

**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

**DEFENDANT'S RESPONSE IN  
OPPOSITION TO THE STATE'S  
MOTION IN LIMINE TO USE PRIOR  
TESTIMONY IN RETRIAL**

Defendant Richard Alexander Murdaugh, through undersigned counsel, respectfully submits this response in opposition to the State's Motion in Limine to Allow the State's Use of Defendant's Prior Testimony in Retrial, filed August 7, 2026. The State asks this Court to rule, before a single juror has been seated or a single evidentiary determination made for the retrial, that the State may read to the jury in its case in chief testimony Mr. Murdaugh gave at a trial our Supreme Court has vacated as constitutionally infirm—testimony his counsel stated, on the record and at the moment of his election, that he was giving only because the trial court had admitted, over his continuing objection, a mountain of inflammatory financial-crimes evidence that the Supreme Court has since unanimously held “should have been excluded.” *State v. Murdaugh*, 448 S.C. 1, 35, 931 S.E.2d 294, 312 (2026). Controlling precedent of the Supreme Court of the United States forbids precisely this use. *Harrison v. United States*, 392 U.S. 219 (1968). The motion should be denied.

**I. Introduction**

A new trial is new. When the Supreme Court of South Carolina vacated Mr. Murdaugh's convictions and remanded for a new trial, it wiped the slate clean. *See North Carolina v. Pearce*, 395 U.S. 711, 721 (1969) (upon the grant of a new trial, “the original conviction has, at the defendant's behest, been wholly nullified and the slate wiped clean”); *United States v. Ayres*, 76 U.S. (9 Wall.) 608, 610 (1869) (the grant of a new trial leaves the parties “in the same situation as

if no trial had ever taken place”). No evidentiary ruling from the first trial binds this Court. No motion in limine survives. No witness list, stipulation, or strategic election carries forward. Our Supreme Court said as much expressly with respect to the State’s centerpiece evidence: whether any evidence of Mr. Murdaugh’s alleged financial crimes will be admitted at retrial must be decided anew, because “the facts and circumstances on retrial may be materially different from those presented in the initial trial.” *Murdaugh*, 448 S.C. at 38, 931 S.E.2d at 313.

From this clean slate the State would exempt exactly one artifact of the corrupted proceeding: Mr. Murdaugh’s own words. On the State’s theory, everything about the vacated trial must be done over—except the testimony the defense was induced to offer in response to the State’s improperly admitted evidence, which the State would now present to the retrial jury as substantive proof in its case in chief, whether or not Mr. Murdaugh ever takes the stand. The law says otherwise. Under *Harrison*, testimony impelled by evidence that should never have been before the jury is fruit of the poisonous tree, inadmissible at the retrial. Under *Simmons v. United States*, 390 U.S. 377 (1968), a defendant may not be compelled to surrender one right as the price of exercising another. And S.C. Code Ann. § 19-11-50—a statute whose purpose is to protect a defendant’s testimonial privilege—cannot be inverted into a warrant for making Mr. Murdaugh a witness against himself at a trial in which he has not waived, and may never waive, his Fifth Amendment privilege.

## **II. Factual Background**

### **A. The State built its first trial around financial-crimes evidence admitted over Mr. Murdaugh’s continuing objection.**

Before the first trial, the State moved to admit evidence of Mr. Murdaugh’s alleged financial crimes as proof of motive. Mr. Murdaugh opposed the motion under Rules 402, 403, and 404(b) of the South Carolina Rules of Evidence. The trial court conducted a lengthy pretrial

hearing, deferred ruling, heard eight witnesses on the subject outside the presence of the jury during breaks in the trial, and ultimately admitted the evidence. *Murdaugh*, 448 S.C. at 32–34, 931 S.E.2d at 310–11. The State then presented ten witnesses on the subject to the jury. By the Supreme Court’s calculation, “the State spent a total of 12.5 hours of actual testimony before the jury over ten days of trial to introduce evidence related to Murdaugh’s financial crimes.” 448 S.C. at 37, 931 S.E.2d at 313. Mr. Murdaugh objected to this evidence before trial, during trial, and—as set forth below—on the very morning of his election to testify.

**B. Counsel stated on the record that the financial-crimes evidence, and it alone, drove the decision to testify.**

On the morning of Thursday, February 23, 2023, moments before the trial court’s colloquy with Mr. Murdaugh concerning his right to testify, Mr. Harpootlian addressed the court:

I would like to renew all previously made motions concerning the financial crimes that were allowed in by Your Honor’s ruling under 403, res gestae, and maybe 401, and advise the Court that we would renew our motion to exclude that testimony. And now because it was included, our advice to Mr. Murdaugh would have been different in terms of taking the stand had that material not been allowed . . . . And I just want to put on the record that our advice, had that not been allowed, our advice as to whether to take the stand or not would have been different. . . . And I’m asking you to strike the financial information, and if perhaps we could recess then could give different advice on what to do.

(Trial Tr. 4656.)

Counsel explained the dilemma in which the erroneously admitted evidence had placed Mr. Murdaugh. Because the financial-crimes evidence was already before the jury, Mr. Murdaugh could not leave it unanswered; but if he took the stand to answer it, the State would “ask him extensively about each and every one of these events in an effort to . . . commit character assassination. This is what we warned about.” (Trial Tr. 4658.) Counsel could not have been plainer about the causal connection between the challenged evidence and the decision then before Mr. Murdaugh:

[O]ur advice would have been different had Your Honor not allowed—I mean, if you would strike all of that testimony and tell them to disregard it, we in all likelihood would not put him on the stand or not advise him to take the stand.

(Trial Tr. 4659.) Counsel protested that the financial-crimes evidence had transformed the proceeding altogether: “in my opinion, this is, you know, a Bernie Madoff trial. This is no murder trial.” (Trial Tr. 4660.)

The trial court declined to strike the evidence, observing that “all rights are preserved as to any and all testimony.” (Trial Tr. 4660.) Only then—with 12.5 hours of financial-crimes evidence standing unrebutted before the jury—did Mr. Murdaugh elect to testify. (Trial Tr. 4661–64.)

The testimony that followed bore out counsel’s prediction. On direct examination, Mr. Murdaugh was constrained to confront the financial-crimes evidence the jury had already heard: “Q. Alex, jury’s heard about testimony of you stealing client funds. Did you do that? A. I did.” (Trial Tr. 4785.) On cross-examination, the State devoted the overwhelming bulk of an examination spanning more than 260 transcript pages to the minute particulars of the financial allegations, accusation by accusation and dollar by dollar. (Trial Tr. 4801–5063; *see, e.g.*, Trial Tr. 4871, 4895, 5061.) The cross-examination the State now asks leave to read to the retrial jury is, in substance, the very “character assassination” counsel foretold when he asked the court to strike the evidence that made Mr. Murdaugh’s testimony necessary. (Trial Tr. 4658.)

**C. The Supreme Court vacated the trial and unanimously held the State’s financial-crimes presentation should in substantial part have been excluded.**

On May 13, 2026, the Supreme Court of South Carolina reversed Mr. Murdaugh’s convictions and remanded for a new trial because Colleton County Clerk of Court Rebecca Hill “placed her fingers on the scales of justice, thereby denying Murdaugh his right to a fair trial by an impartial jury.” *Murdaugh*, 448 S.C. at 9, 931 S.E.2d at 298. Hill’s tampering was aimed with particular precision at the very testimony the State now seeks to recycle. Before Mr. Murdaugh

took the stand, Hill told the jurors “not to be fooled” by the defense’s evidence, “to watch him closely,” to “look at his actions,” and to “look at his movements.” 448 S.C. at 10, 931 S.E.2d at 298–99. The Court found that Hill “made comments that the day Murdaugh testified was ‘epic’ or ‘important’ and urged the jurors not to be ‘fooled,’ ‘confused,’ ‘thrown off,’ or ‘convinced’ by Murdaugh and to watch Murdaugh’s body language closely.” 448 S.C. at 24, 931 S.E.2d at 306. “Hill became a character witness on behalf of the State,” her comments “insinuating that there was something unusual and suspicious about his decision to testify.” *Id.* And in holding that the State could not rebut the presumption of prejudice, the Court placed Mr. Murdaugh’s testimony at the center of its analysis: “The State’s case rested largely on circumstantial evidence, and Murdaugh’s credibility was a key component of his defense. Hill’s repeated comments challenging Murdaugh’s credibility directly undermined that defense.” 448 S.C. at 29, 931 S.E.2d at 309.

The Court then addressed the admissibility of the financial-crimes evidence “to offer guidance on this thorny issue to the trial court on remand.” 448 S.C. at 9, 931 S.E.2d at 298. Although the Court held the trial court acted within its discretion in declining to exclude the subject altogether under the facts and circumstances of the first trial, it continued:

[W]e unanimously hold the trial court allowed the State to go far too long and far too deep into aspects of Murdaugh’s financial crimes that were not probative of the State’s theory of motive, which gave rise to considerable danger of unfair prejudice, and therefore should have been excluded.

*Murdaugh*, 448 S.C. at 35, 931 S.E.2d at 312. The Court was “convinced the State could have effectively presented evidence to support its motive theory in a fraction” of the 12.5 hours it consumed. 448 S.C. at 37, 931 S.E.2d at 313. As for the retrial, the Court “certainly do[es] not intend to require the evidence be admitted,” the question must be decided anew on the facts and circumstances then presented, and any presentation the trial court may permit must proceed

“efficiently without the lengthy presentation of inflammatory details with little to no probative value that was permitted in the first trial.” 448 S.C. at 38, 931 S.E.2d at 313.

**D. The indictments rest on grand jury testimony the State’s lead case agent has admitted was false and on forensic evidence Mr. Murdaugh has shown was fabricated.**

One further body of fact bears on the State’s motion, because the State stakes its statutory argument on the identity of the indictments in the caption. On the night of the murders, SLED seized the white T-shirt Mr. Murdaugh was wearing. Confirmatory HemaTrace testing performed on August 10, 2021 detected no human blood on the shirt, and SLED’s supplemental serology report of November 10, 2021 recorded “no human blood detected” for each cutting tested. By then, SLED’s decision to spray the entire shirt with leucocrystal violet on July 21, 2021, had effectively destroyed it for purposes of any further examination.

SLED nonetheless retained Tom Bevel, a private bloodstain-pattern consultant, to opine on the shirt. Mr. Bevel’s initial report, dated February 3, 2022, opined that the “stains on the white t-shirt are consistent with transfers and not back spatter from a bullet wound,” and that he would expect “little to no spatter” on the shooter at all. What followed is chronicled, document by document, in the previously-filed Motion for Sanctions: a conference between Mr. Bevel, the lead case agent, and others at SLED to “discuss” the unwelcome report; the ceremonial hand delivery to Oklahoma of a shirt already known to be destroyed; and the Photoshop “enhancement” of the very photographs Mr. Bevel had possessed all along—after which Mr. Bevel issued a revised report opining that “100+ stains are consistent with spatter on the front of the t-shirt.” On the first day of trial, the State produced an affidavit in which Mr. Bevel conceded he had never received the higher resolution “RAW” photograph files on which his revised opinion purportedly rested.

In July 2022, the lead case agent, Senior Special Agent David Owen, testified to the Colleton County Grand Jury that blood spatter had been identified on Mr. Murdaugh’s shirt and

that DNA in the areas of spatter belonged to Mr. Murdaugh, Maggie, and Paul. The grand jury returned the indictments under which the State now proceeds. At trial, Agent Owen conceded the point on cross-examination: “Q. So, you didn’t know at the time but you know now that what you told the Colleton County Grand Jury was not correct. Is that fair? A. In reference to the shirt, correct.” (Trial Tr. 3688–89.) The State never offered blood-spatter evidence at trial, and in its reply closing argument told the jury: “that blood evidence was investigated, and the State didn’t offer it. . . . Didn’t try to offer it. Look, they’ve looked into this and it didn’t turn out to be . . . We didn’t try to present it.” (Trial Tr. 5841.) These facts are the bases of Mr. Murdaugh’s pending Motion to Dismiss the Indictments, filed August 7, 2026.

### III. Legal Standard

The State invokes “the general evidentiary rule that a defendant’s testimony at a former trial is admissible in evidence against him in later proceedings.” *Harrison*, 392 U.S. at 222. But *Harrison* did not merely acknowledge that rule; it defined the rule’s limit, and reversed a conviction that transgressed it. Where a defendant testifies “in order to overcome the impact” of evidence improperly placed before the jury, “the same principle that prohibits the use of” the improper evidence “also prohibits the use of any testimony impelled thereby,” for the testimony is “the fruit of the poisonous tree.” *Id.* at 222–23. “The question is not whether the petitioner made a knowing decision to testify, but why.” *Id.* at 223. And once the defendant’s testimony follows upon the improper evidence, the burden rests on the prosecution: “Having ‘released the spring’ by using the petitioner’s unlawfully obtained confessions against him, the Government must show that its illegal action did not induce his testimony.” *Id.* at 225. Even on a silent record, “the more natural inference is that no testimonial admission so damaging would have been made if the prosecutor had not already spread the petitioner’s confessions before the jury,” and that inference, undisputed, requires exclusion. *Id.* at 225–26.

*Simmons* supplies the constitutional principle underlying *Harrison's* rule. There, the Supreme Court of the United States held that testimony a defendant gives in order to vindicate one right cannot be deployed against him as the price of that vindication, finding it “intolerable that one constitutional right should have to be surrendered in order to assert another.” *Simmons*, 390 U.S. at 394.

#### IV. Argument

A. ***Harrison* bars the State from using testimony impelled by evidence the Supreme Court has held should have been excluded.**

The State’s motion rests entirely upon a single factual premise: that “there is no ruling of any error that ‘impelled’ the testimony.” (State’s Mot. ¶ 1.) That premise is false. Our Supreme Court unanimously held that the trial court permitted the State “to go far too long and far too deep into aspects of Murdaugh’s financial crimes that were not probative of the State’s theory of motive, which gave rise to considerable danger of unfair prejudice, and therefore should have been excluded.” *Murdaugh*, 448 S.C. at 35, 931 S.E.2d at 312. The evidence the Supreme Court held should have been excluded is the very evidence Mr. Murdaugh’s counsel identified—on the record, contemporaneously, and before Mr. Murdaugh’s election—as the reason Mr. Murdaugh would take the stand. (Trial Tr. 4656, 4658–60.)

In *Harrison* itself, the Court had no record statement of the defendant’s reasons; it excluded the testimony because the “natural inference” of inducement had not been dispelled by the prosecution. 392 U.S. at 225–26. Here no inference is necessary. Counsel told the trial court, twice, in terms, that but for the financial-crimes evidence “we in all likelihood would not put him on the stand,” and asked the court to strike that evidence so that different advice could be given. (Trial Tr. 4656, 4659.) The trial court refused; the Supreme Court has now held that refusal left

before the jury hours of inflammatory evidence that should not have been there. The causal chain *Harrison* demands is not merely inferable from this record; it is stamped upon it.

The State's own quotation of *Harrison* gives away the argument. A defendant's decision to testify in view of "the strength of the *lawful* evidence adduced against him" poses no bar to later use. *Harrison*, 392 U.S. at 222 (emphasis added); (State's Mot. ¶ 1). The operative word is *lawful*. Twelve and one-half hours of testimony across ten days of trial, presented "far too long and far too deep" into matters "not probative" of motive and freighted with "considerable danger of unfair prejudice," was not lawful evidence; our Supreme Court has said so unanimously. 448 S.C. at 35, 37, 931 S.E.2d at 312–13. Nor may the State now retreat to the position that some quantum of financial-crimes evidence would have been admissible in a properly conducted trial. *Harrison* places the burden on the State to "show that its . . . action did not induce" the testimony. 392 U.S. at 225. The State cannot demonstrate which fraction of its 12.5-hour presentation would have survived a correct application of Rule 403, much less that Mr. Murdaugh would have taken the stand to answer that lawful residue alone. Counsel's objection was directed precisely at the excess—the "minute details of each one of these offenses" (Trial Tr. 4660)—that the Supreme Court has condemned. Doubts on this score are resolved against the party whose error created them. *Harrison*, 392 U.S. at 224–26.

Courts applying *Harrison* have enforced its rule in materially identical circumstances. In *Sweeten v. State*, 693 S.W.2d 454 (Tex. Crim. App. 1985), the State argued the defendant waived his challenge to an improperly admitted confession by taking the stand and addressing it. The Texas Court of Criminal Appeals rejected the waiver theory, holding under *Harrison* that testimony given "in order to overcome the impact" of improperly admitted evidence is tainted by the same error that rendered the underlying evidence inadmissible, and that the burden rests on the

prosecution to prove the testimony proceeded from an independent source. And as recently as last year, in the third trial of a defendant whose conviction had been reversed for prosecutorial misconduct, the Texas courts reaffirmed that *Harrison* forbids the State to introduce in its case in chief a defendant's prior trial testimony impelled by the wrongful use of evidence; the court permitted use of prior testimony there only because the declarant was the defendant's father rather than the accused, and because nothing in the record showed the witness testified to overcome the State's misconduct. *Temple v. State*, 729 S.W.3d 793, 818–20 (Tex. App. Houston [14th Dist.] 2025). Both features found wanting in *Temple* are present here: the declarant is the accused himself, and the record affirmatively establishes why he testified.

The State's remaining citations are not to the contrary. *Byford v. State*, 994 P.2d 700 (Nev. 2000), and *United States v. Arthur*, 602 F.2d 660 (4th Cir. 1979), simply restate the general rule *Harrison* acknowledged; in neither case was there any claim—still less an appellate holding—that improperly admitted evidence impelled the defendant's testimony. Those cases describe the rule. This case falls within its settled exception.

**B. *Simmons* forbids conditioning the right to answer the State's inadmissible evidence on a permanent forfeiture of the privilege against self-incrimination.**

In *Simmons*, the defendant testified at a suppression hearing in order to assert his Fourth Amendment rights, and the government introduced that testimony against him at trial on the issue of guilt. The Supreme Court of the United States reversed, holding it “intolerable that one constitutional right should have to be surrendered in order to assert another.” 390 U.S. at 394.

Mr. Murdaugh faced the choice *Simmons* condemns. He could leave unanswered ten days of inflammatory and, in substantial part, inadmissible evidence portraying him to the jury as someone capable of anything; or he could exercise his right to testify in his own defense and answer it. He chose to defend himself. If that choice now licenses the State to read his words into

evidence at every future trial of these charges—including a retrial made necessary by the misconduct of an elected officer of the court—then the Fifth Amendment privilege he indisputably holds at the retrial has been forfeited as the price of confronting evidence that never should have been admitted. A defendant's waiver of the privilege extends to the trial in which he testifies; the State's theory would convert a single, induced election into a perpetual forfeiture, effective in a proceeding where every other feature of the first trial has been nullified.

The rule the State proposes would also invert every incentive the exclusionary principle exists to protect. If the State may harvest a defendant's testimony for use at a retrial whenever its first trial is overturned, then the more prejudicial and inadmissible the evidence the State injects, the more surely the defendant is drawn to the stand—and the more valuable the transcript the State carries into the retrial its own errors necessitated. *Harrison's* exclusionary rule exists precisely to deny the prosecution any advantage from the wrongful use of evidence. 392 U.S. at 222–26.

**C. The testimony is the product of a structurally corrupted proceeding, and no incident of that proceeding survives its vacatur.**

Mr. Murdaugh's election to testify was made in a trial that was already poisoned. Before he took the stand, the jurors had been instructed by the elected Clerk of Court—an officer whose position, the Supreme Court observed, "amplified the impact" of her words—not to be "fooled" by his defense, to "watch him closely," and to treat his decision to testify as "unusual and suspicious." *Murdaugh*, 448 S.C. at 10, 24, 28, 931 S.E.2d at 298–99, 306, 308. The waiver of the privilege on which the State's entire motion rests was thus exercised within, and shaped by, a proceeding the Supreme Court has held denied Mr. Murdaugh his state and federal constitutional right to a fair trial before an impartial jury. A trial adjudged fundamentally unfair cannot supply the voluntary, untainted testimonial election on which the State's "general rule" depends.

Vacatur, moreover, is not a partial remedy. The first trial is a nullity; the parties stand “in the same situation as if no trial had ever taken place.” *Ayres*, 76 U.S. (9 Wall.) at 610; *accord Pearce*, 395 U.S. at 721. The State does not contend that any evidentiary ruling, any motion in limine, any stipulation, or any strategic election from the first trial binds anyone at the second; the Supreme Court has directed that even the admissibility of the State’s own motive evidence be litigated afresh. *Murdaugh*, 448 S.C. at 38, 931 S.E.2d at 313. It would be a strange jurisprudence indeed in which the sole element of a constitutionally void trial to survive its vacatur is the defendant’s own error-induced testimony, preserved for use against him in the prosecution’s case in chief.

**D. Section 19-11-50 is a shield for the defendant, not a sword for the State.**

The State next invokes S.C. Code Ann. § 19-11-50: “The testimony of a defendant in a criminal case shall not be afterwards used against the defendant in any other criminal case, except upon an indictment for perjury founded on that testimony.” The statute is, by its terms, purely prohibitory: it forbids a use; it authorizes nothing. Its lone “exception”—for perjury prosecutions—is an exception to its own prohibition, not a grant of admissibility. The State’s argument reads the statute backwards: from the premise that § 19-11-50 does not forbid use of prior testimony within “the same criminal case,” the State concludes that such use is affirmatively sanctioned. Non-prohibition is not permission. Whatever the statute leaves unaddressed remains governed by the Constitution and the rules of evidence—and, as shown above, *Harrison* and *Simmons* resolve that question against the State.

The State’s construction misconceives the statute’s purpose. Statutes “must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.” *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Section 19-11-50 sits within a chapter safeguarding the testimonial privilege,

and its accommodation of same-case use reflects the ordinary progression of a single prosecution through successive phases: testimony given at a preliminary or suppression hearing may be met at the ensuing trial; testimony given at the guilt phase may resurface at sentencing. What the statute does not do is designate the retrial of a vacated case—a proceeding at which everything else begins anew—as the singular occasion on which the State may present a non-testifying defendant’s words as its evidence in chief. A statute enacted in 1866 to guarantee that a defendant’s decision to testify in one case will not haunt him in others cannot plausibly be construed as the General Assembly’s chosen instrument for guaranteeing the opposite.

*State v. Tucker*, 334 S.C. 1, 512 S.E.2d 99 (1999), on which the State principally relies, is exactly the case the statute’s same-case accommodation contemplates—and nothing more. Tucker’s conviction was affirmed; only his death sentence was reversed; and his testimony from the guilt trial was received at the resentencing phase of a valid, subsisting conviction. *Id.* at 12–13, 512 S.E.2d at 105. *Tucker* did not involve a vacated trial. It did not involve testimony impelled by evidence held inadmissible. It did not address—or even mention—*Harrison*. The same is true of the State’s older authorities: *State v. Chasteen*, 231 S.C. 141, 145, 97 S.E.2d 517, 519 (1957), and *State v. Williamson*, 65 S.C. 242, 43 S.E. 671, 672 (1903), concern the permissible scope of cross-examination of a defendant who has chosen to testify—impeachment questions that say nothing about the State’s case in chief against a defendant who has not.

Nor do the rules of evidence advance the State’s position. Rule 801(d)(2) and Rule 804(b)(1) of the South Carolina Rules of Evidence answer only the hearsay question. The testimony in *Harrison* equally satisfied “the general evidentiary rule”—it was formally regular, sworn, and subject to cross-examination—and it was excluded nonetheless, because a rule of evidence cannot make admissible what the Constitution excludes. 392 U.S. at 222–26.

**E. The pending motion to dismiss the indictments exposes the arbitrariness of the State's construction.**

The State's statutory argument reduces, in the end, to the observation that the retrial will proceed "on the same criminal indictments." (State's Mot. ¶ 3.) Mr. Murdaugh invites the Court to consider what that argument actually asks the Court to hold. As set forth above and in Mr. Murdaugh's pending Motion to Dismiss the Indictments, those indictments were procured through grand jury testimony the State's lead case agent has admitted was false. Under *State v. Thrift*, 312 S.C. 282, 302, 440 S.E.2d 341, 352 (1994), courts will inquire into the evidence presented to a grand jury "where, as here, a defendant makes a colorable claim of prosecutorial misconduct." Every element of that standard is met here, and none is fairly debatable. There is, at the very least, a colorable claim of misconduct: the fabrication of the blood-spatter evidence is chronicled, document by document, in the Motion for Sanctions. There is prejudice: in a case the Supreme Court has described as "rest[ing] largely on circumstantial evidence," *Murdaugh*, 448 S.C. at 29, 931 S.E.2d at 309, the purported spatter—matched by DNA to each victim—was the only direct forensic evidence of guilt ever presented to any body, and it was presented to the grand jury that indicted. And the evidence was admittedly incompetent: Agent Owen conceded at trial that what he told the grand jury "was not correct" (Trial Tr. 3688–89), and the State conceded in its reply closing argument that "that blood evidence was investigated, and the State didn't offer it" because "it didn't turn out to be." (Trial Tr. 5841). As a technical matter, the motion to dismiss surely must be granted.

Mr. Murdaugh anticipates, candidly, the institutional instinct to resist that conclusion: dismissal may strike the Court as an empty exercise, because the State would simply return to a grand jury, present its case without the fabricated evidence, and obtain new true bills. Perhaps so. But that very observation is the *reductio ad absurdum* of the State's statutory argument. If the

indictments are so freely replaceable that replacing them with differently numbered indictments would accomplish nothing of substance, then nothing of substance can be permitted to turn upon their numbering. Yet the State's entire construction of § 19-11-50 makes the gravest substantive question its motion presents—whether the State may make Mr. Murdaugh a witness against himself in its case in chief—turn upon precisely those interchangeable numbers. On the State's reading, the identical retrial, before the identical court, on identical charges arising from identical facts, is “the same criminal case” so long as the caption reads 2022-GS-15-00592 through -595, and the testimony comes in; but if a grand jury returns fresh true bills, the retrial becomes “any other criminal case,” and the statute flatly bars the testimony “except upon an indictment for perjury.” A construction under which the admissibility of a defendant's own words in the State's case in chief depends upon the serial numbers of the charging papers—numbers the State could regenerate at will—is its own refutation.

The absurdity dissolves on the construction advanced above: the statute's same-case accommodation speaks to the successive phases of a single proceeding, and the substantive question of what evidence may be presented at a retrial is governed by the Constitution and the rules of evidence, whose answer does not vary with the caption. If, however, the Court adheres to the State's literal reading, then its consequences must be enforced uniformly: the *Thrill* elements are met, the indictments must be dismissed, any renewed prosecution will proceed in what is—on the State's own reading—“any other criminal case,” and § 19-11-50 will bar the State's proposed use in terms. Either way, the motion in limine fails.

**F. At most, the State's authorities speak to impeachment—an issue not presented by this motion.**

The remainder of the State's authority confirms rather than undermines the line *Harrison* draws. In *State v. Brown*, 296 S.C. 191, 193–94, 371 S.E.2d 523, 524–25 (1988), decided on facts

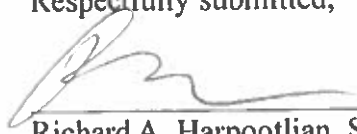
the State itself describes as involving “prior testimony . . . induced by unconstitutional error,” our Supreme Court sustained the use of testimony from a reversed trial for impeachment of the defendant on cross-examination—not as substantive evidence in the State’s case in chief. *Harris v. New York*, 401 U.S. 222, 225–26 (1971), and *United States v. Havens*, 446 U.S. 620, 626 (1980), stand for the same proposition: statements unavailable to the prosecution in its case in chief may nonetheless be used to impeach a defendant who takes the stand and testifies inconsistently. This body of law presupposes precisely the distinction the State’s motion elides. Evidence tainted by official error is excluded from the case in chief even where it remains available for impeachment; no defendant is thereby licensed to commit perjury, and no court is asked to “condone” it.

Whether, and to what extent, any portion of Mr. Murdaugh’s prior testimony could properly be used in impeachment is a question that will arise only if Mr. Murdaugh elects to testify at the retrial, and only in the context of the evidence and testimony then presented. The State’s own motion disclaims any request for “a preliminary ruling on the scope of impeachment.” (State’s Mot. n.1.) What the State actually seeks is a declaration, in advance and in the abstract, that the transcript of a vacated, constitutionally infirm trial is available to it as substantive evidence. *Harrison* forecloses that declaration, and the Court should decline to make it.

## V. Conclusion

For the foregoing reasons, Mr. Murdaugh respectfully requests that the Court deny the State’s Motion in Limine to Allow the State’s Use of Defendant’s Prior Testimony in Retrial and hold that testimony Mr. Murdaugh gave at the vacated first trial of these indictments is not admissible in the State’s case in chief at the retrial. Any question concerning the use of that testimony for impeachment should be reserved for trial, to be resolved if—and only if—Mr. Murdaugh elects to testify.

Respectfully submitted,



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August 13, 2026  
Columbia, South Carolina

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

STATE OF SOUTH CAROLINA  
COUNTY OF COLLETON

) IN THE COURT OF GENERAL SESSIONS  
) FOURTEENTH JUDICIAL CIRCUIT  
)

The State of South Carolina,  
  
Plaintiffs,

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

vs.

Richard Alexander Murdaugh,  
  
Defendant.

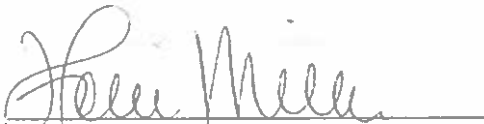
**CERTIFICATE OF SERVICE**

I, Holli Miller, paralegal to the attorney for the Defendant, Richard A. Harpootlian, P.A., with offices located at 1410 Laurel Street, Columbia, South Carolina 29201, hereby certify that on August 13, 2026, I did serve via electronic delivery the following documents to the below mentioned person:

Documents: Defendant's Response in Opposition to the State's Motion in Limine to Use Prior Testimony in Retrial

Response in Opposition to the State's Motion to Compel Defense to Turn Over Digital Evidence

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