

**RECEIVED**

**Sep 02 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

MICHAEL LINDSAY FAILE,

APPELLANT

APPELLATE CASE NO. 2023-001055

---

REPLY BRIEF OF APPELLANT

---

JESSICA M. SAXON  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES..... ii

ARGUMENT IN REPLY .....1

CONCLUSION.....4

**TABLE OF AUTHORITIES**

**Cases**

Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 494 S.E.2d 827  
(Ct. App. 1997) ..... 1, 2

State v. Jones, 435 S.C. 138, 886 S.E.2d 558 (2021) ..... 2

**Statutes**

S.C. Code Ann. § 23-3-110..... 3

**Constitutional Provisions**

U.S. Const. amend. IV ..... 3

## ARGUMENT IN REPLY

Respondent asserts that this issue is not preserved for review by this Court because the record fails to establish a sufficient factual basis upon which to judge the matter. Specifically, respondent complains that there was no evidence entered about the Flock system in Camden, where the second photograph of Appellant's vehicle was captured and that the assertions of defense counsel "are not evidence". BOR, p. 7. This argument ignores the testimony in the record and that the issue in this case is not the existence of Flock's ever-sprawling camera system but the vast amount of information captured and maintained in its third-party databases that law enforcement can access with the click of a mouse button.

The testimony of Rock Hill Police Department analyst Damien Williams established that in Rock Hill, South Carolina, there are approximately twenty-four (24) cameras that generate thousands of photographs a day of the vehicles that travel in the cameras' path. These thousands of images collect more than just the alphanumeric characters of a license plate – the images include distinct vehicle characteristics such as exterior damage, bumper stickers, and accessories. R. 190, ll. 22-23; R. 229, ll. 1-6 R. 222, ll. 1-3; R. 223, ll.14-15; R. 231, ll. 9-17; R. 238, ll. 20-22; R. 260, l. 24-R. 261, l. 2; R. 295, ll. 12-18. The Flock system is so advanced that it is possible to search for a specific bumper sticker in a specific location on a specific type of vehicle. R. 231, ll. 9-17. Further, the record reflects that Flock end users can access not just their own third-party held database of information but other Flock end users' databases around the nation. Finally, the typical retention period of information within a Flock system is thirty days. R. 232, l. 19-R. 234, l. 14; R. 244, ll. 1-14.

Respondent's reliance on Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 446, 494 S.E.2d 827, 834 (Ct. App. 1997) is misplaced. In Goode, the appellant had attempted

to establish a legal duty through handbooks and directives published by the Department of Housing and Urban Development. However, appellant failed to include those handbooks or directives in the record on appeal, and the lack of adequate materials precluded this Court from consider the argument. Goode is inapposite to the instant case, as the record establishes that in Rock Hill, South Carolina, thousands of images of untold numbers of drivers are collected on a daily basis. Those images contain those vehicles' license plate number, detailed exterior characteristics, and date, time, and location data. The thousands of images are then stored in a databases that can be accessed, not only by local law enforcement, but by state and federal agencies around the country for a period of at least thirty days. This means that law enforcement has continuous and immediate access to immense amounts of data on the past movement of private citizens' vehicles through this state and beyond. The record is sufficient for this Court to consider the merits of Appellant's argument.

Respondent also argues this issue is not preserved for review by this Court because defense counsel did not make a contemporaneous objection on constitutional grounds. BOR p. 7. In State v. Jones, 435 S.C. 138, 144, 886 S.E.2d 558, 561 (2021), our Supreme Court held that where a trial court rules on a constitutional issue after a pretrial hearing, that ruling is final and no further objection is required to preserve the issue for appellate review, unless something changes during the trial that may reasonably cause the trial judge to alter the pretrial ruling. Nothing changed between the pretrial hearing and the admission of the evidence in Appellant's case that would have reasonably changed the trial judge's ruling. Hence defense counsel was not required to contemporaneously objection on the same constitutional grounds that he raised pretrial in order to preserve this matter for review. Respondent's assertions that the issue in this matter is unpreserved is without merit.

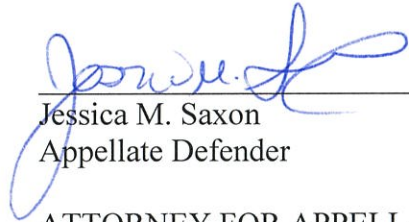
Respondent asserts that Appellant had no reasonable expectation of privacy in his public movements, and thus, police did not conduct a search by photographing his vehicle. This argument misapprehends the issue before this Court. The existence of the Flock cameras, and the fact that they take pictures of vehicles on public roads, is not at issue. It is the information stored in the Flock databases<sup>1</sup> that is the focus of the search. Appellant asserted that a search, for the purposes of the Fourth Amendment and the South Carolina Constitution, occurred when law enforcement accessed a multi-jurisdictional, third-party database containing a thirty-day record of information-dense images of private citizens' vehicles that could be used to chronicle their past movements.

---

<sup>1</sup> Respondent seems to suggest that S.C. Code Ann. § 23-3-110, a statute allowing the State Law Enforcement Division to collect and maintain statewide criminal information, would somehow prevent this Court from finding the databases at issue here are subject to the Fourth Amendment and the South Carolina Constitution. However, 23-3-110 allows SLED to amalgamate information on individuals already charged or convicted of a crime – colloquially known as a RAP sheet. Information about an individual's past criminal charges and convictions is not considered private under the Fourth Amendment or the South Carolina Constitution.

**CONCLUSION**

Based on the foregoing arguments, as well as the arguments in the brief of Appellant, Appellant respectfully requests that this Court reverse his conviction and sentence and remand for a new trial.

  
\_\_\_\_\_  
Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 2nd day of September, 2025.

**RECEIVED**

**Sep 02 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

MICHAEL LINDSAY FAILE,

APPELLANT

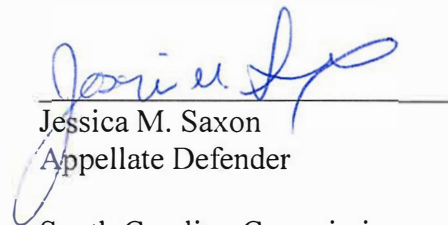
APPELLATE CASE NO. 2023-001055

---

CERTIFICATE OF SERVICE

---

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the Reply Brief of Appellant in the above-referenced case have been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 2nd day of September, 2025.



---

Jessica M. Saxon  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

## Warren, Kaylynn

---

**From:** Warren, Kaylynn  
**Sent:** Tuesday, September 2, 2025 2:49 PM  
**To:** Josh Edwards  
**Cc:** Saxon, Jessica; Susan Spencer  
**Subject:** 2023-001055 The State v. Michael Lindsey Faile  
**Attachments:** 2023-001055 The State v. Michael Lindsay Faile Reply Brief of Appellant.pdf

Good Afternoon,

Attached for service in the above-referenced case is the Reply Brief of Appellant which will be filed today, September 2, 2025, with the Court of Appeals via email filing.

Respectfully,

Kaylynn

**Kaylynn Warren**

Administrative Assistant

South Carolina Commission on Indigent Defense

Division of Appellate Defense

(803) 734-1330