144-45, 184 S.E.2d at 551-52; *Wells*, 162 S.C. at __, 161 S.E. at 181. Indeed, because of the State's concurrent constitutional obligations, the State has turned over far more evidence in response to Murdaugh's motions and demands than it could ever actually introduce at trial. *See, generally, Brady v. Maryland*, 373 U.S. 83 (1963) (prosecution must turn over all evidence that might exonerate the defendant); *Giglio v. United States*, 405 U.S. 150 (1972) (prosecution must turn over information which may be used to impeach a witness's credibility).

Once again, Murdaugh seeks to have this Court apply a rule in a way it was not intended or to amend the Rule to provide him exceptional pre-trial notice of the prosecution's trial strategy, even if he disavows such intent. Such a request is contrary to the rules of procedure which govern modern practice and should be denied.

B. The Purpose of a "Bill of Particulars" Could Not Apply to the Present Case

The only purpose of the "bill of particulars" in ancient South Carolina practice, as demonstrated by the authorities Murdaugh offers, was to cure defects in the sufficiency of indictments. *See State v. Chitty*, 17 S.C.L. 379, 380 (S.C. App. L. & Eq. 1830) ("Comfortably to practice in relation to *general indictments*, the defendant was served with a notice in writing, of the particular acts of barretry, which would be relied on in behalf of the prosecution; and to these the evidence at trial was confined.") (emphasis

added); *State v. Napier*, 63 S.C. 60, 41 S.E.13, 15 (1902) ("The indictment need not set out the particular acts, . . . [but t]he state, however, may be required before trial to give the defendant notice of the particular instances that are meant to be proved."). The State can find no authority in South Carolina precedent in which a "bill of particulars" was ordered in order to force the State to disclose its theory of the case.

Today, the indictment is strictly a notice document, albeit one required by our state constitution, rather than a jurisdictional vehicle. *State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005); *Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005). Courts must judge the sufficiency of the indictment "by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged." *Gentry*, 363 S.C. at 102-03, 610 S.E.2d at 500; (citing S.C. Code Ann. § 17-19-20; *State v. Wilkes*, 353 S.C. 462, 578 S.E.2d 717 (2003)). When an indictment is today properly challenged as insufficient or otherwise defective prior to trial, the cure would not be a "bill of particulars" as is here requested, but leave to amend the indictment or, in the alternative, an order to dismiss the indictment without prejudice. S.C. Code Ann. § 17-19-100; *State v. Means*, 367 S.C. 374, 385-86, 626 S.E.2d 348, 355 (2006); *Evans v. State*, 363 S.C. 495, 511-13, 611 S.E.2d 510, 519-20 (2005).

Murdaugh does not contend any confusion as to the offenses charged. The indictments clearly allege that Murdaugh, on June 7, 2021, brutally shot his wife and son to death, with a rifle and shotgun, respectively. The elements of the offenses are

set forth in the indictments. Murdaugh, a former prosecutor, and his defense team are familiar with the crimes and elements charged. As Murdaugh complains, he has been provided more than a million pages of documentary evidence, to include access to transcripts of testimony before the State Grand Jury, which detail his many thefts to cover bad debts and the ever growing likelihood of his exposure as a fraud *non pareil* in his community, culminating in the confrontations and immediate certainty of exposure he faced on June 7, 2021. The indictments and surrounding circumstances sufficiently appraise Murdaugh of what he is called upon to answer.

Indeed, in *State v. Gunn,* 313 S.C. 214, 437 S.E.2d 75, 78 (1993), the court rejected a claim that a State Grand Jury indictment was vague and overbroad by noting that "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 [State] Grand Jury". Defendant Murdaugh has had the same opportunity as to all the financial evidence and thus far more insight into the prosecution's case than normal.

The evidence of all of Defendant's alleged financial and other misdeeds over 80 State Grand Jury charges is in fact very extensive. That is not the State's fault there is so much of it out there that had to be gathered. If anything, it is the Defendant's fault.

II. MOTION TO ADMIT 404(B) EVIDENCE OF MOTIVE

Nonetheless, the State is sensitive to the need for judicial efficiency, particularly in a case scheduled to last for multiple weeks. Accordingly, the State moves for a ruling by the Court *in limine* to admit as relevant, subject to analysis under Rules 402, 403, and 404(b), SCRE, and subject to proper foundation laid at the time of trial, all such

competent evidence of the relationship between the murders of Maggie and Paul and years of financial difficulty, fraud, and theft—wrongdoing sufficient to imprison him for life[2].

A. The State Can Move *in Limine* to Admit Evidence

The Rules of Evidence must be "construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined." Rule 102, SCRE.

"The purpose of a motion *in limine* is to prevent disclosure of potentially prejudicial matter to the jury." *State v. Floyd*, 295 S.C. 518, 521, 369 S.E.2d 842, 843 (1988). Of course, a ruling *in limine* is not a final decision on the admissibility of evidence, and may be changed by the Court based on the developments at trial. *Floyd*, 295 S.C. at 520, 369 S.E.2d at 843. A ruling *in limine* to admit evidence is strictly conditional and subject to the State's provision at trial of other such evidence as will establish the foundation and relevance of the evidence offered.

B. Evidence of Prior Bad Acts is Admissible Under Rule 404(b), SCRE, to Show Motive, Identity, the Existence of a Common Scheme or Plan, the Absence of Mistake or Accident, and Intent

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Rule 404(b), SCRE. "It may, however, be admissible to show ***motive***, identity, the existence of a

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[2] Indeed, while a formal filing would be premature, as all the charges remain pending, the State has informally notified the defense of its intent to seek Murdaugh's incarceration for the remainder of his life under S.C. Code Ann. § 17-25-45 for the indictments issued by the South Carolina State Grand Jury, in addition to whatever punishment may result from the pending indictments for the murders. *See* S.C. Code Ann. § 17-25-45(b) (listing as serious offenses both "breach of trust with fraudulent intent" and "obtaining signature or property by false pretenses").

common scheme or plan, the absence of mistake or accident, or intent." *Id.* State v. Pagan, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006). Additionally, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE.

In determining whether to admit evidence of other bad acts, a trial judge must first determine if the evidence is relevant. State v. Perry, 430 S.C. 24, 29, 842 S.E.2d 654, 656 (2020). Ordinarily, when a piece of evidence could assist the jury in arriving at the truth of an issue, it is relevant and should be admitted during trial. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986).

Second, the trial judge must determine if the prior bad act evidence falls within one of the permissible exceptions of Rule 404(b) of the South Carolina Rules of Evidence. Perry, 430 S.C. at 30-31, 842 S.E.2d at 657. In doing so, the trial judge should consider whether there is "a logical relevancy or connection between the other crime and some disputed fact or element of the crime charged." Id. at 31, 842 S.E.2d at 658; see State v. Bell, 302 S.C. 18, 27, 393 S.E.2d 364, 369 (1990) ("The evidence must be logically relevant to the particular purpose or purposes for which it is sought to be introduced.").

Third, when the defendant has not been convicted of the other bad acts, the trial judge must determine whether the evidence of those other bad acts is clear and convincing. State v. Fletcher, 379 S.C. 17, 23, 664 S.E.2d 480, 483 (2008). "Clear and convincing evidence is more than a mere preponderance, but less than is required for

proof beyond a reasonable doubt; it does not mean clear and unequivocal." State v. Simmons, 384 S.C. 145, 159 n. 2, 682 S.E.2d 19, 26 n. 2 (Ct. App. 2009).

Fourth and finally, the trial judge must weigh the probative value of the evidence against its potential prejudicial effect. State v. Mathis, 359 S.C. 450, 463, 597 S.E.2d 872, 879 (Ct. App. 2004). Evidence must be excluded from trial if its probative value is *substantially* outweighed by the danger of unfair prejudice. State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (citing Rule 403, SCRE); see also New Oxford American Dictionary 1736 (3rd ed. 2010) (defining "substantially" as "to a great or significant extent"). Significantly though, "evidence which is 'logically relevant to establish a material element of the offense charged is not to be excluded merely because it incidentally reveals the accused's guilt of another crime.'" State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009).

Motive as a well-recognized exception

One well-established exception to general prohibition against evidence of other bad acts is for evidence that tends to prove motive. State v. Blackburn, 271 S.C. 324, 329–30, 247 S.E.2d 334, 337 (1978). Motive is an individual's reason for taking some action. State v. Thomas, 264 S.C. 159, 167, 213 S.E.2d 452, 456 (1975); Snakenberg v. Hartford Cas. Ins. Co., 299 S.C. 164, 172, 383 S.E.2d 2, 7 (Ct. App. 1989) ("*Motive* is the actor's subjective reason for doing the act."). Although motive is not a required element of an offense like murder, the existence of a motive can shed light on the identity on the perpetrator, and the presence or absence of motive is a circumstance that can—and likely will—be considered by a jury. See State v. Braxton, 343 S.C. 629, 636, 541 S.E.2d 833, 837 (2001) (instructing "motive may have bearing on the identity

of the accused as the perpetrator of the crime"); State v. Edwards, 127 S.C. 116, __, 120 S.E. 490, 491 (1923) (recognizing absence of motive is a circumstance that may properly be considered by the jury).

Accordingly, motive can be and frequently is of critical importance to the resolution of a case, and, as a result, courts generally broadly allow the admission of other bad act evidence when it may shed light on a defendant's motive. See State v. Bell, 302 S.C. 18, 29, 393 S.E.2d 364, 370 (1990) ("Evidence of prior acts which demonstrates motive is admissible."); see also State v. Rogers, 116 A.2d 37, 42 (N.J. 1955) ("In criminal prosecutions, whenever the motive or the intent of the accused is important and material, a somewhat wider range of evidence is permitted in showing such motive or intent than is allowed in the support of other issues. Otherwise there would often be no means to reach and disclose the secret design or purpose of the act charged in which the very gist of the offense may consist. Such intent or motive may be proved either by direct or circumstantial evidence. All evidentiary circumstances which are relevant to or tend to shed light on the motive or intent of the defendant or which tend fairly to explain his actions are admissible in evidence against him although they may have occurred previous to the commission of the offense." (citations omitted)).

Throughout the country, proof an individual committed murder to prevent the exposure of financial crimes has previously been recognized to constitute classic "other bad act" evidence admissible for the purpose of proving motive in a murder case. See, e.g., United States v. Siegel, 536 F.3d 306, 317-318 (4th Cir. 2008) (concluding evidence of Siegel's "extensive history of fraud" extending back decades was relevant and explained Siegel's motive for killing one of her financial crime victims was to

prevent her past crimes from being uncovered); People v. Thompson, 384 P.3d 693, 747 (Cal. 2016) (finding evidence of the defendant's desperation to prevent a "financial house of cards" from collapsing and her earlier financial frauds from being uncovered to be admissible evidence of motive in a murder case); Commonwealth v. Rizzuto, 777 A.2d 1069, 1080 (Pa. 2001) ("[T]he sequence of events from November 1993 through January 1994 show that Appellant engaged in a premeditated course of conduct to forge checks and cover up his forgeries. A logical inference can be drawn that Appellant murdered Mrs. Laurenzi to cover up his theft of her funds. As the evidence was relevant to Appellant's motive to kill Mrs. Laurenzi, we find Appellant's argument unavailing."), abrogated on other grounds by Commonwealth v. Freeman, 827 A.2d 385 (Pa. 2003); see also Felder v. State, 810 P.2d 755, 757 (Nev. 1991) (concluding evidence of the defendant's significant debt and commission of financial crimes showed his "desperation" and, thus, was admissible as evidence of motive in a murder case).

And, such evidence of motive only becomes more important in a case in which a defendant may—and almost certainly will—attempt to rely on the nature of his familiar relationship to his victims to establish a defense. Cf. Thompson, 384 P.3d at 747 ("[T]o the extent defendant offered evidence of her good character (or lack of motive) in the form of her alleged loving relationship with her husband and her apparent distress at his murder, this evidence opened the door to allow the prosecution to present evidence of her bad character (and motive to kill him).").

C. Generally, the Evidence Sought to be Admitted

In the present case, Murdaugh's motive for committing the murders is an issue of obvious importance. In addition to the general significance evidence of motive can have

in any murder trial, Murdaugh has been charged with murdering his wife and son—two integral members of his own immediate family. Since people are naturally expected to love their wives and sons instead of brutally gunning them down, *why* Murdaugh did what he is accused of doing will unquestionably weigh on any rational juror's mind when deciding whether the State met its burden of proof. Therefore, any evidence bearing on Murdaugh's motive for the killings has heightened probative value in his case under the circumstances involved.

Beyond that, Murdaugh himself placed the issue of motive front and center through his own actions. Demonstrating that fact, Murdaugh—within just over thirty seconds of beginning to speak to the first officer to arrive at the crime scene on June 7, 2021—suggested to law enforcement the killer's motive stemmed from the February 2019 boat wreck that resulted in the tragic death of Mallory Beach. In fact, Murdaugh expressed certainty and stated he *knew* "that's what it is" [the boat case] to the responding officer. Thus, based on his own statements, Murdaugh placed motive into issue from the outset of law enforcement's investigation into the killings, and he tried to tie that motive to events that had occurred more than two years earlier.

Significantly, based on the evidence that has been uncovered during the investigation into the killings, Murdaugh was the only individual with a true motive to kill his wife and son. As to that motive, the evidence will show Murdaugh accrued substantial debts over a period of years and, to cover those debts, began engaging in illicit financial crimes involving the theft and misappropriation of money from his clients and his own law firm. The evidence will further show those financial crimes were about to come to light at the time of the killings. More specifically, on the date of the killings,

personnel at Murdaugh's law firm had demanded Murdaugh provide an explanation no later than that day as to where hundreds of thousands of dollars in legal fees owed to the firm but stolen by Murdaugh had gone, and Murdaugh had neither the money nor a plausible legal explanation with which to respond to the demand. Meanwhile, a motion to compel the production of Murdaugh's personal financial records was at the same time pending in civil litigation stemming from the fatal boat wreck, and a hearing on that motion was going to be held within a few days. If granted as expected, that motion would have resulted in the exposure of Murdaugh's financial records, which would itself have led to his misdeeds becoming known to others. Ultimately, the murders served as Murdaugh's means to shift the focus away from himself and buy himself some additional time to try and prevent his financial crimes from being uncovered, which—if revealed—would have resulted in personal, legal, and financial ruin for Murdaugh. And it absolutely worked – until a PMPED staffer came across a check on September 2, 2022 which started the process of unravelling the whole thing.

In finer detail, the State intends to prove the following at trial. Defendant came from a family with a singular position of prominence and respect in the community. He had, however, been able to avoid accountability throughout his life. While outwardly giving the illusion of financial wealth from his lucrative law practice, a series of bad land deal exacerbated by the recession permanently changed his finances. While some thought Defendant had recovered with some large cases in the early part of the 2011-15, such as the Thomas, Pinckney, Plyler, and Badger cases, Defendant had become so dependent on a constant velocity of money to service his huge debt and maintain his lifestyle that even the millions in fees were not enough. In addition to borrowing from

anyone who would lend money to him, from banks to family to his partners, Defendant also started to allegedly steal millions from clients, his firm, and his family in order to keep his head above water.

Defendant allegedly stole through four main schemes. First, he stole by billing personal expenses to his clients and on firm credit cards or accounts. Second, he stole from his own family and the firm, by in one instance taking a six-figure loan repayment check he knew had been erroneously issued to him, claiming he lost that check and getting another one issued, depositing the second check, and then waiting months to deposit the first – thus stealing the same money twice.

The third scheme through which Defendant allegedly stole client funds was by having PMPED client trust account disbursement checks made out to "Palmetto State Bank". He then would have Palmetto State Bank ("PSB") executive Russell Laffitte convert those client checks to Defendant's personal use, for such things as paying off Defendant's debts to Defendant's father, to Russell Laffitte's father, and to PSB. Defendant and Russell Laffite also used allegedly stolen client money to pay off almost $1,000,000 in loans Russell Laffitte had loaned from his conservatorship over Murdaugh clients the Plyler girls in order to keep Defendant afloat. Defendant would either have Russell Laffitte as a conservator or personal representative sign the client disbursement accounting in which the funds to be sent to PSB were listed among other funds. Or, Defendant would convince clients nothing was amiss on the disbursement accounting, while they were focused on the substantial funds they were receiving and not noticing something as innocuous looking on its face as a disbursement to Palmetto State Bank.

The fourth scheme through which Defendant allegedly stole client funds was through the "fake Forge" account, which he opened at Bank of America in 2015 under the name "Richard A Murdaugh d/b/a/ Forge". Forge Consulting, LLC, was a legitimate company used by plaintiff's lawyers as a consultant to match clients receiving large settlements with annuity companies. Once Defendant was able to open an account with Forge's name on it, he could have client funds disbursed from the PMPED trust account on a check made out to Forge. Like checks made out to PSB, entries on the disbursement sheet to the known name "Forge" did not attract staff or client attention, particularly when the clients were diverted by the large sums they were receiving from the legitimate entries on the disbursement accounting.

During this time that Defendant was allegedly stealing millions from clients, despite also earning millions in reported income from his law practice, Defendant was also borrowing millions from wherever or whomever he could. The evidence will show Defendant bounced between massive interest payments and inadequate principal payments, and consistently carried staggering six-figure balances on multiple debts, including lines of credit and even a credit card. He borrowed nearly a million dollars from one law partner over a period of years, as well as hundreds of thousands from his father and Russell Laffitte's father.

All of the millions of dollars coming to Defendant -- from legitimate income to stolen client funds to large loans and credit cards -- still was not enough to stop the incessant financial roller coaster on which Defendant put himself. Things only got worse on February 23, 2019 -- when the boat crash happened resulting in the death of Mallory Beach. Not only was Paul facing very serious criminal liability and the

possibility of 25 or more years in prison, but Defendant and his family were now facing significant civil liability for the events leading to Mallory's death – with the Beach family filing a civil lawsuit filed against Defendant and his son "Buster" on May 24, 2019. The plaintiffs' attorney in the civil boat case made it clear they were seeking nothing less than an aggressive monetary recovery from Defendant's personal assets.

Tellingly, the aftermath of the boat case also saw a large uptick in the amount of funds Defendant started to allegedly steal, including over $3 million from the Satterfield recovery, and about $4.5 million total from clients during January 2019 until April 2021 alone. The boat case also marked a large uptick in the checks Defendant had been writing to various associates such as Curtis Eddie Smith. While some of this money was for narcotic pills, the pace for Eddie alone increased to over $1 million alone in 2021. The amounts of the individual checks increased as well.

Defendant had one possible saving grace in a plaintiff's case Defendant was sharing with Chris Wilson. The decision from a bench trial was issued in February of 2021 and it resulted in fees of $792,000 to Defendant ($600,000 for one case and $192,000 for the other). However, Defendant convinced Chris Wilson to make the checks for the fees out to him personally -- instead of to PMPED is it should have been. Defendant deposited those checks into his personal account in March and April of 2021, thus ensuring that he could get to the money right then and stay afloat, as opposed to having to wait until the end of the year for PMPED to disburse fees as part of his bonus. This windfall of over three quarters of a million dollars only provided a brief respite from the pressures that continued to mount on Defendant, and it was quickly spent.

Defendant's civil attorneys had finally told the plaintiff's attorneys in the boat case that Defendant had no money to personally pay any settlement. Incredulous and still believing he was very wealthy, the plaintiff's attorneys filed a motion to compel on October 16, 2020, demanding Defendant disclose his bank accounts, assets, and finances. If that motion was granted, as was expected, the true picture of Defendant's finances and his years of alleged theft would be quickly exposed. The hearing was initially scheduled for May of 2021 but was continued to June 10, 2021.

Meanwhile, in May of 2021, staff at PMPED had become suspicious when they noticed they had received the expense check from the case Defendant had with Chris Wilson, but had not received the fee check. Their inquiries to Wilson's office did not get to the bottom of the matter and they could not get a satisfactory answer from Defendant as to where these fees were. The problem was discussed with partners at PMPED, and they were worried Defendant was trying to hide income because of the boat case.

On top of this, in March, April, and May of 2021, State Grand Jury subpoenas about the boat case were issued for testimony or documents to various witnesses and institutions with a connection or presence in Hampton and the Fourteenth Circuit.

All of these factors start to converge on June 7, 2021. On June 7, 2021, Defendant's finances were falling apart. He did not have enough to pay back Chris Wilson to cover up the fact that he had bypassed the firm of $792,000 in fees.

On June 7, 2021, Defendant was in the office working on the disclosures in the boat case – because a hearing on the motion to compel discovery of Defendant's finances was scheduled for June 10, 2021 – just a few days later. Disclosure of the

finances would expose Defendant for his years of alleged misdeeds. There would be no continuance this time.

On June 7, 2021 a PMPED staffer came into Defendant's office and demanded an answer *that day* as to where the bypassed fees were. However, on June 7, Defendant had already spent the fees and could not pay them back to cover his tracks.

On June 7, 2021, Defendant received word that his father had been taken to the hospital with a very poor prognosis. Defendant's father had previously loaned Defendant money or cosigned loans for Defendant.

On June 7, 2021, Defendant murdered Maggie and Paul.

Immediately everything changed. People immediately treated Defendant as the victim of an unspeakable tragedy. Everyone backed off their inquiries and rallied around him. The PMPED partners and staff were no longer seeking immediate answers about the bypassed fees and stopped making inquiries. The hearing on the motion to compel was cancelled and a personal recovery against Defendant in the civil case was in jeopardy as a practical matter. The day of reckoning vanished.

In the time the aftermath of the murders gave him, Defendants set about covering his tracks. He borrowed money to cover enough of the bypassed fees so that Chris Wilson could send them to PMPED as if they had been there all along. He borrowed from a law partner and continued to write checks to Eddie Smith at an accelerated rate.

It might have worked, but for the fact that on September 2, 2021, staff at PMPED discovered in Defendant's office a copy of one of the fee checks Chris Wilson had written to Defendant directly. It was taken to the PMPED finance office, where it

triggered staff there to take a closer look at one of the Forge matters that had taken a back seat in the wake of the murders. Some more research was done, partners were called with the findings, and on September 3, 2021, Defendant was ultimately confronted with the discoveries of his misdeeds and resigned.

On September 4, 2021, Chris Wilson finally was able to get Defendant to meet with him to discuss the resignation and the $192,000 Defendant owed Wilson for covering the shortfall in the payment of the bypassed fees to PMPED. Within hours of Defendant meeting with the friend he betrayed on the front porch of Defendant's mother's house, as accountability started to fall upon Alex Murdaugh again, Defendant suddenly became the "victim" of a shooting on the side of the road on Old Salkahatchie.

People initially rallied to his aid again. Only this time the facts came to light a lot quicker.

D. Analysis under Rules 404(b) and 403 of the South Carolina Rules of Evidence

Since the other bad act evidence regarding his financial crimes establishes motive for the killings on Murdaugh's part, it constituted relevant—and critical—evidence falling within Rule 404(b)'s motive exception with a logical connection to the charged crimes. See Bell, 302 S.C. at 29, 393 S.E.2d at 370 (explaining evidence demonstrating motive is admissible). The importance of that evidence is only enhanced by the fact Murdaugh is charged with killing two immediate family members, which could be hard for an ordinary person to understand without the context provided by the other bad act evidence. See United States v. Byers, 649 F.3d 197, 209 (4th Cir. 2011) ("Logically, then, when the evidence presented to the jury generates uncertainty about motive or identity, resort to other crimes evidence may be appropriate." (citations, internal quotations, brackets, and ellipses omitted)); Siegel, 536 F.3d at 318 (concluding

evidence of motive was relevant due to its potential to rebut a likely defense that could undercut the prosecution's theory of the case without it); cf. Rogers, 116 A.2d at 42 ("The evidence, although relating to a time prior to the incident involved, nevertheless was material and had a tendency to explain conduct which would otherwise probably be unexplainable.").

Likewise, Murdaugh's other bad acts have been and will be established with clear and convincing proof. At their core the majority is the subject of State Grand Jury indictments supported by subpoenaed documentary evidence, testimony and financial analysis. They are also supported by Defendant's own admissions at various times.

Accordingly, that other bad act evidence meets all the requirements for admissibility pursuant to Rule 404(b). Rule 404(b); cf. Dooley v. Commonwealth, 626 S.W.3d 487, 494-495 (Ky. 2021) ("A defendant's motivation to commit the murder is often an important issue in criminal trials, perhaps especially in cases like this, where the identity of the perpetrator is disputed and must be proven almost entirely by circumstantial evidence. In such cases, proof of a defendant's motivation could be the lynchpin of the prosecution's theory. Motivation and identity thus become the independent, non-propensity bases for offering the evidence, so proof should be allowed, even if the evidentiary foundation depends on speculation to some extent. Where the Commonwealth's motive theory is at least coherent, it is in effect a state-of-mind issue, properly left for the jury to believe or disbelieve." (footnotes omitted)).

Meanwhile, the high probative value of the other bad act for motive purposes is not *substantially* outweighed by a danger of any unfair prejudice as necessary to warrant its exclusion pursuant to Rule 403 of the South Carolina Rules of Evidence for

two primary reasons. First, Murdaugh's commission of numerous white-collar financial crimes could *not* logically be viewed as propensity evidence under the circumstances involved because—outside of its value toward proving motive—theft and misappropriation of money is not something suggesting a tendency to murder close family members like a wife and son.[3]

Second, to the extent any *unfair* prejudice could conceivably result from the admission of the other bad act evidence related to Murdaugh's financial crimes absent proper instruction, the court can ensure the jury only considers the other bad act evidence for the proper purpose—motive—through a jury charge regarding the limited admissibility of the evidence. See Rule 105, SCRE ("When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly."); cf. State v. Lavender, 141 N.E.3d 1000, 1021 (Ohio Ct. App. 2019) (concluding the risk of unfair prejudice that could result from admissible other bad act evidence offered for the purpose of proving motive was sufficiently minimized by the following limiting instruction: "The evidence that is now

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[3] See Perry, 430 S.C. at 30, 842 S.E.2d at 657 (recognizing the inherent risk created by evidence of other similar criminal acts perpetrated by a defendant is the jury will view it as propensity evidence because "[p]roof that a defendant has been guilty of another crime *equally heinous* prompts to a ready acceptance of and belief in the prosecution's theory that he is guilty" (emphasis added and citation and internal quotations omitted)); cf. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (finding evidence Haselden tended to golf, fish, or go to his mother's house in a murder trial was not propensity evidence tending to prove Haselden had a tendency towards abusing and murdering his son); Mattei v. State, 835 S.E.2d 623, 626 (Ga. 2019) ("The insurance scheme was not admitted to show Mattei's alleged propensity to commit the charged offense of murder or some other crime with which he was charged, but was relevant to his potential reason for killing his wife.").

being introduced is received into the record for a limited purpose to show motive and intent. When you consider this evidence in your deliberations, you are not to use it for any other purpose, including to prove the character of an accused in order to show that the accused acted in conformity with that character."). Under such circumstances, the State properly intends to use the other bad act evidence as proof of Murdaugh's motive during his trial on the murder charges.

III. CONCLUSION

This case is unique in South Carolina history for many reasons. One of those is that exposing what happened to Maggie and Paul necessarily has its roots in a corruption that began years ago and festered until June 7 was the result. The evidence should be admitted so the jury can fairly assess why a man might murder his wife and son.

WHEREFORE, the State respectfully requests that this Court deny Defendant's motion for Bill of Particulars but grant the motion *in limine* to admit the State's 404(b) evidence.

Respectfully submitted,

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