

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Horry County

Honorable Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAQUAN MA'LIEK FRINKS,

APPELLANT

APPELLATE CASE NO. 2026-000251

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge abuse his discretion in refusing to relieve the Public Defender Office from representing Appellant when the office represented both Appellant and a potential witness against Appellant and timely screening did not take place because of the late disclosure of the real name of the witness?
2. Did the trial judge err in admitting Facebook messages from Appellant's phone between Appellant and the witness who was part of the conflict discussed in issue one when the statements by the witness about providing a particular Jeep Cherokee to Appellant constitute impermissible hearsay as the statements were offered for the truth of the matter asserted?

STATEMENT OF THE CASE

In January of 2023, the Horry County Grand Jury indicted Appellant, Jaquan Ma'Liek Frinks, for murder and assault and battery of a high and aggravated nature, indictments #2023-GS-26-00426, 00427. (R. p. **). On December 29, 2025, counsel for Appellant, Ronald Hazzard, filed a notice of conflict and appointment of alternate counsel. (*Exhibit #1, Notice of Conflict* R. p. **). On December 29, 2025, the State asked to be heard on the matter. (*Exhibit #3- email*, R. p. **). On January 2, 2026, Appellant appeared before the Honorable Michael G. Nettles. Ronald Hazzard and Elizabeth Tilley represented Appellant. Nancy Livesay and Natale Corsi appeared on behalf of the State. In a written order filed January 6, 2026, Judge Nettles denied substitution of counsel. (*Order Denying Substitution of Counsel*, R. p. **).

On January 26, 2026, Appellant proceeded to jury trial, only on the murder charge, before Judge Nettles. Ronald Hazzard and Elizabeth Tilley represented Appellant. Nancy Livesay and Natale Corsi prosecuted the case. The jury returned a verdict of guilty. Judge Nettles sentenced Appellant to a sentence of life in prison. A timely notice of intent to appeal was served on January 29, 2026. This appeal follows.

STATEMENT OF FACTS

On July 9, 2022, shortly after 11:00 P.M., Christopher Mitchell was fatally shot in a drive-by shooting at the Shady Moss Apartments in Conway, South Carolina. Malaysia Garner, the mother of Appellant's son, was also shot but survived. Garner described the vehicle as a black Jeep with tinted windows. (Tr. p. 165, line 21 – p. 166, lines 1-21; p. 180, line 23 – p. 181, lines 1-11). Garner testified she saw a flash of orange color on the driver's side. (Tr. p. 180, line 19 – p. 181, lines 1-8). The vehicle was also captured on a neighbor's Ring camera. (Tr. pp. 189 -192).

On July 14, 2022, Corporal Jonathan Barrett with the Horry County Police Department responded to a call about an abandoned vehicle in Myrtle Beach. (Tr. p. 219, lines 7-17). Corporal Barrett learned that the vehicle in question, a Jeep, may be involved in a homicide investigation. (Tr. p. 222, lines 11-19). The Jeep was processed for fingerprints and DNA. Numerous unidentified fingerprints were found as well as Appellant's fingerprints on the rearview mirror, and Shaheem Johnson's fingerprints on a receipt. (Tr. p. 343, line 25, p. 344, lines 1-25; p. 347, line 24 – p. 348, 349, lines 1-5; pp. 350 – 356; p. 371, lines 8-14). Unknown contributors of DNA were found in the Jeep. (Tr. p. 387, line 13 – p. 388, lines 1-11; p. 390, lines 1 – 25). The DNA analyst testified that a DNA profile from the steering wheel of the Jeep was a mixture of three individuals with strong support that Appellant was one of the contributors. (Tr. p. 388, line 13 – p. 389, lines 1-25).

The State introduced video from surveillance cameras at the Coastal Grand Mall recorded on July 9, 2022, between approximately 2:50 P.M. to 3:25 P.M. (Tr. p. 416, line 6 – p. 417, 418, lines 1-21). The video shows a group of individuals with a person in orange. (Tr. p. 420, line 7 – p. 421, lines 1-2). The video also shows the person in orange standing next to a black Jeep

and then the Jeep leaving the parking lot. (Tr. p. 426, line 15 – p. 427, 428, lines 1-7). Erin Eck, who was seeing Appellant at the time, identified Appellant from the mall surveillance video as the person in orange. (Tr. p. 488, line 12 – p. 489, lines 1-10).

Lieutenant Benjamin Wells with the Horry County Sheriff's Office was qualified without objection as an expert in digital forensics. (Tr. p. 510, lines 10-19). Lieutenant Wells testified about phone calls, text messages, Facebook messages, Uconnect information, Snapchats, and Google searches found during extractions performed on two phones associated with Appellant. (Tr. pp. 514-520). Lieutenant Wells testified, over objection, about Facebook messages between Appellant and "Hound Runnin Jay" beginning on July 5, 2022, about Appellant acquiring a black Jeep Cherokee. (Tr. pp. 520-542).

Detective Jerome De Sheers with the North Charleston Police Department was qualified without objection as an expert in cellular device locations. (Tr. p. 633, lines 6-12). The detective mapped phone records of two cell phones associated with Appellant. (Tr. p. 633, line 13 – p. 634, lines 1-19). Detective De Sheers testified about cell site locations of the phones on July 9, and 10, 2022. (Tr. pp. 641-653).

The State argued in closing that Appellant was the driver and another individual was the shooter. (Tr. p. 690, line 7 – p. 691, lines 1-8). The shooter is not identified by name. The judge, over objection, charged the jury on the law of "the hand of one is the hand of all." (Tr. p. 668, lines 3-6; p. 671, lines 11-16; p. 737, line 14 – p. 738, 739, lines 1-22; p. 742, lines 9-10). After a re-charge on "the hand of one is the hand of all," the jury returned a verdict of guilty.

ARGUMENTS

1. **The trial judge abused his discretion in refusing to relieve the Public Defender Office from representing Appellant when the office represented both Appellant and a potential witness against Appellant and timely screening did not take place because of the late disclosure of the real name of the witness.**

Standard of Review

“[A] motion to relieve counsel is addressed to the discretion of the trial judge and will not be disturbed absent an abuse of discretion.” State v. Graddick, 345 S.C. 383, 385, 548 S.E.2d 210, 211 (2001) (citation omitted). State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012).

Facts Relevant to the Conflict Issue

Appellant was arrested for murder on July 18, 2022. Appellant was initially represented by private counsel, Ralph Wilson Jr., who was relieved and the Public Defender Office appointed on August 18, 2023. (Jan. 2, 2026, Tr. p. 12, lines 1-13). Public Defenders Eric Fox and Caitlyn Caldwell first represented Appellant. (*Notice of Conflict p. 1*, R. p. **). When Public Defender Caldwell left the office in April of 2024, Public Defender Elizabeth Tilley took over representation as co-counsel. (*Notice of Conflict p. 2*, R. p. **). When Public Defender Fox left the office in September of 2024, Public Defender Martin Spratlin took over representation as co-counsel. (*Notice of Conflict p. 2*, R. p. **). As a result of a conflict, Public Defender Spratlin was replaced by Circuit Public Defender Ronald Hazzard on October 20, 2025. (*Exhibit #1, Notice of Conflict p. 2*, R. p. **). According to the order denying substitution of counsel, on October 15, 2025, the parties agreed on a trial date of January 26, 2026. (*Order Denying Substitution of Counsel, p. 7*, R. p. **).

Public Defender Caldwell was appointed to represent James Felton on a grand larceny charge, unrelated to Appellant's charges, in February of 2024, at the same time she represented Appellant. (Jan 26, Tr. p. 10, lines 5-11). According to the State, they first spoke with Felton about Appellant's murder case on January 30, 2024, prior to representation by the Public Defender Office. (Jan. 2 Tr. p. 10, lines 1-13). An investigative report of the meeting between Assistant Solicitor Nancy Livesay, Investigator Kevin Belt, and Felton, however, is dated February 12, 2024. (*Exhibit #6*, R. p. **). Felton provided important information about Facebook messages between himself, known as "Hound Runnin Jay" and Appellant, known as "Trill Savage." (*Exhibit #6*, R. p. **). The investigative report was not turned over to the Public Defender Office until December 29, 2025¹, the same date the Public Defender Office filed the notice of conflict. (Jan 2, 2026, Tr. p. 5, lines 4-13; Jan 26, 2026, p. 9. Line 23 – p. 10, lines 1-4; *Order Denying Substitution of Counsel* p. 4, R. p. **).

Public Defender Lisa Deitle took over representation of Felton in June of 2024. (Notice of Conflict p. 2, R. p. **). Assistant Solicitor Nancy Livesay and Investigator Kevin Belt met with Felton again on November 14, 2025. (*Exhibit #7*, R. p. **). The investigative report that resulted from this second meeting was also not turned over to the Public Defender Office until December 29, 2025, the same date the Public Defender Office filed the notice of conflict.

Public Defender Deitle learned of the potential conflict on November 18, 2025, when she met with her client at the jail and he told her about the meeting with the prosecution. (Jan. 2, 2026, Tr. p. 5, line 20 – p. 6, p. 7, lines 1-6). The same day, November 18, 2025, Public Defender Deitle reported the potential conflict to the Circuit Public Defender, Ronald Hazzard.

¹ The State admitted that the original discovery turned over in September of 2023, only referenced the messages by the nicknames. (Jan. 2, 2026, Tr. p. 12, line 21 – p. 13, lines 1-12).

(Jan 2, 2026, Tr. p. 6, lines 5-25; p. 40, lines 8-25). Felton was conflicted out of the Public Defender Office the next day. (Jan. 2, 2026, Tr. p. 40, lines 22-24).

On December 29, 2025, the Circuit Public Defender, Ronald Hazzard, filed a notice of conflict and appointment of alternate counsel. (*Exhibit #1, Notice of Conflict* R. p. **). In the notice Circuit Public Defender Hazzard wrote:

Assistant Public Defender Lisa Deitle subsequently met with Mr. Felton at the detention center on November 18, 2025 and Mr. Felton advised her at that time that Assistant Solicitor Livesay had interviewed him and made known that she wanted him to potentially testify as a witness for the State in Mr. Frinks' pending Murder and Attempted Murder cases. He further provided information under attorney/client privilege that is very germane to the allegations against Mr. Frinks and the State's apparent theory as to the circumstances under which the alleged offenses occurred. Upon realizing that a potential conflict existed between Mr. Felton and Mr. Frinks, Assistant Public Defender Deitle followed normal office protocol and brought the matter to the attention of undersigned counsel so that a determination could be made as to the ethical handling of Mr. Felton's representation. What attorney Deitle did NOT realize at the time was that the information she provided to counsel for Mr. Frinks that was obtained from her client under attorney/client privilege could now not be used in Mr. Frinks' defense as that use would be of legal detriment to Mr. Felton, either as a defendant or as a witness for the State. This has resulted in an impermissible conflict under Rule 1.7(a) of the Rules of Professional Conduct.

(*Notice of Conflict, Exhibit #1*, R. p. **). On December 29, 2025, the State asked to be heard on the matter. (*Exhibit #3- email*, R. p. **).

On January 2, 2026, a hearing was held before Judge Nettles on the notice of conflict and appointment of alternate counsel. (Jan. 2 r. pp. 1-45). In a written order, captioned "Order Denying Substitution of Counsel in Matter set for Trial on January 26, 2026," and filed January 6, 2026, Judge Nettles denied substitution of counsel. (*Order Denying Substitution of Counsel*, R. p. **). Appellant renewed the motion for appointment of alternate counsel at the start of the trial on January 26, 2026. (Jan. 26, Tr. pp. 1-60). During the pretrial renewal of the notice of conflict and appointment of alternate counsel, the State advised that they would not call Felton as

a witness. (Jan. 26, 2026, Tr. p. 31, lines 8-23). Counsel for Appellant argued that the State's decision not to call Felton as a witness did not solve the conflict. (Jan. 26, 2026, Tr. p. 32, lines 11-14). The court held the motion to reconsider in abeyance. ((Jan. 26, 2026, Tr. p. 42, line 20 – p. 43, lines 1-8). The jury was picked the next day and the trial went forward. Counsel renewed the conflict motion after the State rested. (Tr. p. 666, lines 1-4).

Discussion

During the January 2, 2026, hearing on the notice of conflict and appointment of alternate counsel Circuit Public Defender Hazzard told the trial judge:

That conversation resulted in him [Felton] providing his attorney at the time, who worked for me, information. Information that we cannot disclose. Information that we cannot use on cross-examination against him. Information that we cannot use on behalf of Mr. Frinks. Which that's what that's the crux and heart of the conflict. Because Ms. Deitle spoke with Mr. Felton as his attorney of record, he provided certain information to her that was then provided to us. And we cannot use the information in any way, shape, or form.

(Jan 2, 2026, Tr. p. 17, lines 8-17).

In the order denying substitution of counsel the trial court found that, “No conflict of interest exists which would prohibit the Public Defender’s Office from their continuing representation of the Defendant.” (*Order Denying substitution of Counsel p. 8, R. p. ***). The court found that, “Witness is not the client, former client, or person owed a fiduciary duty of Assistant Public Defender Elizabeth Tilly or Chief Public Defender Ron Hazzard.” (*Order Denying substitution of Counsel p. 8, R. p. ***). In the order the trial court cites Rule 1.10(e), of the South Carolina Rules of Professional Conduct and State v. Wright, 424 S.C. 335, 818 S.E.2d 236 (S.C. Ct.App.2018). The trial court erred in finding no conflict exists. Rule 1.10(e), of the South Carolina Rules of Professional Conduct is inapplicable under the facts of this case. As a result, the conflict was imputed to the Public Defender Office. The trial court erred in finding

Assistant Public Defender Elizabeth Tilly and Chief Public Defender Ron Hazzard did not owe Felton a fiduciary duty as a former client.

Rule 1.7(a) of the South Carolina Rules of Professional Conduct provides:

Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Rule 407, SCACR.

Rule 1.10(a) of the South Carolina Rules of Professional Conduct deals with the imputation of conflicts and provides:

While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

Rule 407, SCACR.

Rule 1.10(e) of the South Carolina Rules of Professional Conduct, however, provides an exception for public defender offices stating:

A lawyer representing a client of a public defender office, legal services association, or similar program serving indigent clients shall not be disqualified under this Rule because of the program's representation of another client in the same or a substantially related matter if:

- (1) the lawyer is screened in a timely manner from access to confidential information relating to and from any participation in the representation of the other client; and
- (2) the lawyer retains authority over the objectives of the representation pursuant to Rule 5.4(c).

Rule 407, SCACR.

Rule 1.0(n) of the South Carolina Rules of Professional Conduct defines screened as:

“Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

Rule 407, SCACR.

The Public Defender exception found in Rule 1.10(e) of the South Carolina Rules of Professional Conduct is inapplicable in the present because, before screening could be set up, confidential information was disclosed by Felton’s attorney to Appellant’s attorney in order to determine if a conflict existed. Circuit Public Defender Hazzard told the trial judge:

Now, Lisa Deitle did her job. Which is come back to me and say – and really there are two parts to it. One part is she wanted to verify whether or not there’s a conflict. Number two, as a young attorney, she was absolutely aghast that the prosecution would go out to the jail and talk to someone they knew has an attorney without notifying the attorney first. I had to talk her off the ledge on that. That’s really what started it. Her – and that’s really what caused just the spewing of information by her. Because she was like I can’ believe they did that. And I had to tell her, yeah, some – for some reason the rules allow it. If they’re not talking about his case, his charges, they get to talk to him about whatever they want.

(Jan 2, 2026 Tr. p. 40, lines 8-21). Circuit Public Defender Hazzard earlier noted that the prosecutors speaking with public defender clients was “playing with fire.” (Jan. 2, 2026, Tr. p. 30, lines 9-10).

Timely screening did not happen because the Public Defender Office was unaware of the identity of witness Felton, only referred to as “Hound Runnin Jay” in the discovery provided. The prosecution was aware of Felton’s identity and involvement in Appellant’s case based on their first interview with Felton in February of 2024. The investigative reports from the first interview in 2024, and a second interview in 2025, were not provided to the defense until

December 29, 2025, the same day the notice of conflict was filed by the defense and after the case had been scheduled for trial on January 26, 2026.

The conflict in the Public Defender Office constituted an actual conflict. An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendants. Fuller v. State, 347 S.C. 630, 557 S.E.2d 664 (2001); See also Zuck v. State of Alabama, 588 F.2d 436, 439 (5th Cir.1979). The Public Defender Office owed a duty to witness Felton that was adverse to Appellant. In order for this dual representation not to constitute an actual conflict, there needed to be proper screening, according to the ethical rules. The screening did not take place, as required, because the Public Defender Office was unaware of the identity of the witness and unaware of the conflict. Under the imputation of conflicts, found in Rule 1.10(a) of the South Carolina Rules of Professional Conduct, none of the lawyers associated with the Public Defender Office could represent Felton or Appellant. As argued by Circuit Public Defender Hazzard, “Information was provided, under attorney-client privilege, that impacts Mr. Frink’s case from a client at the time. And our conflict is if it were any other attorney in the world they – if they obtained that information, they could use it on Mr. Frink’s behalf. They could use it to defend his case. We are ethically estopped from doing that.” (Jan. 2, 2026, Tr. p. 18, lines 3-9).

Once the actual conflict of interest was determined, assigning Felton outside counsel did not remove the conflict as Felton was a former client. See Rule 1.7(a)(2) of the South Carolina Rules of Professional Conduct. (Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be

materially limited by the lawyer's responsibilities to another client, **a former client** or a third person or by a personal interest of the lawyer) (emphasis added).

The present case is distinguished from State v. Wright, 424 S.C. 335, 818 S.E.2d 236, (Ct. App. 2018). In Wright the public defender moved to be relieved because her direct supervisor represented one of the witnesses against her client. The Court of Appeals found the trial court correctly denied the motion to be relieved writing:

We read Rule 1.10(e) as providing a way to ensure the public defender's office is not conflicted out, but we do not read it as requiring any specific procedures to ensure the absence of a conflict. The trial court took sworn testimony from both the Chief Public Defender as well as the attorney supervising Wright's counsel. They each testified they did not discuss any particulars of Wright's case with his attorney and they did not discuss anything that would give Wright's attorney any advantage or disadvantage in this case. While we are troubled by the situation, we are confident in the trial court's attempt to ensure no actual conflict existed. Rule 1.10(e) provides a public defender may continue representing a client, even with an imputed conflict of interest, if there is proper screening to prevent the exchange of confidential information. We find the trial court adequately determined no confidential information was disseminated or received by Wright's attorney. Thus, while no member of the office explicitly communicated the need to create a screening mechanism, the testimony indicates such a wall existed in this case. Accordingly, the public defender's office accomplished the purpose of the rule and Wright's attorney did not have to be relieved.

Wright, 424 S.C. at 340, 818 S.E.2d at 238.

In contrast, in the present case Felton's public defender disclosed confidential information to Appellant's public defender in an attempt to determine if a conflict existed. In the order denying substitution of counsel the trial court wrote:

The distinguishing facts between Wright and this matter are that the Public Defender's Office here immediately moved to be relieved from representation of Witness on November 19, 2025, thus creating the screening mechanism which was not present in Wright. Here, the confidential information was disclosed by Witness' attorney to Defendant's attorney and there is no record before the Court that there was any confidential information regarding Defendant disclosed to Witness' attorney, which would of course been inappropriate and unethical.

(*Order denying substitution of counsel p. 10, R. p. ***). The fact that Appellant's public defenders did not disclose information about Appellant's case to Felton's public defender does not cure the conflict created by Felton's public defender disclosing information to Appellant's public defenders. There is a significant risk that the representation of Appellant was materially limited by the Public Defender Office responsibilities to former client Felton.

At the start of trial when the prosecution advised they would not call Felton as a witness, the trial court asked if that resolved the conflict. Assistant Public Defender Tilly answered, "No, Your Honor. Because my motion to reconsider is not necessary that it involves cross-examination. It is our calling him as a witness." (Jan. 26, 2026, Tr. p. 32, lines 11-14). When asked by the trial court if Felton were to testify would he have exculpatory evidence, Circuit Public Defender Hazzard answered, "Based on the information that I have received as far as his conversation with Ms. Deitle, it would be helpful – very helpful – based on what I know their posture to be or what they say it is as far as how things unraveled and happened, yes. Yes. He had additional – or provided additional information that would definitely, as I said, help place it in a broader and different context. And, yes, it would definitely be to Mr. Frinks' benefit." (Jan. 26, 2026, Tr. p. 39, line 18 – p. 40, lines 1-2). Under the facts of this case, the representation of Appellant by the Public Defender Office constitutes an actual conflict of interest.

The trial judge's refusal to relieve the Public Defender Office is controlled by an error of law. The Sixth Amendment right to effective assistance of counsel encompasses the right to representation by an attorney who does not owe conflicting duties to other defendants. Holloway v. Arkansas, 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978). Where counsel is guaranteed, the client has the right to conflict-free representation. Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980). Violation of this principle is grounds for reversal. Id. A defendant

need not demonstrate prejudice if there is an actual conflict of interest. State v. Gregory, 364 S.C. 150, 153, 612 S.E.2d 449, 450 (2005). The trial judge's refusal to relieve the public defender office violated Appellant's Sixth Amendment right to conflict-free representation and the violation requires reversal.

The trial court additionally found that, "Even if the Court found that Attorney's for the Defendant had a fiduciary duty to Witness [Felton] as to create a conflict of interest, no conflict currently exists since the attorney-client privileges information placed on the record was waived by Witness when he voluntarily revealed the information to the Solicitor's Office." (*Order Denying substitution of Counsel p. 11*, R. p. **). While Felton waived attorney-client privilege with regard to information provided to the Solicitor's Office, additional information provided to his attorney is protected and not waived. When the prosecution asserted waiver, Circuit Public Defender Hazzard told the judge, "I appreciate the fact that the State wants to guess at the information that was provided by Mr. Felton. I will tell you, as an officer of the court, that is not the fact." (Jan. 2, 2026. Tr. p. 29, lines 5-10). The judge asked, "That what is not the fact?" (Jan. 2, 2026. Tr. p. 29, line 11). Hazzard answered, "That they know the information divulged to our office by Mr. Felton." (Jan. 2, 2026. Tr. p. 29, lines 12-13). Hazzard additionally told the trial judge, "And yes, I tried to figure out every way possible. That is why Mr. Felton was summarily conflicted out the next day. Because I'm trying to save this case for this office but when it became apparent the depth of the information that had nothing to do or was in way greater an addition to what they say he told them. That's something that I'm not willing to put my law license on the line for." (Jan. 2, 2026. Tr. p. 31, lines 1-7). The additional information was not waived by Felton.

The trial court then found, “The Court is permitted to consider the ‘additional’ material in an *ex parte in-camera* hearing but is not required to do so to make a determination on whether or not a privilege exists.” (*Order Denying substitution of Counsel p. 13*, R. p. **). Counsel declined the offer of an *ex parte in-camera* hearing for the trial court to consider the additional material, believing the disclosure would be improper. (Jan. 2, 2026, Tr. p. 29, lines 1-7). The information Felton provided to his public defender about Appellant was protected by the attorney-client privilege. As discussed above, under the facts of this case, the representation of Appellant by the Public Defender Office constitutes an actual conflict of interest.

The present case is distinguished from Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984). In Duncan the South Carolina Supreme Court wrote:

This is a case of concurrent representation. The Public Defender's Office represented both Duncan and Leroy Davis, a witness against Duncan. Steve Henry, an Assistant Public Defender, made a conscious decision not to reveal the prior inconsistent statement of Davis to Duncan or his attorney. Henry, representing Davis on an unrelated murder charge, felt he had an ethical duty not to reveal the statement. Thus, Henry states that he acted under what he perceived to be a conflict of interest.

This court is unable to discern the conflict. Duncan and Henry have done no more than state in a conclusory fashion that there was a conflict of interest. There is no evidence in the record to support the conclusion. Revealing the statement could not have harmed Davis because the Solicitor had it already. Henry's proper action should have been to go to the trial judge and explain the situation to him and ask guidance.

Duncan v. State, 281 S.C. 435, 438–39, 315 S.E.2d 809, 811 (1984). In the present case the conflict was clear. Appellant’s counsel was unable to use information beneficial to Appellant but adverse to former client Felton. Additionally, unlike in Duncan, the Solicitor’s Office did not have the additional information divulged by Felton to his public defender.

In the present case counsel for Appellant asserted an actual conflict. In Cuyler v. Sullivan, 446 U.S. 335, 346–47, 100 S. Ct. 1708, 1717, 64 L. Ed. 2d 333 (1980)(footnotes omitted), the United States Supreme Court wrote:

Defense counsel have an ethical obligation to avoid conflicting representations and to advise the court promptly when a conflict of interest arises during the course of trial. Absent special circumstances, therefore, trial courts may assume either that multiple representation entails no conflict or that the lawyer and his clients knowingly accept such risk of conflict as may exist. Indeed, as the Court noted in Holloway, *supra*, at 485–486, 98 S.Ct., at 1179, trial courts necessarily rely in large measure upon the good faith and good judgment of defense counsel. “An ‘attorney representing two defendants in a criminal matter is in the best position professionally and ethically to determine when a conflict of interest exists or will probably develop in the course of a trial.’ ” 435 U.S., at 485, 98 S.Ct., at 1179, quoting State v. Davis, 110 Ariz. 29, 31, 514 P.2d 1025, 1027 (1973).

The trial court erred in refusing to relieve the Public Defender Office.

Finally, the trial court found that “Attorneys for Defendant are not ethically estopped from using the obtained information from witness [Felton] under Rule 4.4(b), Rule 407, SCACR.” (*Order Denying substitution of Counsel p. 14*, R. p. **). Reliance on Rule 4.4(b) of the South Carolina Rules of Professional Conduct is misplaced. Rule 4.4(b) provides, “A lawyer who receives a document or electronic information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronic information was inadvertently sent shall promptly notify the sender.” The comments provide, “A document or electronic information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronic information is accidentally included with information that was intentionally transmitted.” The disclosure in the present case was not inadvertent. Felton’s Public Defender, suspecting a conflict might exist when her client told her that Assistant Solicitor Livesay interviewed him and wanted him to

potentially testify as a witness for the State against Mr. Frinks, disclosed confidential information to the Circuit Public Defender in order to determine if a conflict existed.

The trial judge abused his discretion in refusing to relieve the Public Defender Office. An actual conflict of interest existed with regard to the representation by the Public Defender Office of both Appellant and former client Felton. Timely screening did not take place because of the late disclosure by the State. The trial judge's failure to relieve the Public Defender Office was an error of law because the failure violated Appellant's Sixth Amendment right to conflict-free representation. The failure to provide conflict-free representation requires reversal.

- 2. The trial judge erred in admitting Facebook messages from Appellant's phone between Appellant and the witness who was part of the conflict discussed in issue one when the statements by the witness about providing a particular Jeep Cherokee to Appellant constitute impermissible hearsay as the statements were offered for the truth of the matter asserted.**

Standard of Review

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); *State v. Clasby*, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

Discussion

Lieutenant Benjamin Wells with the Horry County Sheriff's Office was qualified without objection as an expert in digital forensics. (Tr. p. 510, lines 10-19). The State asked Lieutenant Wells about Facebook messages extracted from phones associated with Appellant. The

messages were about Appellant acquiring a Jeep Cherokee. (Jan 26. Tr. p. 520, line 12 – p. 521, lines 1-13). Appellant objected. (Jan 26. Tr. p. 521, line 14). During a bench conference the prosecution told the judge the messages were between Appellant and “Runnin Jay².” (Jan 26. Tr. p. 521, lines 16-22). Appellant objected on hearsay grounds. (Jan 26. Tr. p. 521, line 23 – p. 522, lines 1-8). The judge ruled, “I think it is, indeed, admissible, and that’s my ruling. But I’ll allow you to put your objection on the record.” (Jan 26. Tr. p. 522, lines 9-12).

Lieutenant Wells was allowed to testify that Hound Runnin Jay was talking about a 2018 Black Jeep Cherokee on July 5, 2022. (Jan 26. Tr. p. 523, lines 14-23). Wells was allowed to testify about Hound Runnin Jay’s messages on how he got the Jeep³, where he found the keys, that the Jeep had been checked for a tracker, and that the Jeep needed gas. (Jan 26. Tr. p. 524, line 1 – p. 525, line 1). Wells testified about messages from Hound Runnin Jay making arrangements for Appellant to get the Jeep on July 6, 2022. (Jan 26. Tr. p. 525, lines 2-25). Wells testified that Hound Runnin Jay told Appellant, “Smooove ass dolo, no cap⁴, got two keys for you and already switched the plates.” (Jan 26. Tr. p. 526, lines 14-15). There was more testimony about a second message from Hound Runnin Jay’s reminding Appellant the Jeep needed gas. (Jan 26. Tr. p. 527, lines 1-13). There were messages about the tint on the Jeep and Wells was allowed to testify that Hound Runnin Jay sent a message, “I know it ain’t fishbowl though. My girl said it got a tint though.” (Jan 26. Tr. p. 527, line 17 – p. 528, lines 1-9).

Wells testified that Hound Runnin Jay messaged Appellant, “Don’t come 12 out here.” (Jan 26. Tr. p. 529, lines 1-2). Wells testified about messages stating the Jeep had been found.

² The prosecutor admitted that Hound Runnin Jay is James Felton. ((Jan 26. Tr. p. 545, lines 5-8).

³ During the January 2, 2026, pre-trial hearings the prosecutor told the judge that she showed the Facebook messages to Felton and he admitted he stole the Jeep. (Jan.2, 2026, Tr. p. 25, lines 7-24).

⁴ The Jeep recovered was missing a gas cap. (Jan 26. Tr. p. 237, lines 16-25).

(Jan 26. Tr. p. 529, line 17 – p. 530, lines 1-11). Wells testified that Hound Running Jay then messaged Appellant, “It’s still there. They say they can’t do shit. It ain’t stolen,” (Jan 26. Tr. p. 531, lines 23-24). “It’s parked on private property. They said only thing dude can do is tow it. They can’t do shit.” (Jan 26. Tr. p. 532, lines 1-3). Hound Runnin Jay sends Appellant an address on Cherry Buck Trail. (Jan 26. Tr. p. 533, lines 10-11). Wells continued to testify about messages between Appellant and Hound Runnin Jay. (Jan 26. Tr. pp. 520-542).

After the jury was released for lunch, Appellant renewed the hearsay objection. (Jan 26. Tr. p. 542, line 23 – p. 543, lines 1-7). Counsel for Appellant also told the judge, “. . . Hound Runnin Jay is James Felton, whom the State said they were not using anything by him, were not calling him, the public defender client who was the basis of the motion to be relieved due to conflict.” (Jan 26. Tr. p. 543, lines 8-14). After lunch counsel for Appellant objected to the Facebook messages distinguishing State v. White, 446 S.C. 276, 919 S.E.2d 37 (S.C. Ct. App, 2025), and the self-defense cases finding text messages were not hearsay. Appellant argued, “Here, the truth of the matter asserted is whether or not the defendant came into possession of this car, and that’s exactly what these text messages are for. As a result, under these circumstances, I would submit to the Court that that would be improper.” (Jan 26. Tr. p. 551, lines 8-13).

Wells was allowed to testify that at 1:59 AM on July 10, 2022, Hound Runnin Jay messaged Appellant, “You good.” (Jan 26. Tr. p. 586, lines 23-24). When Appellant asked why, the message response from Hound Runnin Jay was, “A few people got shot on 378. It says they looking for a black Jeep or Durango. Stay off that way.” “In Shady Moss.” (Jan 26. Tr. p. 587, lines 2-5). The trial judge erred in admitting the Facebook messages. The messages constituted impermissible hearsay as out-of-court statements offered for the truth of the matter asserted.

Rule 801(c), SCRE, provides, “ ‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Hound Runnin Jay, James Felton, the former client who was part of the conflict issue discussed in issue one, did not testify at trial. Many of the Facebook messages from Hound Runnin Jay were offered for the truth of the matter asserted. The messages were offered to show that Appellant acquired the Jeep. Details about the Jeep in the messages helped identify the Jeep as the one recovered by law enforcement and believed to have been used in the drive-by shooting. The crime analyst who processed the Jeep recovered testified the gas cap was missing and the windows were tinted. (Jan 26. Tr. p. 237, line 16 – p. 238, lines 1-13).

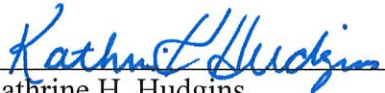
The Facebook messages in the present case are distinguished from the text messages in State v. White, 446 S.C. 276, 919 S.E.2d 37 (S.C. Ct. App, 2025), where third party text messages were found not to be hearsay because the State did not offer the messages for the truth of the matter asserted but rather for the effect on the listener’s state of mind. The text messages in White referred to prior drug transactions for which White was not charged. The Court of Appeals found the messages went to White’s intent as White was charged with possession with intent to distribute drugs. While the State argued the messages in the present case were offered to show the effect on the listener, the messages did not show state of mind, such as intent. Instead, the messages went to the truth of the matter asserted, that Appellant acquired the Jeep.

The messages in the present case are also distinguished from the text messages in State v. Young, 432 S.C. 535, 541, 854 S.E.2d 615, 618 (Ct. App. 2021), where the Court of Appeals wrote, “The court allowed another group of messages not for their truth, but because Young’s response was arguably incriminating. For example, there was no testimony about who sent Young messages, shortly after the shooting, which stated ‘I see you hittin [expletive] [with] that

fire welcome to family fool.’ Young’s responses—‘Already ... delete this text NOW’ and ‘Who told u?’—suggested she was involved.” The messages in the present case did not involve Appellant’s response to an accusation as in Young. Instead, the messages connected Appellant to the Jeep and were offered for that purpose. The trial judge erred in admitting the messages. The error was further complicated by the fact that the messages were from the former public defender client, giving rise to the conflict of interest as discussed in issue one. The errors are not harmless.

CONCLUSION

Based on the above arguments this Court should reverse the conviction and remand for a new trial.


Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of August, 2026.