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 **RESPONSE TO DEFENSE MOTION TO COMPEL PRODUCTION OF DNA EVIDENCE**

The State responds as follows to the current defense motion to compel production of DNA evidence.

1. Facts/Procedural History as to Items 70 and 71 (Maggie fingernails)

The defense received all DNA reports as well as the complete DNA case file well prior to the first trial in this matter. Again, there is nothing "new" or recently discovered about the DNA result from Maggie's left-hand fingernails – the existence of this extremely partial profile in a not unexpected mixture was well known to the defense since 2022. On August 31, 2022, the DNA report containing a reference to the mixed sample from Maggie's fingernails was turned over to the defense. The defense visited the SLED lab to view the evidence on November 21, 2022, and also received the complete SLED DNA case file from the State in discovery on January 12, 2023.[1]

Moreover, the evidence was litigated during the first trial. DNA analyst Sara Zapata noted that the left hand fingernails contained "only a few alleles that were not [Maggie's] own alleles", that it was possible for anyone in the courtroom could have those same

[1] The defense even argued during an October 20, 2022 hearing that the unidentified alleles had not been tested against Curtis Eddie Smith, which the State was in the process of doing. Eddie Smith was excluded as a contributor to the sample, and a DNA report to that effect was issued on November 2, 2022 and provided to the defense on November 10, 2022. See https://www.youtube.com/watch?v=wd8i0tsuGml, beginning at 07:42.

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three alleles, that the sensitivity of testing for and prevalence of touch DNA means one can pick up stray alleles on fingernails from interacting with one's environment, and that the extremely minimal profile was insufficient for CODIS. **{Tr. 3262, 3287-3291}**. The pathologist Dr. Reimer noted that Maggie had no defensive wounds and in particular no indications from her fingernails that would indicate she had been in a fight with her attacker. **{Tr. 3382}**. Indeed, if Maggie had scratched the skin of an attacker immediately before she died, the chances would substantially increase that an extremely strong profile would have been found under her fingernails.[2]

After the reversal, the defense then requested access to remaining reserve samples of SLED Item No. 70, fingernails from Margaret Murdaugh's left hand, asking for independent review. The State filed response to the original motion on June 28, 2026, and a hearing was held before this Court on June 29, 2026, when again, the State indicated that it was "happy and willing to facilitate actual substantive conversations with the defense experts as to their proposals and representations as to their capabilities."

The State facilitated such a conversation on July 7, 2026, when the State hosted a WebEx including representatives from the SLED, the State, Othram, and defense counsel. SLED analysts described the results and the quantification from the left-hand fingernails. Following this, Othram stated: (1) : the ratio of 99 to 1 was pretty much a sole source sample (meaning just from Maggie), (2) that it was almost not even a mixture, (3)

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[2] See, e.g. Alketbi, Salem, "Fingernail samples as DNA reservoirs: Implications for forensic interpretation" World Journal of Advanced Research and Reviews. (April 10, 2026) ("Evidence from prevalence and persistence studies demonstrates that foreign DNA beneath fingernails is common in non-criminal contexts and that mixed profiles represent expected rather than exceptional findings." "Controlled simulations of scratching have shown that foreign DNA may be readily detectable immediately following contact"). Kettner, et. al., "IPV – Bridging the juridical gap between scratches and DNA detection under fingernails of cohabitating partners," Forensic Science International: Genetics (January 14, 2015) (Mean male DNA content was 16 fold higher in scratching vs. non-scratching fingers).

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that it would be extremely unlikely Othram could generate enough DNA to do anything additional with such a minor and partial profile, and (4) any Othram testing would be "very high risk" with little chance of success but permanently consume all sample." The quantification results from the samples analyzed by SLED were as follows:

> (1) The quantitation results for L21-09074 Item 70 are:
> Small Autosomal target: 1.2137 ng/uL
> Large Autosomal target: 1.0472 ng/uL
> Y-chromosome target: 0.0101 ng/uL
>
> (2) The quantitation results for L21-09074 Item 71 are:
> Small Autosomal target: 3.0112 ng/uL
> Large Autosomal target: 3.0303 ng/uL
> Y-chromosome target: 0.0225 ng/uL

Following this, SLED provided Othram portions of the DNA Case File, the Quant Trio Worksheet, and the relevant electropherograms for items 70 and 71.

The State then had communications with defense counsel regarding the remaining untested reserve sample, in which it offered to quantify the remaining reserve sample but then stop and consult with the defense, which was "a fair process for both sides". The defense refused, and thus the issue was addressed before this Court at the hearing on August 14, 2026. At that hearing, the Court ordered essentially the same procedure as suggested by the State, but that SLED would send the remaining extract from the SLED-tested sample, as well as the untested reserve samples to Othram for quantification Once done, Othram would then stop and the defense would consult with the State before proceeding.

On September 11, 2026, defense counsel sent a letter advising of the results of Othram's quantification of the extract from the reserve sample, which showed:

From the extract remaining from the SLED-tested portion of the sample:

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(1) The quantitation results for extract from L21-09074 Item 70 are:
Small Autosomal concentration: 0.188
Large Autosomal concentration: 0.034
Y-chromosome concentration: 0.001

(2) The quantitation results for extract from L21-09074 Item 71 are:
Small Autosomal concentration: 0.252
Large Autosomal concentration: 0.034
Y-chromosome concentration: 0.002

(3) The quantitation results for reserve sample from L21-09074 Item 70 are:
Small Autosomal concentration: 0.036
Large Autosomal concentration: 0.015
Y-chromosome concentration: 0.000

(4) The quantitation results for reserve sample from L21-09074 Item 71 are:
Small Autosomal concentration: 0.043
Large Autosomal concentration: 0.043
Y-chromosome concentration: 0.000

The defense letter stated it was going to potentially combine all the samples together (from two separate hands) for testing, and that the testing would consume all of any remaining sample and extract and "no material would remain for subsequent testing by either party".

The State responded by letter on September 17, 2026, in which it set forth some very reasonable questions, raised to it by the SLED scientists. The State asked that if (1) Othram had already indicated that the SLED-tested samples were pretty much sole source from Maggie, and Othram by its own statement was unlikely to produce anything further in what it termed was a "high-risk" procedure, (2) the Othram-quantified reserve samples both showed 0.000 as to Y-chromosome, (3) Othram's testing was going to consume all remaining material permanently, and (4) Othram may in fact combine samples, then the State needed to know "what testing is being proposed, the goal of the testing, the likelihood of any usable data, and much less why no extract would be

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remaining for SLED to test like SLED provided to Othram." Moreover, the State requested clarification as to what samples were proposed to be combined, and why that was viable given the Y-chromosome zeroes on the Othram quantification. Finally, the State again offered to facilitate a communication between the scientists so that the State could understand what was being proposed and its potential viability before all material was permanently consumed.

The defense then filed the instant motion to compel.

2. Argument as to as to Items 70 and 71 (Maggie fingernails)

The State's positions are reasonable. Ultimately, the State has the burden of proof and a responsibility for preservation and custody of evidence in a case.[3] Additionally, as previously related to the Court, the State also has obligation under the PCR DNA act to preserve biological evidence. See S.C. Code Ann. § 17-28-70 (A) ("The court shall order a custodian of evidence to preserve all physical evidence and biological material related to the applicant's conviction or adjudication.").

The State is only trying to ensure that it – and more importantly the Court – understands what testing is being proposed, its scientific viability, and the likelihood of success before all remaining DNA is consumed forever. The State is trying to understand why the defense testing of the previously unquantified reserve sample would leave no testable extract for the State -- unlike the testable extract the State provided the defense.

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[3] Jurisdictions impose a duty of preservation on the State once an item to evidence is collected and held in State custody. State v. Krosch, 642 N.W.2d 713, 718 (Minn. 2002) (citing State v. Steffes, 500 N.W.2d 608, 612-13 (N.D.1993); State v. Ware, 118 N.M. 319, 881 P.2d 679, 682 (1994). "It is well-settled that the prosecutor is under a duty to preserve evidence even before [a] defendant's right to discovery attaches." People v. Hale, 167 Misc. 2d 872, 875, 638 N.Y.S.2d 886, 889 (Sup. Ct. 1996). "The duty to preserve evidence starts as soon as the evidence is obtained and continues after a conviction." Chouleng Soun, The Rising Tide in Wrongful Convictions: The Shortcomings of Brady and the Need for Additional Safeguards, 56 New Eng. L. Rev. 221, 240 (2022).

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Ultimately, given the State's obligations, it is not unreasonable for the State to request information and judicial oversight before the defense pursues low-probability exploratory DNA testing that permanently consumes and destroys State's evidence.

Moreover, the State is entitled to be privy to Othram's process and data -- if and when such testing occurs (after assessment of Othram's plan). The State is also entitled to receive a copy of the results of Othram's testing. The Othram-quantified reserve sample has not been previously tested by SLED, and the State has a right to be privy to tests of its evidence. Caselaw supports this premise. People v. Varghese, 162 Cal. App. 4th 1084, 1093, 76 Cal. Rptr. 3d 449, 456 (2008) ("[T]he defendant has no right to obtain the evidence collected by the prosecution, to destroy that evidence in independent testing, and then to withhold from the prosecution the results of the testing."); People v. Cooper, 53 Cal. 3d 771, 816, 809 P.2d 865, 889 (1991) ("Defendant argues that if he were compelled to inform the prosecution what tests he wanted to perform, he would be forced to implicitly divulge defense strategy. The defense was not, however, compelled to do anything. The prosecution and court allowed the defense to participate in the testing on condition that the prosecution learn the results. The defense could choose to accept the condition or not participate in the testing. Forcing such a choice does not violate the Constitution or any other provision of law").

3. Argument as to Item 25.1 (swabs from Maggie's phone)

In its September 11, 2026, letter, the defense also demanded that the State conduct no further testing of Item 25.1 and transfer it to Othram. The State responded by letter on September 17, 2026, in which it noted: (1) Two swabs were collected and approximately ¼ of each swab remains. Also, 10ul of extract remains for this item. SLED has the electropherograms from this test that can be shared, (2) SLED's DNA analysis

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concluded that while a partial DNA profile was developed, due to the limited information that could be obtained, no further interpretation can be offered according to viable and well-established scientific protocols, and (3) the defense request did not specify what testing is proposed and the goal or likely success of that testing, and the State would be glad to facilitate a conversation among the scientists.

For the reasons expressed in the previous subsections, the State's responses are reasonable.

4. Responses as to specific requests for relief

As to the requests for relief in paragraph VII(1), the remaining material and extracts for Item 25.1 were preserved after analysis and remain preserved.

As to the requests for relief in paragraph VII(2), as set forth above the State objects to permanent consumption of Items 70 and 71 without further information as to the proposed testing and an opportunity for the State to fairly be privy and receive the results of such testing.

As to the requests for relief in paragraph VII(3), the DNA case file was previously released to the defense in advance of the first trial.

As to the requests for relief in paragraph VII(4), the DNA case file was previously released to the defense in advance of the first trial. SLED advises there is no specific communication regarding Y-STR testing on Items 25.1, 70, or 71. The inability to determine the number of contributors for Item 25.1 was part of the analyst's interpretation of the profile and the reason Item 25.1 was not comparable is documented in the DNA report issued on 6/25/2021. The analyst deemed this profile not suitable for comparison and it is therefore not appropriate for submission into CODIS. The technical and

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administrative reviews for the DNA report issued on 6/25/2021 were completed on 6/25/2021. No STR data foreign to the victim was present for Item 71 for additional comparisons to be reported.

As to the requests for relief in paragraph VII(5), the State will as always comply with material that is discoverable under Rule 5 and Brady. There is no showing justifying a motion to compel.

As to the requests for relief in paragraph VII(6), the DNA case file was previously released to the defense in advance of the first trial which included the STRmix reports. SLED will provide based on the defense's new request for the proprietary STRmix project folder for 70 and Genemapper ID-X project files for Items 25.1, 70, and 71.

CONCLUSION

The defense motions to compel should be denied. The Court should order Othram to discuss with SLED scientists the proposed plan before proceeding with the State having an opportunity to object before the defense permanently consumes all remaining sample from Items 70 and 71. In the current circumstances, the State is also entitled to be privy to the testing and its results, especially for previously untested reserve sample. With further information, the State would be happy to consider steps as to remaining extract or material as to Item 25.1.

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Respectfully submitted,

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October 8, 2026

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