

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

State of South Carolina,

v.

Richard Alexander Murdaugh,

Defendant.

**COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

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

MOTION FOR SANCTIONS

Defendant Richard Alexander Murdaugh, through undersigned counsel, pursuant to Rule 5(a)(1) of the South Carolina Rules of Criminal Procedure, hereby moves the Court to prohibit the State from offering at trial any testimony regarding blood spatter from Tom Bevel, any other principal, associate, or employee of Bevel, Garner & Associates, LLC, or any officer of the State or other person whose opinion derives from review of Mr. Bevel's work product, as a sanction for Mr. Bevel and the State's deliberate refusal to comply with the Court's order compelling production of documents related to Mr. Bevel's opinions. Further, Mr. Murdaugh requests the Court award him costs and reasonable attorney's fees incurred in the motion practice concerning Mr. Bevel. Mr. Murdaugh however asks that the Court delay considering this request for costs and fees until after trial.

I. Introduction

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. As Mr. Murdaugh has noted in previous motions, the State immediately decided Alex was guilty, before anyone collected, investigated, or reviewed any evidence and, unable to build a solid case against Mr. Murdaugh to present in court, instead engaged in a campaign of selective and deceptive leaks to news media to convince the public that Murdaugh is guilty before he is tried. Perhaps the most extraordinary leak occurred in April 2022, when the State told FITSNews that "A shirt worn by Alex Murdaugh on

the night his wife and son were murdered was found to have a significant amount of high-velocity impact spatter on it from at least one of their bodies,” and that “[t]he presence of this forensic evidence on his clothing ‘could have only come from one thing,’” i.e., “the spatter indicates that Murdaugh was physically close to one or more of his family members when they were shot.” Mandy Matney, *High-Velocity Impact Spatter Directly Ties Alex Murdaugh To Double Homicide, Sources Say*, FITSNews (Apr. 26, 2022). The only possible motive for this leak was to convince the public that Mr. Murdaugh was guilty of the murders before trial, even before he was formally charged. This leak was an extrajudicial statement made on behalf of the State with the deliberate intention to prejudice the present judicial proceedings.

It was also a lie.

The leaked information was the purported opinion of Tom Bevel of Bevel, Gardner & Associates, Inc., (BGA) in Oklahoma. Mr. Bevel is a retired Oklahoma City police officer with no credentials in any scientific discipline. On the night of the murders, the South Carolina Law Enforcement Division (SLED) collected the white cotton T-shirt Mr. Murdaugh was wearing when he discovered Maggie and Paul’s bloody bodies. SLED retained Mr. Bevel to opine that T-shirt is stained with high-velocity blood spatter that could only come from being in proximity with them at the time of their murders. It did so even though the State knew on August 10, 2021—almost six weeks before first reaching out to Mr. Bevel on September 21st—that confirmatory blood tests results were definitively negative for human blood in all areas of the shirt where purported spatter is present. SLED never told Mr. Bevel the shirt definitively tested negative for human blood before Mr. Bevel produced his report. In fact, the State never told him until after defense counsel mailed a copy of the report directly to Mr. Bevel as an attachment to a copy of a public court filing.

However, even without knowing the shirt tested negative for human blood, Mr. Bevel's initial report correctly determined there was no high-velocity blood spatter on the shirt. It also stated that spatter was unlikely to be on the shooter at all. Only after badgering and a personal visit from SLED officials did Mr. Bevel change his report both to say that it turns out abundant spatter is on the T-shirt after all, and that spatter likely would be on the person who shot Paul (although Paul's DNA is not found on the areas of the shirt Mr. Bevel now says have spatter). In reaching this opposite conclusion, Mr. Bevel cited no new evidence except an in-person examination of the T-shirt—after it was destroyed for purposes of forensic testing by the unnecessary application of an oxidizing chemical stain, and *after* Mr. Bevel *told* the State it had no evidentiary value to him. The inspection was just an excuse to pay Mr. Bevel a visit by having senior SLED agents act as couriers for the remnants of the T-shirt. Mr. Bevel admits his opinion was not changed by the inspection; instead, he claims his opinion changed when he realized he could use Photoshop to alter pre-destruction photographs of the T-shirt.

All this came to light because SLED disclosed a copy of Mr. Bevel's first report by mistake and because Mr. Murdaugh's counsel requested a microscopic examination of the T-shirt, forcing the State to admit it had been destroyed. Based on the destruction of the T-shirt and evident bad-faith conduct surrounding the spatter analysis, Mr. Murdaugh moved to exclude it under *State v. Cheeseboro*, 346 S.C. 526, 552 S.E.2d 300 (2001), and asked for an evidentiary hearing. (Mot. Exclude, Nov. 23, 2022.) Mr. Murdaugh also moved to compel production of Mr. Bevel's case file, including communications, photographs, or other documents given to or received from him by SLED. (Mot. Compel, Nov. 28, 2022.) The Court granted the motion to compel orally on December 9, 2022, and later in writing on December 19, 2022.

II. Background

Below is a comprehensive timeline of events related to Mr. Bevel's role in this case. The timeline naturally separates into three phases. First, SLED is so frustrated by its inability to find evidence to support its initial assumption that Mr. Murdaugh is guilty that it decides to hire a blood spatter expert to opine on Mr. Murdaugh's T-shirt even though there is no blood on the shirt. Second, when SLED receives Mr. Bevel's initial report—yet another dead end in its quest to prove an innocent man's guilt—it responds by getting him to reverse it, then leaks the new opinion to the public. Third, SLED is caught in this lie by its own ineptitude, but doubles down, offering contradictory excuses, weird at-home science fair experiments, and a regurgitation of Mr. Bevel's report from a straw-man former SLED agent—all while openly defying the Court's order for production of relevant materials.

A. SLED tries but fails to find evidence against Alex Murdaugh.

June 7, 2021: Maggie and Paul are murdered. SLED collects Alex's clothing.

June 8, 2021: The white T-shirt Alex was wearing is tested for gunshot primer residue (GSR). Only three particles of GSR are found, which SLED analysts believe is consistent with transfer from recently holding a firearm and not necessarily indicative of having recently fired a firearm.

June 9, 2021: A small cutting is taken from the front hem of the T-shirt and tested with a presumptive test for blood in which hemoglobin catalyzes the oxidation of colorless phenolphthalin into pink phenolphthalein. A presumptive test only indicates the possible presence of blood. Many chemicals, including fabric detergent residues, can also cause the oxidative reaction, so the test is not conclusive for the presence of blood. The cutting responds positively to the presumptive test and is tested for DNA. Mr. Bevel will later concede blood and DNA on the

bottom of his shirt are transfers from touching his family's bodies and wiping his hands and face on his shirt, and not the result of high-velocity spatter. *See figure 1, infra.*



Figure 1

June 25, 2021: SLED issues the DNA report for the small cutting from the bottom hem of Mr. Murdaugh's T-shirt. It tests positive for Maggie's DNA and an unknown person. Paul is excluded as a DNA contributor.

July 7, 2021: Senior Special Agent David Owen, the lead case agent, and his superior, Charles Ghent, SLED Lieutenant for the Low Country Region, brief their superior, Ryan Neill, SLED Captain for the Low Country Region, on the investigation, which is not going well. Thereafter, Capt. Neill speaks with Samuel Reighley, Jr., another SLED Captain with a leadership role in forensic services, to ask, "Questions about Alex's shirt and how it was examined and blood was indicated" and to express concern over the "Lack of photographs of blood stains, and the poor quality of those that were taken." Capt. Reighley informs Capt. Neill that SLED has no bloodstain

expert on staff. Capt. Neill notes that if needed he will investigate using former SLED special agent Kenny Kinsey, now Chief Deputy at the Orangeburg County Sheriff's Office.

July 20, 2021: Capt. Reighley tells Capt. Neill that "[Crime Scene] and Serology are going to process Alex's shirt again (Spray with LCV/or something similar)." LCV is leucocrystal violet, another presumptive test for blood, in which hemoglobin catalyzes the oxidation of LCV to a purple color. Capt. Neill notes Deputy Kinsey had agreed to look at photos of the T-shirt "to see if Blood Pattern [analysis] would be beneficial."

July 21, 2021: SLED tests the T-shirt with LCV. The testing is conducted by Lt. Kukila Wallace of SLED's crime scene forensics unit. The T-shirt is photographed, hung, sprayed with LCV, photographed again, then laid out and gridded with string. Large areas of the shirt containing spots that immediately reacted with the LCV are cut from the shirt and sent for DNA testing, which is conducted by SLED analyst Sarah Zapata. The DNA tests are conducted on several unlabeled sub-cuttings from each larger cutting.

A side effect of this testing is that it effectively destroys the shirt. The LCV oxidizes more rapidly in the presence of catalyzing chemicals like blood or laundry detergent residue, but eventually it all oxidizes, the entire shirt turns purple, and all details bleed into large diffuse splotches. SLED could have conducted the same test with luminol, which would not destroy the shirt. Had the T-shirt been purple or black, luminol would have been required. But luminol produces a luminescent reaction, which would require turning the lights off in the room and taking photographs in the dark, which would be slightly more difficult than photographing purple stains on a white T-shirt in a room with normal lighting. SLED chose to save that slight amount of effort at the expense of destroying the evidence.

More importantly, it is unclear how a color-stain test could possibly help detect blood stains on a white cotton T-shirt that had never been washed since the murders. According to Mr. Bevel, high-velocity spatter droplets have a diameter of 1 mm or less. With normal vision the unaided human eye can see spots as small as 0.1 mm. Any spatter would have been visible without staining. *Regardless, turning a tiny dark red spot on a white background into a tiny purple spot in no way makes the spot more visible.*

July 25, 2021: SLED issues the DNA report for the cuttings made on July 21st. One cutting from the back of the shirt tested positive for Maggie's DNA. Paul was excluded as a DNA contributor for that cutting. Of the cuttings from the front bottom portion of the shirt (which the State admits are not spatter) tested, one tested positive for Paul's DNA while excluding Maggie as a contributor, one tested positive for Maggie's DNA while excluding Paul, and a third tested positive for Maggie without excluding Paul. The cuttings from the upper two-thirds of the front of the shirt (which the State claims are spatter from shooting Paul) generally tested positive for Maggie's DNA with Paul either excluded or not considered because of his relatedness to the other contributors. None tested positive for Paul's DNA.

August 10, 2021: SLED takes more sub-cuttings from the larger cuttings from the T-shirt and Ms. Zapata performs HemaTrace tests to confirm the presence of human blood. HemaTrace is an immunochromatographic test that detects a reaction between dye-conjugated antibodies and a form of hemoglobin found only in humans and higher primates. It is commonly used to confirm the presence of human blood (or any other human tissue containing traces of blood or hemoglobin). It is highly sensitive, able to detect as little as four micrograms of blood in a sample. For comparison, a single grain of finely ground table salt weighs about 60 micrograms. *Every cutting from the shirt tested negative for human blood.*

September 21, 2021: Lt. Jeffrey Crooks of SLED's latent print department first reaches out to Mr. Bevel, sending an email stating, "My agency has a case that requires BPA [blood pattern analysis] analysis, and we are currently not working BPA cases. We would like to discuss potentially hiring your organization to conduct the analysis." Although Deputy Kinsey, currently employed as a South Carolina law enforcement officer, had agreed to assist, no one followed up with him after the LCV testing on July 25th. Instead, SLED waited two months then contacted a retired Oklahoma police officer.

September 23, 2021: Mr. Bevel provides an estimate to SLED of \$11,800 for analysis and a written report.

September 29, 2021: Emily Reinhart, SLED captain for forensic administration, meets with Capt. Reighly, Lt. Wallace, Lt. Schenk (the other SLED crime scene lieutenant), and Lt. Hash (SLED's head of DNA testing) regarding testing of possible blood on a seat belt. Capt. Reinhart directs "If LCV is used, it is understood that no HemaTrace testing would be done by DNA. Samples would go straight to DNA." It appears that SLED, in response to the known but as-yet unreported negative HemaTrace results on Mr. Murdaugh's T-shirt, has decided to avoid the possibility that the HemaTrace confirmatory test would contradict the presumptive LCV test. SLED appears to want the option to say that anything that reacts with LCV—animal blood, plant material, food residue, household cleaners—and has any amount of DNA from Maggie or Paul—essentially, anything they ever touched—has their blood on it, instead of actually testing for the presence of human blood.

October 12, 2021: Lt. Wallace informs Mr. Bevel that SLED would like to move forward with retaining Mr. Bevel in this case and asks Mr. Bevel to provide next steps. Mr. Bevel responses

that case materials should be sent to 1007 S. Pickard St., Norman, Oklahoma, which is Mr. Bevel's home address. *See figure 2, infra.*

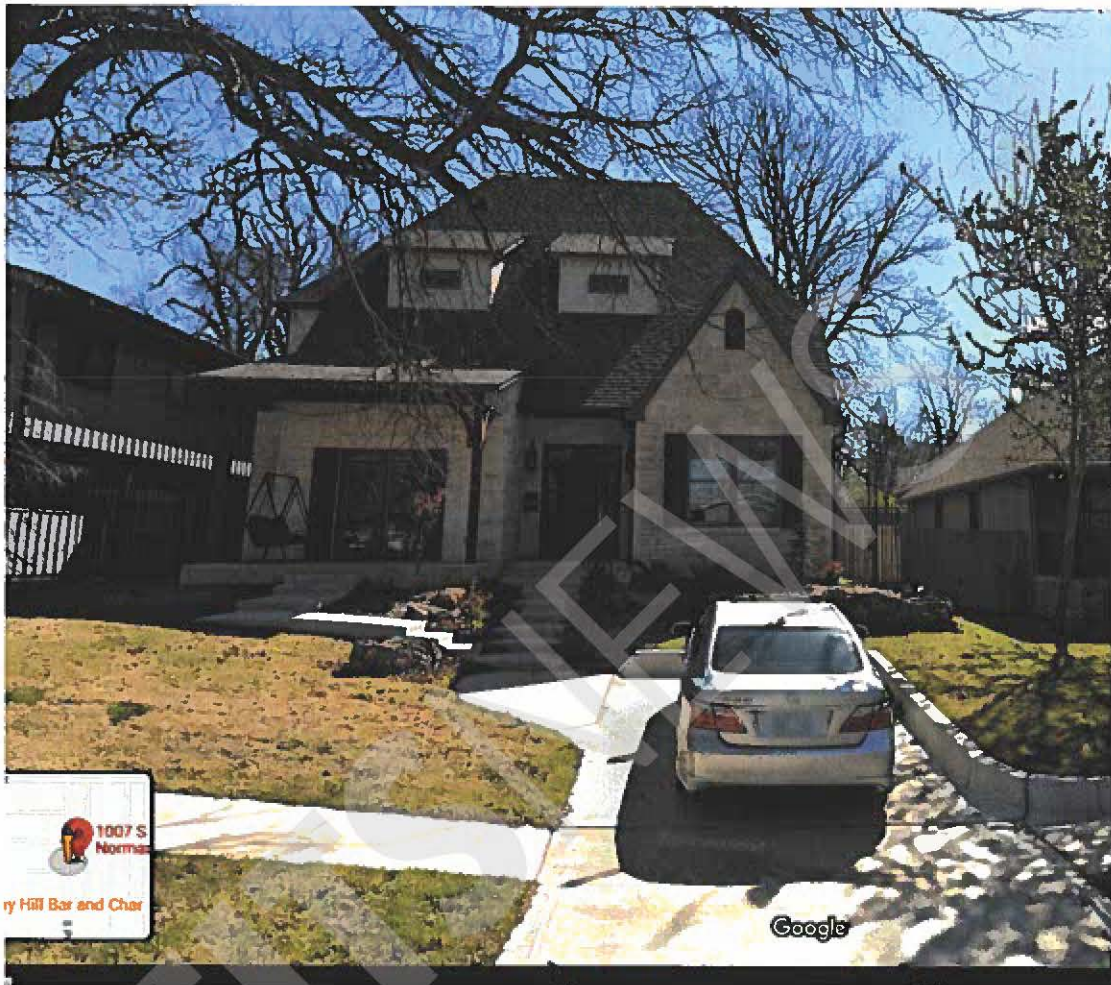


Figure 2

November 10, 2021: SLED issues a supplemental report to the July 25th report, noting “no human blood detected” for each cutting from the T-shirt. For some reason, this report is not issued until three months after the tests were conducted. By comparison, the DNA report was issued only four days after the larger cuttings were submitted for testing.

December 15, 2021: Lt. Ghent tells Mr. Bevel that case documents will be transferred via evidence.com and “In the event any physical evidence is need for your work, Lt. Kukila Wallace will coordinate shipping this to you.”

January 4, 2022: The evidence.com link is re-sent to Mr. Bevel and case documents transmitted to Mr. Bevel for review. The HemaTrace test results are withheld from Mr. Bevel.

February 4, 2022 (Friday): Mr. Bevel provides SLED his initial report, dated February 3rd, opining that “stains on the white t-shirt are consistent with transfers and *not* back spatter from a bullet wound” (emphasis in original). This initial report also opines that he would expect “little to no spatter on the shooter or [his/her] clothing” resulting from the shooting of Paul and none resulting from the shooting of Maggie. Mr. Bevel further opines, “For there to be little to no back spatter on the shooter or they’re [*sic*] clothing is certainly possible for this incident.”

B. SLED and Mr. Bevel decide to fabricate evidence against Alex Murdaugh.

February 7, 2022 (Monday): Agent Owen meets with Capt. Neill, Lt. Ghent, and Crime Scene personnel to discuss Mr. Bevel’s report. After the meeting, Agent Owen asks Mr. Bevel to speak with them via Zoom the next day.

February 8, 2022: Mr. Bevel has a Zoom conference with Agent Owen and others at SLED to discuss his report. During this Zoom conference, Mr. Bevel asks to inspect the T-shirt.

February 15, 2022: Lt. Wallace and Lt. Schenk examine the T-shirt and determine it is destroyed for purposes of further testing due to LCV oxidation. Lt. Wallace takes photographs of the shirt with a cell phone and sends it to Lt. Ghent. Lt. Ghent emails the photographs to Mr. Bevel, asking him “whether the shirt in this condition will still be of potential use for your examination of the stains in question” and stating, “If you believe so, we will make arrangements to have the shirt and the cuttings delivered to you.” Mr. Bevel replies, “I would say that it doesn’t look promising but if I testify at a trial I would prefer to say that I saw it in person to make that determination and the cuttings are probably more important than the rest of the shirt. So yes please send them 1007 S Pickard Ave, Norman, OK 73069.” As noted above, that is Bevel’s home address. *See figure 2, supra.*

February 16, 2022: Agent Owen emails Mr. Bevel that “Due to chain of custody issues, I will hand deliver the shirt for your review,” and proposes doing so in the week of March 7th to 11th.

February 17, 2022: Mr. Bevel tells Agent Owen that chain-of-custody issues do not require him to deliver the shirt in person in Oklahoma. SLED nonetheless decides to send both Agent Owen and Lt. Wallace to Oklahoma as couriers to deliver the T-shirt, even though it has already been determined to be useless as evidence.

March 1, 2022: Agent Owen informs Mr. Bevel that he and Lt. Wallace will travel to Oklahoma to meet with him on March 10th.

March 6, 2022: Mr. Bevel emails Agent Owen:

The photos of the shirt the lab took before chemical processing, I assume there is an original format and size that is better than the one I have to work with. Before coming out to OK can you check to see if there are more photos and get them in the original format and size. There should also be photos taken right after applying the chemical can we get them?

Please get a copy of any lab notes which should include their observations and a sketch with size measurements and locations on the shirt.

Agent Owen responds “Yes sir. I will work on that.”

March 7, 2022: Mr. Bevel again emails Agent Owen:

I have been working on enhancements of the overall photos of the front of the shirt and see some possible tiny stains that may be spatter. With a higher a quality photo we may be able to state more than I thought we could with what I have currently received. The larger elongated stain we focused on that was easy to see in the photos is not what I’m looking for, it’s the tiny stains which I’m hoping the lab notes will address and higher quality photos will show.

March 9, 2022: Agent Owen and Lt. Wallace travel to Oklahoma to meet with Mr. Bevel.

March 10, 2022: Agent Owen and Lt. Wallace travel to Oklahoma to meet with Mr. Bevel to discuss his report. They meet at the police laboratory at 1501 W. Lindsey St., Norman,

Oklahoma. Lt. Wallace forwards an email to Mr. Bevel attaching a photocopy of what appear to be her handwritten notes on the case.

March 11, 2022 (Friday): Agent Owen and Lt. Wallace travel back to South Carolina. Mr. Bevel responds to Lt. Wallace's email, stating "Got the notes and they were helpful in a better overall understanding of the scene and processing." The notes do not appear on the list of materials considered for any version of Mr. Bevel's report.

March 14, 2022 (Monday): Mr. Bevel emails Agent Owen to tell him that "With the large CD format, we were able to filter the colors of the shirt using Photoshop focusing on red (blood) and blue (LCV) and white of the shirt," that now "There are over 100+ spatter stains," and "Bottom line I don't see any other mechanism to get so many misting stains onto his shirt other than the spatter created from the shotgun wounding" of Paul.

March 21, 2022: Agent Owen enthusiastically replies to Mr. Bevel's March 14th email:

Good afternoon Tom,
Just inquiring about Peer Review and report status.
Thank you sir!
David

March 22, 2022: Agent Owen receives a revised report from Mr. Bevel, opining that "100+ stains are consistent with spatter on the front of the t-shirt." This final report also eliminates the opinion that Mr. Bevel would expect "little to no spatter on the shooter or [his/her] clothing" resulting from the shooting of Paul, instead opining that "due to gravity along with blood impacting these areas with sufficient force secondary spatter may also have been created raining down back into the scene and potentially on the shooter" and "The shooter is certainly in a close enough range to get spatter on their clothing." Mr. Bevel changed his previous statement, "For there to be little to no back spatter on the shooter or they're [sic] clothing is certainly possible for this incident," to

read “For there to be spatter on the shooter or their clothing it is certainly possible given the facts and circumstances surrounding this incident.”

The items listed under “The following information was considered in this analysis” are *identical* to those listed for his initial report except for a single addition: the viewing of the T-shirt at the on March 10th. There is no mention of any “RAW” image files, or any other photographs not considered when producing the initial report in February.

When Agent Owen confirmed receipt, he asked Mr. Bevel, “is Ken Martin the only that did peer review? I was under the impression there would be a round table of 5 to 6 colleagues.” Ken Martin is an associate employed by Mr. Bevel’s firm.

March 23, 2022: Agent Owen discussed the revised report with Mr. Bevel. Based on emails that day and the previous day, the nature of the discussion appears to be to correction of typos in the revised report.

March 29, 2022: Mr. Bevel provides his final report, largely identical to his previous revised report but adding the following at the end of the report:

The t-shirt has been evaluated by six (6) recognized Bloodstain Pattern experts all agreeing the best explanation for the stains on the shirt are spatter from approximately the bottom third up to the top of the shirt and transfers on the bottom third down to the hem of the t-shirt. All agree they cannot identify some other mechanism to create the distribution and sizes of the questioned stain spatter.

The identity of these “recognized Bloodstain Pattern experts” is undisclosed. This addition obviously is in response to Agent Owen’s request on March 22, 2022, for a “round table” of reviewers agreeing with the report.

The items listed under “The following information was considered in this analysis” are identical to those listed for his revised report except for one addition: a note about using forensic mannequins with dowel rods to understand “possible body positions when the deceased were

shot.” There is no mention of any “RAW” image files, or any other photographs not considered when producing the initial report in February.

April 20, 2022: Mr. Bevel sends SLED an invoice for \$10,988.75 (invoice dated April 18th). The invoice address for payment remission is 7601 Sunset Sail Ave., Edmond, Oklahoma, which is the home address of Craig Gravel, a retired Oklahoma police officer who is a partner at Bevel, Gardner & Associates. *See Figure 3, infra.*

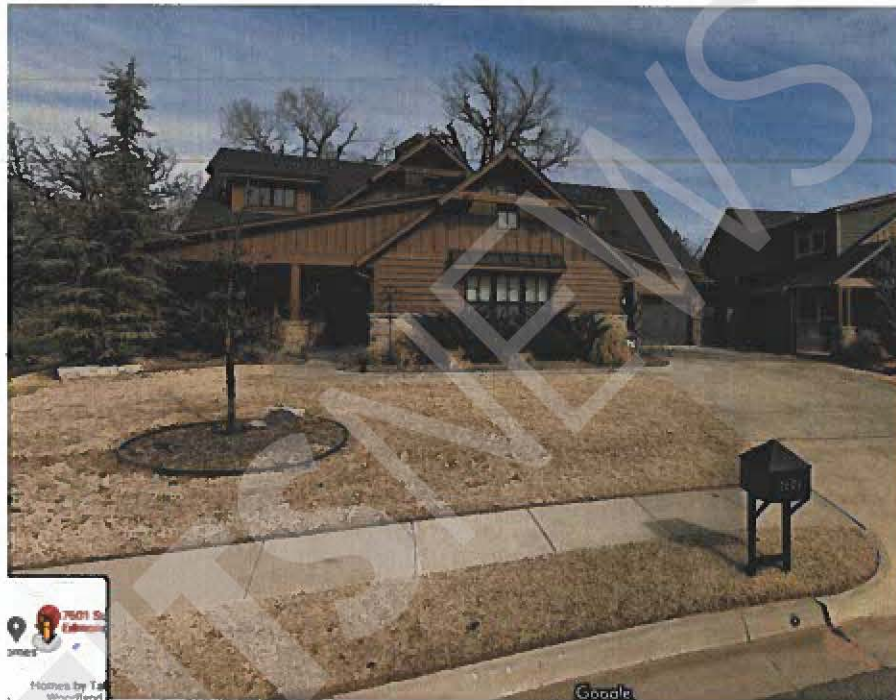


Figure 3

April 26, 2022: SLED leaks the blood spatter “evidence” to FITSNews in a calculated attempt to prejudice criminal proceedings against Mr. Murdaugh.

C. Caught in their lies, SLED and Mr. Bevel double down.

September 16, 2022: SLED accidentally produces Mr. Bevel’s initial report to the defense, mislabeling it as interview notes from a November 9, 2021, interview with Kenny Hughes.

September 20, 2022: Defense paralegal Holli Miller discovers Mr. Bevel’s mislabeled initial report and notes its differences from the final report.

November 3, 2022: After repeated requests, the State produces the entire DNA lab file in this case. Although the purpose of requesting these files was to review DNA evidence, they do also contain the HemaTrace results, buried within hundreds of pages of other documents. These results are not immediately discovered by defense counsel.

November 4, 2022: Defense counsel request microscope-magnified photographs of the purported blood stains on Mr. Murdaugh's T-shirt. The purpose of this request is to obtain expert opinion on whether the purported blood stains were transfer stains rather than spatter. Hair and insects can make mist-sized transfer stains that look "morphologically very similar to impact" spatter. *E.g.*, David Rivers & Theresa Geiman, *Insect Artifacts Are More than Just Altered Bloodstains*, 8 *Insects*, no. 2, June 2017, at 37. However, microscopic examination can sometimes distinguish between impact spatter and transfer from tiny objects like hairs and insect feet. At this time, the defense did not realize the stains were not human blood.

November 9, 2022: Lead prosecutor Creighton Waters and others in the prosecution team have a conference call with Mr. Bevel, in which the defense request for microscopic examination of the shirt is discussed. The call notes the shirt was "very dark, close to black" because of LCV oxidation and therefore the requested examination would be impossible. On the call, Mr. Bevel observes that magnifying digital photographs could not substitute for microscopic examination because that would just be "blowing up pixels" and "I don't see that doing anything that would help" identify blood spatter. Of course, later in November he claims to have done exactly that when changing his opinion from "no blood spatter" to "lots of blood spatter" purportedly in response to Photoshop enhancements of digital photographs. Mr. Bevel also assures Mr. Waters that defense counsel's purpose in requesting an examination of the T-shirt is merely "giving us busy work to keep us busy and guessing."

November 11, 2022: Defense counsel again asks Mr. Waters for an examination of the shirt. Also, defense counsel first learns about the negative HemaTrace tests. In response to a defense motion to compel polygraph records related to Curtis Smith, a drug dealer who failed a polygraph examination when asked if he shot Maggie and Paul, SLED compared DNA taken from Curtis Smith against DNA from various items of evidence including cuttings from Mr. Murdaugh's T-shirt. The results of the comparison with the cuttings from the T-shirt stated, "No human blood identified." At this time, defense counsel did not know why these statements appeared on the November 2, 2022, report regarding Curtis Smith but not the earlier July 25, 2021, report. Now, however, it is known that these statements reflect the HemaTrace test results, and they did not appear on the July 25, 2021, report because the tests were performed on August 10, 2021.

November 17, 2022: Mr. Waters finally informs defense counsel that the shirt has "turned black" and is not examinable. Defense counsel asks to view the shirt.

November 21, 2022: Defense counsel view the shirt at the SLED forensic laboratory.

November 22, 2022: Defense counsel discovers the HemaTrace test results when reviewing the DNA laboratory notes while preparing a motion to exclude.

November 23, 2022: Mr. Murdaugh files a motion to exclude at about noon. The basis for the motion is the destruction of the T-shirt. The motion includes a request for an order compelling production of all communications between Mr. Bevel and the State. At 3:30 p.m., the State produces a set of communications with Mr. Bevel. These emails reveal to the defense that when Bevel could not usefully examine the shirt, he used Photoshop to edit the color of the stains on the shirt and that was his asserted basis for changing his opinion.

November 28, 2022: Mr. Murdaugh files a motion to compel Mr. Bevel's records and all communications with Mr. Bevel. The motion is styled "Motion to compel the State to produce evidence regarding alteration of photographs of evidence it destroyed." It specifically seeks all communications, including all electronic of physical documents exchanged, "regardless of mode of transmission," and all Photoshop Document files related to photographs of the T-shirt. The motion specifically refers to files delivered on physical media (what Mr. Bevel claims are the "RAW" format files).

November 29, 2022: Defense counsel emails a letter to Mr. Bevel, asking to speak with him about his report and enclosing the motions to exclude and compel that had been filed, including exhibits. The last two sentences of the letter read: "One question is whether you were informed that Mr. Murdaugh's T-shirt tested negative for human blood. Copies of the prosecution's serology reports are included as exhibits to the enclosed motions." The letter was sent at 11:29 a.m. EST. At 4:37 p.m. EST, Mr. Bevel began writing a 229-word Word document, which he completed at 5:09 p.m. EST. The document is unsigned and not addressed to anyone. It states in full:

On Wednesday 11-27-2022 in the afternoon a reporter called asking about the defense, filling a motion that I changed my BPA opinion due to pressure from the state. He was told that until adjudication is complete, I can't talk to anyone about the case to include reporters.

As to the state pressuring me, this never occurred.

In my original report after looking at the processing photos and the t-shirt, which was almost completely a dark color, I stated there are no bloodstains that can be identified as coming from a firearm. My opinion would be the same today if the RAW photo files had not been sent to me.

RAW is an acronym for "raw image file format" which preserves all the data from the camera sensors. In non-raw format such as JPEG or TIFF less data is present due to digital processing such as compression of the data.

The original photos that were sent to me were in non-raw format and the photos did not show enough data to see staining that would be consistent with mist sized blood spatter.

Upon getting a CD of the RAW files with much more recorded data, Photoshop was used to enhance blue and dark spots on the white background of the t-shirt. This produced over 100 stains with distribution and sized that are consistent with mist sized spatter from a gunshot.

The reporter Mr. Bevel mentions is Avery Wilks with the Post & Courier.

December 1, 2022: Mr. Bevel finally receives the HemaTrace reports *from SLED* that show the shirt tested negative for human blood. Agent Owen writes a timeline in which he claims he first saw the HemaTrace test results on November 30, 2022, a full week after defense counsel attached them to a publicly filed motion (timeline started at 7:45 p.m. and completed at 1 p.m. the following day).

December 8, 2022: Mr. Waters has Deputy Kinsey view the destroyed T-shirt at the SLED forensics laboratory. Mr. Waters also speaks with SLED DNA analyst Zapata, who performed the HemaTrace tests at issue, about the HemaTrace results.

Mr. Bevel, presumably at Mr. Waters' direction, responds to the November 29th letter from defense counsel, explaining that his response was delayed by deaths in his family and that his "policy is always to honor a request to speak to an attorney about an active case" and offers to make himself available for a call with prosecutors and defense counsel. The parties agree to a call on December 16th. Mr. Bevel later asks to reschedule that call to December 21st.

December 9, 2022 (Friday): The Court hears the motion to compel materials regarding Mr. Bevel. The Court orally grants the motion from the bench.

December 12, 2022 (Monday): Mr. Bevel obtains an LCV kit for his upcoming "science fair" experiment, in which he will conduct a weekend experiment in his garage or other room in his house to prove that HemaTrace always returns a false negative when used on substances

previously treated with LCV, despite multiple peer-reviewed articles in academic journals stating the opposite. Meanwhile, Mr. Waters has Deputy Kinsey visit the Moselle property.

December 13, 2022: SLED analyst Zapata writes a memorandum to file, presumably at the request of Mr. Waters, positing possible explanations for a negative HemaTrace test. Ms. Zapata attaches to her memorandum two academic articles regarding HemaTrace and LCV: Carl A. Streeting et al., *A comparison of ABACard® HemaTrace® and RSID™-Blood tests on dried, diluted bloodstains treated with leucocrystal violet or luminol*, Australian Journal of Forensic Sciences 108 (June 2020) (finding HemaTrace tests “performed well” for bloodstains enhanced with LCV, returning positive results for blood treated with LCV 94% of the time); Connie J. Swander & Jennifer G. Stites, *Evaluation for the ABACard HemaTrace for the Forensic Identification of Human Blood*, Mich. State Police Forensic Lab. (1998) (finding HemaTrace detects blood diluted with LCV) (paper submitted to the Michigan Association of Forensic Science Annual Meeting).

December 14, 2022 (at 10:12 p.m.): Mr. Waters submits a redline of Mr. Murdaugh’s proposed order on the motion to compel. A second redline is sent at 9:31 a.m. the next morning. Mr. Waters’ proposed order oddly objects that Mr. Bevel was not retained by “the State,” claiming he instead was retained by “SLED,” even though SLED obviously is a state agency, and implies Mr. Bevel’s files therefore are not within the control of “the State.” The implicit argument is that Mr. Waters has little to no control over SLED, Mr. Bevel, and their blood spatter imbroglio.

December 15, 2022: Mr. Bevel obtains a bag of expired human blood from a blood bank.

December 16, 2022 (Friday): Mr. Bevel obtains HemaTrace test kits. Meanwhile, Mr. Waters has Deputy Kinsey meet with the pathologist who performed Maggie and Paul’s autopsies.

December 17, 2022 (Saturday): Mr. Bevel performs his at-home “science fair” experiment (the experiment may have begun on the previous day). Mr. Bevel sprays five cuttings from a white T-shirt with the expired human blood he obtained. He tests one cutting with HemaTrace, which tests positive. He then sprays the remaining four cuttings with LCV, allows them to dry, then tests them with HemaTrace. They test negative. He concludes LCV always causes HemaTrace to return a false negative.

Mr. Bevel has produced no material regarding this experiment beyond a brief report and a short PowerPoint presentation containing a few low-resolution images. Beyond that, Mr. Bevel has not produced any photographs, lab notes, or even anything indicating where this experiment occurred. Because he has no office or laboratory, and because he previously requested evidence to be shipped to his home address, it is likely Mr. Bevel performed this weekend experiment in his home as well. He does not even identify what portions of the shirt were tested with HemaTrace. Instead, he illustrates a stain *he did not test*, and shows a void where some cloth he did test was removed, without ever showing whether any bloodstain was present on the tested portion of the cloth at all. *See figure 4, infra* (slide from Mr. Bevel’s PowerPoint showing a “recommended” stain for testing but then showing some other unseen portion of the shirt was actually tested).

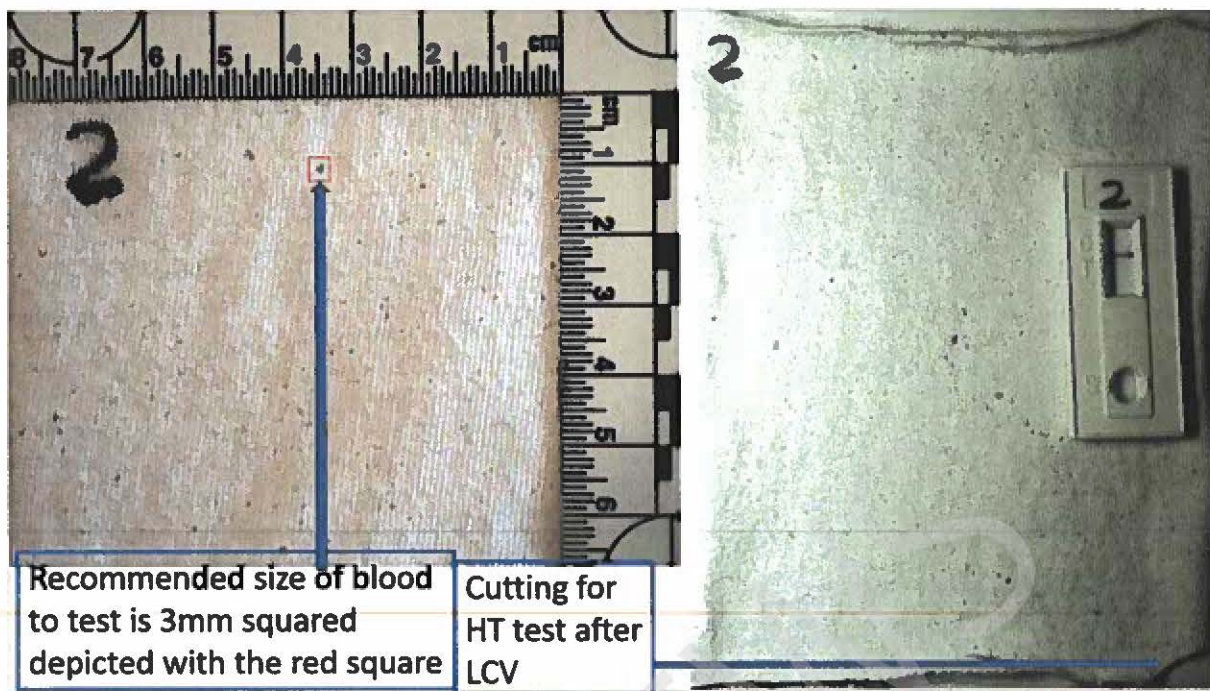


Figure 4

Mr. Bevel posits the false negatives he claims he observed may have been caused by a combination of diluting and the small misting stains indicative of “high velocity impact spatter,” which according to him are “much smaller than the recommended 3mm squared” stains recommended as a minimum size for HemaTrace testing. He provides no supporting citation or documentation for his assertion that the “[r]ecommended size of blood to test is 3mm squared,” which appears to be nothing more than his own scientifically illiterate reading of the instructional insert that came with the HemaTrace test strips. The HemaTrace instructions state a sample cut from cloth or fabric should be between 3 mm² and 5 mm². They do not say the *stain* on the cloth should be at least 3 mm² (which would be a large stain). The sample cutting is soaked in 2 mL of HemaTrace buffer, then one-tenth of that is dropped into the well on the test card. Two lines on the test strip means human blood is detected, which occurs if hemoglobin is present above 0.05 µg/mL. That means the 200 µL dropped on the card only needs to contain 10 *nanograms* of hemoglobin to obtain a positive result. As noted in the academic articles provided by SLED’s own

analyst, the HemaTrace test can detect nearly microscopic amounts of blood. Indeed, HemaTrace is *more* sensitive than LCV—HemaTrace will detect blood diluted to the point that it does not have a visible reaction with LCV. Swander & Stites, *supra*, at 4.

December 18, 2022 (Sunday): Mr. Bevel writes a supplemental report regarding his at-home “science fair” experiment. Based on his purported discovery in his garage or kitchen or wherever that HemaTrace always returns a false negative when tested on surfaces previously treated with LCV, he concludes the negative HemaTrace results for Mr. Murdaugh’s T-shirt are not relevant to whether blood spatter is present on his shirt because it was treated with LCV before it was tested with HemaTrace. His opinion regarding blood spatter therefore is unchanged by the negative HemaTrace tests. No reference is made to any published, peer-reviewed, academic work on the subject, because that work would contradict the results of his “science fair” experiment.

December 19, 2022: The Court issues a written order memorializing the granting of the motion to compel. The Court orders “the State to produce to the defense forthwith.”

- (1) Copies of all written or recorded communications to and from Mr. Bevel, regardless of mode of transmission.
- (2) Copies of all electronic or physical documents sent to and received from Mr. Bevel, regardless of mode of transmission.
- (3) All Photoshop Document files of Mr. Bevel, or of any member, employee, or agent of Bevel, Garner & Associates, LLC, related to photographs of the white T-shirt Defendant was wearing the night his wife and son were murdered.
- (4) A copy of the case file of Bevel as the term is defined in the Manual of the United States Department of Justice, 9-5.003 Criminal Discovery Involving Forensic Evidence and Experts.

(Order, Dec. 19, 2022 (footnote omitted).) “Forthwith” means “immediately; at once; without delay.” Forthwith, Dictionary.com. A “case file,” under the definition in the U.S. Department of Justice’s manual incorporated by reference in the Court’s order, is described as follows:

This information, which may be kept in an actual file or may be compiled by the forensic expert, normally will describe the facts or data considered by the forensic expert, include the underlying documentation of the examination or analysis performed, and contain the material necessary for another examiner to understand the expert's report. The exact material contained in a case file varies depending on the type of forensic analysis performed. It may include such items as a chain-of-custody log; photographs of physical evidence; analysts' worksheets or bench notes; a scope of work; an examination plan; and data, charts and graphs that illustrate the results of the tests conducted.

Defense counsel asks Mr. Waters and Mr. Bevel to provide these materials by Friday, December 23rd.

December 21, 2022: Three-and-a-half hours before the scheduled call with Mr. Bevel, the State produces Mr. Bevel's supplemental report on his "science fair" experiment. Mr. Waters called about one hour before the production to alert defense counsel. On the call, Mr. Waters sounds embarrassed. He seemed unaware Mr. Bevel was performing "science fair" experiments at his home in Oklahoma to disprove the results of tests conducted in SLED's brand-new, multimillion dollar forensic laboratory facilities.¹

Defense counsel postpones the call with Mr. Bevel. It has not been rescheduled.

December 27, 2022: Defense counsel again asks Mr. Waters and Mr. Bevel to provide materials the Court ordered them to produce immediately and without delay, stating that motion to exclude as a sanction will be filed if the materials are not produced by the close of business on December 28th.

December 28, 2022: Mr. Waters responds: "We have been actively working on this issue around the holidays. We were hoping to get it uploaded before Christmas by dropbox but SLED got a text from Mr. Bevel Friday the 23rd that it was going to take 13 hours so he bought an

¹ Cf. Seanna Adcox, *New SLED lab biggest chunk of \$100M requested by law enforcement agencies for construction*, Post & Courier (Dec. 30, 2017).

external hard drive to send. I am advised by SLED that the hard drive was in fact fedexed by Mr. Bevel and is due to be out for delivery to SLED HQ today by 4:30pm.”

December 29, 2022: The defense receives a copy of the hard drive from Mr. Bevel. It contains 46 GB of materials. There are no “RAW” image files. There are no Photoshop files. There are no photographs whatsoever except for those contained in PowerPoint presentations and a few very low-resolution JPEG images labeled “Slide1”, “Slide2”, etc. Mr. Bevel produced no notes or analysis notes related to spatter beyond drafts of his reports and various PowerPoint presentations made for SLED. He did not produce relevant correspondence in his possession. For example, he produced no correspondence regarding use of the Norman, Oklahoma, police laboratory for his meeting in March with Agent Owen and Lt. Wallace. Neither Mr. Bevel nor SLED produced any text messages—even though Mr. Waters’ email to defense counsel said Mr. Bevel *texted* to communicate that he was having issues uploading files to SLED.

December 30, 2022: The Attorney General’s office produces its own communications with Mr. Bevel.

January 9, 2023: Mr. Waters receives a report by Deputy Kinsey that mirrors—and expressly relies on—Mr. Bevel’s report. **Exhibit A.** Mr. Waters apparently believes the prospects for getting Mr. Bevel’s opinions admitted into evidence are dubious and he thinks he can avoid Mr. Bevel’s issues merely by having someone else read Mr. Bevel’s report and repeat it in as his own.

Deputy Kinsey’s report is organized around the same 12 “investigative questions” Mr. Bevel used in his report and essentially paraphrases Mr. Bevel’s opinions on those questions with one notable exception. In response to “IQ-4: Are the blood stains on Alex’s white t-shirt consistent with back spatter from a gunshot,” Deputy Kinsey repeats Mr. Bevel’s phrase about “100 plus”

stains, then opines, “the smaller stains that are present after treatment with LCV appear to be high velocity impact stains . . . only caused by a gunshot or high speed machinery.” But then he pivots 180-degrees to conclude: “After consideration of the original opinion, analysis reports, and follow-up experimentation, this expert cannot render an opinion on IQ-4 above.”

Deputy Kinsey is unwilling render on whether “the blood stains on Alex’s white t-shirt” are spatter from a gunshot because he knows the T-shirt tested negative for human blood.

January 13, 2023 (Friday before holiday one week before trial): The State produces Deputy Kinsey’s report to the defense.

January 18, 2023: This motion is filed.

III. Legal Standard

To the undersigned’s knowledge, no South Carolina prosecutor has ever before attempted to introduce inculpatory expert testimony from an out-of-state expert who—in open defiance of a court order—refused to produce the materials he relied upon in forming his opinion. Therefore, there is no controlling legal standard directly on point. The leading case on the authority of a trial court to exclud testimony of an expert generally is *Jumper v. Hawkins*, 348 S.C. 142, 558 S.E.2d 911 (Ct. App. 2001). “The *Jumper* court held a trial judge is required to consider and evaluate the following factors before imposing the sanction of exclusion of a witness: (1) the type of witness involved; (2) the content of the evidence emanating from the proffered witness; (3) the nature of the failure or neglect or refusal to furnish the witness’ name; (4) the degree of surprise to the other party, including the prior knowledge of the name of the witness; and (5) the prejudice to the opposing party.” *Barnette v. Adams Bros. Logging*, 355 S.C. 588, 592, 586 S.E.2d 572, 574–75 (2003) (citing *Jumper*, 348 S.C. at 152, 558 S.E.2d at 916).

The *Jumper* court however was concerned with the exclusion of an expert who was not timely identified in the proper manner, not an identified expert who refuses to comply with the

court's orders compelling discovery. In civil cases, when a party fails to comply with a discovery order, the trial court has the discretion to impose any sanction it deems just, including an order dismissing the action. Rule 37(b)(2), SCRPC; *Barnette*, 355 S.C. at 593, 586 S.E.2d at 575. These sanctions can include (but are not limited to):

- (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;
- (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

...

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Rule 37(b)(2), SCRPC.

The sanction Mr. Murdaugh seeks here—an order prohibiting the disobedient party from introducing designated matters into evidence—is specifically enumerated by the civil rule and in fact is the least harsh possible sanction enumerated. The federal criminal rule is similar: “When a party in a criminal case fails to comply with a discovery order, the district court ‘may order such party to permit the discovery or inspection, grant a continuance or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.’” *United States v. Fernandez*, 780 F.2d 1573, 1576 (11th Cir. 1986) (quoting Fed. R. Crim. P. 16(d)(2)) (reversing district court denial of a motion to exclude testimony as a sanction for failure to comply with a discovery order, holding the violation “requires that the district court

. . . “fashion[] the least severe, yet effective, sanction”). Rule 5 of the South Carolina Rules of Criminal Procedure has similar language, though it anticipates a failure to disclose in response to a discovery request from a party, not defiance of a court order.

IV. Discussion

A. **Mr. Bevel and the State have refused to comply with this Court’s order.**

Mr. Bevel and the State have not complied with the Court’s order. Mr. Bevel and the State were ordered to produce “(1) Copies of all written or recorded communications to and from Mr. Bevel, regardless of mode of transmission.” The State and Mr. Bevel have produced email correspondence, but they have not produced any text messages. On December 28th, Mr. Waters told defense counsel “SLED got a text from Mr. Bevel Friday the 23rd that it was going to take 13 hours [to upload certain files] so he bought an external hard drive to send.” That text message has not been disclosed and, more importantly, it obviously is not the one and only text message Mr. Bevel ever sent to or received from someone at SLED.

Mr. Bevel and the State were ordered to produce “(2) Copies of all electronic or physical documents sent to and received from Mr. Bevel, regardless of mode of transmission.” Neither Mr. Bevel nor the State have produced any “RAW” image format photographs of the T-shirt. Instead, Mr. Bevel produced a short memorandum stating that he received these files and that his Photoshop manipulation of them was the sole basis for changing his opinion from “there is no blood spatter” to “there is a lot of blood spatter.” Email correspondence suggests these photographs may have been delivered on a CD, which the motion to compel specifically refers to files delivered on physical media, and why the Court’s order specifies documents “regardless of mode of transmission.” Yet Mr. Bevel and the State flatly refuse to produce these files. Examination of them is critical to understanding the validity of his new opinion.

The most charitable explanation for the refusal to produce the critical files is that Mr. Bevel wants to protect his new opinion from scrutiny. The more likely explanation is that Mr. Bevel is simply lying about why he changed his opinion. Mr. Waters has represented to defense counsel that there are no undisclosed “RAW” photographs, and that the only photographs Mr. Bevel was provided are the JPEG images the State has produced to the defense. Mr. Waters’ word is far more credible than Mr. Bevel’s, and his statement is corroborated by the facts that (1) the portion of Mr. Bevel’s final report listing the evidence documents lists many photographs but it does not list any photograph not also listed as evidence considered in his initial report, (2) Mr. Bevel’s final report does not list any “RAW” image files, (3) the number of photographs listed on Mr. Bevel’s final report correspond with the number of photographs the State has produced—most of which were taken on July 21, 2021, with a Nikon D780 camera and produced as 6048x4024, 300dpi JPEG images with 24-bit color depth. On the other hand, Agent Owen has produced a timeline stating that he and Lt. Wallace did deliver “RAW” photographs to Mr. Bevel when they went to Oklahoma, and there are contemporaneous emails referencing photographs delivered on a CD.

Mr. Bevel and the State were ordered to produce “(3) All Photoshop Document files of Mr. Bevel, or of any member, employee, or agent of Bevel, Garner & Associates, LLC, related to photographs of the white T- shirt Defendant was wearing the night his wife and son were murdered.” He has produced no such files, only a memorandum confirming he in fact does have them. Photoshop files contain a great deal of metadata, including an audit trail of alterations regarding the underlying image. *See Adobe, Adobe Photoshop File Formats Specification*, https://www.adobe.com/devnet-apps/photoshop/fileformatashtml/#50577409_pgId-1030196 (Nov. 2019). If there are no RAW image files at all, producing these files would reveal that, which may be why Mr. Bevel refused to produce them despite being specifically ordered to do so.

Mr. Bevel and the State were ordered to produce “(4) A copy of the case file of Bevel as the term is defined in the Manual of the United States Department of Justice, 9-5.003 Criminal Discovery Involving Forensic Evidence and Experts.” The order defines a “case file” as “the underlying documentation of the examination or analysis performed, and contain the material necessary for another examiner to understand the expert’s report” including “a chain-of-custody log; photographs of physical evidence; analysts’ worksheets or bench notes; a scope of work; an examination plan; and data, charts and graphs that illustrate the results of the tests conducted.” (See Order at 2 (incorporating the definition of “case file” found in the U.S. Department of Justice’s Justice Manual at 9-5.003). Mr. Bevel has produced nothing meeting this definition other than draft reports and accompanying PowerPoint presentations. There are no native image files of *any* photographs taken by Mr. Bevel, just images (apparently clippings from screenshots) that he pasted into his PowerPoint presentations. Of course, he took at least one photo during his “science fair” experiment regarding LCV that did not make it into the PowerPoint. Regardless, Mr. Murdaugh needs the actual photograph files, not lower-resolution screenshots lacking metadata embedded in presentations for SLED.

Mr. Bevel and the State were ordered to produce these materials “forthwith”—i.e., “immediately; at once; without delay.” The motion to compel was granted orally on December 9th. The written order was entered December 19th after the Court rejected argument from Mr. Waters that he has no control over SLED. It is now January 18th, three business days before trial. The materials have not been produced.

B. Exclusion of testimony from Mr. Bevel is warranted.

Exclusion of testimony from Mr. Bevel is warranted for two independent reasons. First, each applicable factor under the *Jumper* standard weighs in favor of exclusion. That standard applies in civil cases, and it anticipates a failure to meet disclosure obligations, not willful defiance

of a court order, but there is no standard specific to the present circumstances. But there is no reason to suppose court orders should be less stringently enforced in a criminal trial than in a civil trial. Second, exclusion of Mr. Bevel is necessary to preserve the authority of the Court and the dignity of the trial proceedings. The Court cannot allow a party's retained witness to defy its orders, then to come to the courthouse and give the testimony he is paid to provide as if the Court's orders never happened.

1. Under the Jumper standard, testimony from Mr. Bevel must be excluded.

Under *Jumper*, a court considering excluding testimony from an expert witness as a sanction should consider “(1) the type of witness involved; (2) the content of the evidence emanating from the proffered witness; (3) the nature of the failure or neglect or refusal to furnish the witness' name; (4) the degree of surprise to the other party, including the prior knowledge of the name of the witness; and (5) the prejudice to the opposing party.” *Barnette*, 355 S.C. at 592, 586 S.E.2d at 574–75 (citing *Jumper*, 348 S.C. at 152, 558 S.E.2d at 916). The degree of surprise factor is inapplicable here, where the issue is not an untimely disclosure but rather the failure to comply with ordered disclosure at all. Each of the other factors weighs entirely in favor of exclusion.

a. The type of witness involved weighs in favor of exclusion

The first *Jumper* factor asks whether the witness to be excluded is a fact witness or expert witness. *Busillo v. City of North Charleston*, 404 S.C. 604, 613 n.5, 745 S.E.2d 142, 147 n.5 (Ct. App. 2013) (Williams, J., dissenting) (“The first of the five *Jumper* factors is ‘the type of witness involved’ and concerns whether the undisclosed witness is a fact witness or an expert witness.”) The Court would be rightly reticent to exclude testimony from a witness with unique first-hand knowledge of facts material to these murders as a sanction for misconduct in litigation. But Mr. Bevel is just a paid expert in Oklahoma with no first-hand knowledge of any material fact in this

case, who has never even been to the crime scene. This factor therefore weighs in favor of exclusion.

b. The content of the evidence from the proffered witness weighs in favor of exclusion.

The second *Jumper* factor is “the content of the evidence emanating from the proffered witness.” 348 S.C. at 152, 558 S.E.2d at 916. The probative value of the evidence Mr. Bevel would offer—the opinions in his final report and supplement to that report detailing his “science fair” experiment—is, to put it mildly, dubious. It is very difficult to see how Mr. Bevel’s “expert” opinions could possibly assist the jury. The basic facts are undisputed: There was no apparent blood spatter on Mr. Murdaugh’s white T-shirt, which is why SLED sprayed it with LCV (though why SLED thought that would make blood more visible on a white T-shirt is unknown). When it was sprayed with LCV, certain stain patterns emerged in the time window before the entire shirt turned violet. Cuttings from those stain patterns were taken and tested for DNA and for presence of human blood using a confirmatory HemaTrace test more sensitive than LCV, which is documented in peer-reviewed academic journals to work on surfaces treated with LCV. The cuttings uniformly tested negative for human blood.

To this Mr. Bevel could only add that he first opined there was no blood spatter on the T-shirt, but then reversed himself and discovered over 100 blood spatter stains on it that must be from a high-velocity impact. He says he changed his opinion based on his Photoshop manipulation of high-resolution “RAW” format photographs that he received after he provided initial report—but that he did not list as material considered on his final report, that he refuses to produce even when ordered to do so, and which the prosecutor says do not exist at all. Additionally, when he produced his final report, he did not know the T-shirt tested negative for human blood. He says that knowledge does not change his opinion because after he learned that—and after he was ordered to produce his case file—he performed a weekend science fair experiment in a room in his

home in which he proved HemaTrace tests always return a false negative when used on surfaces treated with LCV, disproving the results of SLED's own tests performed in a multimillion-dollar laboratory by a professional analyst, Sarah Zapata, having a real science degree from a respected university, as well as disproving multiple peer-reviewed, published academic articles.

For support, Mr. Bevel provides no documentation of his "science fair experiment" other than a PowerPoint presentation that does not even identify the bloodstains he purportedly tested with HemaTrace. And his report's conclusions rest in part on his elementary misunderstanding of the instructional pamphlet that came with the HemaTrace test kit. This calls to mind a review of Mr. Bevel's book, *Bloodstain Pattern Analysis* (3d ed 2008), published in the *Journal of Forensic Science*.² The book was rather poorly received in academic circles. One reviewer wrote:

Excluding the chapters written by the guest authors, the text is unequivocally nonscientific in substance and style with a multitude of grammatical, typographical, and scientific errors. Persistent poor syntax and use of colloquialisms lie in stark contrast to the linguistic competence and professional manner of the pathologist. The chapter entitled "Understanding and Applying Characteristic Patterns of Blood" is a patent example of inappropriate parlance. In most cases, the language errors are simply nuisances that may produce confusion for some readers. Most perturbing are the scientific errors, which could mislead those lacking an education in science.

...

The data and conclusions of the unpublished research are questionable at best and the possibility that nonscientific readers may interpret the information as factual is cause for concern.

...

[T]he present text can best be described as "Cargo Cult Science," a phrase coined by Richard Feynman in his commencement address to the Caltech class of 1974. As used, Feynman was describing a particular manifestation of pseudoscience, one in which someone believes he or she has correctly harnessed all of the trappings

² The *Journal of Forensic Science* is the peer-reviewed, official publication of the American Academy of Forensic Sciences.

and rituals of science but is missing a critical component: scientific integrity. Alas, much more is missing from this text; science itself is absent.

Ralph R. Ristenbatt III, *Review of: Bloodstain Pattern Analysis with an Introduction to Crime Scene Reconstruction, 3rd edition*, 54 J. Forensic Sci. 234, 234 (2009).³

Mr. Bevel's opinions could only confuse the jury regarding underlying facts that are undisputed. He would be extremely unlikely to survive a *Council* hearing. See *State v. Phillips*, 430 S.C. 319, 343, 844 S.E.2d 651, 663 (2020) (holding that "if an objection is made [to scientific evidence], the trial court must hold a *Daubert/Council* hearing, the proponent of the evidence must present the factual and scientific basis necessary to satisfy the foundational elements of Rule 702, and the trial court must conduct an on-the-record balancing of probative value against the applicable Rule 403 dangers"). Mr. Waters knows this, which is why he retained Deputy Kinsey as a substitute for Mr. Bevel. Fortunately, Mr. Bevel's willful defiance of the Court's order to produce the materials intended for use in a *Council* hearing obviates the need to hold the hearing before the Court excludes him.

This factor therefore weighs in favor of exclusion.

c. *The nature of Mr. Bevel's refusal to comply with the Court's order weighs in favor of exclusion.*

The third factor is "the nature of the failure or neglect or refusal" giving rise to motion to exclude. 348 S.C. at 152, 558 S.E.2d at 916. Here, the failure is a calculated effort to obtain advantage in litigation through willful and direct disobedience of the Court's orders. Mr. Bevel says he has RAW image files and Photoshop files, and that they were the basis for his new opinion,

³ The author, Ralph Ristenbatt, is an assistant teaching professor of forensic science in the Department of Biochemistry and Molecular Biology at The Pennsylvania State University. The SLED analyst who performed the HemaTrace tests in this case, Sarah Zapata, received her Bachelor of Science degree in 2014 from Penn State. Prof. Ristenbatt was an instructor when Ms. Zapata was a forensic science student there, teaching courses such as "Scientific Approach to Crime Scene Investigation." It is unclear whether he taught any courses Ms. Zapata attended.

but he, and the State, refuse to provide them even after being ordered to do so. And as described above, Mr. Bevel has refused to produce much of anything fitting the definition of a “case file.” The purpose behind this defiance is to insulate Mr. Bevel’s opinion from scrutiny, either in a *Council* hearing or at trial. Significantly, it appears the ordered disclosure would show that Mr. Bevel fabricated his proffered justification for changing his opinion from exculpatory to inculpatory at the request of SLED, and that his at-home “science fair” experiment does not mean the fact that the shirt tested negative for human blood is irrelevant to a blood stain analysis. No other failure or refusal could weigh more heavily in favor of exclusion. *Cf. Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 918 (1982) (“Contempt results from the willful disobedience of an order of the court . . .”).

d. Allowing Mr. Bevel to testify at trial would be prejudicial to Mr. Murdaugh.

The final applicable factor is prejudice to Mr. Murdaugh. 348 S.C. at 152, 558 S.E.2d at 916. The Court has already ruled on this factor. Mr. Murdaugh needs the requested materials to prepare his defense, which is why the Court granted the motion to compel. (Order at 1 (“The Court finds this information should be disclosed pursuant to Rule 5, South Carolina Rules of Criminal Procedure.”).) The State could have argued the defense does not need these materials in opposition to the motion to compel. It did not. It cannot now argue the defense does not need the requested materials as a justification for refusing to comply with the Court’s order.

The State and Mr. Bevel should not be permitted to defy a Court order to sabotage a *Council* hearing they know Mr. Bevel cannot survive. And in the unlikely event that Mr. Bevel could qualify as an expert witness, Mr. Murdaugh would need the requested materials to cross-examine him effectively at trial. If there are RAW image files, producing these files is necessary to understand exactly how Mr. Bevel manipulated the original images and whether his manipulation in fact supports his new opinion. Photoshop files are necessary for the same reason, as are

documents regarding his “science fair” experiment, all communications with Mr. Bevel including text messages (which defense counsel suspect may be more candid than emails to or from official email accounts), and everything else the Court ordered Mr. Bevel to produce.

This factor therefore supports exclusion.

2. *Exclusion of Mr. Bevel is necessary to preserve the authority of the Court and the dignity of the trial proceedings.*

“Contemptuous behavior is conduct that tends to: bring the authority and administration of the law into disrespect; or, interfere with or prejudice parties or their witnesses during litigation.” *State v. Kennerly*, 331 S.C. 442, 450, 503 S.E.2d 214, 218 (Ct. App. 1998), *aff’d*, 337 S.C. 617, 524 S.E.2d 837 (1999). “The power of contempt exists to maintain the order and decorum of court proceedings, to enforce the court’s writs and orders, and to punish acts tending to obstruct the due administration of justice.” *Id.* SLED and Mr. Bevel’s open defiance of the Court’s order compelling production certainly is contemptuous. *See* Rule 37(b)(2)(D) (providing that in a civil case, the court may treat “as a contempt of court the failure to obey any orders” regarding discovery “except an order to submit to a physical or mental examination”). Their refusal to comply with the Court’s order disrespects the authority of the Court, interferes with and prejudices Mr. Murdaugh during this litigation, and obstructs the due administration of justice in this case.

Mr. Murdaugh does not ask the Court for a Rule to Show Cause regarding Mr. Bevel (because he is in Oklahoma), but he urges the Court not to tolerate his contemptuous behavior. A court order that is not enforced invites disrespect of all other court orders. Litigation largely is a process in which a party seeks to advance its cause by asking the tribunal to order some relief, other parties agree or oppose the request, the tribunal hears the parties’ arguments and then decides whether to grant the requested relief, and the parties abide the decision or appeal to a superior tribunal. If the parties are free to advance their cause by ignoring decisions they do not like, the

process of litigation cannot function. Thus, it is essential that courts enforce their orders: “If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent” *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 450 (1911). “As a result, ‘there could be no more important duty than to render such a decree as would serve to vindicate the jurisdiction and authority of courts to enforce orders and to punish acts of disobedience.’” *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 796 (1987) (quoting *Gompers*, 221 U.S. at 450).

Mr. Murdaugh here requests the least severe sanction sufficient to vindicate the Court’s authority and to enforce its order compelling production of materials relevant to Mr. Bevel’s opinions: exclusion of his opinions at trial.

C. Exclusion of blood spatter testimony derived from Mr. Bevel is also warranted.

Mr. Waters does not believe Mr. Bevel will be permitted to testify on blood spatter, which is why he is attempting to sneak Mr. Bevel’s report in through Deputy Kinsey as a back door. *See Exhibit A.* The Court should not allow this for three reasons.

First, it would in no way vindicate the authority of the Court to exclude Mr. Bevel from testifying to the opinions in his report just to allow someone else read Mr. Bevel’s report and say, “that’s my opinion too.” Deputy Kinsey states that his opinion relies on part on Mr. Bevel’s report. Mr. Bevel says his report relies on materials the Court ordered him to produce. Mr. Bevel and the State have refused to comply with that order. By simple transitive logic,⁴ Deputy Kinsey’s report also relies on materials the State has refused to produce in defiance of the Court’s order. If Mr. Bevel’s report, so should Deputy Kinsey’s report.

⁴ “In logic, the term ‘transitive’ describes a given relation between terms such that if it exists between ‘a’ and ‘b’ and between ‘b’ and ‘c,’ then it also exists between ‘a’ and ‘c.’” *Strawther v. Grounds*, No. 2:13-CV-1357-MCE-EFB, 2015 WL 3893570, at *8 (E.D. Cal. June 24, 2015) (internal quotation marks omitted).

Second, to the extent Deputy Kinsey might say his report is an independent review of evidence independent of Mr. Bevel's report, no required disclosures have been made. Mr. Murdaugh made a Rule 5 request on July 15, 2022, which requires the State to produce to Mr. Murdaugh all "books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense." Rule 5(a)(1)(C), SCRCrimP. The State has produced no draft reports, communications, notes, or analyses by, to, or regarding Deputy Kinsey. Deputy Kinsey's report was even produced as a scan of printed hard copy so it would not even have metadata. Not one email to or from Deputy Kinsey has been produced. Such documents are encompassed by the Rule 5 request, just as the were for Mr. Bevel. Under Rule 5, the deadline for such production was August 15th. Of course, many of these documents might not exist at all because Deputy Kinsey's report is just a paraphrase of Mr. Bevel's report.

Third, Deputy Kinsey's report diverges from Mr. Bevel's report in one key aspect: Deputy Kinsey is unwilling to say the T-shirt has any blood spatter. In response to "IQ-4: Are the bloodstains on Alex's white t-shirt consistent with back spatter from a gunshot?" Mr. Bevel opined that there are "100+ stains" consistent with spatter on the front of the T-shirt. Deputy Kinsey opines that "the smaller stains that are present after treatment with LCV appear to be high velocity impact stains . . . only caused by a gunshot or high speed machinery" but then concludes: "After consideration of the original opinion, analysis reports, and follow-up experimentation, this expert cannot render an opinion on IQ-4 above." Deputy Kinsey is unwilling to opine the LCV-stained pattern on the T-shirt is consistent with blood spatter from the murders because he knows the T-shirt tested negative for human blood.

Deputy Kinsey's opinion on blood spatter—or, more accurately, his lack of an opinion—therefore appears to have little value to the prosecution. But if prosecution asks him to testify, it likely will ask him to express a partial opinion about the pattern of stains on the T-shirt to create the impression that they are blood spatter caused by the gunshots that killed Maggie and Paul, when in fact Deputy Kinsey holds no such opinion. Deputy Kinsey flatly states he “cannot render an opinion” on whether there is blood spatter on the T-shirt. Mr. Waters therefore should not be permitted to offer Deputy Kinsey's expert opinion testimony on spatter patterns on the T-shirt to lead the jury to a conclusion that, in Deputy Kinsey expert opinion, cannot be drawn from the evidence.⁵ To do so would not assist the jury; it would only confuse the jury. *See* Rule 403, SCRE (providing the court may exclude evidence if its probative value is substantially outweighed by a danger of confusion of the issues or misleading the jury); Rule 702, SCRE (expert opinion testimony admissible only if it would “assist the trier of fact to understand the evidence”). Where there is no blood, there can be no blood spatter.

D. An award of costs and fees is warranted.

The State's misadventure with Mr. Bevel has imposed substantial costs on Mr. Murdaugh while he prepares his defense to unfounded murder charges. In a civil case he would be entitled to costs incurred including attorney's fees. Rule 37(a)(4), SCRPC. He should be no less entitled to them in a criminal case. The State's misconduct, outlined above in detail, has been egregious. Now however is not the time to argue over attorney's fees, so Mr. Murdaugh asks the Court to take his request for costs under advisement until after the jury's verdict.

⁵ This motion only concerns blood spatter opinion testimony. Mr. Murdaugh herein neither asks the Court to exclude testimony from Deputy Kinsey on other aspects of crime scene investigation, like the trajectory of gunshots or position of the victims, nor concedes the admissibility of such testimony.

V. **Conclusion**

For the foregoing reasons, Mr. Murdaugh requests the Court to prohibit the State from offering testimony regarding blood spatter from Tom Bevel, any other principal, associate, or employee of Bevel, Garner & Associates, LLC, or any officer of the State or other person whose opinion derives from review of Mr. Bevel's work product. Further, Mr. Murdaugh requests that after trial, the Court award him costs and reasonable attorney's fees incurred in motion practice regarding Mr. Bevel.

Respectfully submitted,



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Attorneys for Richard Alexander Murdaugh

January 18, 2023
Columbia, South Carolina.

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

The State of South Carolina,

Plaintiffs,

vs.

Richard Alexander Murdaugh,

Defendant.

Indictment Nos. 2022GS1500592 – 00595

CERTIFICATE OF SERVICE

I, Holli Miller, paralegal to the attorney for the Defendant, Richard A. Harpootlian, P.A., with offices located at 1410 Laurel Street, Columbia, South Carolina 29201, hereby certify that on January 18, 2023, I did serve by placing in the U.S. mail, first class postage affixed thereto (with a courtesy copy sent electronically), the following documents to the below mentioned person:

Document: Motion for Sanctions

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

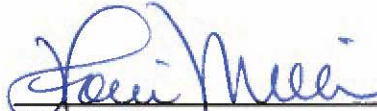

Holli Miller

EXHIBIT A

(Affidavit and Preliminary Expert Opinions
of Dr. Kenneth Lee Kinsey, Jan 9, 2023)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF COLLETON))
)
 State vs Richard Alexander Murdaugh-(22-GS)
 -15-00592 through -595))
)
)
)

AFFIDAVIT AND PRELIMINARY
EXPERT OPINIONS OF
DR. KENNETH LEE KINSEY

1. My name is Dr. Kenneth Lee Kinsey. I am over twenty-one (21) years of age, of sound mind, and in all respects qualified to represent my expert opinions and submit this Affidavit.
2. I am currently employed as the Chief Deputy of the Orangeburg County Sheriff's Office. In my current role, I manage all daily operations, conduct internal affairs investigations, conduct criminal investigations as well as train law enforcement staff. I manage an annual budget of approximately \$9.5 million dollars and serve as direct supervisor to all Sheriff's Office employees.
3. I earned a doctorate degree (Ph.D.) in Criminal Justice in May of 2019 from Walden University. My dissertation research "Use of Force and Perceptions of Public Attitude Held by Police Trainers"¹ utilizes a quantitative analysis to determine the psychological influences of officer motivation from those responsible for providing instruction to police officers such as Academy Instructors, Departmental Training Officers and Field Training Officers.
4. In December of 2011, I earned a master's degree (M.S.) from Troy University in Criminal Justice. I received my bachelor's degree (B.S.) in May of 1991 from Clemson University in Parks, Recreation, and Tourism Management with an emphasis in Resource Management.
5. I have qualified as an expert witness in Crime Scene Investigations/Reconstruction, Latent Fingerprint Identification/Processing, Footwear Comparison/Identification, Blood Stain Pattern Analysis, and Fabric Impression Examination. Additionally, the following credentials certify me as an expert to review this case: I was previously certified as a Crime Scene Investigator (#1632) by the International Association for Identification, Successful completion of all SLED proficiency training and annual requirements, Leadership and Strategic Planning Training from the U.S. Attorney's Office, Special Weapons and Tactics Training from York County's Sheriff's Office, NRA Law Enforcement Handgun Instructor, South Carolina Criminal Justice Academy Firearms & Patrol Rifle Instructor, Forensic Examination of Violent Crime Scenes for Ron Smith & Associates and Training in Homicide, Capital Crimes and Punishment from the Regional Organized Crime Information Center, and my knowledge and experience of police policies, practices and customs developed during my extensive law enforcement career.

¹ Kinsey, Kenneth Lee, "Use of Force and Perceptions of Public Attitude Held by Police Trainers" (2019). *Walden Dissertations and Doctoral Studies*. 6911. <https://scholarworks.walden.edu/dissertations/6911>

6. Additionally, I have gained vast experience conducting crime scene investigations throughout my 30 year law enforcement career, serving in the following capacities: criminal investigator (to include property and violent crimes), violent crimes investigator (OCSO), crime scene and latent prints (OCSO and SLED), and assisting all agencies in the 1st circuit on request.
7. I have actively processed over 800 death scenes in my career, as primary or back-up, and I currently attend and assist with many scenes in my jurisdiction. Additionally, I have assisted by reconstruction and/or evidence processing in several thousand other cases where I did not respond as primary or back-up crime scene investigator.
8. I have attended over 200 autopsies throughout South Carolina for the purpose of identifying and gathering forensic evidence.
9. In addition to my current assignment, and the former positions described above I have also held the following: Class 1 Administrative Major for the Orangeburg County Sheriff's Office, Class 1 Chief Investigation for Dorchester County Solicitor's Office, Special Agent II and S.W.A.T. for the South Carolina Law Enforcement Division as well as Lieutenant of the Special Operations Division for the Orangeburg County Sheriff's Office.
10. In addition to the various law enforcement training and instruction I provide, I also serve as an Adjunct Professor at Claflin University, where I have been teaching Crime Scene Investigations and other CJ related classes since 2012.
11. My involvement in this matter is made at the direction of Chief Attorney S. Creighton Waters, South Carolina Attorney General's Office. I was advised to review and answer twelve (12) investigative questions as were requested in the Bevel report. The following includes my professional assessment of the criteria:

DOCUMENTS/EVIDENCE REVIEWED

- David Greene BWC recording June 7, 2021
- Sled Crime Scene Inv. Summary (46 pg)
- 1st interview of Alex Murdaugh (34:35)
- Autopsy Report for Paul Murdaugh (6 pg)
- Photos from Autopsy of Paul Murdaugh (34)
- Autopsy Report for Margaret Murdaugh (8 pg)
- Photos from Autopsy of Margaret Murdaugh (38)
- DNA Report June 25, 2021 (18 pg)
- DNA Report July 25, 2021 (17 pg)
- CS Photos/Evidence Processing – (449)
- CS Photos/Evidence Processing – (357)
- L21-09074 Lab Photos of Shotgun (30)
- FA Report July 23, 2021 (10 pg)
- Mercedes GLS Processing Photos (138)
- Lab Photos of Victim's Clothing (200)
- Evidence Processing- (25)
- Trace Reports (4)
- 1. June 15, 2021
- 2. June 18, 2021
- 3. September 20, 2021

- 4. October 25, 2021
- Visual Observation of Alex Murdaugh shirt at SLED Forensics Laboratory (Did not Handle) December 8, 2022
- Visit to 4147 Mozelle Ln (December 12, 2022)
- Consultation at MUSC w/ Dr. Riemer (12/16/22)
- (12) page Report titled "Homicide Investigation of Paul and Margaret Murdaugh BGA Case 2022-01 SC": Issued by Tom Bevel of Bevel Gardner & Associates (03/29/22)
- 3 page Bevel Addendum (12/18/2022)

OVERVIEW OF INITIAL CRIME SCENE 4147 MOZELLE LN.

The double homicide took place at a k-9 kennel on the large property owned by Alex Murdaugh (Attachment-1). It was my understanding that the property had been utilized as an outdoor/hunting retreat by previous owners. The property is very large with small pines, hardwoods, open fields, a large house (residence), a smaller house, a repurposed airplane hangar, and separate k-9 kennel. The property also contained several outbuildings and sheds that I viewed from a distance but did not examine. Paul Murdaugh had been shot two times with a shotgun in the confines of a feed/mudroom that was connected to several covered but outdoor dog runs (Attachment-2). Paul was discovered on the covered sidewalk outside the door of this room and was discovered prone (face-down) on the cement walkway (Attachment-3). Maggie Murdaugh was a short distance away and was located NW at the end of the repurposed hanger that is now a covered shed. Maggie Murdaugh was also prone (face-down) and had succumbed to several gunshots from a rifle (Attachment-4). Alex Murdaugh reported that he had discovered the two victims upon his return to the property.

Gunshot Wounds to Margaret Murdaugh:

Documented as (1-5). The numerical assignment does not note sequence of wounds received.

1. Gunshot to anatomical left side of torso. Grazing wound to the abdomen with projectile travelling upward through the left breast. Bullet continues into the lower left jaw, face, and ear. Bullet proceeds into the brain with no apparent exit located. Terminal/immediate death.
2. Gunshot to left wrist. Entrance on dorsal side with an exit on ventral side (non-fatal).
3. Gunshot to left thigh. Entrance of wound is medial front to back, downward at a left to right angle. Exit wound is apparent on the back of thigh. This wound contains stippling (2 in.), no soot (non-fatal).
4. Gunshot to back of scalp/head. Anatomical right, terminal/immediate severe brain injury. Exits head and travels into upper shoulder/back area at a downward trajectory.
5. Gunshot to upper abdomen. Entrance on anatomical right side of abdomen (rt. To left, front to back). Potentially fatal but not immediate. Severe organ damage. Exit wound on lower left side of back. This wound contains stippling (3 in.), no soot. Similar angle to wound number 3.

Gunshot Wounds to Paul Murdaugh:

Documented as (A and B). The alphabet assignment does not note sequence of wounds received.

- A. Shotgun wound to shoulder and head (small game # shot). Entrance on top of left shoulder travelling in anatomical left to right direction. Enters left side of neck and proceeds into head. Brain was severed and exited through the anatomical right side of head. Upward trajectory, slightly front to back. Brain was completely detached from head. No soot/stippling. Terminal/immediate death.
- B. Shotgun wound to chest (buckshot). Entrance on anatomical left side of chest near midline. Stippling is present on anatomical left side of entrance wound. Left to right trajectory exiting left side of chest and underarm. Pink plastic wad is present in exit chest wound. Shot spreads and continued through left upper arm.

Twelve (12) Investigative Questions

IQ-1: What is the order of the shotgun wounds to Paul Murdaugh (shot sequence)?

IQ-2: Where is the shooter positioned for the two (2) shots to Paul?

IQ-1 & 2 Opinion:

The shot along the midline of Paul's chest was the first wound that he sustained. The second and final shot was to his left shoulder, into his jaw, and exiting his head.

First wound:

- a. This shot was delivered from several feet away as Paul stood just shy of the approximate center of the feed room (Attachment-5).
- b. His position was facing slightly SW at the time of the buckshot penetration. After entry (large, angled wound), the buckshot travelled subcutaneously across his left chest and exited under his arm.
- c. Most of the shot then entered the underside of the left arm and exited again on the outside of the upper arm.
- d. This position is supported by the continued path of at least seven (7) buckshot pellets that continued through the windowpanes at the rear of the feed room (Attachment-6).
- e. An open shot cup or wad was visible at the exit point under the left arm.
- f. 90 or near 90-degree blood drops on the cement show that Paul was still standing but moving slowly toward the door (Attachment-7).
- g. Partial FW impressions in the blood droplets supports Paul's movement towards the door.

- h. Blood and body fluids, the continued path of buckshot through the windowpanes, and the location of the fired shotshell behind the door would place the shooter standing in or slightly outside the room's door approximately midline of the feed room, with the breach of the shotgun inside the room (Attachment-8).

Second Wound:

- A. The second wound to Paul occurred at the threshold of the feed room door and was immediately terminal (Attachment-9).
- B. This shot was unlike the first wound in that this wound was produced by a shotshell of small shot, commonly referred to as birdshot, BB shot, or chill shot.
- C. The shot to Paul's head entered along the top of his left shoulder, and into his left cheek area at an angle upward into the brain before exiting the top right portion of the head.
- D. Paul's height of 5'8", and the sharp angle upwards, approximately 135 degrees up would support that Paul's left side was dipping slightly, and head slightly forward as he was standing or exiting the feed room at the time of the second shot.
- E. Blood, tissue, blood volume, and body fluids on the door, and specifically the upper door frame, directionality, void areas to the west side of door frame (Attachment-10), spatter documented on the SW side of shelved items inside the door (Attachment-11), and the position of the severed brain would place the shooter outside the door to the west side of entry.
- F. The length of the shotgun would be needed for a reasonable degree of certainty, but it is unlikely that the shooter was standing with a shouldered weapon at the time of the second discharge.

IQ-3: Can the sequence of shots to Margaret's body be identified?

Margaret has (5) gunshot wounds. Gunshots wound 3 (left thigh) and gunshot wound 5 (upper abdomen) have similar range, stippling, and trajectory. These two wounds would generally not cause immediate death or immobility. Gunshot wound 2 (left wrist) may or may not be a continuation of gunshot wound 1 (anatomical left side). Gunshot 2 would also be considered not lethal in most cases if it is not a continuation of the upward left torso wound. Gunshot wound 2 could be the results of the projectile located in the doghouse due to its lack of incapacitation and the unknown movements of Margaret and the shooter. Estimates to ejector direction and range are not sufficient without test firing the same weapon with same ammunition to measure with certainty. The location of cartridge casings would only provide a possible location of the shooter and Margaret and are subjective due to their unknown movements. Therefore, I must base my opinion on the physical location and position of the deceased, bullet path of known wounds, and physical damage caused by those wounds

- Gunshot wounds 1 and 4 would cause immediate incapacitation and would cease all movement.
- Lacking evidence that Margaret's body had been moved or manipulated, the evidence suggests that gunshot wound 2, 3, and 5 were the first series of shots delivered to Margaret.
- The exact sequence can't be determined except these three wounds were received in an upright or semi-upright position prior to the two wounds that were immediately fatal.
- There was no evidence that Margaret's body was supine, or had been moved or manipulated (blood pool, blood run).
- There were no projectiles located in the soil underneath the deceased that would suggest a near 90 degrees shot downward.

IQ-3: Opinion

It is my opinion that gunshot wound 1 would have been delivered after 2,3, and 5 from Margaret's left side, and from behind. This shooter position would explain the grazing wound to her abdomen, path through the left breast, jaw, and into her head. Margaret's position would have been prone or nearly prone holding herself up on her knees and at least her right hand with her shoulders and head down. Gunshot wound 2 would be included in this sequence if it is not the projectile in the doghouse. The final shot (#4) would have been from a distance and travelling through the crown of Margaret's head and into her upper back (opposite direction of gunshot wound 1).

IQ-4: Are the blood stains on Alex's white t-shirt consistent with back spatter from a gunshot?

- 100 plus stains on the front of the neck area of white t-shirt (transfers/projected blood stains)
- -1mm
- Enhanced w/Leuco Crystal Violet (LCV)
- Cutting already taken
- Evidence processing photos/reports/analysis

IQ-4: Opinion

The front of the white t-shirt contains what appears to be transfer and spatter stains. The lower and larger stains are not spatter of any speed but transfer from another object (See IQ-5: Opinion). The smaller stains that are present after treatment with LCV appear to be high velocity impact stains. These stains are characterized as being -1mm in size, and based on my experience are only caused by a gunshot or high speed machinery. High speed machinery would not necessarily be defined in this case as a drill or similar object but by any mechanism with enough disruptive force to distribute and project blood over 100 fps. After consideration of the original opinion, analysis

reports, and follow-up experimentation, this expert cannot render an opinion on IQ-4 above.

IQ-5: Are the 100+ spatter stains on the front of t-shirt the result of using the t-shirt to wipe the face?

- The photographs of the t-shirt exhibit at least two distinct types of blood stains, and in two areas.
- The first would be the multiple small stains near the top neck and chest area of the garment.
- The larger stain at or near the front bottom would be the second type blood stain.
- BWC video depicts Alex Murdaugh wiping his face and forehead with the second/bottom area, with his hands on the inside of the garment.

IQ-5: Opinion

It is my opinion that the bottom stain is representative of a transfer of spatter from one area to the shirt by way of a wipe. A wipe is when an object meets another object that already contains blood (BWC video). Alex Murdaugh wiped his face and forehead with the area of the t-shirt that now contains the larger stain. The shirt in this case could have wiped the blood from the face/forehead. The 100 + smaller stains at the top of the shirt at the neck/chest area are distinctly different and do not represent a transfer from wiping the face.

IQ-6: What type of blood staining would be expected to be on the face from checking two deceased bodies for a pulse or trying to roll one body over to its back but falling to do so?

- Both victim's received immediate and terminal wounds.
- No heartbeat (pumping blood).
- No expectorated blood.
- Attempting to roll body would produce elongated type spatter stains but only low and at shoe level.

IQ-6: Opinion

In my opinion, the only type of blood stain that would be expected to be on the face would be a transfer (swipe) pattern from checking for signs of life (body-hand-face).

IQ-7: Can the position for the shooter for Margaret's shooting be identified?

Margaret has (5) gunshot wounds. Gunshots wound 3 (left thigh) and gunshot wound 5 (upper abdomen) have similar range, stippling, and trajectory. These two wounds would generally not cause immediate death or immobility. Gunshot wound 2 (left wrist) may or may not be a continuation of gunshot wound 1 (anatomical left side). Gunshot 2 would also be considered not lethal in most cases if it is not a continuation of the upward left torso wound. Gunshot wound 2 could be the results of the projectile located in the doghouse due to its lack of incapacitation and the unknown movements of Margaret and the shooter.

IQ-7: Opinion

It is my opinion that an exact position of the shooter cannot be determined in relation to Margaret. The most accurate information available to narrow down the position of the shooter's position is the physical location and position of the deceased, bullet path of known wounds, stippling or lack thereof, and physical damage caused by those wounds. Estimates to ejector direction and range are not sufficient without test firing the same weapon with same ammunition to measure with certainty. The location of cartridge casings would only provide a possible location of the shooter and Margaret and are therefore subjective due to their unknown movements (IQ-3, Kinsey, 2022).

IQ-8: How does environmental factors and physical manipulation of the shirt affect the stains observed?

- Environmental factors such as (extreme) heat, humidity, moisture, mold, mildew, and physical manipulation of a wet garment can affect the appearance of blood stains on a garment prior to the garment being dried.
- Shape and type of stain would remain constant after garment is sufficiently dried but could fade or darken in appearance over time if not properly dried, packaged, and stored in controlled conditions.

IQ-8: Opinion

In my opinion, environmental factors can affect the appearance of blood stains on a garment if the garment is exposed to harsh conditions and if the garment is not properly dried and handled. Blood stains that are present on garments that have been properly dried, packaged, processed, and are (fixed) will retain their shape, but may fade over time if exposed to the described extreme conditions as stated above.

IQ9: Would the shooter for either victim get blood back spatter on their person or clothing?**Paul**

- Distance of shooter (several ft.), lack of blood and tissue letting, and angle of Paul would likely not produce back spatter on shooter for gunshot wound (#1).
- Birdshot close to muzzle end of weapon (#2).
- Possibility of back spatter on (#2) if shotgun was shouldered due to shot direction, gravity, and scattering of small pellets inside open wounds.
- Proportionately more blood and tissue blow back would be expected if shooter was closer to the muzzle end of weapon.

Margaret

- Two gunshot wounds exhibited stippling (#3 & #5).
- Neither were close proximity to each other.
- Remaining wounds were from a distance greater than would be expected to project blood.

IQ-9: Opinion

It is my opinion that the fatal shot to Paul's shoulder, face, and head would likely produce enough back spatter (#2), and would be within range to contaminate the shooter. This amount would produce very small droplets (-1mm/ +100 fps) of projected blood in the direction of the shooter if shouldering the weapon and firing in a parallel to the ground position. The likely presence of blood droplets and other tissue would increase in quantity if the shooter was not behind the stock, but was positioned closer to the muzzle end of the weapon (increase in angle, gravity).

Additionally, the only gunshot wound on Margaret that would be sufficient to produce back spatter would be GSW (#4), due to distance, clothing, or precise entry of bullet (Single projectile vs. shotgun pellets). However, this wound would not project blood and tissue far enough in most cases to contaminate the shooter.

IQ 10: Does the physical evidence support a struggle between Paul and the shooter given the shot to his chest?

- Stippling on anatomical left side of chest wound.
- Paul is angled.

IQ-10: Opinion

I identified no physical evidence that would suggest or support a struggle between Paul and the shooter.

IQ-11: Could the shooter be prone or kneeling on the cement at the time of the shoulder-headshot?

IQ-11: Opinion

- G. Paul's height of 5'8", and the sharp angle upwards, approximately 135 degrees up would support that Paul's left side was dipping slightly, and head slightly forward as he was standing or exiting the feed room at the time of the second shot.
- H. Blood, tissue, blood volume, and body fluids on the door, and specifically the upper door frame, directionality, void areas to the west side of door frame, spatter documented on the SW side of shelved items inside the door, and the position of the severed brain would place the shooter outside the door to the west side of entry.

The length of the shotgun would be needed for a reasonable degree of certainty, but it is unlikely that the shooter was standing with a shouldered weapon at the time of the second discharge (IQ-1 & 2 Opinion: Kinsey, 2022)

IQ-12: What is the best explanation for how the cell phone dislodged from Paul's back pocket?

- Reported to have been carried in rear pocket.
- Elastic on top.
- Located and documented on pocket.
- Blood transferred inside top band of pocket.
- Was not removed from pocket by Paul after second gunshot wound.

IQ-12: Opinion

It is my opinion that the phone was removed from Paul's rear pocket by someone other than Paul, and after the fatal shot. The blood stain inside of pocket was produced during phone's retrieval, and prior to phone's placement on top of the rear pocket.

I specifically reserve the right to amend, alter, and/or supplement this Affidavit and my Expert Opinions contained herein should new information become available.

I hereby render the above expert opinions (11 pages + the following A-L Attachments) regarding the homicides of Paul and Maggie Murdaugh, occurring June 6, 2021. The undersigned, under the pains and penalties of perjury, affirms that the foregoing facts are true to the best of my abilities.


Dr. Kenneth Lee Kinsey

THUS, DONE and SIGNED before me, NOTARY PUBLIC, this 9 th day of January, 2023.

Melissa G. Bochette
(Print)

Melissa G. Bochette
(Signed)

Notary Public South Carolina
My Commission Expires Dec. 14, 2023





FITSALEMS

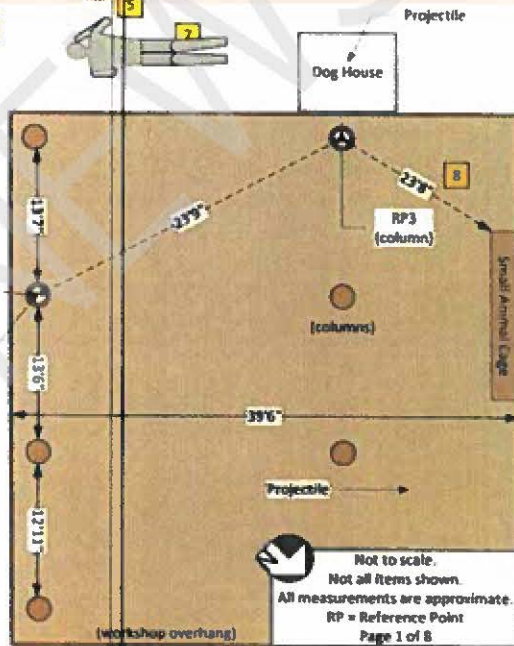
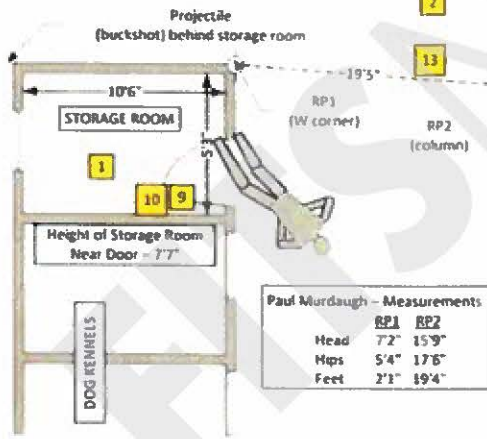
Attachment 1

L21-09074
 Homicide
 SLED Low Country/Colleton CSO
 June 7, 2021
 4147 Moselle Road, Islandton, SC 29929
 Lead SLED CS Agent: S/A Melinda Worley
 Prepared by S/A M. Worley on 7/7/21 *MM*

Legend
 Marker 1: Shotgun wad
 Markers 2 - 7: Cartridge cases
 Marker 8: Tire impressions
 Markers 9 - 10: Shotshells
 Marker 11: N/A (not used)
 Marker 12: Suspected biological material
 Marker 13: Bullet strike in gravel

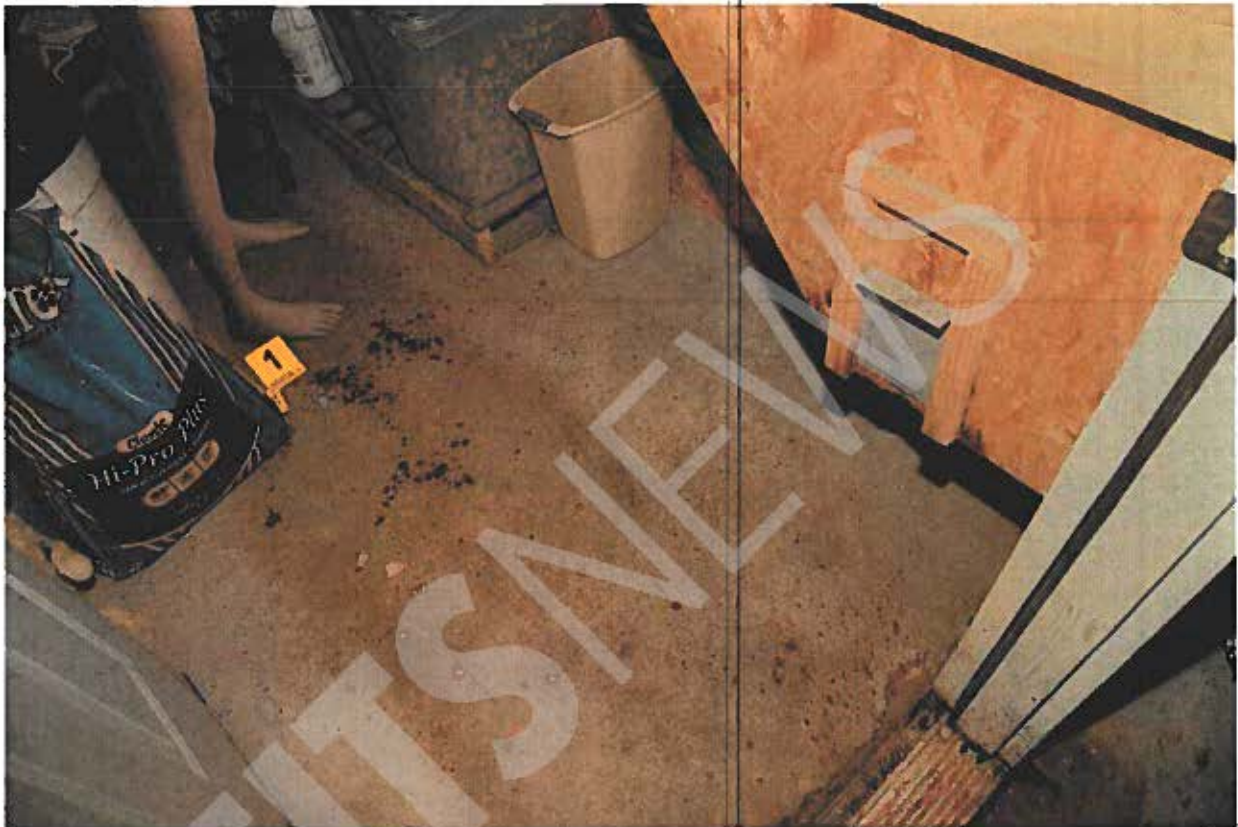
Margaret Murdaugh - Measurements

	RP1	RP3
Head	32'3"	15'8"
Hips	34'0"	13'1"
Feet	35'9"	10'1"



A

Attachment 2



B

Attachment 5



E

Attachment 6

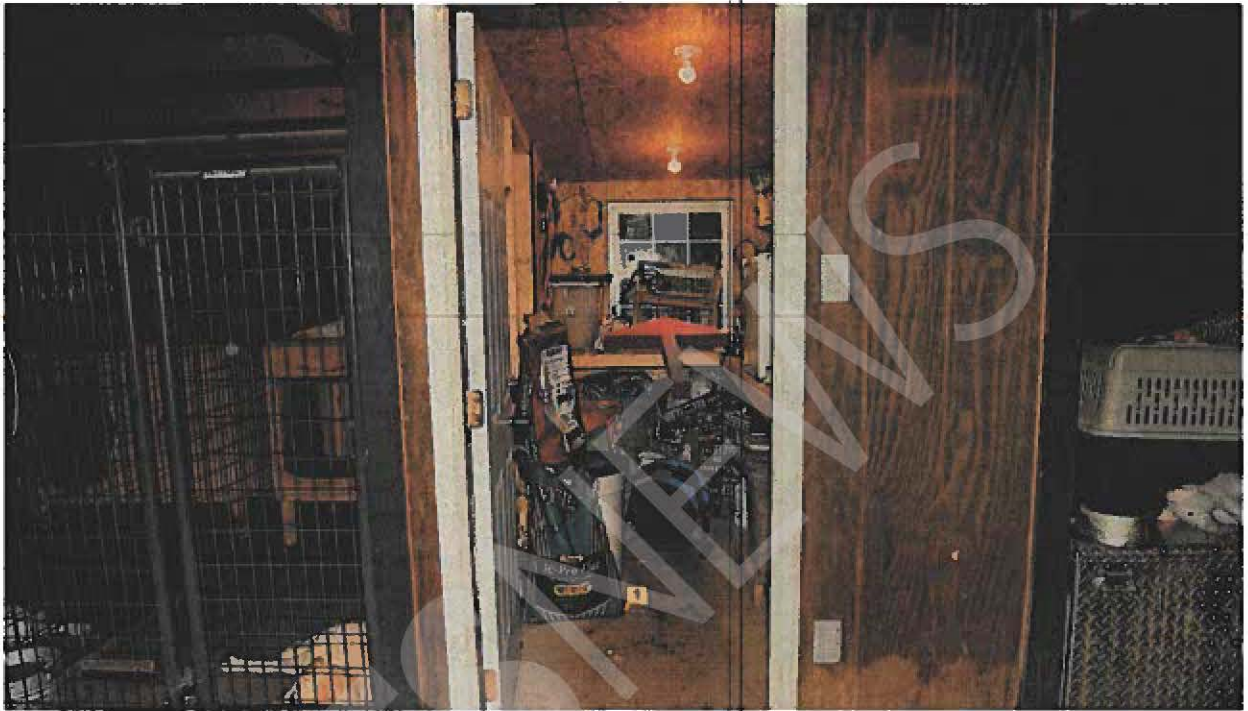


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Attachment 7

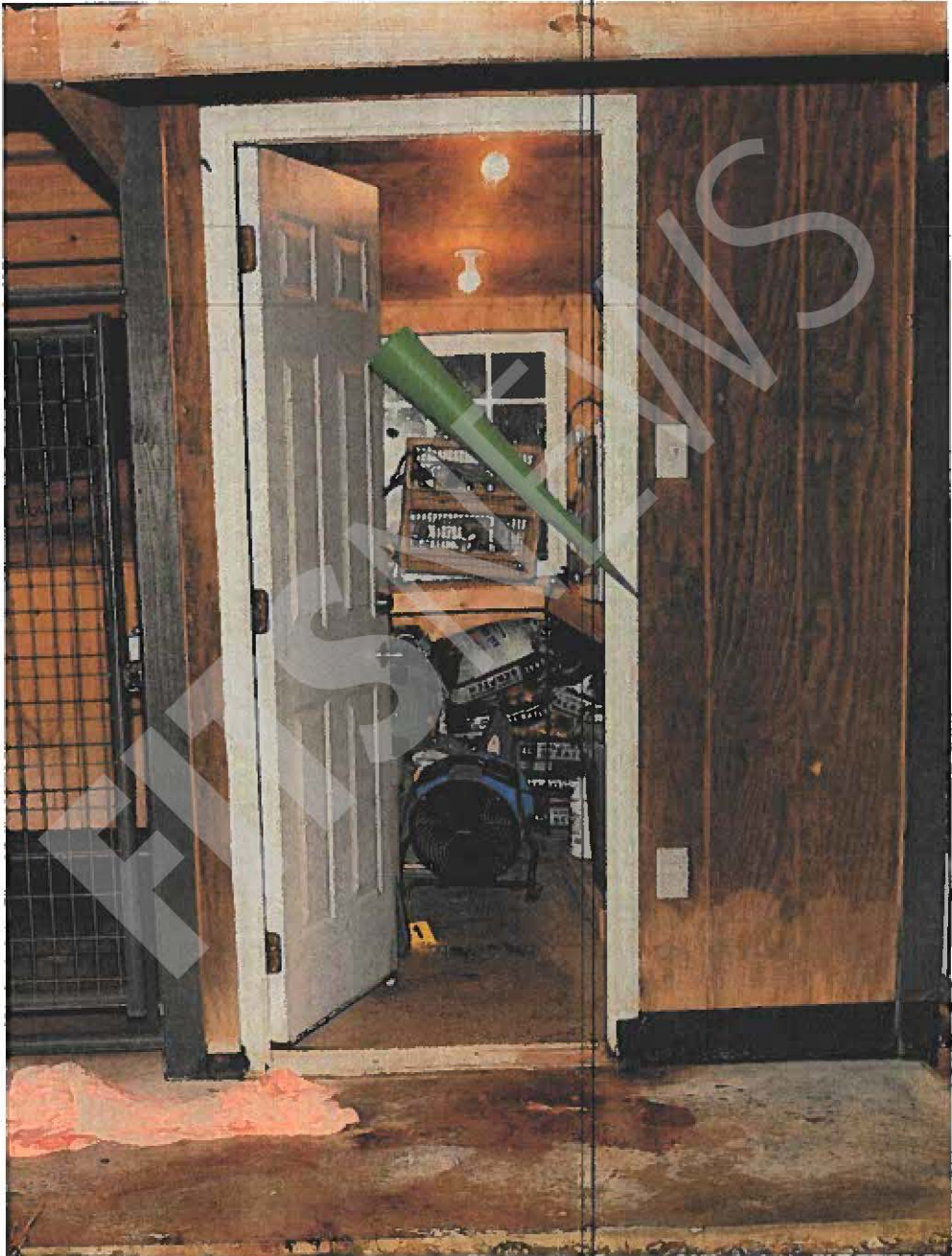


Attachment 8

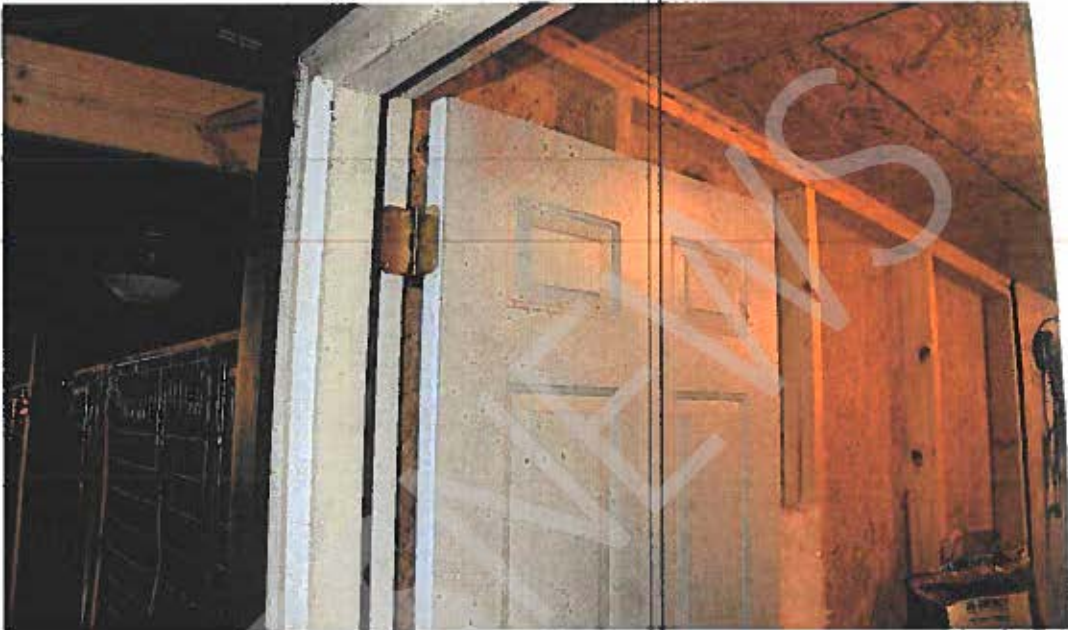


H

Attachment 9

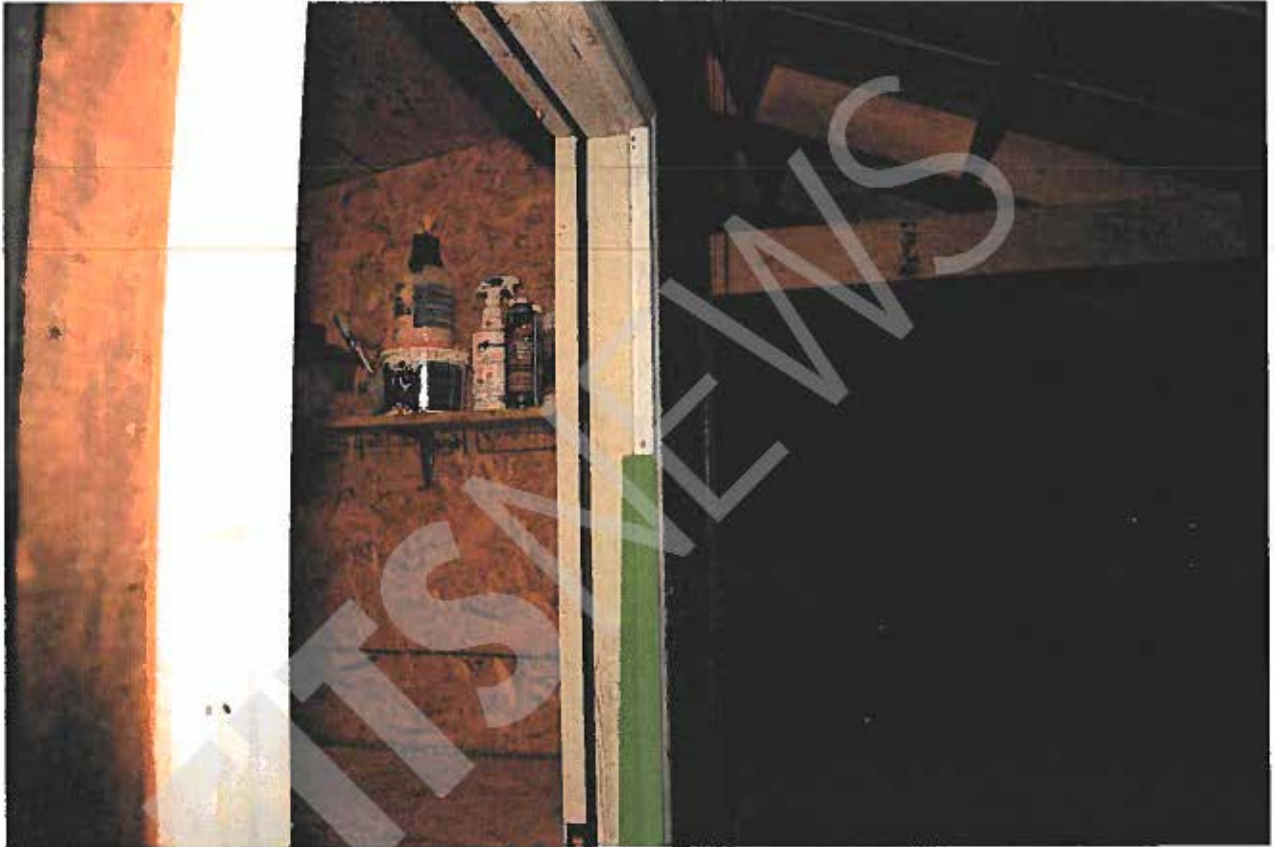


Attachment 10



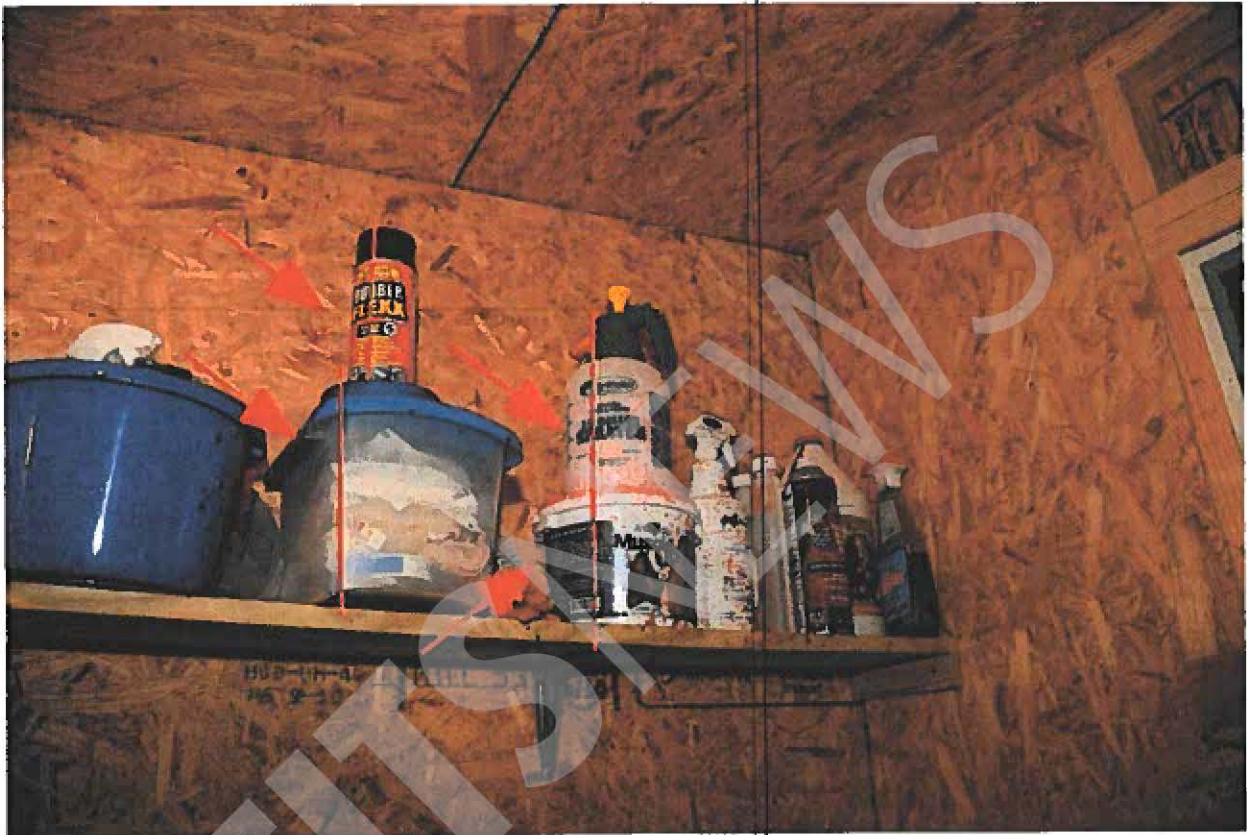
J

Attachment 10 (cont.)



K

Attachment 11



JAN 18 2023 AM 11:02
COLLETON CO 6S. REBECCA H. HILL

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