

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

State of South Carolina,

v.

Richard Alexander Murdaugh,

Defendant.

**COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

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

**RESPONSE IN OPPOSITION TO THE
STATE'S MOTION TO COMPEL
DEFENSE TO TURN OVER DIGITAL
EVIDENCE**

Defendant Richard Alexander Murdaugh, by and through undersigned counsel, submits this Response in opposition to the State's Motion as to Privilege Review of Defendant's Phone and Motion to Compel Defense to Turn Over Digital Evidence, filed August 7, 2026.

Mr. Murdaugh does not object to the State's proposal to conduct a fresh privilege review of his phone data through a properly walled-off taint team, or to the protocol the State describes — under which the new review team identifies the communications it contends are not privileged and provides them to the Court and to the defense so that Mr. Murdaugh may object before any member of the investigation or prosecution team sees them. Mr. Murdaugh asks only that any order memorialize both the firewall and that pre-disclosure objection procedure, and he reserves all objections as to particular communications the review team may identify.

Mr. Murdaugh opposes the second half of the motion: the State's request for an order compelling the defense to turn over a forensic extraction of his telephone performed by a defense-retained expert. That request should be denied for three reasons:

First, the defense extraction is a *logical* extraction. By the State's own definitions, a logical extraction captures only surface, user-accessible data and cannot capture the deleted files and non-user-accessible databases — the “knowledge C” artifacts — that the State says it is looking for. The motion asks for the one kind of extraction that cannot contain the one kind of data the motion

seeks. The surface data a logical extraction *does* capture is data the State already has twice over: in its own June 2021 logical extraction, taken three days after the deaths and closer in time to the events at issue, and in its own September 2021 full file-system extraction, which contains everything that can be extracted from the phone. The State has also had the device in its possession continuously since September 2021, and can perform any further extractions it deems necessary.

Second, no rule, statute, or decision of the South Carolina appellate courts authorizes the order the State requests, and the State cites none. Rule 5(b)(2) of the South Carolina Rules of Criminal Procedure affirmatively withholds the internal documents of the defense and its agents from discovery, and the work-product doctrine independently protects the examination of a defense expert whom the defense has not elected to call.

Third, the State's constitutional argument misreads each of the three authorities on which it rests. Two of them — *In re Bernstein* and *First Union* — are cases in which production was refused and the privilege was upheld.

I. Factual Background

The following facts are not, so far as counsel is aware, in dispute.¹

June 2021 — the State's logical extraction. Three days after the deaths of Maggie and Paul Murdaugh, and with Mr. Murdaugh's consent, law enforcement personnel with the Fourteenth Circuit Solicitor's Office performed a *logical* extraction of his telephone. (Mot. at 1–2.) The State did not provide Mr. Murdaugh with a copy of that extraction. He was not then a defendant—he was not arrested until September 2021 and was not indicted for these offenses until July 2022—so no discovery obligation had attached, and no discovery was produced.

¹The facts recited in this section are stated as the representation of undersigned counsel. Should the Court wish, counsel will establish them by proffer, by affidavit, or by testimony.

August 2021 — the defense logical extraction. In August 2021, at the direction of counsel, Chip Johnson of The Johnson Group, LLC, performed a *logical* extraction of the telephone, which was then in Mr. Murdaugh's own possession. The purpose was not to preserve evidence for a trial that had not been contemplated, and not to capture anything the State lacked. The purpose was to give Mr. Murdaugh access to the contents of his own telephone—the same contents the State had already copied.

September 2021 — the State's seizure and full extraction. In September 2021, following his arrest, SLED seized the same telephone and performed a *full* file-system extraction pursuant to a search warrant. (Mot. at 2.) The State has had physical custody of the device continuously from that day to this — approximately five years. In discovery before the first trial, SLED provided Mr. Murdaugh with full unredacted copies of its own extractions. (Mot. at 2.)

II. Argument

A. The State claims it seeks production of a logical extraction to obtain data that it admits only a full extraction could produce.

The State tells the Court it wants the defense extraction because it wants “valuable data artifacts that were not captured during the State's initial logical extraction and would have been long overwritten by the time of State's full extraction.” (Mot. at 5.) The State identifies those artifacts as “SQLite databases (such as Knowledge C) used by IOS at the time of the murders,” which “continuously overwrite themselves, sometimes in a matter of days.” (Mot. at 5 n.3.)

The State admits that a logical extraction cannot reach that data. Knowledge C databases are, in the State's words, “non-user accessible data” recoverable through a *full* extraction. (Mot. at 2 n.2.) A logical extraction “only extracts ‘surface’ aka user accessible data such as texts, call logs, pictures and video.” (Mot. at 1 n.1.) The extraction the State seeks to compel is a logical

extraction. It therefore cannot contain the artifacts the State says it is after. Stripped of a rationale that its own footnotes foreclose, the State's motion is a request to inspect the defense's file.

A logical extraction of Mr. Murdaugh's telephone in August 2021 would contain surface user data: texts, call logs, photographs, and video. The State possesses that category of data from two independent sources, taken on either side of the August 2021 extraction. The State's own June 2021 logical extraction is the same type of extraction, of the same device, performed three days after the deaths — that is, *closer* in time to the events at issue than the defense extraction, not farther from them. Whatever probative surface data existed on the device in June 2021, the State captured in June 2021. The State's own September 2021 full extraction is, by the State's definition, a superset of a logical one: it captures “the entire data footprint from the phone.” (Mot. at 2 n.2.) Any data present on the device in August 2021 and still present in September 2021 was captured by the State's own full extraction.

That leaves, as the only conceivable universe of unique content, surface user data that came onto the device after the State's June 2021 extraction and was gone before the State's September 2021 seizure. That is data generated *after* the deaths for which Mr. Murdaugh stands charged. The State does not identify it, does not describe it, and does not explain its relevance to the offenses charged.

B. No rule authorizes an order compelling the defense to produce its expert's examination, which is protected defense work product.

The motion identifies no rule of criminal procedure, no statute, and no South Carolina decision authorizing a court to compel a criminal defendant to deliver his expert's work to the prosecution. The State's legal argument is devoted entirely to the proposition that the Fifth Amendment does not *bar* such an order. But the Fifth Amendment is a shield; it is not a source of the State's entitlement. The absence of a constitutional prohibition is not an affirmative grant of

authority. Before the Court reaches whether an order would offend the privilege against self-incrimination, the State must identify the rule that obligates the defense to produce in the first instance. It has not done so, because no such rule exists.

Discovery from a criminal defendant in South Carolina is governed by Rule 5(b) of the South Carolina Rules of Criminal Procedure. That rule is not a general reciprocal-discovery provision. It is narrow and conditional. Under Rule 5(b)(1)(A), a defendant who has obtained disclosure under Rule 5(a)(1)(C) or (D) must permit the State to inspect “books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant *and which the defendant intends to introduce as evidence in chief at the trial*” (emphasis added). Rule 5(b)(1)(B) imposes the same conditional obligation as to “any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case ... within the possession or control of the defendant, *which the defendant intends to introduce as evidence in chief at the trial*” (emphasis added).

The trigger in both provisions is the defendant’s own election to offer the material in his case in chief. Mr. Murdaugh has made no such election, and the State does not contend that he has. Rule 5(b) creates no obligation to produce material the defense does not intend to offer, and it confers no license on the State to inspect the defense’s investigative file in the hope that something in it may prove useful to the prosecution.

If and when Mr. Murdaugh determines that he intends to introduce the August 2021 extraction in his case in chief, or to call Mr. Johnson as a witness at trial, his obligations under Rule 5(b) will be discharged at that time and in the ordinary course, along with any related

obligations under this Court's scheduling orders. Until then, Rule 5(b) is not engaged. The State's motion asks the Court to accelerate a disclosure obligation that has not arisen and may never arise.

Rule 5(b)(2) of the South Carolina Criminal Rules of Procedure provides that it “does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or *his attorneys or agents in connection with the investigation or defense of the case*” (emphasis added). This language describes the August 2021 extraction precisely. Mr. Johnson is a forensic examiner retained by defense counsel. He conducted the extraction at counsel's direction, in connection with the investigation and defense of this case. He is an agent of counsel within the meaning of the rule, and the product of his examination is an internal defense document. The only rule the State could invoke to obtain the material is the very rule that withholds it from the State.

The work-product doctrine, *Hickman v. Taylor*, 329 U.S. 495 (1947), applies with particular force in criminal cases. As the Supreme Court explained in *United States v. Nobles*, 422 U.S. 225 (1975), “[a]lthough the work-product doctrine most frequently is asserted as a bar to discovery in civil litigation, its role in assuring the proper functioning of the criminal justice system is even more vital.” *Id.* at 238. The doctrine is not confined to the lawyer's own notes: “[i]t is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself.” *Id.* at 238–39.

Nobles also identifies the single circumstance in which the protection would give way here—the defendant in *Nobles* lost the protection only because he “*elect[ed] to present the investigator as a witness*,” thereby waiving it “with respect to matters covered in his testimony.” *Id.* at 239 (emphasis added). Mr. Murdaugh has made no such election. The protection therefore

remains intact, and the timing of any disclosure is governed by his election under Rule 5(b)—not by the State’s curiosity.

In June 2021 the State copied the contents of Mr. Murdaugh’s telephone with his consent. It kept the copy. Because he had not been arrested or charged, it owed him nothing in discovery and gave him nothing. Two months later, still uncharged, he engaged an expert to make a copy of his own phone so that he would have access to his own data. In September 2021 the State took the telephone itself, and it has held it ever since. The State now asks this Court to order Mr. Murdaugh to surrender the copy he was obliged to obtain for himself because the State would not share the one it made. A rule permitting that result would mean that defense counsel cannot safely have evidence examined at all: counsel would have to weigh the value of testing the State’s case against the certainty that any examination performed may be conscripted into the State’s case in chief.

C. The constitutional authorities the State cites do not support the relief it seeks.

Even if some rule authorized the relief the State seeks (none does), the State’s Fifth Amendment analysis does not withstand examination. Each of the three authorities on which it relies points the other way.

The State argues that “the State is not seeking anything from Alex Murdaugh himself. The phone extraction in question is in either his attorney’s or expert’s possession (or both), not his.” (Mot. at 6.) *Fisher* holds the opposite. The Court there explained that “pre-existing documents which could have been obtained by court process from the client when he was in possession may also be obtained from the attorney by similar process following transfer.” *Fisher v. United States*, 425 U.S. 391, 403–04 (1976). Transfer to counsel neither creates protection nor destroys it; the material occupies the same position in counsel’s hands that it occupied in the client’s.

The State offers *In re Bernstein*, 425 F. Supp. 37 (S.D. Fla. 1977), as “an instructive application of this *Fisher* rule.” (Mot. at 6.) It is instructive, though not in the way the State suggests. The *Bernstein* court denied the government’s motion to compel and quashed its subpoena, holding that the witness had properly invoked privilege as to recordings he had himself created and retained. *Bernstein*, 425 F. Supp. at 38–39. The court cautioned against a reading of the privilege that would “strain the protection afforded by the Fifth Amendment beyond that reasonable point for which it was initially conceived.” *Id.* at 39.

The comparison the State invites is also unfavorable to it. *Fisher* involved workpapers prepared by third-party accountants. *Bernstein* involved recordings the witness had created himself and kept. The August 2021 extraction is a copy of the contents of Mr. Murdaugh's own telephone, made from a device then in his own possession, at his own direction and expense. The *Bernstein* court places this material on the protected side of the line the State asks the Court to draw.

The State quotes *First Union National Bank v. First Citizens Bank & Trust Co. of South Carolina*, 346 S.C. 462, 470 (Ct. App. 2001), for the proposition that “[t]he privilege protects against production of documents when by producing the documents, the witness would be admitting the papers existed, were in his possession, or control, *or* were authentic.” (Mot. at 6.) The State then asserts that “the defendant fails under all three prongs.” (Mot. at 6.) The quoted sentence is disjunctive on its face. It sets out a series of three distinct implicit admissions joined by “or,” *any one of which* may trigger the privilege. It is not a three-element test that the party asserting the privilege must satisfy in full, and the State cites no case reading it that way.

And, like *Bernstein*, *First Union* is a case in which the privilege was *upheld*: the Court of Appeals reversed the contempt sanction imposed on the party who declined to respond to discovery

while a criminal investigation was pending. The State has cited two cases in which courts refused to compel production and has offered them as authority for compelling production.

Finally, the State's "forgone [*sic*] conclusion" argument fails on its own terms. Under *Fisher*, the foregone-conclusion doctrine applies where "[t]he existence and location of the papers are a foregone conclusion and the taxpayer adds little or nothing to the sum total of the Government's information by conceding that he in fact has the papers." 425 U.S. at 411. The government bears the burden of demonstrating its prior knowledge "with reasonable particularity"; where it "has not shown that it had any prior knowledge of either the existence or the whereabouts" of the material, the doctrine does not apply. *United States v. Hubbell*, 530 U.S. 27, 30, 44–45 (2000).

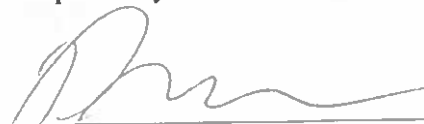
The State pleads "upon information and belief." (Mot. at 1.) It does not know when the extraction was performed, does not know its type, and does not know its contents—indeed, it has affirmatively *misdescribed* those contents, telling the Court that the material may hold volatile knowledge C artifacts that a logical extraction cannot capture. A movant who cannot say what a document contains has not established its contents as a foregone conclusion. What production would actually convey to the State is not a set of facts it already possesses, but the defense's own investigative judgments—what counsel elected to preserve, when, and why. That is the testimonial component that the privilege and the work-product doctrine each protect.

III. Conclusion

For the foregoing reasons, Mr. Murdaugh respectfully requests that this Court deny the State's motion to compel production of the August 2021 logical extraction performed by Chip Johnson of The Johnson Group, LLC, and of any related work product of Mr. Johnson or The Johnson Group, LLC; and, as to the State's proposed privilege review, enter an order that (a) memorializes the firewall between the review team and the investigation and prosecution teams,

and (b) requires that any communication the review team proposes to release be identified to the Court and to Mr. Murdaugh, with a reasonable opportunity to object, before it is disclosed to the investigation or prosecution teams.

Respectfully submitted,



Richard A. Harpootlian, SC Bar No. 2725
Phillip D. Barber, SC Bar No. 103421
Andrew R. Hand, SC Bar No. 101633
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, South Carolina 29202
(803) 252-4848
rah@harpootlianlaw.com
pdb@harpootlianlaw.com
arh@harpootlianlaw.com

James M. Griffin, SC Bar No. 9995
Margaret N. Fox, SC Bar No. 76228
GRIFFIN HUMPHRIES, LLC
8906 Two Notch Road (29223)
Post Office Box 999
Columbia, South Carolina 29202
(803) 744-0800
jgriffin@griffinhumphries.com
mfox@griffinhumphries.com

Attorneys for Richard Alexander Murdaugh

August 13, 2026
Columbia, South Carolina.

AUG 13 2026 AM 11:43
COLLETON CO GS: GARY HALE