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BAD CHARACTER EVIDENCE OR PROOF OF MOTIVE IN HIGH-PROFILE MURDER CASE?

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INTRODUCTION

Following a formal, multi-witness offer of proof outside the presence of the jury in a high-profile trial of once-prominent, since-disbarred and now notorious South Carolina attorney, Alex Murdaugh, Colleton County Judge Clifton Newman decided to permit the prosecution to admit what could well be damning evidence of the defendant's alleged financial crimes as proof of his MOTIVE for shooting his wife (Maggie, age 52) and younger son, Paul (age 22) on the family's hunting estate on the evening of June 7, 2021.

The defendant reportedly called 911 after discovering the bloody bodies of his wife (shot several times with a high-powered rifle) and son (shot twice with a shotgun). He later told police (while dressed in a white t-shirt and shorts) that he was coming from a visit with his mother when he arrived and happened upon the grisly scene.

However, a snapchat video from the son's cell phone depicting him with a dog on the family property taken minutes before the killing revealed two background voices who witnesses identified as those of the defendant and his wife. Another video from an hour earlier showed the defendant standing in front of a wind-blown tree while the son could be heard laughing in the background.

Such evidence appears to contradict the defendant's claim of alibi. Other evidence in this mostly circumstantial case includes shell casings and live rounds (matching those retrieved from the victims) found all over the property. The defendant was also seen on video tearfully telling a detective, "I did him (Paul) so bad." On cross examination, when tape was slowed down, it arguably sounded like, "they did him so bad."

Gunshot residue (hardly the most compelling evidence) was found in the defendant's vehicle as well as on a blue raincoat that the defendant was supposedly wearing after the fact.

A TALE OF TWO MURDAUGHS

According to newspaper accounts*, the defendant descends from a long line of powerful local prosecutors and amassed millions of dollars over the years as a successful (and manipulative) attorney. He lived a lavish lifestyle which apparently turned out to be well beyond his means.

Apart from the murder charges, he is accused of committing nearly 100 financial crimes including embezzlement of millions from his firm over several years, money laundering, fraud, and scamming several clients out of settlement money.

Among the victims is the family of Murdaugh's former housekeeper (Gloria Satterfield) who died from an alleged "trip-and-fall" on his property in 2018. Murdaugh reportedly failed to provide them with any of the four million dollars in settlement proceeds.

According to testimony at the evidentiary proceeding, the defendant bamboozled a close friend (Chris Wilson) who settled a case with him as outside counsel out of \$192,000.00. When the overall settlement of \$792,000.00 was reached, the defendant told his friend to have the check made payable to him personally instead of to his firm. He then asked his friend to lend him \$192,000.00 which he failed to pay back.

When confronted, the defendant apologized, claiming that he was a drug addict who was in deep financial trouble. Shortly thereafter, he arranged with a drug dealer for his own killing so that his remaining son, Buster could collect on a ten-million-dollar life insurance policy. That misadventure went awry as the would-be fatal bullet only grazed his head.

On the morning of the homicides, the defendant was confronted by the CFO of his firm, Jeanne Seckinger who called him out on the missing \$792,000.00 settlement proceeds. He angrily replied that he had the money and would provide it in due course whereupon he said he had to leave to see his father who was dying of cancer. An investigation by the firm revealed that the defendant had allegedly fleeced the firm of millions over a ten-year period.

THE PROSECUTION'S THEORY OF ASMISSIBILITY

The prosecutor (Creighton Waters) argued that the financial crimes evidence was relevant to show the defendant's motive for the killings which was to distract the firm from his monetary misdeeds by creating sympathy for himself as a grieving husband and father. When he was confronted by the CFO, his day of reckoning and imminent ruin, according to the prosecutor, had arrived.

Defense Counsel (Richard Harpoothian) argued that such evidence would be unduly prejudicial and that it made no sense that the defendant would murder his own family to draw attention away from his alleged financial crimes.

DEFENSE STRATEGY MAY HAVE BACKFIRED

Although the judge denied the prosecution's offer of proof when first brought before its case-in-chief, he reversed course after the defense called the defendant's best friend (Rogan Gibson) who testified that he could not, based on his familiarity with the defendant and his family, envision any circumstances in which he could kill his loved ones. The defense also presented a video of a recent family birthday party for the defendant.

The defense objected when the prosecutor asked the witness if he was aware of the defendant's having been confronted by his law firm's CFO over the missing \$792,000.00 settlement check. The court ruled that the DOOR HAD BEEN OPENED by the introduction of good character-type evidence.

The judge also, as noted above, decided to allow the prosecution to introduce evidence of the defendant's financial transgressions to rebut the defense's good character evidence. In particular, the court indicated that it completed the story of why the crimes were committed and put the defendant's conduct on the night in question in context.

WAS THE COURT CORRECT?

Presumably, the defense evidence was offered to show that the defendant was a loving, family man and, therefore, would be unlikely to murder his own family. The question, then, (answered in the affirmative by the trial judge) is whether evidence of family harmony (and presumably of the defendant's peacefulness and domesticity) opened the door to rebuttal evidence of the defendant's character trait for dishonesty (as embezzlement and other forms of peculation would seem to imply).

NY ADVISORY EVIDENCE RULE 4.11

1. This rule plainly states that evidence of a person's character or character trait is NOT ADMISSIBLE to prove that the defendant acted in conformity therewith on a particular occasion. (*People v Zackowicz*, 254 NY 192 [1930]).
 - 1 b. A defendant in a criminal case MAY OFFER evidence of his good character with respect to a RELEVANT trait to prove that on a particular occasion he acted in conformity therewith (and, therefore, was not likely to have committed the crime charged). (*People v Aharanowicz*, 71 NY2d 678 [1988]).
2. When evidence of character is deemed admissible, proof thereof may only consist of testimony as to the defendant's REPUTATION with respect to the RELEVANT CHARACTER TRAIT.

Under the Federal Rules of Evidence (FRE 404 [1][a] and 405 and the South Carolina rules which mirror the FRE), character evidence may come in the form of REPUTATION and/or OPINION testimony (which the witness, Rogan apparently gave when he said he could envision no circumstance where the defendant would murder his family).

THE IMPORTANCE OF RELEVANCE

As noted above, character evidence, whether introduced by the defendant or in rebuttal by the People must be RELEVANT to the trait that is implicated by the crime charged. In the Murdaugh murder case, the relevant traits would appear to be peacefulness/domestic harmony vs violence/domestic strife or hostility.

Therefore, once the defense offered evidence to suggest that the defendant was a loving husband/father who was unlikely to kill his own family, the prosecution arguably would be allowed to offer rebuttal evidence (whether reputation or opinion) to show that he was not a peaceable PERSON, and that life was not so rosy in paradise after all.

But how is proof that the defendant was an ALLEGED THIEF relevant to rebut good character evidence of peacefulness and domestic tranquility?

It's not. What appears to have occurred is that, after hearing the defense proof, the court reconsidered the People's theory that the proffered evidence was relevant to prove the defendant's MOTIVE i.e., that

he killed his family to engender sympathy for himself and get his firm off his back over his financial chicanery.

The Rules of Evidence (FRE 404 [b][2] and NY Advisory Rule 4.21) state that evidence of prior crimes, bad acts or other wrongs may be admissible within the court's discretion to prove MOTIVE (and a host of other relevant matters such as intent, knowledge, common scheme or plan, identity, and absence of mistake or accident (See *People v Molineux*, 83 NY 418 [1901]).

Before admitting such evidence, the court MUST BALANCE its probative value (in proving motive) against the potential for unfair prejudice to the defendant. Whether it is plausible that a husband and father would slaughter his wife and son to cover his thieving ways with sympathy and distraction is quite a question that the jury will have to resolve. What is without question is that evidence of systematic, large-scale stealing from clients and from the defendant's own law firm will not go over well with the triers of fact.

Whether they consider it as proof of motive for murder or of the defendant's bad character that predisposed him to criminal conduct may never be known.

- Information about the Murdaugh trial was obtained from the following online sources:
- "Financial Misdeeds Allowed in Alex Murdaugh Murder Trial," by Jeffrey Collins, 2/2/23 APNews.com
- "Prosecutors: Murdaugh Killed Family to Gain Pity, Distract," by James Pollard, 12/9/22 APNews.com
- "The Latest Drama in the Trial of Alex Murdaugh includes Tearful Testimony from a Former Best Friend," by Aja Romano, 2/3/23, Vox.com