

**STATE OF SOUTH CAROLINA
COUNTY OF COLLETON**

State of South Carolina,

v.

Richard Alexander Murdaugh,

Defendant.

**COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT**

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

**MOTION FOR A BILL OF
PARTICULARS**

Defendant Richard Alexander Murdaugh, by and through his undersigned counsel, hereby moves the Court to order the State to file a bill of particulars stating the alleged motive it intends to present at trial, with sufficient particularity to allow the defense to identify relevant inculpatory or exculpatory evidence in advance of trial.

I. Background

On June 7, 2021, Alex Murdaugh's wife Maggie and son Paul were brutally murdered near the dog kennels at a family home on Moselle Road in Colleton County. As Mr. Murdaugh has noted in previous motions, the State immediately decided Alex was guilty, before anyone collected, investigated, or reviewed any evidence. Yet for some reason, the State waited over a year before indicting Mr. Murdaugh for the murders. During that year, the State indicted Mr. Murdaugh 17 times for various non-violent offenses, including breach of trust, obtaining property by false pretenses, forgery, money laundering, and computer crimes, that have no obvious connection to Maggie or Paul.

The day after he was indicted for the murders, Alex Murdaugh served his *Brady* and Rule 5 motion for disclosure of the evidence against him in the murder case. But Mr. Murdaugh has struggled to get the State to timely produce discovery required under *Brady* and Rule 5 that is relevant to the murder case. No discovery was received at all until after a motion to compel production was granted. Since then, the State has made at least 14 supplemental productions

regarding the murder charges, most recently on Friday, December 2, 2022. But the State has readily produced copious discovery regarding the charges against Mr. Murdaugh for non-violent financial crimes, to date amounting to over 1.2 million pages of documents comprising over 132 gigabytes of data.

II. Argument

The State asserts the 1.2 million pages of documents relating to alleged financial crimes are relevant because Mr. Murdaugh's alleged financial crimes are in some unexplained way "inextricably linked" with the murder of his wife and son. Of course, records related to alleged financial crimes do not contain direct evidence of Mr. Murdaugh's guilt. Their only possible relevance is motive. This is consistent with defense counsel's discussions with the prosecution about the relevance of the alleged financial crimes.

Mr. Murdaugh seeks a bill of particulars to cause the State to state the motive it alleges, so the defense may adequately prepare a defense and to avoid unnecessarily extending the trial by weeks. Motive is not an element of the charges against Mr. Murdaugh, but it is essential evidence in any circumstantial murder case. *See, e.g., State v. Takis*, 204 S.C. 140, 28 S.E.2d 679, 680 (1944) ("It is quite true that ordinarily the State, upon the trial of an accused for a homicide, does not have to show motive, but where, as in this case, the State undertook to prove motive as a part of its chain of circumstantial evidence against the accused, and without which there would have been no 'corroboration of the primary fact of guilt,' then motive became most material . . ."); *State v. Sweat*, 362 S.C. 117, 124, 606 S.E.2d 508, 512 (Ct. App. 2004) ("Generally, motive is not an element of a crime that the prosecution must prove to establish the crime charged, but frequently motive is circumstantial evidence . . . of the intent to commit the crime when intent or state of mind is in issue." (internal quotation marks omitted)); *see also, e.g., Kelley v. Alabama*, 409 So. 2d 909, 914 (Ala. Crim. App. 1981) ("Where the evidence is in conflict as to whether the accused

did the act, or is partially or wholly circumstantial upon that issue, the question of motive becomes a leading inquiry.”); *Pollard v. Indiana*, 29 N.E.2d 956, 957 (Ind. 1940) (“The absence of a motive for committing the crime charged is in the nature of an exculpatory circumstance which a defendant on trial is entitled to establish.”). Given the essential nature of motive in this case, the extreme volume of materials the State claims are somehow probative of motive, and the (at present) total obscurity of the motive that will be alleged at trial, a bill of particulars is appropriate. *Cf. United States v. Automated Med. Labs., Inc.*, 770 F.2d 399, 405 (4th Cir. 1985) (holding a bill of particulars is appropriate when the indictment contains every essential element of the offense yet more factual detail is needed “to fairly apprise the defendant of the charges against him so that he may adequately prepare a defense and avoid surprise”).

In federal practice, Rule 7(f) of the Federal Rules of Criminal Procedure expressly permits a defendant to seek a bill of particulars from the prosecution. “[T]he purpose of a bill of particulars is to enable a defendant to obtain sufficient information on the nature of the charge against him so that he may prepare for trial, minimize the danger of surprise at trial, and enable him to plead his acquittal or conviction in bar of another prosecution for the same offense.” *United States v. Schembari*, 484 F.2d 931, 934–35 (4th Cir. 1973). “The indictment notifies [the defendant] of the offenses with which it has been charged; the bill of particulars, if granted, serves to supply the evidentiary details needed to prepare a defense.” *United States v. Am. Waste Fibers Co.*, 809 F.2d 1044, 1047 (4th Cir. 1987). “A bill of particulars identifies for the defendant the area within which the government’s chief evidence will fall” but it is not a “detailed disclosure of the government’s evidence in advance of trial.” *United States v. Fletcher*, 74 F.3d 49, 53 (4th Cir. 1996) (internal quotation marks omitted).

There is no corresponding rule in the South Carolina Rules of Criminal Procedure, but the bill of particulars was once commonly used in South Carolina practice and is still a device available to the trial court. *E.g.*, *State v. Chitty*, 17 S.C.L. 379, 408 (S.C. App. L. & Eq. 1830) (“The notice, in fact, is nothing more than a bill of particulars of the evidence, intended to be offered on the trial, and rendered necessary by the generality of the charge, as a means of guarding the defendant against surprise.”). In South Carolina, a bill of particulars was most used when indictments charged violation of statutes generally prohibiting certain activities without specifying specific violative acts. *See State v. Napier*, 63 S.C. 60, 41 S.E. 13, 15 (1902) (citing various 19th Century cases to explain where the “the charges include in their nature a succession and continuation of acts which do not belong to any particular period” the “indictment need not set out the particular acts” but the “state, however, may be required before trial to give the defendant notice of the particular instances that are meant to be proved”). In the 20th Century, South Carolina criminal practice evolved to include specific alleged acts in indictments, largely obviating the need for a bill of particulars. *See, e.g.*, *State v. Wells*, 162 S.C. 509, 161 S.E. 177, 181 (1931) (“Generally, the same result [as a bill of particulars] may be accomplished, however, by a motion to quash the indictment because it does not furnish a defendant with the necessary and proper information for him to meet the charges preferred against him.”).

Although now dormant in South Carolina practice, the bill of particulars remains an available means “in a criminal case [] to advise the defendant more fully of the charge against him, where the indictment is good as a pleading, but the court may be of the opinion that the defendant is entitled to some further information before being compelled to go to trial.” *Id.* at 161 S.E. at 190 (Cothran, J., dissenting). Here, the nature of the case against Mr. Murdaugh justifies use of this dormant, but still valid, device. Again referring to federal practice, a trial court

determines whether a bill of particulars is warranted by considering “the complexity of the offense, the clarity of the indictment, and the degree of discovery otherwise available to the defendants.” *United States v. Walker*, 922 F. Supp. 732, 739 (N.D.N.Y. 1996) (internal quotation marks omitted). Those factors applied here each support a bill of particulars. First, if the financial crimes are indeed “inextricably intertwined” with the murders, the complexity of the murder case is enormous, encompassing millions of pages of documents and over 80 alleged financial crimes. Second, the indictment provides no clarity whatsoever as to how those millions of pages are relevant to the murders. Third, the degree of discovery available demands some guidance from the State as to relevance. While Mr. Murdaugh has filed multiple motions to compel to get evidence directly related to the murder charges—which has been slowly provided in over a dozen supplemental productions—he has been positively papered over with evidence relating to his alleged financial crimes while simultaneously being assured it all has some unknown but critical relationship to the murder charges.

Until now, this state has never had a prosecution in which millions of pages of documents purportedly supporting over 80 counts of various financial crimes allegedly committed by the defendant are declared to be, in some vague way, “inextricably intertwined” with murder charges against the same defendant. If the defense must wait until trial to discover what (if anything) that means, the result will be an extension of trial by weeks and continuances within the trial, while defense counsel review documents and make motions under Rules 403 and 404 of the South Carolina Rules of Evidence, while the State responds, and while the Court hears and rules on the motions. In addition to creating these “mini-trials” within the actual trial, this would risk introduction of testimony or evidence later deemed inadmissible, which in turn could create extended debate on curative jury instructions and, ultimately, avoidable appellate litigation. *Cf.*

D.R.C. v. Indiana, 812 N.E.2d 1127, 1142 (Ind. Ct. App. 2004) (reversing conviction of David Camm for murdering his wife and children because alleged prior bad acts were improperly admitted into evidence that were “not reasonably related to any proper purpose under Indiana Evidence Rule 404(b), including proof of motive”); *D.R.C. v. Indiana*, 908 N.E.2d 215, 237 (Ind. 2009) (again reversing conviction of David Camm for murdering his wife and children because alleged prior bad acts were again improperly admitted into evidence).¹

Any necessary arguments regarding alleged prior bad acts can instead happen in a motion hearing if the State would give some reasonable indication of the motive it intends to argue at trial. Mr. Murdaugh does not ask the State to identify specific evidence and explain how that supports its theory of motive. That is a task for trial (or a motion in limine), and to force the State to do so now would force the State to disclose its trial strategy, which would be improper. *See, e.g., United States v. Castillo-Rodriguez*, No. 95-CR-46, 1999 WL 528565, at *7 (N.D.N.Y. July 20, 1999) (noting a bill of particulars is not available to force the prosecution to disclose “the details of how it intends to prove the charges”). Defense counsel can figure out what evidence may support or refute the State’s proposed motive if the State would simply articulate the motive. Mr. Murdaugh only asks the State to do so with reasonable particularity. For example, it would not be helpful to aver only that “the motive for the murders was to conceal financial crimes.” But it could be helpful if the State also gave some general statement about how the murders would conceal the alleged financial crimes: Had Maggie and Paul threatened to expose them? Was Mr. Murdaugh

¹ David Camm was wrongly accused of murdering his wife and children largely based on bogus blood spatter expert opinions offered by, among others, Tom Bevel, the subject of Mr. Murdaugh’s pending motion to exclude. In Camm’s case, the real killer, career-criminal Charles Boney, was identified and convicted when, after Mr. Camm’s first conviction, unidentified male DNA found at the scene was finally compared against CODIS, the FBI’s national DNA database. Unidentified male DNA was also found at the scene of Maggie and Paul’s murder. To date, it does not appear the State has compared it against CODIS.

purportedly attempting some specific act of concealment that their murders could have facilitated? Were the murders merely meant to distract from the investigation of the financial crimes? While it is implausible that he would murder his wife and son to avoid law enforcement scrutiny of his activities, Mr. Murdaugh's purpose here is not to argue the merits of any proposed motive. Mr. Murdaugh merely asks for some minimal guidance so he can prepare for trial.

The issue here is not Mr. Murdaugh's due process rights. A bill of particulars is not required in a criminal case. In South Carolina, as in federal practice, whether to require a bill of particulars lies in the discretion of the trial court. *Wells*, 161 S.E. at 181 ("We know of no provision in our law requiring the presentation or delivery of a bill of particulars."); *United States v. Anderson*, 481 F.2d 685, 690 (4th Cir. 1973) (holding the decision to grant a bill of particulars is within the sound discretion of the district court). The issue is trial management. But trial management issues within the discretion of the trial court often turn on providing basic fairness to the parties. It would be fundamentally unfair to allow the State to ambush Mr. Murdaugh at trial with a surprise theory about how some unproven non-violent prior bad act should be admitted as evidence he murdered his wife and son, while claiming the defense was given notice of the purported evidence just because the State dumped 1.2 million pages of documents of unknown relevance on the defense.

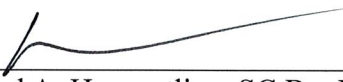
Mr. Murdaugh simply seeks in this case what the defendants received in *United States v. Grooms*, Crim. No. 3:09-1174 (D.S.C. July 29, 2010). In *Grooms*, the defendants were charged with various offenses related to cockfighting. Indictment, Crim. No. 3:09-1174, Nov. 9, 2009. They moved to dismiss the indictment on various grounds. Motion Hearing Transcript 2:21-3:6, *Grooms*, Crim. No. 3:09-1174, Feb. 17, 2010. The prosecution admitted that an interstate commerce nexus was an element of certain charges in that case but argued that "factual allegations

contained in the indictment that indicate any [e]ffect on interstate or foreign commerce” were not necessary because the indictment alleged (through a statutory citation) the bare existence of an interstate commerce nexus, and because “we will have proof at trial” of such a nexus. *Id.* at 7:12–9:17. The presiding judge, the Honorable Cameron Currie, observed, “So we have the government alleging I think first the interstate nexus and, two, alleging what that interstate nexus is. The defendants are in no position to know exactly what they are going to have to refute at trial in order to defend the case.” *Id.* at 13:1–10. Judge Currie ordered the Government to provide a bill of particulars. *Id.* at 28:3–13. Basic fairness cannot accept that a defendant accused of cockfighting should be entitled to a more specific explanation of the charges against him than a defendant in a murder case.

III. Conclusion

For the foregoing reasons, the Court should grant this motion for a bill of particulars and order the State to file a bill of particulars regarding the motive.

Respectfully submitted,



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December 5, 2022
Columbia, South Carolina.

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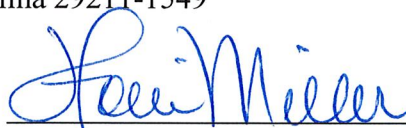
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CERTIFICATE OF SERVICE

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 December 5, 2022, I did serve by placing in the U.S. mail, first class postage affixed thereto (with a courtesy copy sent electronically), the following documents to the below mentioned person:

Document: Motion for a Bill of Particulars

Served: Creighton Waters, Esquire
Office of The Attorney General
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