

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON)	
State of South Carolina,)	Case Nos: 2022-GS-15-00592
)	2022-GS-15-00593
v.)	2022-GS-15-00594
)	2022-GS-15-00595
Richard Alexander Murdaugh,)	
)	STATE'S RETURN IN OPPOSITION TO
Defendant.)	MOTION FOR A FORTHWITH ORDER
)	

In response to the Defendant's Motion for a Forthwith Order filed by Richard Alexander Murdaugh on September 23, 2022, the State would show this Court:

Murdaugh asks this Court to grant him unprecedented subpoena power for documents to be produced in advance of trial, a power which is not authorized or contemplated by the South Carolina Rules of Criminal Procedure. The State objects to Murdaugh's request.

Absent rule or statute, a criminal defendant has no right to discovery at common law. *State v. Miller*, 289 S.C. 316, 317, 345 S.E.2d 489, 490 (1986) (citing *State v. Flood*, 257 S.C. 141, 184 S.E.2d 549 (1971)). The Rule which affords defendants any discovery right provides: "An attorney, as an officer of the court, may . . . issue and sign subpoenas or subpoenas duces tecum for any person or persons to attend as witnesses in any cause or matter in the General Sessions Court." Rule 13(a)(1), SCRCrimP. Significantly, the Rule further requires: "The subpoena shall state the name of the court, the title of the action, and shall command each person to whom it is directed to attend and give testimony, or otherwise produce documentary evidence *at a specified court proceeding.*" *Id.* (emphasis added). The Note to the 2019 amendment to the Rule explains that amended Rule 13(a)(1) "makes clear that subpoenas may only be issued to summon a witness to appear or present documentary evidence at a court proceeding." *Id.* at Note to 2019 Amendment.

Murdaugh seeks to have this Court apply the Rule in a way it was not intended or to amend the Rule to provide him exceptionally broad subpoena power to command the pre-trial production of documents relating to his defense without making public the subpoenas and placing the burden on the recipient to seek to obtain protection from the Court after the subpoena has been served. No court has the ability by itself to grant Murdaugh the power he seeks.

“In interpreting the language of a court rule, [the court applies] the same rules of construction used in interpreting statutes.” *Green By & Through Green v. Lewis Truck Lines, Inc.*, 314 S.C. 303, 304, 443 S.E.2d 906, 907 (1994). “If a rule’s language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced.” *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003). “Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

In *Hodges*, the Supreme Court recognized the canon of construction “*expressio unius est exclusio alterius*” or “*inclusio unius est exclusio alterius*.” *Id.* The Court explained it holds that “to express or include one thing implies the exclusion of another, or of the alternative.” *Id.* at 86, 533 S.E.2d at 582. In this case, the Rule clearly specifies what is included in subpoena powers under the Rule: “The subpoena . . . shall command each person to whom it is directed to attend and give testimony, or otherwise produce documentary evidence *at a specified court proceeding*.” Rule 13(a)(1), SCRCrimP (emphasis added). Because the Rule explicitly includes the power to command to a specified court proceeding, it necessarily excludes the power to command delivery pre-trial to a party. This Court may not properly grant Murdaugh his requested unending power to command delivery outside of a specified court proceeding based on the clear and unambiguous language of the Rule.

Additionally, Rule 45 of the South Carolina Rules of Civil Procedure expressly permits a subpoena duces tecum to be issued separately from a trial, hearing, or deposition. It allows a subpoena duces tecum to be used for either the production of evidence or to “permit inspection and copying of designated books, documents or tangible things . . . *at a time and place therein specified.*” Rule 45(a)(1)(C), SCRCF (emphasis added). Under the civil rule, a subpoena duces tecum can be issued for purposes of pre-trial investigation. This is significant because it demonstrates that had the same right been intended in criminal proceedings, Rule 13 of the Rules of Criminal Procedure would have been written similarly to Rule 45 of the Rules of Civil Procedure. *See, e.g., S.C. Coastal Conservation League v. S.C. Dep’t of Health & Env’t Control*, 390 S.C. 418, 426, 702 S.E.2d 246, 251 (2010) (finding if the Legislature intended a specific result, then they previously demonstrated they knew how to draft the statute to accomplish the result when they had in another context). Very clearly, there was no intention to allow such broad and encompassing discovery in criminal proceedings.

Further, and most significant, the South Carolina Constitution prohibits this Court from granting Murdaugh the power he seeks. Article I, Section 8 of the South Carolina Constitution provides:

In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

As stated by the South Carolina Supreme Court:

One of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government. It prevents the concentration of power in the hands of too few, and provides a system of checks and balances. The legislative department makes the laws; the executive department

carries the laws into effect; and the judicial department interprets and declares the laws.

State ex rel. McLeod v. McInnis, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982). Additionally, Article V, Section 4 of the South Carolina Constitution 4 allows for the Supreme Court to “make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts.” This is directly coupled with Article V, Section 4A which explains the process for a new rule or to amend an existing rule:

All rules and amendments to rules governing practice and procedure in all courts of this State promulgated by the Supreme Court must be submitted by the Supreme Court to the Judiciary Committee of each House of the General Assembly during a regular session, but not later than the first day of February during each session. Such rules or amendments shall become effective ninety calendar days after submission unless disapproved by concurrent resolution of the General Assembly, with the concurrence of three-fifths of the members of each House present and voting.

S.C. Const. Art. V, § 4A. As directly required by the Constitution of this state, any amendment to any rule of procedure—which undoubtedly includes Rule 13 of the Rules of Criminal Procedure—must be submitted by the Supreme Court to the Legislature prior to its enactment. Only the Legislature can allow a rule or amendment to become effective either by its express approval or by allowing ninety days to pass after submission without disapproving of the rule or amendment. *Cf. State v. Beaty*, 423 S.C. 26, 41, 813 S.E.2d 502, 510 (2018) (noting “the South Carolina Constitution limits this Court’s power to promulgate rules governing practice and procedure in the courts of this State”).

Effectively, Murdaugh is seeking to rewrite Rule 13 without going through the constitutionally mandated procedure. He is asking this Court to do what even the five Justices of

the South Carolina Supreme Court are not authorized by our Constitution to do without Legislative involvement.

The prosecution of Murdaugh for the murders of Maggie and Paul Murdaugh is special only insofar as the elevated public attention on this matter requires certain safeguards to ensure a fair trial. Murdaugh is not a special defendant, and his rights and privileges as a criminal defendant are sufficiently safeguarded by the letter of the law as currently written and applied. This Court should conclude that Murdaugh may issue subpoenas subject to the same limitations as any other defendant under Rule 13 of the South Carolina Rules of Criminal Procedure and deny his current Motion for a Forthwith Order.

WHEREFORE, the State respectfully requests that this Court deny Defendant's motion.

Respectfully submitted,

ALAN WILSON
Attorney General

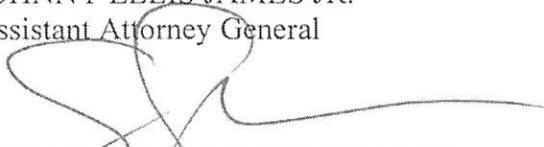
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