STATE OF SOUTH CAROLINA COUNTY OF SUMTER	COURT OF GENERAL SESSIONS THIRD JUDICIAL CIRCUIT
State of South Carolina, v. Richard Alexander Murdaugh, Defendant.	Indictment Nos. 2022-GS-15-00592, -593, -594, and -595 **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS THE INDICTMENTS**

I. Introduction

Defendant Richard Alexander Murdaugh, through undersigned counsel, submits this memorandum in support of his Motion to Dismiss the Indictments, filed August 7, 2026. The State procured the indictments by presenting forensic evidence that the State fabricated: that an expert had found the victims' blood spatter on the shirt Mr. Murdaugh was wearing when he found the bodies of his wife and son, even though the State's laboratory had confirmed, *eleven months before the agent testified*, that there was no human blood on the shirt. This misconduct is compounded by the fact that this fabricated evidence was leaked to the press before Mr. Murdaugh was indicted in order to prejudice the public against him.

The presence of blood spatter was not the agent's only false forensic testimony to the Colleton County Grand Jury. Paul Murdaugh was shot with a combination of buckshot and steel load birdshot from a 12-gauge shotgun. The agent testified before the Colleton County Grand Jury on July 14, 2022 that "shotguns of similar make and load were found on the property." (Trial Tran. 3722:14-19; 3723:16–18 (Ex. A).) In a recorded interview almost a year earlier, this same agent told Mr. Murdaugh that shotguns found in the Murdaugh family home were loaded with the same combination of shells as the gun that killed his son. The agent admitted during his trial testimony that he knew this statement was false, and explained that he is permitted to use "trickery" while interviewing a suspect. (Trial Tran. 3695:4-16, (Ex. A).) He swore to the same thing before the

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State Grand Jury. Trial Tran. 3695:17-21, (Ex. A).) At trial he conceded that no such gun existed and that his grand jury testimony "was not accurate." (Trial Tran. 3697:1-15 (Ex. A).) An agent who lies to a suspect and then tells the same lie to two grand juries has not made an error; he has made a case.

And from the indictments to the present day, the State has used the State Grand Jury, in secret, to develop evidence against an already-indicted defendant on charges that are not among the enumerated offenses to which that body's jurisdiction is limited, evidence it discloses late or not at all. Under *State v. Thrift*, 312 S.C. 282, 302, 440 S.E.2d 341, 352 (1994), this is more than the "colorable claim of prosecutorial misconduct" that permits the Court to look behind the indictments, and the prejudice caused to Mr. Murdaugh by the presentation of this false evidence to the grand jury more than merits dismissal of the indictments.

II. Factual Background

The events below are drawn from the State's discovery productions, the first trial transcript, and sworn testimony in related proceedings. First, within two months of the murders, SLED established that the shirt Mr. Murdaugh was wearing on the night of June 7, 2021, bore no human blood, and then set out to find an expert who would say it bore high-velocity blood spatter that only proximity to a gunshot wound could produce. Second, when the expert SLED retained reported that there was no such spatter, SLED got him to reverse himself, and the State leaked the reversed opinion to the press.[1] Third, the lead case agent presented the fabricated opinion to the Colleton County Grand Jury, which then indicted. Fourth, the fabrication came apart in discovery, over the State's resistance to the Court's orders. Fifth, the lead case agent presented false testimony

[1] The defense is in possession of sworn deposition testimony identifying the individual who provided this information to a reporter and will file the transcript with the Court if requested and/or if the State denies responsibility for this leak.

regarding the combination of buckshot and steel birdshot 12 gauge shot shells loaded in family guns found at the Moselle residence. Sixth, from October 2021 to the present, the State has used the State Grand Jury, whose jurisdiction does not reach murder, to investigate the murders and the witnesses to them, before the indictments, after them, during trial preparation, and again in the months since our Supreme Court ordered a new trial.

A. SLED establishes that there is no human blood on the shirt, and goes looking for a spatter expert.

June 7, 2021: Maggie and Paul Murdaugh are murdered at the kennels at Moselle. In the early morning hours of June 8, SLED Senior Special Agent David Owen, the lead case agent, collects the white cotton T-shirt, shorts, and shoes Mr. Murdaugh was wearing when he found the bodies. (Trial Tr. 3689 (Ex. A).)

June 8–9, 2021: The shirt is tested for gunshot residue; three particles are found, two from a lift of the right sleeve and chest and one from the left. (Trial Tr. 2454 (Ex. A).) A small cutting from the front hem, where Mr. Murdaugh wiped his hands and face after touching the bodies, reacts to a presumptive test for blood and is sent for DNA analysis. A presumptive test indicates only the possible presence of blood. (Trial Tr. 3200 (Ex. A) (SLED analyst: "A presumptive test only indicates the possible presence of a body fluid.")) Other substances produce the same reaction; SLED's own crime scene agent testified that bleach and rust are "the main ones." (Trial Tr. 819 (Ex. A).)

June 25, 2021: SLED reports that the hem cutting carries Maggie Murdaugh's DNA and that Paul Murdaugh is "excluded as [a] contributor[]." The State has never contended that the hem stains are anything other than transfer from Mr. Murdaugh touching his wife's body.

July 7, 2021: Agent Owen and SLED Lt. Charles Ghent brief SLED Captain Ryan Neill on the investigation. Captain Neill records in his notes "Questions about Alex's shirt and how it was

examined and blood was indicated," the "[l]ack of photographs of blood stains, and the poor quality of those that were taken," and that SLED has "[n]o bloodstain expert." (Neill Notes at 4 (Ex. B).)

July 20, 2021: Captain Neill records that "CS and Serology are going to process Alex's shirt again (Spray with LCV/or something similar)." (Ex. B at 4.) Leucocrystal violet (LCV) is another presumptive reagent. Captain Neill notes that former SLED agent Kenny Kinsey, then Chief Deputy of the Orangeburg County Sheriff's Office, is willing to look at photographs "to see if Blood Pattern would be beneficial." (*Id.*)

July 21, 2021: SLED's crime scene unit sprays the entire shirt with LCV, photographs it, grids it with string, and cuts large sections from the areas that reacted for DNA analysis. (SLED Crime Scene Photographs of Item 19, July 21, 2021 (Ex. C); Trial Tr. 819–20 (Ex. A).) The treatment is irreversible. Within months the shirt turned uniformly dark and the stains could no longer be distinguished. (Emails of Lt. Charles Ghent and Tom Bevel, Feb. 15, 2022, with SLED photograph of Item 19 (Ex. D) ("after treatment and storage").) The only forensic record of the shirt's pre-treatment condition is a set of JPEG photographs.

July 25, 2021: SLED reports DNA results for the LCV cuttings. No cutting from the upper two-thirds of the shirt, where the State would later claim spatter from the shooting of Paul Murdaugh appeared, carries Paul Murdaugh's DNA; Paul Murdaugh is excluded from most of them, and the two cuttings in which his DNA appears are from the bottom front of the shirt, which the State has never called spatter. (SLED DNA Analysis Report, July 25, 2021, at 1–9 (Ex. E).)

August 10, 2021: **Every cutting tests negative for human blood.** (HemaTrace Worksheets, Aug. 10, 2021 (Ex. F).) At the direction of her supervisor, Lt. Laura Hash, SLED DNA analyst Sarah Zapata performs HemaTrace confirmatory tests on sub-cuttings from every

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area of the shirt that reacted to the LCV. HemaTrace is an immunochromatographic assay for human hemoglobin that returns a positive result at concentrations as low as 0.05 micrograms per milliliter; forensic laboratories use it as the confirmatory test for human blood. Lt. Hash is present and witnesses the results.

September 21, 2021: Six weeks after the negative confirmatory results, Lt. Jeffrey Crooks of SLED's latent print department writes to Tom Bevel of Bevel, Gardner & Associates in Oklahoma: "My agency has a case that requires BPA analysis, and we are currently not working BPA cases. We would like to discuss potentially hiring your organization to conduct the analysis." (Crooks Email to Bevel, Sept. 21, 2021 (Ex. G).) Mr. Bevel works from his home and his opinions and testimony have been discredited and rejected in many jurisdictions. SLED passes over the South Carolina officer who had offered to look at the photographs for an out-of-state consultant it would pay.

September 29, 2021: SLED's forensic administration captain, Emily Reinhart, meets with Captain Reighley, Lt. Wallace, Lt. Schenk, and Lt. Hash about testing a seat belt for blood, and directs: "If LCV is used, it is understood that no HemaTrace testing would be done by DNA." (SLED Forensic Servs. Lab. Narrative, L21-09074, at 11 (Ex. H).) Lt. Hash, who had watched the shirt cuttings test negative seven weeks earlier, attends; Captain Reinhart and Lt. Hash had both been present when the shirt was sprayed on July 21. (DNA Case File at 201 (Ex. I).) The directive concerned a seat belt, but it stated a rule: an LCV reaction would not be followed by the confirmatory test that had just returned negative on the shirt. This rule means that if touch DNA from a family member is found on any clothing or household item that reacts with LCV, it could be represented to have the family member's blood on it, even if no blood was present.

November 10, 2021: Three months after the tests, SLED issues a supplemental report recording, for each of the twelve cuttings from the shirt, "No human blood identified." (SLED Supplemental DNA Report, Nov. 10, 2021, at 2 (Ex. J).) The report is addressed to Agent Owen. (*Id.* at 1.) Agent Owen would later claim that he first saw it more than a year later, on November 30, 2022. (Trial Tr. 3685 (Ex. A).)

B. The expert finds no spatter, SLED gets the opinion reversed, and the State leaks it to the press.

1. SLED withholds the negative results from its expert, who nevertheless finds no spatter.

December 13, 2021 – January 5, 2022: Lt. Ghent arranges for the case materials to be transmitted to Mr. Bevel through evidence.com. (SLED Emails to Bevel, Dec. 13, 2021, and Jan. 4, 2022 (Ex. K).) On January 5, 2022, Agent Owen sends Mr. Bevel SLED's questions, the second of which is "Are the stains on the shirt consistent with a gunshot?" (SLED Email to Bevel, Jan. 5, 2022 (Ex. K).) The HemaTrace results and the November 10, 2021 report are not among the materials provided to Mr. Bevel.[2]

February 4, 2022: Mr. Bevel delivers his initial report, dated February 3, 2022. It concludes that the "stains on the white t-shirt are consistent with transfers and not back spatter from a bullet wound," that he would expect "little to no spatter on the shooter or [his/her] clothing" from the shooting of Paul Murdaugh and none from the shooting of Maggie Murdaugh, and that "[f]or there to be little to no back spatter on the shooter or they're [sic] clothing is certainly possible for this incident." (Bevel Initial Report, Feb. 3, 2022, at 11 (Ex. L).) His transmittal email asks SLED to

[2] Mr. Bevel would not receive the HemaTrace results and the November 10, 2021 report until December 1, 2022, after the defense filed a motion to exclude his revised report claiming that high velocity blood spatter was present on Mr. Murdaugh's shirt, indicating that he was in close proximity to Paul's murder.

"advise if there are other areas you want an analysis done and included in this report." (Bevel Email, Feb. 4, 2022 (Ex. M).)

*2. **SLED gets the opinion reversed.***

February 7–8, 2022: On the first business day after receiving Bevel report, Agent Owen meets with Captain Neill, Lt. Ghent, and crime scene personnel, then writes to Mr. Bevel asking for a video conference "to discuss your report and additional question[s] we have in this matter." (Owen email requesting video conference, Ex. N.) The Zoom meeting, captioned "Murdaugh Investigation BGA Meeting," takes place on February 8. (Ghent Email, Feb. 8, 2022 (Ex. O).) Agent Owen's own later chronology describes the meeting as a "[d]iscussion about findings" at which SLED "requested additional examination." (Owen Chronology (Ex. P).)

February 15, 2022: Lt. Ghent sends Mr. Bevel a cell-phone photograph of the shirt "after treatment and storage" and asks "whether the shirt in this condition will still be of potential use." 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." (Ghent–Bevel Emails, Feb. 15, 2022 (Ghent-Bevel Emails, (Ex. D).)

February 17 – March 4, 2022: Agent Owen tells Mr. Bevel that "[d]ue to chain of custody issues, I will hand deliver the shirt." Mr. Bevel responds that the United States Postal Service "keeps the chain of custody in tack [sic]," but adds, "If you don't take the above route, I would also like to meet and discuss the case in person." SLED sends Agent Owen and Lt. Wallace to Oklahoma. (Owen–Bevel Emails, Feb. 17 – Mar. 4, 2022 (Ex. Q).)

March 6–7, 2022: Before the visit, Mr. Bevel writes: "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." (Bevel Email, Mar. 6, 2022 (Ex. R).) The next day, he

reports that he has "been working on enhancements of the overall photos of the front of the shirt and see some possible tiny stains that may be spatter." (Bevel Email, Mar. 7, 2022 (Ex. R).)

March 9–11, 2022: Agent Owen and Lt. Wallace fly to Norman, Oklahoma, carrying the treated shirt, and spend the day of March 10 with Mr. Bevel at the Norman police laboratory. (Owen Chronology (Ex. P).) They fly back Friday, March 11.

March 14, 2022: On the first business day after the visit, Mr. Bevel writes to Agent Owen: "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. There are over 100+ spatter stains along with transfers such as the bottom hem. . . . 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." (Bevel Email, Mar. 14, 2022 (Ex. S).)

March 21–22, 2022: Agent Owen writes: "Just inquiring about Peer Review and report status." (Owen Email, Mar. 21, 2022 (Ex. S).) Mr. Bevel delivers a revised report the next day. Its conclusions, carried into the final report of March 29, are that "100+ stains are consistent with spatter on the front of the t-shirt," that "[t]he shooter is certainly in a close enough range to get spatter on their clothing," and that "[f]or there to be spatter on the shooter or their clothing it is certainly possible given the facts and circumstances surrounding this incident." (Bevel Final Report, Mar. 29, 2022, at 11 (Ex. T).) Agent Owen acknowledges receipt and asks: "is Ken Martin the only [sic] that did peer review? I was under the impression there would be a round table of 5 to 6 colleagues." (Owen Email, Mar. 22, 2022 (Ex. U).) Mr. Martin is Mr. Bevel's associate. Agent Owen then sends Mr. Bevel a page-by-page list of "observations" on the report, including the report's statement that only one shotgun was fired should be reconsidered because "[w]e do

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have a shotgun in custody that can not be ruled out the shotgun used. Just ensuring you are comfortable using this language." (Owen Email, Mar. 22, 2022 (Ex. U).)

March 29, 2022: Mr. Bevel delivers his final report. It adds a paragraph not found in any earlier version: "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." (Ex. T at 12.) The six Bloodstain Pattern experts are not named. The list of materials considered is the same as the list for the February 3 report, with one addition: the viewing of the treated shirt on March 10. (*Id.* at 2.) No "RAW" photographs, and no photographs of any kind not considered in February, are listed.

3. The State leaks the fabricated opinion to the press.

April 10, 2022: Lt. Ghent notifies Captain Reinhart by email that he would like to schedule a meeting with SLED's DNA staff "to discuss lab results with Creighton Waters from the SCAG Office." Lt. Hash confirms that she, Ms. Zapata, and analyst Rachel Nguyen are available on April 20. (SLED Forensic Servs. Lab. Narrative, L21-09074, at 13 (Ex. H).)

April 18–19, 2022: In preparation for the April 20 meeting, Ms. Zapata accesses the November 10, 2021 report, which records the HemaTrace results, on SLED's iLab system on each of the two days before the meeting. (iLab Audit Information for L21-09074 Report No. 9, at 2 (Ex. V); Trial Tr. 3308–09 (Ex. A).)

April 20, 2022: Lt. Ghent convenes the first meeting between SLED and the prosecutors since Mr. Bevel's report. Nothing in the State's file records that anyone told the prosecutors the shirt had tested negative for human blood. (Owen Chronology (Ex. P) (recording that Agent Owen first "[f]ound" the November 10, 2021, report on November 30, 2022).)

At trial, Ms. Zapata testified:

> Q. Well, at some point, did someone come to you and ask about the hematrace test results that you performed that said no human blood over seventy-four, in relation

to this report, saying that there was blood spatter that had to come from a gunshot on the t-shirt?

A. At some point, I know that we discussed the hematrace results on the shirt.

Q. And when was that?

A. It probably would have been in the meeting where we went over all of the results of my reports. I know that we had several meetings to discuss the results of my reports.

Q. Any idea when that was?

A. It does appear that that April was the first meeting after that report was issued where we had a discussion about the reports.

Q. So, it would have been that meeting that it had been discussed. Were your hematrace test results and the blood spatter report discussed in the same meeting?

A. Possibly, but I don't know that. I also wasn't present for all of the meetings all of the time. . . .

(Trial Tr. 3309–10 (Ex. A).)

April 26, 2022: FITSNews publishes an article headlined "High-Velocity Impact Spatter Directly Ties Alex Murdaugh To Double Homicide, Sources Say," reporting 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," that the evidence "could have only come from one thing," that it had "been independently analyzed and confirmed by multiple forensic experts — including by at least one out-of-state laboratory," and that "[o]fficials at [SLED] and the South Carolina Attorney General's Office appear to be closer to filing charges." (FITSNews, Apr. 26, 2022 (Ex. W).) Every detail of the news article traces to Mr. Bevel's March 29 report, which only Mr. Bevel's firm, SLED, and the Attorney General's office possessed.

The leak was an extrajudicial statement, made on behalf of the State, whose only purpose was to persuade the public of Mr. Murdaugh's guilt before he was charged. It was also false, and

the State's own laboratory file had proved it false. The leak did not stop in April. On July 14, 2022, the day the Colleton County Grand Jury returned the indictments, CNN reported that "[b]lood spatter found on the clothing of disgraced attorney Alex Murdaugh could place him at the scene of the murder of his wife and son," attributing the report to "a source with knowledge of the investigation." (*Disgraced South Carolina Attorney Alex Murdaugh Indicted for Murders of Wife and Son*, CNN (July 14, 2022) (Ex. X).) The same claim reached a national magazine the following week: "blood spatter allegedly found on Alex Murdaugh's clothes indicates he was at the scene at the time of the murder." (*Inside the 'Mountain of Evidence' That Police Say Proves Alex Murdaugh Killed His Wife & Son*, People (July 20, 2022) (Ex. Y) (attributing the claim to "a law enforcement source with direct knowledge of the case").)

April 27, 2022: SLED's forensic document release coordinator, Lorri Johnson, sends eight DNA STRmix files from the case to Mr. Waters, at Ms. Zapata's request. (SLED Forensic Servs. Lab. Narrative, L21-09074, at 13 (Ex. H).)

December 9 and 19, 2022: The Court grants the motion to compel from the bench and then in writing, ordering the State "to produce to the defense forthwith" all communications with Mr. Bevel, all documents exchanged with him, all Photoshop files relating to the shirt, and Mr. Bevel's case file. (Order, Dec. 19, 2022.) In the proposed order he submits, Mr. Waters objects that Mr. Bevel was retained by "SLED," not "the State." The State was already distancing itself from its own expert.

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C. Agent Owen presents the fabricated evidence to the grand jury.

1. Agent Owen testifies under oath before the Colleton County Grand Jury and the State Grand Jury that the shotguns in the house were loaded like the gun that killed Paul.

June 7, 2021: The spent 12-gauge shotshells recovered from the feed room, where Paul Murdaugh was killed, are a buckshot load and a Winchester Drylok, which is a waterfowl load—not bird shot/turkey load. (Trial Tr. 3693:17–22; (Ex. A).)

August 11, 2021: Agent Owen interviews Mr. Murdaugh a third time, on video, at SLED's Lowcountry Regional Office in Walterboro. Mr. Murdaugh has come voluntarily, is not in custody, and is free to leave. (Trial Tr. 3638:6–21, 3641:2–21 (Ex. A).) Agent Owen tells Mr. Murdaugh that multiple shotguns found on the property were loaded with the same combination of shells found where Paul Murdaugh was killed. He later recalled his own words as "buckshot/bird shot." (*Id.* at 3694:17–21.) There were no such guns. Asked at trial whether he could "identify any weapons found in the house at Moselle that were loaded with buckshot and birdshot," Agent Owen answered, "No, sir." (*Id.* at 3695:1–3.) Asked whether his statement to Mr. Murdaugh was "an investigative tool, or were you just under the misimpression that that was the case," he testified:

> A. Investigative tool.
>
> Q. So, you lied to him?
>
> A. I'm allowed to use trickery to illicit [sic] a response.
>
> Q. I understand. So, you were trying to trick him. You agree?
>
> A. I'm allowed to use trickery to illicit [sic] a response, yes.
>
> Q. And you're allowed to do it and you did it.
>
> A. Yes.

(Trial Tr. 3695 (Ex. A).)

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November 16, 2021: Agent Owen testifies under oath before the State Grand Jury and repeats the same lie intentionally told to Mr. Murdaugh: that the shotguns in the house were loaded like the gun that killed Paul. Owen testifies to the grand jurors what he told Mr. Murdaugh: that there were four shotguns on the Moselle property, loaded with buckshot and turkey load. (Trial Tr. 3695 (Ex. A).) Asked whether "all of them to your recollection [were] loaded that -- like that," he answered: "They were -- they were located loaded in a similar fashion, yes." "In a similar fashion?" "Yes, sir." "With one turkey load and one buckshot load." "Yes, sir." (Owen SGJ Tr. 48, Nov. 16, 2021, *as read at* Trial Tr. 3697:1–12 (Ex. A); *see also* Owen Grand Jury Outline, (Ex. Z at 10-11) (reflecting similar testimony before the Colleton County grand jury).). Notably, this is *six days* after SLED's laboratory addressed to him the report recording "No human blood identified" on the shirt.

July 14, 2022: Agent Owen testifies before the Colleton County Grand Jury and repeats the same lie he told to Mr. Murdaugh during the August 11 interview, and the State Grand Jury testimony of November 16, 2021. (Owens Grand Jury Outline, (Ex. Z.);Tr. Tran. 3722:14-19; 3723:16–18). Specifically, Owen testified testified that "shotguns of similar make and load were found on the property." *Id.*

February 15, 2023: At trial, Agent Owen admits that the August 11 statement to Mr. Murdaugh was a deliberate lie. (Trial Tr. 3695 (Ex. A).) He also concedes that SLED found no gun at the house loaded with buckshot and turkey load. (*Id.* at 3696:15–18.) Confronted with his grand jury answers, he agrees: "Q. And that was not accurate, correct? A. Correct." (*Id.* at 3697:13–15.)

Agent Owen's two accounts of the same statement cannot both be true. On August 11, 2021, the statement was admittedly intentional deception when made to Mr. Murdaugh. Owen

knew there was no gun in the house loaded like the gun that killed Paul Murdaugh, and he said otherwise to see how Mr. Murdaugh would respond. (Trial Tr. 3695:4–16 (Ex. A).) Three months later he made the same statement under oath to the State Grand Jury, and at trial he denied that it was a mistake or a trick. (Owen Grand Jury Outline, (Ex. Z at 10-11); Trial Tr. 3695:22–3696:2 (Ex. A).) Owen repeated the same statement to the Colleton County Grand Jury to obtain the murder indictments. (Owen Grand Jury Outline at 10–11 (Ex. Z).) A statement the witness knew to be false in August was not an honest error in November.

The law permits an interrogating officer, within limits, to deceive a suspect. *Frazier v. Cupp*, 394 U.S. 731, 739 (1969). It permits no one to deceive a grand jury. Nor was the falsehood incidental. The shotgun that killed Paul Murdaugh has never been recovered. Owen made a claim that the shotguns in the Murdaugh house were loaded in the same manner as the shotgun that killed Paul had been loaded and further tied the murder weapon to Mr. Murdaugh's house, and it was false.

As discussed below, the shotshells followed the same course as the spatter: the same agent, a forensic link between Mr. Murdaugh and the shootings that did not exist, sworn to a grand jury, and corrected only when defense counsel put the agent's own words in front of him.

2. *Agent Owen testifies before the Colleton County Grand Jury to the presence of blood spatter belonging to Maggie & Paul on Alex's shirt.*

July 2022: Agent Owen testifies before the Colleton County Grand Jury from a prepared narrative. He tells the grand jurors that an expert "found multiple particles of blood spatter on the shoulders and front of Alex's shirt" and that "[t]he DNA in the areas of spatter were identified as belonging to Alex, Maggie, and Paul." (Owen Grand Jury Outline, "Shirt" (Ex. Z); Trial Tr. 3684–85, 3688–89 (Ex. A).) The outline, which Agent Owen emailed to Lt. Ghent under the subject "GJ Notes" on July 7, 2022, does not mention the HemaTrace results, the November 10, 2021 report,

or the words "no human blood." The grand jury returns the four indictments under which the State proceeds today.

Both statements were false. There was no human blood in the areas Mr. Bevel marked as spatter, as SLED's laboratory had confirmed eleven months earlier. And Paul Murdaugh's DNA was not found in any of those areas; it was found only in two cuttings from the bottom front of the shirt, which the State has never called spatter. The "blood spatter" was the only physical evidence the grand jury heard that placed Mr. Murdaugh at the shootings; the State's own analyst could not say whether the three gunshot-residue particles on the shirt came from the discharge of a firearm or from contact with something that carried residue. (Trial Tr. 2454 (Ex. A).) Everything else the State possessed then, and everything it presented at trial, was circumstantial. *State v. Murdaugh*, 448 S.C. 1, 29, 931 S.E.2d 294, 309 (2026) ("The State's case rested largely on circumstantial evidence.").

D. The State uses the State Grand Jury to investigate the murders, before and after the indictments, and is doing so again.

Murder is not among the offenses within the State Grand Jury's jurisdiction, *see* S.C. Code Ann. § 14-7-1630(A), and the State sought the murder indictments from the Colleton County Grand Jury. Its own records show that the State Grand Jury impaneled for "Operation Low Country Boil," designated SGJ 2021-296, served from October 2021 forward as the investigative arm of the murder case, and that it serves that function today.

October 19, 2021: Agent Owen's case-management history for the murder investigation, SLED file 31-21-0061, records: "Case is with the SGJ." (Owen Case Mgmt. History at 049 (Oct. 20 Prod.) (Ex. AA).)

November 10–16, 2021: Agent Owen gives a "presentation to AG Waters and SGJ staff in Columbia" and sits "with Waters for SGJ intro prep"; on November 15 he serves the Murdaugh

housekeeper, Blanca Simpson, with a State Grand Jury subpoena for "Testimony"; and on November 16 he records: "SGJ Intro of 31-21-0061," the murder file, together with the financial files. (Ex. AA at 050; SGJ Subpoena Log at 075 (Oct. 20 Prod.) (Ex. AB).)

January–April 2022: State Grand Jury subpoenas issue, among others, to Marian Proctor, Maggie Murdaugh's sister; to Rogan Gibson, the last person to speak with Paul Murdaugh; to Mushelle Smith, Randolph Murdaugh's caregiver, who had told SLED in September 2021 that Mr. Murdaugh arrived at Almeda carrying "a blue covering"; to Nathan Tuten, for "Testimony"; and to Gregory Alexander, then Chief of the Yemassee Police Department, for "Testimony." (Ex. AB.) Each was a witness to the events of June 7, 2021, or to Mr. Murdaugh's movements in the days around it, and the State called the first four at the murder trial. Whatever any of them knew about the financial charges, each was summoned as a witness to the murders.

June 20–29, 2022: Three weeks before the murder case is presented to the Colleton County Grand Jury, State Grand Jury subpoenas issue to Palmetto Primary Care for "Records for Murdaugh family." (Ex. AB.)

July 14, 2022: The Colleton County Grand Jury returns the murder indictments. The State Grand Jury's work on the case does not stop. The subpoena log records further subpoenas on August 5, 2022, and on October 26, 2022, the latter for "Testimony and documents." (Ex. AB.) On November 16, 2022, Agent Owen and Agent Kelly interview a witness "due to a text message found on RAM's phone discussing cleaning a vehicle in Aug 2021"; the next day, November 17, 2022, in the middle of daily entries for "[t]rial prep at SCAG," Agent Owen records: "SCAG SGJ, met with SCAG to review evidence." (Ex. AA at 059.) The murder trial began sixty-seven days later.

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August 21–31, 2026: The State's October 20, 2026, production includes a folder captioned "TD Bank Records Re Margaret Murdaugh," containing a subfolder for "Subpoena No. M26-SGJ-3-264(296) – TD Bank" and a "08-21-2026 Case Response"; the subfolder is empty. (Oct. 20 Prod. p. 121 (Ex. AB).) The number identifies a State Grand Jury subpoena issued in 2026 in case 296, the same investigation. On August 31, 2026, with the State having told this Court on August 14 that it was "not aware of any discovery issues at this time" (Hr'g Tr. 7, Aug. 14, 2026 (Ex. AC)), the Clerk of the State Grand Jury signs, on the application of Mr. Waters, a subpoena commanding Yemassee Police Chief Gregory Alexander to appear and testify before the State Grand Jury on September 15 through 17, 2026. (SGJ Subpoena No. M26-SGJ-3-289 (Ex. AD).) The press reports testimony before that grand jury that Chief Alexander was seen with the murder weapons after the killings and that officers are under investigation for concealing the weapons and clothing. (Def.'s Mot. Compel Disclosure of Evid. Concerning Disposal of the Murder Weapons, Sept. 30, 2026, at 5 & Exs. A, B.) After counsel appeared for Chief Alexander, the State withdrew his subpoena. (*Id.* at 5.) In its response, the State described the State Grand Jury proceeding as an investigation "into a fresh lead concerning post-murder possession of the firearms used to kill Victims Maggie and Paul Murdaugh," invoked State Grand Jury secrecy, S.C. Code Ann. § 14-7-1720, declined to confirm or deny the investigation, and stated that it "is aware of its *Brady* obligations and will comply if and when those obligations are triggered." (State's Resp. to Def.'s Mot. Compel Disclosure of Evid. Concerning Disposal of the Murder Weapons, Oct. 8, 2026, at 1–2.)

October 16, 2026: At the status conference, the Court tells the State that "should you get to the point that *Brady* is triggered, you need to turn that material over to Mr. Harpootlian." Mr.

Waters answers: "Yeah. It could be nothing. It could be *Brady*. It could be very, very damning to Mr. Murdaugh about one of his ride or die friends." (Hr'g Tr. 72, Oct. 16, 2026 (Ex. AE).)

III. Argument

A. The Court may look behind the indictments because Mr. Murdaugh has made a colorable claim of prosecutorial misconduct.

Ordinarily our Supreme Court "do[es] not inquire into the nature or sufficiency of the evidence before a grand jury." *State v. Thrift*, 312 S.C. 282, 302, 440 S.E.2d 341, 352 (1994). "An exception to this general rule exists where, as here, a defendant makes a colorable claim of prosecutorial misconduct." *Id.*[3] Grand jury proceedings are presumed regular "unless there is clear evidence to the contrary," and speculation will not open the inquiry. *State v. Shands*, 424 S.C. 106, 120, 817 S.E.2d 524, 531 (Ct. App. 2018). Once the inquiry is opened, our Supreme Court asks whether the misconduct prejudiced the defendant, applying the standard the United States Supreme Court announced in *Bank of Nova Scotia v. United States*, 487 U.S. 250, 254–56 (1988): an indictment is dismissed where the misconduct "substantially influenced the grand jury's decision to indict," or where there is "grave doubt" that the decision was free of its influence. *Thrift*, 312 S.C. at 302–03, 440 S.E.2d at 352; *see also United States v. Derrick*, 163 F.3d 799, 807–10 (4th Cir. 1998). Knowingly presenting material false testimony to a grand jury is the paradigm of such misconduct. *United States v. Basurto*, 497 F.2d 781, 785–86 (9th Cir. 1974) (due process forbids trial on an indictment the government knows rests in part on perjured testimony material to the charge); *United States v. Hogan*, 712 F.2d 757, 759–62 (2d Cir. 1983) (dismissing

[3] In *Thrift*, our Supreme Court reversed the trial court's finding that the State had committed prosecutorial misconduct, yet it went on to conduct the prejudice inquiry and affirmed dismissal on that basis because the claim of prosecutorial misconduct was merely colorable. *See id.* at 303–04, 352–53.

indictment where the prosecutor placed unreliable and inflammatory matter before the grand jury); *United States v. Samango*, 607 F.2d 877, 882–84 (9th Cir. 1979).

The claim here is more than colorable. It is established by the State's own documents and by the State's own admissions. The lead case agent David Owen swore to the grand jury that an expert had found the victims' blood spatter on Mr. Murdaugh's shirt; the State's laboratory had confirmed eleven months earlier that the shirt bore no human blood; Owen admitted at trial that his grand jury testimony was not correct; and the State told the trial jury that the spatter "didn't turn out to be." (Trial Tr. 3688–89, 5841 (Ex. A).) That is not speculation; it is clear evidence. No further showing is required to open the inquiry.

B. The indictments were procured by fabricated evidence and should be dismissed.

1. The grand jury testimony was false, and the State knew it.

A grand jury's function is to determine whether there is probable cause on the evidence the State chooses to present. When the State presents evidence it knows to be false, and the false evidence is material to the grand jury's finding, the resulting indictment is not the product of the grand jury's independent judgment but of the State's deception, and it is dismissed where the false evidence substantially influenced the decision to indict, or leaves grave doubt that the decision to indict was free from substantial influence of the violations. *Basurto*, 497 F.2d at 785–86; *Bank of Nova Scotia*, 487 U.S. at 256.

The State cannot avoid the consequence of its agent's testimony by characterizing it as an innocent mistake. First, the knowledge of the State's investigating agency is the knowledge of the State. *Kyles v. Whitley*, 514 U.S. 419, 437–38 (1995); *State v. Durant*, 430 S.C. 98, 108–10, 844 S.E.2d 49, 54–55 (2020) (evidence in SLED's possession is within the State's *Brady* obligation). SLED's laboratory performed the HemaTrace tests on August 10, 2021; its supervisor watched them; its report of November 10, 2021, addressed to Agent Owen, recorded "No human blood

identified" for every cutting; and its forensic administration captain, seven weeks after the tests, directed in the next LCV case that "no HemaTrace testing would be done." With the widespread publicity appearing on stations such as CNN, FitsNews, and People Magazine, it is implausible that no one in the SLED laboratory who had participated in the original testing or in the Bevel communication, travel, and production, that they were not aware that Mr. Murdaugh's shirt did not contain human blood. The State knew that Agent Owen's testimony was false.

Second, the agent's own conduct forecloses any claim of good faith. He convened the meeting to "discuss" the report that found no spatter; he arranged the Oklahoma visit after being told the shirt "doesn't look promising"; he prodded for "Peer Review" and a "round table of 5 to 6 colleagues"; he suggested that the expert reconsider language inconvenient to the State's theory of the weapons; he withheld the negative serology from the expert for ten months after the expert's first report and for fifteen months after the tests; and when the fabrication surfaced, he wrote a chronology asserting that "Raw data of photographs" had been delivered in Oklahoma, which the expert's own affidavit shows was false.

Third, the testimony was material. The spatter was the only physical evidence that would have inculpated Mr. Murdaugh in the shootings. It was the "physical evidence" the State's leaks promised; the murders were the "one thing" the spatter "could have only come from." A grand jury told that the victims' blood was misted onto the defendant's shoulders by the fatal gunshots was effectively told that the case was closed. And the State's duty did not end when the testimony was given. The State's "failure to correct false evidence is as reprehensible as its presentation." *Riddle v. Ozmint*, 369 S.C. 39, 48, 631 S.E.2d 70, 75 (2006). The HemaTrace results that refuted the grand jury testimony sat in SLED's own file from August 2021 forward; the State produced them, unremarked, among hundreds of pages in November 2022, and corrected nothing before the

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grand jury or the Court. The falsity of the testimony only came to light when a defense paralegal found the results buried in a document dump.

Similarly, the false testimony about the shotgun shell loads in the guns at the Murdaugh home being the same as the load pattern that killed Paul linked Mr. Murdaugh to the murder weapon that was never located. Agent Owen knew, by his own admission at trial, that this testimony was false, and it was obviously material because he used it in an attempt to trick Mr. Murdaugh into saying something incriminating. (Trial Tr. 3695–97 (Ex. A).)

Two objections the State will make can be answered now. The first is that the knowledge of SLED's laboratory is not the knowledge of the agent who testified. Mr. Murdaugh does not rest on imputation alone. The agent's own conduct, set out above, is the primary ground: the report that refuted the opinion was addressed to him, and his claim that he did not open it for a year rests on his word alone; he withheld the negative serology from his expert, he managed the reversal of the expert's opinion, and he wrote the false chronology when the reversal was exposed. Imputation supplies the rest. The State's obligation to correct false evidence does not depend on which of its agents learned the truth, *Riddle*, 369 S.C. at 48, 631 S.E.2d at 75, and a rule that permitted the State to present through one agent what another agent knew to be false would make the prohibition on false grand jury testimony a nullity. The second objection is likely that the spatter was never offered at trial and the petit jury convicted without it; thus, there can be no "grave doubt" about the indictment. That confuses two inquiries. The *Bank of Nova Scotia* question is whether the misconduct "substantially influenced the grand jury's decision to indict," or whether there is "grave doubt" that the decision was free of that influence, 487 U.S. at 256, and that question is answered by what the grand jury heard, not by what a later jury did. The petit jury's tampered verdict has been vacated, and a vacated verdict establishes nothing. What remains is a grand jury

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that was told the victims' blood was on the defendant's shoulders and their DNA in it, resulting in a return of true bills. The State's decision not to offer the spatter at trial does not show that the grand jury was uninfluenced by it; it shows that the State knew, by then, the defense had discovered its misconduct.

*2. **The misconduct was not an isolated act.***

The fabrication of the spatter evidence did not occur in isolation. Before the indictments, the fabricated opinion was leaked to the media. The defense has sworn deposition testimony identifying the source of the leak, which directly attributes the leak to the State.[4] Moreover, the spatter was not the only false forensic evidence Agent Owen swore to. In November 2021, he told the State Grand Jury that four shotguns at Moselle were loaded "with one turkey load and one buckshot load," the combination he believed had killed Paul Murdaugh. Three months earlier he had told Mr. Murdaugh the same thing as a deliberate lie. He repeated this lie to the Colleton County Grand Jury to obtain an indictment. At trial he conceded that no such gun existed and that his grand jury testimony "was not accurate." An agent who knowingly lies to a suspect, then repeats the lie to two grand juries and calls it neither a mistake nor a trick, has not misspoken. He has told the grand jury what he wanted it to believe, not what the evidence was.

The State's use of the State Grand Jury to investigate the murders, after the indictments and again now, is an independent ground for dismissal. The State Grand Jury Act confers jurisdiction over fourteen categories of offenses and provides that the body's subject-matter jurisdiction "in all cases is limited to" them. S.C. Code Ann. § 14-7-1630(A). Our Supreme Court has read the grant to reach crimes "committed in the same course of conduct as an enumerated crime," *State v. Sheppard*, 391 S.C. 415, 423, 706 S.E.2d 16, 20 (2011); *see State v. Harrison*, 432

[4] If the State denies responsibility for the leak, or if the Court requests, the defense will file the sworn testimony with the Court.

S.C. 448, 467–68, 854 S.E.2d 468, 478 (2021), but no reading of the statute makes the murders of Maggie and Paul Murdaugh a State Grand Jury matter, and the State has never said they were. It took its murder indictments from a county grand jury. What its own records show is that it used the State Grand Jury, from October 2021 forward, to do what the county grand jury could not: to compel the testimony of the witnesses to the murders, in secret, under the Act's secrecy provisions, § 14-7-1720, and to gather the records of the murder investigation under the Act's subpoena power. The housekeeper, Maggie Murdaugh's sister, the last person to speak with Paul Murdaugh, the caregiver who described the "blue covering," and two of Mr. Murdaugh's acquaintances were each summoned before it. Some of them may also have known something bearing on the financial charges; whatever else they knew, each was a witness to the murders, and Agent Owen's log records that it was the murder file itself, 31-21-0061, that was "introduced" to the State Grand Jury.

The rule that governs the period after the indictments is settled. "[P]rosecutors cannot use grand jury proceedings for the sole or dominant purpose of preparing for trial on an already pending indictment." *United States v. Alvarado*, 840 F.3d 184, 189 (4th Cir. 2016). "Once a defendant has been indicted, the government is precluded from using the grand jury for the sole or dominant purpose of obtaining additional evidence against him." *United States v. Moss*, 756 F.2d 329, 332 (4th Cir. 1985). No reported South Carolina decision has addressed a prosecutor's post-indictment use of a grand jury against the indicted defendant; the question appears to be one of first impression in this State. The rule follows from premises our courts have already stated: "A grand jury is not a prosecutor's plaything and the awesome power of the State should not be abused." *State v. Davis*, 420 S.C. 50, 61, 800 S.E.2d 138, 143 (Ct. App. 2017) (quoting *State v. Capps*, 276 S.C. 59, 61, 275 S.E.2d 872, 873 (1981)). "The grand jury is more than a mere

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instrument of the prosecution." *Thrift*, 312 S.C. at 311 n.15, 440 S.E.2d at 357 n.15. Because "[t]he prosecutor alone calls the shots concerning every aspect of the grand jury proceedings," a prosecutor who acts beyond his authority before the State Grand Jury commits structural error. *Harrison*, 432 S.C. at 473, 854 S.E.2d at 481.

The State Grand Jury Act itself authorizes an order "limiting or ending a state grand jury investigation" upon a finding of "serious abuses of law or procedure by or before the state grand jury," S.C. Code Ann. § 14-7-1630(G), and confines the body's jurisdiction "in all cases" to the offenses the Act enumerates, § 14-7-1630(A); *see Sheppard*, 391 S.C. at 423, 706 S.E.2d at 20; *Harrison*, 432 S.C. at 467–68, 854 S.E.2d at 478. None of those offenses is the preparation of the State's case on a pending murder indictment. The rule exists because the grand jury's investigative powers are not available to a litigant, and a prosecutor who continues to use them against a defendant already charged obtains, out of the view of the court and the accused, a one-sided discovery that the rules of criminal procedure do not permit. A grand jury may continue to investigate other persons and other crimes after an indictment, and evidence against the indicted defendant that comes to light in a good-faith investigation of others is not forbidden fruit. *Alvarado*, 840 F.3d at 189–90; *Moss*, 756 F.2d at 332. The defendant bears the burden of rebutting the presumption of regularity. *Alvarado*, 840 F.3d at 189–90. The question in every case is the prosecutor's purpose.

Here the prosecutor has described it. Asked by the Court on October 16, 2026, about the material now before the State Grand Jury, the lead prosecutor in this case, on whose application the subpoenas issued, told the Court: "It could be nothing. It could be *Brady*. It could be very, very damning to Mr. Murdaugh about one of his ride or die friends." (Hr'g Tr. 72, Oct. 16, 2026 (Ex. AE).) Mr. Waters named three possibilities, and two of the three are measures of the inquiry's

value in this case: evidence the State must give Mr. Murdaugh, or evidence the State will use against him. He did not describe an investigation of a police chief whose outcome would be an indictment or a declination. He described the yield of the inquiry for the trial of this case. The State might have asked some questions about the conduct of public officers, which are within the State Grand Jury's jurisdiction, but what became of the weapons and the clothing on the night of June 7, 2021 is the subject of the pending indictments and the State's own filing calls the inquiry one into "the firearms used to kill Victims Maggie and Paul Murdaugh."

The State's representations to the Court confirm the point. A prosecutor who tells the Court that his grand jury inquiry may be "very, very damning" to the defendant in the case before it, and in the same breath that its contents are secret and that disclosure awaits his own judgment of when *Brady* is "triggered," has described the combination that *Moss* and *Alvarado* exist to prevent: the grand jury's compulsory process used to develop evidence for a pending trial, and the grand jury's secrecy used to keep that evidence from the accused until the State chooses to deploy it.

The State Grand Jury's work on the murder case did not stop at the indictments. The State has produced no record of what the State Grand Jury recently heard about this case on that day or any other, and it has invoked secrecy to keep the question from being asked. The State may not run its murder case through a secret proceeding after indictment, measure that proceeding's output by how "damning" it is to the defendant, and then tell this Court that the rules of discovery do not reach it. That is the "ambush" the State disclaimed on October 16, and it is of the same character as the conduct described above: evidence developed out of view, by means the defense cannot test, for use against Mr. Murdaugh at a trial in which the State has already once produced evidence it knew to be false.

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This conduct bears on the motion in two ways. First, it is further misconduct, to be weighed with the rest in determining whether the indictments should stand. *Hogan*, 712 F.2d at 761–62. Second, it bears on the remedy. Dismissal without prejudice would require the State, if it means to proceed, to present its evidence to a grand jury with jurisdiction over the offense, on a record subject to the ordinary rules, rather than to carry forward indictments obtained on false evidence while it develops new evidence in a forum this Court cannot see.

C. Dismissal without prejudice, restoring the status quo ante, is the mildest appropriate remedy.

1. Courts dismiss civil actions outright for the fabrication of evidence.

In civil litigation, a party who fabricates evidence and produces it to his adversary forfeits his case. A court's inherent power to protect the integrity of its proceedings includes the power of "outright dismissal," *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–46 (1991), and the courts have exercised it against litigants who manufacture evidence. *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118–20 (1st Cir. 1989) (affirming dismissal with prejudice where plaintiff fabricated a document and attached it to the complaint; "a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted"); *Pope v. Fed. Express Corp.*, 974 F.2d 982, 984 (8th Cir. 1992) (affirming dismissal with prejudice where plaintiff produced a manufactured document and testified falsely about it); *Garcia v. Berkshire Life Ins. Co. of Am.*, 569 F.3d 1174, 1180 (10th Cir. 2009) (affirming dismissal for fabricated discovery documents; "[t]he submission of falsified evidence substantially prejudices an opposing party by casting doubt on the veracity of all of the culpable party's submissions throughout litigation," and exclusion of the evidence is not always "enough to deter"); *Vargas v. Peltz*, 901 F. Supp. 1572, 1580–82 (S.D. Fla. 1995) (dismissing action where plaintiff fabricated physical evidence; exclusion of the evidence alone would be "an open

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invitation to abuse the judicial process"). The Fourth Circuit is in accord. *See Projects Mgmt. Co. v. Dyncorp Int'l LLC*, 734 F.3d 366, 373–74, 376–77 (4th Cir. 2013) (affirming dismissal with prejudice for fabricated evidence and perjury); *United States v. Shaffer Equip. Co.*, 11 F.3d 450, 461–63 (4th Cir. 1993) (recognizing inherent power to dismiss for fraud on the court and setting out the factors that govern the choice of sanction). South Carolina law is the same. Rule 37(b)(2)(C), SCRCP, authorizes dismissal or default for abuse of the discovery process, and our courts have affirmed that sanction where a party's misconduct struck at the integrity of the proceeding. *See QZO, Inc. v. Moyer*, 358 S.C. 246, 252, 256–58, 594 S.E.2d 541, 544, 546–48 (Ct. App. 2004) (affirming order striking pleadings and entering default where defendant destroyed evidence in defiance of a court order); *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 542–43, 489 S.E.2d 679, 681–82 (Ct. App. 1997) (Rule 37 "expressly grants the trial court power to order judgment by default" for violation of a court order, though the sanction is "harsh medicine that should not be administered lightly"; reversing a default that fell on a party not responsible for the violation); *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198–99, 511 S.E.2d 716, 718–19 (Ct. App. 1999). And our Supreme Court has recognized that "the fabrication of evidence by a party in which an attorney is implicated" is the paradigm of fraud on the court, misconduct so grave that a judgment procured by it may be set aside without any showing that the outcome would have differed. *Chewning v. Ford Motor Co.*, 354 S.C. 72, 78–79, 579 S.E.2d 605, 608–09 (2003). The rationale is not punishment for its own sake. A litigant who manufactures evidence has demonstrated that he is willing to win by deceit, and no lesser sanction can assure the court that what remains of his case is untainted. The court therefore ends the case rather than attempt to sort the genuine from the manufactured.

The State's conduct here would warrant that sanction. It fabricated an expert opinion, presented the opinion to a grand jury under oath, leaked it to the press, and resisted a court order to produce the files that would expose it. *See* Def.'s Renewed Mot. Sanctions, June 29, 2026 (collecting cases). A criminal prosecution cannot be held to a lower standard of integrity than a private dispute over money. The State has objected that the defense is "litigating this like a civil case." (Hr'g Tr. 46, Oct. 16, 2026 (Ex. AE).) If the comparison is apt, it is apt in one direction only: a civil litigant who fabricated evidence, produced it, and then resisted the order to produce the file behind it would not be litigating anything; his case would be over.

2. Criminal courts impose the same sanction for the same conduct.

The rule is not confined to civil litigation, and it does not depend on the fabricated evidence reaching a jury. The closest case is from a federal district court within the Fourth Circuit. In *United States v. Omni International Corp.*, 634 F. Supp. 1414 (D. Md. 1986), government personnel altered and revised interview memoranda after the defense moved to dismiss, produced the altered documents in discovery without disclosing the alterations, and gave false or inaccurate testimony about them. The court "condemn[ed] the practice of altering and revising documents once the matter is in litigation without disclosure," held that "[j]ustice cannot function in a system in which one side feels free to make even minor modifications which only aid its position slightly, without informing the other side of its actions," and dismissed the indictment without prejudice under its supervisory power, although the altered documents were never offered at trial. *Id.* at 1425–26, 1440. In *People v. Velasco-Palacios*, 235 Cal. App. 4th 439, 185 Cal. Rptr. 3d 286 (2015), a prosecutor added two lines to the translated transcript of the defendant's interrogation, so that the defendant appeared to confess to an aggravated form of the offense, and produced the altered transcript to defense counsel in discovery. The fabrication was discovered before trial and the transcript was never offered. The trial court dismissed the charges, and the Court of Appeal

affirmed, holding that the misconduct was "outrageous" without any showing of physical coercion, that prejudice in plea negotiations and to the attorney-client relationship was prejudice enough, and that mere exclusion of the fabricated evidence would not deter the conduct because "the state would merely prove its case by the use of other, untainted evidence." *Id.* at 451, 185 Cal. Rptr. 3d at 295 (quoting *Barber v. Municipal Court*, 24 Cal. 3d 742, 759 (1979)).

South Carolina courts have done the same, and recently, with the same agent and a member of the same prosecution team. On June 17, 2025, on the morning of Michael Colucci's retrial for the murder of his wife, Judge Roger M. Young, Sr., dismissed the indictment without prejudice after the lead SLED agent, David Owen, admitted that he had not documented the victim's mother's statement that her daughter had spoken of suicide days before her death ("I admit I did not document this"), and after the court found that the mother "did not mention the prior incident in that trial because she was cut off by the prosecutor." The information, the court found, "was kept from the jury by state action or inaction." Judge Young recognized that dismissal was "an unusual remedy" and ruled: "this court believes that our courts should demand better from the state." (*State v. Colucci*, Berkeley Cnty. Ct. Gen. Sess. (June 17, 2025) (Young, J.).)[5]

The agent whose omission ended the Colucci murder prosecution is the agent who testified before the grand jury here. Where the false evidence reached the grand jury, courts dismiss the indictment and leave the State to re-present. In *People v. Llewelyn*, 136 Misc. 2d 525, 518 N.Y.S.2d 881 (Sup. Ct. 1987), the prosecution placed a false ballistics report before the grand jury; the court held that "the introduction of false, material testimony necessarily impairs the integrity of the Grand Jury," without regard to whether the prosecutor knew of the falsity, and dismissed the

[5] Judge Young issued an oral ruling dismissing the indictment, which can be found at https://www.youtube.com/watch?v=0RtOg04LUmc&t=162s.

indictment "with leave to the District Attorney to resubmit the matter to another Grand Jury." *Id.* at 538. In *People v. Pelchat*, 62 N.Y.2d 97, 464 N.E.2d 447, 476 N.Y.S.2d 79 (1984), the Court of Appeals dismissed an indictment, with leave to resubmit, where the only witness before the grand jury, a police officer, told the prosecutor after the indictment that he had not in fact observed the defendant commit any crime, and the prosecutor proceeded anyway. *Id.* at 98, 105–09. And in *United States v. Aguilar*, 831 F. Supp. 2d 1180 (C.D. Cal. 2011), the court dismissed the indictment where "the Government team allowed a key FBI agent to testify untruthfully before the grand jury," inserted falsehoods into warrant affidavits, and "recklessly failed to comply with its discovery obligations." *Id.* at 1182; see id. at 1208–11 (remedy). Federal and state courts have gone further and dismissed with prejudice for flagrant discovery misconduct, treating the investigating agency's misconduct as the prosecution's own. *United States v. Chapman*, 524 F.3d 1073, 1085–87 (9th Cir. 2008); *United States v. Bundy*, 968 F.3d 1019, 1031, 1037 (9th Cir. 2020); *Comm. for Pub. Counsel Servs. v. Att'y Gen.*, 480 Mass. 700, 725, 108 N.E.3d 966, 986 (2018) (dismissal with prejudice is "very strong medicine" that "should be prescribed only when the government misconduct is so intentional and so egregious that a new trial is not an adequate remedy" (quoting *Bridgeman v. Dist. Att'y for Suffolk Dist.*, 476 Mass. 298, 322–23, 67 N.E.3d 673, 692 (2017))).

Mr. Murdaugh does not ask the Court to find "outrageous government conduct" in the due process sense, a doctrine the Fourth Circuit has described as surviving "in theory" but "highly circumscribed," *United States v. Hasan*, 718 F.3d 338, 343 (4th Cir. 2013), and he does not ask for the "very strong medicine" of dismissal with prejudice. He asks for what *Omni* and *Llewelyn* ordered: dismissal without prejudice, which "imposes greater hardship on the Government as a sanction than a continuance" because the State must re-indict, *United States v. Kuyoro*, 175 F.4th

630, 641 n.2 (5th Cir. 2026), but which leaves the State free to seek true bills from a grand jury that has not been deceived. The State fabricated an expert opinion, presented it to a grand jury under oath, produced it in discovery as the foundation of its forensic case, and never offered it at trial because it could not. The State further presented false testimony connecting the shotgun loads (buckshot and birdshot) used to murder Paul Murdaugh to the shotgun loads in the shotguns located in Murdaugh's residence. That is the conduct of *Omni* and *Velasco-Palacios*, with a grand jury added; it is the conduct of *Llewelyn* and *Pelchat*, with a fabrication added.

3. *Mr. Murdaugh asks only that the State be returned to where it stood before the fabrication.*

Mr. Murdaugh does not ask the Court to bar the State from prosecuting him as the sanction for presenting fabricated evidence to the Colleton County Grand Jury. He asks the Court to dismiss the indictments that the fabricated evidence procured, without prejudice, so that the State stands where it stood in July 2022, before Agent Owen walked into the grand jury room: free to seek true bills, on competent evidence, from a grand jury that has not been deceived.

The trial date of April 5, 2027, need not move; the Colleton County Grand Jury next sits on December 10, 2026. The only thing the State loses is the fruit of the misconduct itself. That is the measure our courts apply to any sanction: it "should be reasonable based on the specific misconduct" of the sanctioned party, and the court "should not go beyond the necessities of the situation to foreclose a decision on the merits of a case." *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154–55, 399 S.E.2d 439, 440–41 (Ct. App. 1990). Dismissal without prejudice forecloses no decision on the merits, and no lesser sanction undoes what the fabrication accomplished.

IV. Conclusion

The State indicted Mr. Murdaugh on evidence it had manufactured and knew to be false, told the public about that evidence before it told a grand jury, and intentionally presented false testimony that ammunition in shotguns located at the Murdaugh home were loaded in the same pattern as the ammunition used to shoot and kill Paul Murdaugh. This false evidence was presented to establish that Alex Murdaugh had weapons that matched the murder weapon and that he had Paul Murdaugh's blood mist on his shirt, which could have only come from standing near Paul when he was shot and killed.

Mr. Murdaugh's indictment therefore was not the product of the grand jury's independent judgment but rather was the product of the State's deception. Because this false evidence undeniably would have substantially influenced the decision to indict, or at a minimum leaves grave doubt that it did not, Indictment Nos. 2022-GS-15-00592, -593, -594, and -595, returned by the Colleton grand jury must be dismissed.

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