STATE OF SOUTH CAROLINA COUNTY OF COLLETON	COURT OF GENERAL SESSIONS FOURTEENTH JUDICIAL CIRCUIT
State of South Carolina, v. Richard Alexander Murdaugh, Defendant.	Indictment Nos. 2022-GS-15-00592, -593, -594, and -595 **MOTION TO RECONSIDER ORDER DENYING MOTION TO DISMISS THE INDICTMENTS**

Defendant Richard Alexander Murdaugh respectfully moves the Court to reconsider its Order Denying Motion to Dismiss the Indictment, filed November 20, 2026 (the "Order"), and requests an evidentiary hearing. The Order applies the wrong legal standard, and it makes findings of fact that the record contradicts. Both should be corrected.

The indictments charge Mr. Murdaugh with the June 7, 2021, murders of his wife, Maggie, and his son, Paul, at Moselle, the family's property in Colleton County. The only witness before the Colleton County Grand Jury that returned them on July 14, 2022, was Special Agent David Owen of the State Law Enforcement Division ("SLED"), the lead case agent. He testified from a written narrative, which the State has filed, and he was cross-examined about that testimony at the 2023 trial, the verdict in which our Supreme Court has since set aside. Agent Owen told the grand jury that an expert had found blood spatter on the T-shirt Mr. Murdaugh was wearing that night, and that the DNA in the spatter was that of Maggie and Paul Murdaugh. SLED's own laboratory had tested those stains for human blood on August 10, 2021, with a confirmatory test called HemaTrace. Every one was negative. The laboratory reported that result on November 10, 2021, in a report addressed to Agent Owen, eight months before he testified. He also told the grand jury that the shotgun Mr. Murdaugh was holding when deputies arrived and two other shotguns in the house were loaded like the gun that killed Paul Murdaugh. None was. The Order itself finds that

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"no shotgun recovered from the residence was loaded with both buckshot and turkey loads." The Order does not find that either statement to the grand jury was true. Mr. Murdaugh moved to dismiss the indictments because the grand jury that returned them was told these things.

The Order nonetheless denies relief, for two reasons, and both are errors of law. First, it finds that the State's other evidence was sufficient to establish probable cause. That is not the test. The test is whether the untrue testimony substantially influenced the grand jury's decision to indict, and the decision from which that test derives states that the inquiry "cannot be merely whether there was enough to support the result." *Kotteakos v. United States*, 328 U.S. 750, 765 (1946). There was no eyewitness to these murders, no recording of them, no confession, and no murder weapon. In such a case, testimony that blood spatter from the shooting itself was on the accused's shirt substantially influences a decision to indict, whatever else the grand jury hears. Second, the Order finds that Mr. Murdaugh did not prove bad faith. Bad faith is not required. Our Supreme Court, in the decision the Order identifies as controlling, affirmed the dismissal of an indictment after finding that the prosecutors had acted "in complete good faith." *State v. Thrift*, 312 S.C. 282, 303–04, 440 S.E.2d 341, 353 (1994).

The sufficiency test had a further consequence. Having asked whether the State's other evidence was sufficient, the Order proceeded to weigh that evidence, and in doing so it states as fact matters that are disputed and that only the trial jury may decide: that a raincoat found in a closet in Mr. Murdaugh's mother's house was "Defendant's raincoat," though no witness has ever said so; and that Mr. Murdaugh was at the scene "immediately before the homicides," though the time of the homicides is a central disputed question in the case. It states that the State's evidence "overwhelmingly" establishes probable cause. The Order also makes findings, without hearing a witness, about the investigation and about what the State's agents knew. Several findings are

contradicted by the State's own documents. The Order attributes to one laboratory report findings that appear in another. It finds that Agent Owen was unaware of a report that is the only document reporting a result his grand jury narrative recites. It finds that the State's expert changed his opinion after reviewing "higher-quality photographs." He received no new photographs. A disc SLED later carried to him held the same photographs, under the same file names and in the same format, that SLED had sent him two months before.

The Order will be read as a determination of the facts it recites. Findings the record contradicts should not remain in it. Each such finding is identified below by the page of the Order and the page of the record. Mr. Murdaugh asks the Court to dismiss the indictments without prejudice or, failing that, to hear the witnesses before finding what they knew.[1]

I. The Court's Authority to Reconsider

The Order is interlocutory. Until final judgment the Court retains jurisdiction over the case and the authority to revise its own rulings. *See State v. Dingle*, 279 S.C. 278, 282, 306 S.E.2d 223, 225 (1983) (because an interlocutory order "is not appealable until final judgment is rendered, the trial court had continuing jurisdiction over the subject matter of the case"), *abrogated on other grounds by Horton v. California*, 496 U.S. 128 (1990). An interlocutory order "may be reconsidered and corrected by the court before entering a final order on the merits." *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). "A trial judge, until final judgment, controls the trial of the case before him, and as a general rule may amend, correct, modify, or otherwise change its findings of fact and conclusions of law before entry of judgment

[1] Citations to "Mem.," "Resp.," and "Reply" are to the memorandum, response, and reply on the motion to dismiss, and exhibits are cited as lettered in those filings; "Ex. A" and "Ex. B" are the exhibits to this motion. Because the court reporter's transcript of the November 13, 2026, hearing is not yet available, that hearing is cited by the time stamps of the transcript published by Rev.com.

or decree." *PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc.*, 297 S.C. 176, 183, 375 S.E.2d 331, 334 (Ct. App. 1988). Rule 29, S.C. R. Crim. P., which governs post-trial motions, does not limit that authority before trial.

This motion is also necessary to preserve the questions presented. An issue is preserved for appellate review only if it was "raised to and ruled upon by the trial judge." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). Where a party has raised an issue and the court has not ruled upon it, the party must ask for a ruling. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). The Order records two grounds Mr. Murdaugh presented without deciding them: the imputation of SLED's knowledge to the State, and the inaccuracy of the DNA testimony on the information the agent admits he had. It does not address two others: recklessness, and the State's failure to correct the testimony. Mr. Murdaugh asks the Court to decide them.

II. Errors of Law

A. The Order asks whether the State's other evidence was sufficient. The question is whether the untrue testimony substantially influenced the decision to indict.

The Order addresses prejudice under the heading "Sufficiency of Independent Probable Cause." It finds that "the remaining unchallenged evidence overwhelmingly established probable cause"; that "[t]his independent evidence was sufficient to establish probable cause for the indictments"; and that "[a]ccordingly, the Court finds no basis for concluding that the challenged testimony substantially influenced the grand jury's decision to indict, nor does the Court harbor grave doubt as to whether it had such an effect." (Order at 9–10.) The finding of no substantial influence and the finding of no grave doubt both follow the word "accordingly." They are drawn from the sufficiency of the remainder, and the Order gives no other reason for them. That is not the test. The Order states the correct test at page 4 and then does not apply it.

Under *Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988), dismissal is appropriate "'if it is established that the violation substantially influenced the grand jury's decision to indict,' or if there is 'grave doubt' that the decision to indict was free from the substantial influence of such violations." *Id.* at 256 (quoting *United States v. Mechanik*, 475 U.S. 66, 78 (1986) (O'Connor, J., concurring in the judgment)); *Thrift*, 312 S.C. at 303–04, 440 S.E.2d at 353. The standard is taken from *Kotteakos*, which rejects the test the Order applies:

> The inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error. It is rather, even so, whether the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand.

328 U.S. at 765. *Thrift* applied the standard in that way. Our Supreme Court did not ask whether the State's remaining evidence against the defendant there would have supported an indictment. It asked what the improper testimony would have conveyed to the grand jurors, found that the inference of guilt "was inescapable," and treated the weakness of the State's other evidence as a reason the improper testimony mattered more. *Thrift*, 312 S.C. at 303–04, 440 S.E.2d at 353.

The Fourth Circuit has applied this test in the same way, in a case arising in this State. In *United States v. Feurtado*, 191 F.3d 420 (4th Cir. 1999), an agent gave a grand jury testimony he later learned was untrue. The district court found that the testimony of two other witnesses, "alone, if believed, establishes probable cause to support the charges contained in the indictment." *Id.* at 424. It nonetheless dismissed the indictment without prejudice, because "it had some doubt that the grand jury's decision to indict was free from the influence of" the agent's inaccurate testimony, and, on the defendants' appeal, the Fourth Circuit held that the district court "took the correct course." *Id.* at 424–25. The sufficiency of the untainted evidence did not end the inquiry in *Feurtado*, and it does not end the inquiry here.

The correct question is therefore what the grand jurors were told and what it would have meant to them. They were told by the lead agent that an expert had found blood spatter on the shirt Mr. Murdaugh was wearing, and that the DNA in the spatter was that of his wife and son. (State's Ex. N at 18; Trial Tr. 3684–85, 3688–89.) Lt. Charles Ghent, Agent Owen's supervisor, wrote in his own outline for the presentation what that evidence meant: "(Shooter in doorway — Paul)." (State's Ex. O.)

Without that testimony, the case before the grand jury was this: No one saw these murders. No camera recorded them. Mr. Murdaugh has never confessed to them. The weapons have never been found. Everything else the Order identifies is evidence from which a grand juror might or might not infer guilt: the telephone records; a video recorded at the kennels on Paul Murdaugh's telephone at about 8:45 p.m., and Mr. Murdaugh's statements about where he was; the cartridge casings; a missing family rifle; the financial evidence; a raincoat that no witness has identified as Mr. Murdaugh's, bearing residue that no one can date; and vehicle telemetry that the grand jury is not shown to have heard. A disputed statement about where a man was earlier in the evening permits an inference. The spatter testimony was different. It was the only evidence that purported to show, as a matter of physical fact, that Mr. Murdaugh was present, at close range, when the shotgun was fired. It relieved the grand jurors of the need to infer that he was there, because it told them that science had already established it. Blood spatter from the shooting itself, on the shirt of the accused, plainly would have substantially influenced the decision to indict, regardless of any other evidence the grand jury heard. At the least the question admits of grave doubt, and grave doubt requires dismissal. *Bank of Nova Scotia*, 487 U.S. at 256.

The grand jurors were told as well that the guns in Mr. Murdaugh's house were loaded like the gun that killed his son. That, too, was untrue; the Order finds that no shotgun was so loaded.

(Order at 8.) The statement gave the grand jurors a second false link between Mr. Murdaugh and the killing of his son: a reason to believe the murder weapon came from his house.

The Order adds that "inconsistencies in prior investigative statements or forensic conclusions are matters properly addressed through cross-examination and impeachment at the upcoming trial." (Order at 10.) That mistakes the right at issue. It is the right not to be tried for murder except upon the indictment of a grand jury that was not misled. S.C. Const. art. I, § 11. A trial cannot vindicate that right. In *Thrift*, the remedy was dismissal before trial.

B. The wrong test led the Order to make findings about the trial evidence that it had no occasion to make.

The error is not confined to the result. A court that asks whether the remaining evidence is sufficient must decide what the remaining evidence proves. A court that asks whether the untrue testimony influenced the grand jury need decide only what the grand jurors were told. It has no occasion to find the State's remaining evidence sufficient, to call it overwhelming, or to resolve disputed facts about it. Because the Order asked the first question, it went on to characterize the evidence that will be offered at trial. It states that the State's remaining evidence "overwhelmingly established probable cause." (Order at 9, 11.) It assigns ownership of the raincoat to Mr. Murdaugh and fixes his presence "immediately before the homicides" and "just minutes before their deaths." (Order at 9–10.)

None of that was necessary to decide the motion under the correct standard, and none of it was proper. No testimony was taken. Who owned the raincoat and when the murders occurred are disputed, and they are for the trial jury alone. Venue in this case was transferred because of publicity, and the Order, entered months before trial, will be read by the public from which that jury will be drawn as the Court's judgment that the case against Mr. Murdaugh is overwhelming.

The particular statements, and the record that contradicts them, are set out in Part III.E. They should be withdrawn.

C. *Thrift* does not require intentional or bad-faith misconduct; it affirmed dismissal where there was none.

The Order denies the motion because the record "does not establish that Special Agent Owen knowingly or willfully provided false testimony" or "that the prosecution intentionally presented false evidence," because the agent's failure "does not rise to the level of bad faith misconduct," and because Mr. Murdaugh "has not established intentional prosecutorial or investigative misconduct." (Order at 6, 7, 10.) That is not the standard of *Thrift*.

The Order describes *Thrift* as a case in which our Supreme Court "concluded that dismissal was warranted given the extensive prejudicial testimony, the absence of a limiting instruction, and the State's acknowledgment of weaknesses in its case." (Order at 4.) The description is accurate as far as it goes. It omits what *Thrift* held first. The trial court in *Thrift* had found prosecutorial misconduct. Our Supreme Court reversed that finding. It held that "the record discloses absolutely no evidence of any improper motive or improper conduct" on the part of the prosecutors, and that they had "handled the Thrift matter in complete good faith and in accord with the highest of ethical and professional standards." *Thrift*, 312 S.C. at 303, 440 S.E.2d at 353. Our Supreme Court then continued:

> Although we find no prosecutorial misconduct here, we nonetheless address the prejudice prong because of the *colorable claim* of prosecutorial misconduct and the unique procedural posture of this case.

Id. (emphasis added). Applying *Bank of Nova Scotia*, it held that the evidence the grand jury should not have heard "was severely prejudicial," and it affirmed the dismissal of the indictment. *Thrift*, 312 S.C. at 303–04, 440 S.E.2d at 353.

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The inquiry our Supreme Court conducted turned on the effect of the evidence on the grand jury, not on the state of mind of the person who presented it. An order that denies relief for want of proof of intent or bad faith imposes a requirement that *Thrift* did not impose. *Thrift* required a "colorable claim" of misconduct to open the inquiry, not proof of it, and a claim that rests on the State's own laboratory report and its agent's sworn admissions is more than colorable. The polygraph testimony in *Thrift* was improper. The testimony here was untrue, and it came from the State's only witness. That is the graver defect. The grand jury that hears an untrue account of the forensic evidence is misled to the same degree whether the witness lied or failed to read a report addressed to him, and the defendant's right to an indictment returned by an informed grand jury is impaired to the same degree. As *Thrift* observed, "[t]he grand jury is more than a mere instrument of the prosecution." *Id.* at 304 n.15, 440 S.E.2d at 353 n.15.

The federal decision on which the Order relies (Order at 4) for the proposition that "[m]ere inaccuracies" and "mistaken testimony" are insufficient, *United States v. Moore*, 184 F.3d 790, 794 (8th Cir. 1999), concerned an agent's mistaken statements that two conspirators were married and that a key had changed hands, which the court found immaterial. It did not concern an agent's testimony that an expert had found blood spatter bearing the victims' DNA on the defendant's clothing, when the laboratory had reported in writing to that agent that no human blood was identified, nor was Paul's DNA found in the area of the purported blood spatter.[2]

[2]The Order references two sections Alex's shirt where the laboratory could not reach any conclusions as to whether the sections contained Paul's DNA. However, the Order ignores the fact that the Grand Jury was told that the laboratory did in fact conclude that Paul's DNA was found in the area where the expert found blood spatter.

D. In the alternative, the standard under the State's own authorities is knowing or reckless, and the Order's findings describe recklessness.

Were a culpable state of mind required, it would not be limited to intent. The State's own authority states the federal standard as "a knowing or reckless misleading of the grand jury as to an essential fact." *United States v. Lombardozzi*, 491 F.3d 61, 79 (2d Cir. 2007). Another of the State's authorities goes further: "even unintentional misconduct may be sufficient," because "[t]he relevant inquiry focuses on the impact of the prosecutor's misconduct on the grand jury's impartiality, not on the degree of the prosecutor's culpability." *United States v. De Rosa*, 783 F.2d 1401, 1405–06 (9th Cir. 1986). *Feurtado* is a dismissal for unintentional misconduct. The district court found that "the only misconduct . . . was unintentional misconduct" and that there was "no evidence of willful prosecutorial misconduct," and it dismissed the indictment without prejudice, the course the Fourth Circuit approved. 191 F.3d at 424–25. Mr. Murdaugh argued recklessness in his reply, and at the hearing he accepted the standard stated in the State's own authority. (Reply at 12–13; Hr'g Tr. 01:25:15, Nov. 13, 2026.) The State's response does not mention recklessness. It argues only that there was no "intentional fabrication," and its own authority states the standard as knowing or reckless. (Resp. at 14.) The Order does not address it.

The Order's own findings describe recklessness. The Order finds that the report was "addressed directly to" Agent Owen; that it "should not have been overlooked"; that the agent failed "to recognize and account for a laboratory report addressed directly to him prior to presenting testimony in this case"; that "[l]aw enforcement bears a fundamental duty to thoroughly review and accurately represent the complete evidentiary record"; and that "[o]versights of this nature undermine public confidence in the integrity of the criminal justice system." (Order at 6, 7.) The lead agent in a double-murder investigation, who is the grand jury's only witness, and who testifies about the forensic examination of a garment without reading the laboratory's report on

that garment addressed to him, has disregarded an obvious risk that his testimony is untrue. That is recklessness as to an essential fact. Mr. Murdaugh requests a ruling on this point.

E. The Order records but does not decide the argument that SLED's knowledge is the State's knowledge.

The Order notes Mr. Murdaugh's argument that "knowledge of the November 10, 2021, SLED report . . . is imputed to the State regardless of whether the prosecution had actual knowledge of its existence." (Order at 6.) Mr. Murdaugh made that argument in his memorandum and his reply. (Mem. at 19–21; Reply at 12–13.) The State's response does not answer it. The Order does not rule on it. It proceeds instead to find that the agent and the Attorney General's Office were personally unaware. (Order at 6–7.)

The argument resolves the question on which the Order turns. The State's knowledge of evidence is not measured by what an individual agent or prosecutor happened to read. The prosecution is charged with knowledge of what is known to "the others acting on the government's behalf in the case, including the police." *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). SLED's laboratory performed the tests, a SLED supervisor witnessed them, SLED's analyst reported them, and SLED's own access records show its personnel opening the report ten times before the indictments. (Trial Tr. 3305–07; Mem. Ex. V at 2.) SLED was the investigating agency and its agent was the State's only witness. The State knew, as a matter of law, from August 10, 2021, that its laboratory had identified no human blood on the shirt cuttings. And the State may not allow testimony it knows to be untrue to stand uncorrected. *Napue v. Illinois*, 360 U.S. 264, 269 (1959); *Riddle v. Ozmint*, 369 S.C. 39, 47–48, 631 S.E.2d 70, 75 (2006). Those decisions arose from trials, but no principle holds the State to a lesser duty of candor before a grand jury, which hears only the State. The State

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acknowledges that it had the report in hand no later than November 30, 2022. It has never returned to a grand jury. Mr. Murdaugh requests a ruling on imputation and on the State's failure to correct.

III. Findings of Fact That the Record Contradicts

Some of the findings addressed below were urged by neither party, and some are contradicted by the State as well as by Mr. Murdaugh. Where that is so, it is noted.

A. What the grand jury was told is established, and the Order elsewhere so finds.

The Order states that, because the Colleton County Grand Jury's proceedings were not transcribed, "the precise substance of the testimony presented to the Colleton County Grand Jury cannot be definitively established." (Order at 2.) The statements at issue are established by the sworn testimony of the only witness who appeared before that grand jury. Agent Owen testified at trial that he prepared a narrative for the presentation and followed it "[f]or the most part"; that the narrative stated an expert had found blood spatter on Mr. Murdaugh's shirt; and, asked whether "that [is] what you told the Colleton County Grand Jury," he answered, "Yes." (Trial Tr. 3684–85 (Mem. Ex. A).) He testified that his narrative stated that DNA "in the areas of spatter" belonged to "Alex, Maggie, and Paul," and that what he "told the Colleton County Grand Jury was not correct." (Trial Tr. 3688–89 (Mem. Ex. A).) On redirect by the State he confirmed that he told the grand jury "shotguns of similar make and load were found on the property." (Trial Tr. 3723.) The narrative is in the record as the State's own exhibit. (State's Ex. N at 12, 18.) The State has offered no testimony, from Agent Owen or anyone else, that he told the grand jury anything different, and it stated in its response that the agent "related the opinion to the Colleton County Grand Jury" and that the shotgun statement was "not precisely expressed." (Resp. at 2, 16.) As to the testimony about the shirt, neither party suggested that its substance is uncertain.

The Order itself finds that "the agent testified before the Colleton County Grand Jury regarding blood spatter on the defendant's shirt and DNA belonging to Alex, Maggie, and Paul

Murdaugh." (Order at 7.) It also makes findings about what "the grand jury received." (Order at 10.) The statement that the testimony "cannot be definitively established" is contradicted by those findings and by the undisputed record. It is wrong and should be withdrawn. If the content of the presentation were uncertain, that uncertainty would foreclose the Order's later conclusion that the remaining evidence the grand jury "received" was sufficient; the Order cannot find what the grand jury heard for one purpose and decline to find it for another.

B. The findings concerning the shirt.

1. *The Order attributes to the HemaTrace report findings it does not contain. They are in a different report, which does not place Paul Murdaugh's DNA in the stains at issue.*

The Order "notes that the SLED HemaTrace report found that Stain C and Stain D came back as inconclusive and Stain F was not interpretable concerning the presence of Paul Murdaugh's DNA." (Order at 7.) That is incorrect, and neither party attributed those findings to the HemaTrace report. The HemaTrace report of November 10, 2021, contains no such findings. It reports no DNA results for the shirt. For all twelve cuttings from the shirt, including the ten lettered stains, its only result is: "No human blood identified." (Mem. Ex. J at 2.)

The findings the Order describes appear in the DNA report of July 25, 2021. (Mem. Ex. E at 3–6.) On that the parties agree: the State filed the July 25 report as its own exhibit and argued from it at the hearing, where it addressed stains C and D only. (State's Ex. C; Hr'g Tr. 01:59:36, Nov. 13, 2026.) The reference to stain F is the Order's own. The July 25 report does not assist the State. It identifies Paul Murdaugh as a possible contributor in two cuttings, stains A and J, both from the bottom front of the shirt, which the State has never called spatter. It reports that Paul Murdaugh is "excluded" as a contributor to stains B, E, H, and I, and, under the propositions the laboratory tested, to stain G. (Mem. Ex. E at 3, 5–9.) As to stains C and D it offers "no conclusions" regarding Paul Murdaugh or his brother, Buster, as possible contributors, and stain F

could not be interpreted. (*Id.* at 3–4, 6.) A report that excludes Paul Murdaugh from five of the eight remaining stains and reaches no conclusion as to the other three cannot support sworn testimony that the DNA "in the areas of spatter" was his. That Maggie Murdaugh's DNA was on the shirt of the husband who found and touched her body is not disputed. As to Paul Murdaugh, the testimony was untrue.

2. ***The agent's stated ignorance of the HemaTrace report does not explain the DNA testimony, and the Order does not rule on that testimony.***

The Order treats the agent's stated unawareness of the November 10, 2021, report as the answer to both the spatter testimony and the DNA testimony. (Order at 6–7.) It cannot answer the DNA testimony. Agent Owen testified that the statement that Paul Murdaugh's DNA was in the areas of spatter "was from the report that I had in my possession." (Trial Tr. 3689.) The only report of DNA results for the shirt cuttings is the July 25, 2021, report, which is addressed to him and which, by his own entry, he "received and reviewed" on July 26, 2021. (Mem. Ex. E at 1; Mem. Ex. AA at 045.) The report he had read does not say what he told the grand jury; as to five of the stains, it says the opposite. The DNA testimony was therefore inaccurate on the information the agent admits he had, without regard to the HemaTrace report. The State does not contend that the report places Paul Murdaugh's DNA in the stains it calls spatter; it acknowledged at the hearing that, as to the upper portion of the shirt, "there was not a specific reference to Paul." (Hr'g Tr. 01:59:36, Nov. 13, 2026.) The Order does not rule on that ground, and Mr. Murdaugh requests a ruling thereon.

3. ***The finding that the report was "initially downloaded" on November 30, 2022, and that neither the agent nor the prosecution knew of it, rests on an audit that cannot support it, and the finding was made without hearing a witness.***

The Order finds that "SLED records revealed that the HemaTrace report was initially downloaded on November 30, 2022, by the Attorney General's Office and Special Agent Owen,"

and concludes: "Thus, when the agent testified before the Colleton County Grand Jury . . . neither the agent nor the Attorney General's Office were aware of the report." (Order at 6–7.) The records show a download on that date. They do not show that it was the first, and the conclusion does not follow from them.

The record in question is SLED's audit of access to the report. (Mem. Ex. V.) It records that Agent Owen and a member of the Attorney General's Office opened the report through one of SLED's records systems, iLab, on November 30, 2022. (*Id.* at 2.) That is the entry on which the Order relies. But the first download recorded for the agent is not the first knowledge, and the Order does not mention what else the audit shows.

The audit records that the report was opened within SLED ten times before the July 14, 2022, indictments: by Captain Cal Reighley of SLED's forensic services division on March 22, April 12, April 13, and twice on June 8, 2022; by Adrienne Hefney, a forensic DNA analyst, on April 4 and April 6, 2022; by the analyst who performed the tests, Sarah Zapata, on April 18 and April 19, 2022; and by Lesa Chapman, whom the State has listed as a SLED witness, on July 12, 2022, two days before the indictments. (*Id.*) Before November 30, 2022, the date the Order adopts, the audit records twenty-seven instances of internal access. (*Id.* at 2–3.) The audit then lists, under the heading "iLAB Possible Access," the SLED personnel who "accessed the Case Information screen" for the laboratory file: Lt. Ghent on December 16, 2021, and again on January 27, 2022; Agent Owen on January 26, 2022; Debby Tebeau, an administrative coordinator for SLED's Lowcountry region, on March 23, 2022; and Jeff Croft, a senior special agent assigned to this case, on April 28, 2022. (*Id.* at 3.) Of those entries the audit states: "we are unable to determine if a report was downloaded," because "[t]he audit currently does not capture information on that screen

beyond someone visiting it." (*Id.*) Each of those visits came after the report was issued and before the indictments.

The audit is not a list of the persons who have seen the report, and the Order errs in treating it as one. It records who opened a file in a records system. It does not record who was handed a copy, who was sent one, or who was told what it said. A report, once retrieved, can be copied and given to anyone. This report was itself copied and produced to the defense. Ms. Tebeau's entry illustrates the gap. Nothing suggests that an administrative coordinator opened a homicide laboratory file for her own use. If she retrieved the report, she retrieved it for someone else in the Lowcountry region, which is the region of Lt. Ghent and of the agents who worked this case under him. (*See* Mem. Ex. H at 13.) And the audit cannot say what Agent Owen himself did when he visited the laboratory file on January 26, 2022. The absence of a recorded download by Agent Owen before November 30, 2022, shows nothing about what he had seen.

The remainder of the record points the other way. The report is addressed to Agent Owen. (Mem. Ex. J at 1.) The tests it reports were performed on August 10, 2021. The day before, Agent Owen recorded a call from two SLED agents "questioning DNA/BPA [bloodstain pattern analysis] on Shirt." On the day of the tests he recorded a "[p]hone call with BSU," another SLED unit, "about shirt." (Mem. Ex. F; Mem. Ex. AA at 045–046.) On April 10, 2022, Lt. Ghent asked SLED's laboratory for a meeting "to discuss lab results with Creighton Waters from the SCAG Office." Mr. Waters is the State's lead trial counsel. The meeting was held on April 20, 2022. The analyst who performed the HemaTrace tests opened the November 10 report on each of the two days before it. She testified that the HemaTrace results on the shirt "probably" were discussed at that meeting, which was "the first meeting after that report was issued where we had a discussion about the reports." (Mem. Ex. H at 13; Mem. Ex. V at 2; Trial Tr. 3308–10.) That meeting took

place nearly three months before the indictments. And Agent Owen's own case history records that on November 8, 2022, three weeks before the date on which the Order finds he first downloaded the report, he "[d]ownloaded and reviewed additional DNA Report" and "[s]cheduled meeting time with Tom Bevel," the State's blood-spatter expert. (Mem. Ex. AA at 058.) Whatever report that was, the agent was then downloading DNA reports and arranging to meet the expert.

Whether Agent Owen or the prosecutors knew of the laboratory's results before July 14, 2022, is thus a disputed question of fact. No witness testified at the November 13 hearing. The only evidence that the agent was unaware of the report is his own testimony at trial; the evidence that the results were known within SLED, and probably discussed with the prosecutors, comes from the State's documents and its own analyst. A finding that resolves that dispute in the State's favor, on the strength of an audit that disclaims the ability to resolve it, cannot stand. The fact should be found, if at all, after the witnesses have been heard, as set out in Part IV.

4. ***The agent's grand jury narrative recites a result that appears only in the report he says he had never seen.***

The Order does not reconcile its finding that Agent Owen was unaware of the November 10, 2021, HemaTrace report with what his narrative told the grand jury about a different item of evidence. His narrative for the grand jury states: "No DNA found on the raincoat." (State's Ex. N at 18.) The laboratory's DNA results for the raincoat are reported in one document, the November 10, 2021, report. (Mem. Ex. J at 2; Trial Tr. 3307.) They appear on the same page as the statement that no human blood was identified on the shirt, immediately below it. (Mem. Ex. J at 2.) Agent Owen's narrative for the grand jury thus recites, as part of the State's case, a result that appears only in the report he swore he "had never seen" until "November of 2022." (Trial Tr. 3685.)

The laboratory's analyst testified that she telephoned Lt. Ghent with preliminary results for the raincoat and that, according to her notes, she did not discuss the shirt. (Trial Tr. 3307–08.) Whether that call is how the raincoat result reached Agent Owen's narrative, no witness has said. A preliminary telephone call to a supervisor does not account for a written narrative that the agent was still editing in July 2022. (*See* Resp. at 11.) If the agent read the report, he testified about the shirt with the laboratory's result before him. If he did not, then SLED's investigators were told what the report said about the raincoat and were not told, or did not ask, what the same report said about the shirt. The Order's finding that "neither the agent nor the Attorney General's Office were aware of the report" addresses neither possibility. (Order at 7.)

5. ***The expert did not receive "higher-quality photographs." The finding that he did is contradicted by the record.***

The Order finds that the State's expert, Mr. Bevel, reached his conclusion of spatter "following further discussions and a review of higher-quality photographs taken before LCV processing, as well as a physical examination of the T-shirt." (Order at 5.) That finding is wrong. It repeats an assertion in the State's response. (Resp. at 3, 7.) LCV, or leucocrystal violet, is the chemical reagent with which SLED's laboratory sprayed the shirt in July 2021, and the State's response described the photographs as "raw" files taken before the spraying. At the hearing the State acknowledged that "much later on, it is determined that they weren't in fact raw images." (Hr'g Tr. 01:46:04, Nov. 13, 2026 (the published transcript renders the word as "were"; the recording of the hearing reflects "weren't").) The expert has stated the same in writing: he asked for the RAW photographs, believed he had received them, and "now know[s] my belief was in error as what I received on the CD was in JPEG format." (Reply Ex. B ¶¶ 8–9.) His final report lists no photograph that was not before him in February 2022, when he reported, in what the Order

calls a draft, that the stains were "consistent with transfers and not back spatter from a bullet wound." (Mem. Ex. L at 11; Mem. Ex. T at 2.)

As for the physical examination, the shirt the expert examined in March 2022 had already been treated with the reagent. SLED's own analysts had inspected it the month before "to determine the condition of the item post LCV processing," and the expert, shown a photograph of it, wrote that "it doesn't look promising." (Mem. Ex. H at 13; Resp. at 3.)

At the hearing the State offered an account different from its response: that the photographs carried to the expert, if not RAW files, were "much higher quality images" than he had before, "very high quality, very large JPEGs." (Hr'g Tr. 01:46:04, Nov. 13, 2026.) That is also incorrect.

On January 3, 2023, three weeks before the first trial, Agent Owen sent the expert a text message: "Would you please look at the disc of pictures we brought you last March and tell the file extension of the pictures please. If you could also take a screenshot and send it to me?" (Ex. A.) The expert answered with photographs of the disc, which is labeled "L21-09074 Copy of Shirt," and of its directory. (*Id.*) The directory shows forty-nine files, KNM_3274.JPG through KNM_3322.JPG. (*Id.*; Reply Ex. B (attachment).)

The expert already had them. SLED uses a service called evidence.com to share files. The package it created there and sent to the expert on January 4, 2022, a month before he reported that there was no spatter, contains a folder of the 358 photographs taken when the laboratory processed the shirt on July 21, 2021: KNM_3134.JPG through KNM_3491.JPG. (Ex. B.) All forty-nine files on the disc are in that folder, under the same names. (*Id.*) All 358 are JPEG files, and they are not reduced copies: each is between seven and fourteen megabytes. (*Id.*) The State's lead agent learned on January 3, 2023, that the disc held JPEG files. The State nonetheless told this

Court in 2026 that the agents had carried "raw" photographs to the expert and that he had reviewed "higher quality images." (Resp. at 3.)

The disc gave him no photograph in March 2022 that he did not have in February. New photographs do not account for his reversal. The record discloses no other new information. It discloses only that he reported no spatter, that SLED's agents then flew to Oklahoma, where he lives, with the treated shirt, and that he reported spatter. (Resp. at 3.)

6. ***Five other findings concerning the shirt are contrary to the record or do not answer the motion.***

First, the Order finds that in July 2021 SLED's laboratory "concluded" that the shirt bore "possible spatter and transfer stains." (Order at 5.) It did not. The laboratory issued no report reaching that conclusion. The record shows a presumptive chemical reaction, followed on August 10, 2021, by confirmatory testing in which every cutting tested negative for human blood. (Mem. Ex. F; Trial Tr. 3305.) The Order's chronology omits the August 10 tests.

Second, the Order states that the testimony "arose during an ongoing investigation in which forensic findings and expert opinions continued to develop as additional information became available." (Order at 7.) That is not what happened. The negative results did not develop after the testimony. They existed eleven months before it, and were reported in writing to the testifying agent eight months before it. What developed afterward was the State's acknowledgment of them.

Third, the Order states that the report "did not surface until October 2022." (Order at 5.) The report was in SLED's file from November 10, 2021. It reached the defense on November 3, 2022, within the laboratory file the State was compelled to produce, and the State acknowledged at the hearing that the defense "already had it from the case file dump" before the State's own disclosure of December 2, 2022. (Reply at 3 n.1; Hr'g Tr. 01:51:01, Nov. 13, 2026.)

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Fourth, the Order states that the expert, on receiving the report, "maintained his original conclusion" that the stains were spatter. (Order at 6.) "Original" is the wrong word. The State's own account is that he "confirmed his prior opinion," and the Order itself recounts, a page earlier, that his draft report found no spatter. (Resp. at 4; Order at 5.) His original conclusion, in the report of February 3, 2022, was that the stains were transfers and not spatter. (Mem. Ex. L at 11.) The conclusion he maintained was the one he reached after SLED's agents carried the shirt to him.

Fifth, the Order notes that the expert, once shown the laboratory's report, "opined that the LCV treatment could have resulted in a false negative." (Order at 6.) That is an opinion formed after the indictments, and it does not make the testimony true. The grand jury was not told that the laboratory had found no human blood and that an expert believed the laboratory might be wrong. It was told that an expert had found blood spatter, and it was told nothing about the laboratory's result.

C. The findings concerning the shotguns.

The Order finds that "no shotgun recovered from the residence was loaded with both buckshot and turkey loads." (Order at 8.) That finding is correct, and it establishes that the agent's statement was untrue. Agent Owen made the statement twice: in November 2021 to the State Grand Jury, a separate, statewide grand jury, in testimony that was transcribed, and in July 2022 to the Colleton County Grand Jury, in the narrative he followed. Two further findings cannot be squared with that finding or with the record, and a third obscures it.

First, the Order finds that "[t]he investigative outline prepared for the July 14, 2022, Colleton County Grand Jury presentation accurately identified the different ammunition loads recovered and their relationship to the ammunition used in the murders." (Order at 8.) The narrative the testifying agent prepared and followed states that "shotguns located in the Moselle property were found to be loaded in the same manner (buckshot shell and one turkey/bird load shot

shell) as those that were used in the murder of Paul," and that the shells found near Paul Murdaugh's body were "a consistent load found in" the shotgun Mr. Murdaugh retrieved from the house after he found the bodies "as well as two other shotguns found in the Murdaugh residence." (State's Ex. N at 12.) On the Order's own finding, that is false. The only outline to which the Order's description could apply is the one prepared by Lt. Ghent, who, as the Order recognizes, "did not testify before the grand jury." (Order at 2; State's Ex. O.) A document the witness did not write and did not use shows what the State planned to present and what it understood the evidence to mean. It does not show what the witness said.

Second, the Order finds that the inaccuracies "reflected confusion or imprecise descriptions rather than intentional fabrication or misrepresentation of evidence." (Order at 9.) Agent Owen was asked under oath about his sworn statement to the State Grand Jury that the shotguns were so loaded: "[W]ere you mistaken then or were you trying to trick the State Grand Jury?" He answered: "No. I was not trying to trick the State . . . Grand Jury." Counsel followed: "You were mistaken." He answered: "No." (Trial Tr. 3695–96.) He testified that he had put the same assertion to Mr. Murdaugh in an interview as an "[i]nvestigative tool," explaining, "I'm allowed to use trickery to illicit [sic] a response." (Trial Tr. 3695.) He then conceded that the testimony "was not accurate." (Trial Tr. 3697.) A witness who, asked directly, would not say he was mistaken, and who describes the same statement as a deliberate "trickery" device when made to a suspect months prior, has not described confusion. The finding of confusion has no testimonial support. It decides a question of intent, which the Order treats as dispositive, on a cold transcript and against the witness's own answer.

Third, the Order finds that "several recovered shotguns contained different ammunition loads, including buckshot, birdshot, and turkey loads." (Order at 8.) That is true only of the guns

taken together, and it obscures what the State's inventory shows. Of the four shotguns recovered, one was unloaded, two held only turkey loads, and one contained buckshot: the gun Mr. Murdaugh retrieved after he found the bodies, which also held a 16-gauge birdshot shell that SLED's firearms examiner reported "was not correct for use in the shotgun." (Resp. at 13–14; State's Ex. L.) The shells that killed Paul Murdaugh were 12-gauge buckshot and 12-gauge steel waterfowl shot. (Trial Tr. 3693; Resp. at 9.) No shotgun at Moselle held that combination.

D. Nothing in the record shows that the grand jury received the FBI's telemetry analysis.

The Order finds that "[t]he State did not seek indictment until long after additional independent evidence was obtained, including . . . FBI telemetry analysis," and lists that analysis in its account of the "remaining unchallenged evidence." (Order at 9–10.) The only sources for that statement are a sentence in the State's response, unsupported by any exhibit, and the argument of counsel that the State was "waiting for the telemetry from the FBI." (Resp. at 3; Hr'g Tr. 01:47:59, Nov. 13, 2026.) Neither is evidence. The agent's narrative does not mention vehicle telemetry, and neither does Lt. Ghent's outline. (State's Exs. N, O.) When the State asked Agent Owen on redirect what he had presented to the Colleton County Grand Jury, he listed the timeline from the telephones, the financial evidence, the cartridge casings, the rifles, the shotguns, the kennel video, and the witnesses; he did not mention telemetry. (Trial Tr. 3722–26.) The FBI's engineer testified that defeating the encryption on the vehicle's data took "[a]pproximately one year." He did not say when that year began or ended. (Trial Tr. 2606.) The General Motors data on which the State relied at trial did not arrive until the trial was under way. (Trial Tr. 3169, 3943.) Whenever the FBI finished its work, nothing shows that the grand jury heard of it, and it should not be counted among the evidence on which the indictments rest.

E. The Order states as established fact matters that are disputed and that are not decided by this motion.

As set out in Part II.B, the Order's use of a sufficiency test led it to describe the State's trial evidence, and in doing so it adopts the State's characterization of evidence that Mr. Murdaugh contested at the first trial and will contest at the second. (Order at 9–10.) Nothing the Order says of these matters binds anyone at trial. *See Loyola Fed. Sav. Bank v. Thomasson Props.*, 318 S.C. 92, 94, 456 S.E.2d 423, 425 (Ct. App. 1995) ("factual statements unnecessary to the issue addressed in an interlocutory order are not binding at trial, and do not become the law of the case"). But its statements will be read as the findings of the Court. They are the State's contentions, not facts, and they should be withdrawn.

1. *The raincoat is not "Defendant's raincoat."*

The Order lists among the independent evidence "evidence of GSR," or gunshot residue, "on the Defendant's raincoat." (Order at 10.) No witness has identified the raincoat as Mr. Murdaugh's.

The raincoat was found, months after the murders, in a coat closet on the second floor of the house where Mr. Murdaugh's mother lived. (Trial Tr. 2155, 2157–58; Mem. Ex. J at 2.) SLED searched that house because a caregiver, Mushelle Smith, reported that she had seen Mr. Murdaugh carry in "[a] blue tarp, like a tarp," which she described as "like a tarp that they put on a car to keep your car covered up." (Trial Tr. 2109.) The agents were told to look for "a blue in color tarp-like material," and they found one: a blue tarp, in a storage container in a bedroom closet. (Trial Tr. 2156–57.) They also took the raincoat. Ms. Smith testified that in every interview she told SLED that what she saw was "a blue tarp and not a rain jacket." (Trial Tr. 2134–35.)

Agent Owen then showed the raincoat to members of the family "to see if they recognized it as being Alex, Maggie, Paul's, Buster's, or anybody else in the family." Asked whether "a single

family member recognized that blue rain jacket," he answered: "No, they did not." (Trial Tr. 3673–74.) Bart Proctor, who is Maggie Murdaugh's brother-in-law, and John Marvin Murdaugh, who is Mr. Murdaugh's brother, each testified that he had never seen it. (Trial Tr. 3574, 5277.) SLED's laboratory examined the raincoat "for ownership" and found no hair; it developed no usable DNA profile; and it found no blood. (Trial Tr. 3217–18; Mem. Ex. J at 2.) Agent Owen agreed that no one can say whether the gunshot residue inside it was deposited "five years ago, three years ago, one year ago." (Trial Tr. 3677.)

No witness has testified that the raincoat belonged to Mr. Murdaugh, that he ever wore it, or that it was ever in his possession. The only witness who saw what he carried says it was a tarp. The possessive in the Order is the State's argument, and it should be removed.

2. ***The video does not establish when the murders occurred.***

The Order refers to "video evidence placing the Defendant at the scene immediately before the homicides," and states that the video "placed Defendant at the Moselle kennels with both victims just minutes before their deaths." (Order at 9–10.) The video was recorded at approximately 8:45 p.m. (State's Ex. O.) It shows who was at the kennels at that time, and that Maggie and Paul Murdaugh were then alive. It does not show when they were killed. The State infers the time of the murders from telephone records; no witness has established it. The coroner testified that the time of 9:00 p.m. on the death certificates is "strictly an estimation" and "a guess," and that the deaths could have occurred at 8:00, at 10:00, or at "any time in between." (Trial Tr. 4114–15.) Lt. Ghent's own outline for the grand jury records the time of death with a question mark. (State's Ex. O.) The State's contention that the murders followed the video by minutes is an inference it will ask a jury to draw. Whether to draw it is a central question for trial. It was not before the Court on this motion and should not be stated in the Order as fact.

3. *The Order should not be read to decide the admissibility of the State's motive evidence.*

The Order counts among the independent evidence "circumstantial evidence regarding motive and opportunity." (Order at 10.) Whether the State's motive evidence is admissible at all is the subject of the State's renewed motion in limine and Mr. Murdaugh's opposition, which are pending. The Order does not decide that motion and should say so. Nor should its reference to the "remaining unchallenged evidence" be read to mean that the State's evidence is uncontested. (Order at 9, 11.) That evidence was not the subject of this motion. It was contested before the first jury and will be contested before the second.

IV. The Request for an Evidentiary Hearing

The Order turns on the knowledge and intent of the State's agents. It finds that Agent Owen "was unaware" of the laboratory's report, that "neither the agent nor the Attorney General's Office were aware of the report," that the shotgun testimony "reflected confusion," and that there was no "bad faith." (Order at 6, 7, 9.) Those are findings about what particular persons knew and intended. They were made without hearing from any of those persons. The State offered no affidavit from Agent Owen, from Lt. Ghent, or from anyone who attended the April 20, 2022, meeting with the laboratory. Apart from the agent's single answer at trial that he "had never seen the report," the State's account of what its agents knew is found in its brief and in the argument of its counsel, for whom that meeting was convened. (Trial Tr. 3685; Mem. Ex. H at 13.) That is not evidence. "It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence," and a trial court "may not base necessary findings of fact and conclusions of law solely on counsel's statements of fact or arguments." *Ex parte Morris*, 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006). "[A]rgument of counsel is not a substitute for evidence," and "discretion may not be exercised without a factual basis." *Brown v. Johnson*, 276 S.C. 68, 72, 275 S.E.2d 876, 878 (1981). The rule is no different in a criminal case.

State v. Rogers, 263 S.C. 373, 381, 210 S.E.2d 604, 608 (1974) (a contention "is without merit where it consists solely of an attorney's statements, unsworn and unsupported by any proof or offer of proof"). Mr. Murdaugh relies on the trial transcript for what the agent admitted. The Order relies on it to believe what he denied. Belief requires the witness.

Mr. Murdaugh met his burden with the State's own records and the sworn admissions of its agent. On the facts that are not disputed, *Thrift* requires dismissal without any finding as to what the agent knew. But the Order makes his knowledge and intent dispositive, and if they are to remain so, they cannot be found on the representations of counsel. Where a motion turns on disputed facts, the court must hear evidence before it finds them. The Fourth Circuit has stated the rule for pretrial motions in criminal cases: a hearing is required "when the motion asserts facts that (1) are disputed and unresolvable on the record and (2) will affect the resolution of the constitutional claim," because the court must then "resolve conflicts in testimony, weigh the evidence, and judge the credibility of witnesses." *United States v. Bowman*, 106 F.4th 293, 300 (4th Cir. 2024) (quotation omitted). The same rule governs a motion to dismiss an indictment. *United States v. Palmer*, 159 F.4th 221, 229 (4th Cir. 2025). In *Feurtado*, the district court made its findings concerning the agent's grand jury testimony only "after examination of the grand jury testimony and a hearing at which oral testimony was taken." 191 F.3d at 424. South Carolina law likewise requires that findings rest on evidence. Findings on a pretrial motion are entitled to deference only "when the findings are supported by the evidence." *State v. Odom*, 382 S.C. 144, 148, 676 S.E.2d 124, 126 (2009). In *Thrift* itself, the motions were heard over four days, the attorneys who negotiated the disputed agreement testified, and our Supreme Court observed of the grand jury claim that "there is a complete record available for analysis." 312 S.C. at 290, 293, 303, 440 S.E.2d at 345, 347, 352.

Both *Bowman* conditions are met. The facts are disputed and cannot be resolved on this record. The State says its agent did not know of the laboratory's results. The record shows that the report was addressed to him; that his grand jury narrative recites what the same report said about the raincoat; that he noted telephone calls about the shirt on the day before and the day of the tests; that his supervisor convened a meeting between the laboratory and the Attorney General's Office at which, the analyst testified, the results "probably" were discussed; that a SLED captain and others opened the report ten times before the indictments; and that SLED's own audit cannot say when the agent first opened it. And the facts will affect the resolution of the motion, because the Order treats them as dispositive of it. Whether the agent is telling the truth about what he knew is a question of credibility, and credibility cannot be judged from a brief.

The Order observes that, because the grand jury's proceedings were not recorded, what the grand jury heard "cannot be definitively established." (Order at 2.) If the Court adheres to that statement, the witness who was in the room should be heard.

Mr. Murdaugh therefore requests that the State be directed to identify by name each person who attended the April 20, 2022, meeting, and requests a hearing at which Agent Owen, Lt. Ghent, the laboratory's analysts and their supervisor, and those who attended that meeting may be examined on the following: (1) to the extent the Court regards it as uncertain, what Agent Owen told the Colleton County Grand Jury about the shirt, the DNA, the shotguns, the raincoat, and vehicle telemetry; (2) when Agent Owen, Lt. Ghent, and the prosecutors each first learned that the shirt had tested negative for human blood; (3) how the raincoat result in the November 10, 2021, report came to be in the agent's narrative; (4) what was said about the shirt at the April 20, 2022, meeting; (5) what "additional DNA Report" Agent Owen downloaded on November 8, 2022; (6) what was delivered to the State's expert, and what was said to him, between his first report and his

second, given that the photographs were the same; and (7) the basis for the agent's sworn statements about the loading of the shotguns.

V. Relief Requested

Mr. Murdaugh respectfully requests that the Court reconsider the Order and:

(1) apply the standard of *Thrift* and *Bank of Nova Scotia*, which asks whether the untrue testimony substantially influenced the decision to indict or leaves grave doubt on the question, without regard to whether the remaining evidence would have sufficed and without requiring proof of intent or bad faith, and dismiss Indictment Nos. 2022-GS-15-00592, -593, -594, and -595 without prejudice;

(2) if the Court does not dismiss on the undisputed facts, direct the State to identify each person who attended the April 20, 2022, meeting, and convene an evidentiary hearing on the matters identified in Part IV before any finding concerning the knowledge or intent of the State's agents is made or left standing;

(3) withdraw the statements that the State's remaining evidence "overwhelmingly" established probable cause, that the raincoat is "Defendant's," and that the video placed Mr. Murdaugh at the scene "immediately before the homicides" and "just minutes before their deaths," and make clear that the Order decides nothing as to the admissibility or weight of the State's evidence at trial, including its evidence of motive;

(4) withdraw or correct the findings identified in Part III, including that the precise substance of the grand jury testimony "cannot be definitively established"; that the HemaTrace report made findings concerning Paul Murdaugh's DNA in stains C, D, and F; that the report was first downloaded on November 30, 2022, and that neither the agent nor the Attorney General's Office was aware of the report before the indictments; that the expert reversed his opinion upon reviewing higher-quality photographs, when the photographs were the same; that the laboratory

concluded the shirt bore possible spatter; that the forensic findings "continued to develop"; that the report "did not surface until October 2022"; that the expert maintained his original conclusion; that the investigative outline accurately identified the ammunition loads; that the shotgun testimony reflected confusion; that "several recovered shotguns" held the loads described; and that the FBI's telemetry analysis is among the evidence that supports the indictments; and

(5) rule on the grounds the Order records but does not decide, or does not address: whether the testimony concerning Paul Murdaugh's DNA was inaccurate without regard to the HemaTrace report; recklessness; and the imputation of SLED's knowledge to the State and the State's failure to correct the testimony.

The trial date need not be affected. Dismissal without prejudice leaves the State free to present its case to a grand jury again, this time accurately, and nothing prevents it from doing so well before April 5, 2027.

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VI. Conclusion

The Court has found that the State's lead agent failed to account for a laboratory report addressed to him before he testified, that law enforcement bears a fundamental duty to represent the evidentiary record accurately, and that the failure undermines public confidence in the integrity of the criminal justice system. Those findings are enough. The consequence was a grand jury that was told something untrue about the only evidence said to show, as a physical fact, that the accused was present when the shots were fired. Under *Thrift*, the remedy is dismissal. That the State had other evidence is not an answer. The motion to reconsider should be granted.

Respectfully submitted,

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November 23, 2026
Columbia, South Carolina.

Attorneys for Richard Alexander Murdaugh

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

The State of South Carolina,

Plaintiffs,

vs.

Richard Alexander Murdaugh,

Defendant.

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

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 November 23, 2026 I did serve via electronic delivery the following document to the below mentioned person:

Document: Motion to Reconsider Order Denying Motion to Dismiss the Indictments

Served: Creighton Waters, Esquire
Office of The Attorney General
cwaters@scag.gov

Holli Miller

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