STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NOS. 21CRS2396-2399 & 21CRS2404-2407
STATE OF NORTH CAROLINA v. CHAD COFFEY, Defendant.	MOTION TO RECUSE AND MOTION TO DISMISS

NOW COMES the Defendant, Chad Coffey, who hereby moves this Honorable Court, pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article I, §§ 6, 16, 19 and 23 and Article IV, § 18 of the North Carolina Constitution, N.C.G.S. §§ 7A-61 and 64 and § 15A-626, for an Order requiring the recusal of the prosecution team and dismissal of the indictments on the ground that the indictments were brought by a prosecution team with an actual conflict of interest. In support of this motion, Mr. Coffey shows as follows:

INTRODUCTION

1. The United States Supreme Court has long held that criminal prosecution by prosecutors laboring under a conflict of interest constitutes a structural constitutional error that is not subject to harmless error review or prejudice analysis, as the Court explained:

> Between the private life of the citizen and the public glare of criminal accusation stands the prosecutor. That state official has the power to employ the full machinery of the state in scrutinizing any given individual. Even if a defendant is ultimately acquitted, forced immersion in criminal investigation and adjudication is a wrenching disruption of everyday life. For this reason, we must have assurance that those who would wield this power will be guided solely by their sense of public responsibility for the attainment of justice. A prosecutor [laboring under a conflict of interest] cannot provide such assurance[.]
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> * * *
>
> We may require a stronger showing for a prosecutor than a judge in order to conclude that a conflict of interest exists. Once we have drawn that conclusion, however, we have deemed the prosecutor subject to influences that undermine confidence that a prosecution can be conducted in disinterested fashion.

* * *

> A concern for actual prejudice in such circumstances misses the point, for what is at stake is the public perception of the integrity of our criminal justice system. . . . Society's interest in disinterested prosecution therefore would not be adequately protected by harmless-error analysis, for such analysis would not be sensitive to the fundamental nature of the error committed.

Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787, 810–12, 814 (1987) (first paragraph appears below others in original); *see id.* at 809, n.19 (favorably citing *Brotherhood of Locomotive Firemen & Enginemen v. United States*, 411 F.2d 312, 319 (5th Cir. 1969) (holding that appointment of conflicted prosecutor is a due process violation even though "No possible whisper of a suggestion of a remote reflection on the [conflicted] counsel . . . is intended or implied.").

2. Under N.C.G.S. § 7A-64, a lawyer other than the elected District Attorney or one of his full time assistants may be appointed to assume the constitutional power to prosecute within a prosecutorial district "only upon a showing by the requesting district attorney supported by facts" that:

   (1) "Criminal cases have accumulated on the dockets . . . beyond the capacity of the district attorney and the district attorney's full-time assistants," such that the appointment is necessary "to keep the dockets reasonably current";

   (2) "The overwhelming public interest warrants the use of additional resources for the speedy disposition of cases involving drug offenses, domestic violence, or other offenses involving a threat to public safety";

   (3) "There is a conflict of interest"; or

   (4) "A county within the jurisdiction of the requesting district attorney is subject to a disaster declaration by the Governor."

   N.C.G.S. § 7A-64(b).

3. On July 8, 2020, Granville County District Attorney Waters asserted in writing that Wake County District Attorney Freeman should be appointed to prosecute the charges Ms. Freeman obtained against Mr. Coffey on July 2, 2020, based on Mr. Waters' conflict of interest in prosecuting Mr. Coffey, writing, "I am of the opinion that a neutral and unbiased determination of whether to charge is vital to the proper administration of justice." Exhibit 1.

4. Therefore, Mr. Waters has an actual and admitted conflict of interest.

5. On the basis of Mr. Waters' actual and admitted conflict of interest as to the Defendant, Mr. Coffey, Ms. Freeman was delegated Mr. Waters' constitutional power to prosecute Mr. Coffey in Granville County, power which Ms. Freeman otherwise lacked.

6. District Attorney Freeman and the rest of the investigation and prosecution team that she led failed to screen the conflicted prosecutor, Mr. Waters, from the investigation or prosecution.

7. Not only was Mr. Waters (the conflicted prosecutor) not screened from the prosecution; Mr. Waters affirmatively endeavored, through text messages and private conversations, to influence the decision making of the prosecution team by instigating ill-will toward Mr. Coffey—such as sending Ms. Freeman text messages containing screenshots of Facebook posts by Mr. Coffey's wife and telling Ms. Freeman that he believed she would "feed off it," to which Ms. Freeman responded, "I hope you'll keep sending me stuff like this." Exhibit 2.

8. The week following Mr. Waters' communications fostering ill-will toward Mr. Coffey, Ms. Freeman brought an additional 10 felony charges against Mr. Coffey. Those charges were nearly universally brought based on uncorroborated statements of informants of unknown reliability. Thus, the basis for these charges was information that likely would fail as a matter of law to establish probable cause to obtain a search warrant. *See, e.g., State v. Collins*, 160 N.C. App. 310, 315 (2003), *aff'd*, 358 N.C. 135, 591 S.E.2d 518 (2004) (Uncorroborated statements of unreliable informants fail to establish probable cause.); *United States v. Miller*, 925 F.2d 695, 698 (4th Cir.), *cert. denied*, 502 U.S. 833 (1991) ("An informant's tip is rarely adequate on its own to support a finding of probable cause.").

9. Mr. Waters also suggested steps the prosecution team should take—such as obtaining records from the Sheriff's Training and Standards Commission—steps which the prosecution team thereafter took, and which resulted in 28 additional felony charges. Half of these charges were based on a never-before employed legal theory of highly questionable validity, and half were based on a theory that is directly foreclosed by appellate court precedent.

10. Mr. Waters endeavored to directly influence the prosecution team even though he well knew that, in his own words, "a neutral and unbiased determination [as to Mr. Coffey] was vital to the proper administration of justice." In other words, Mr. Waters knew that "the proper administration of justice" required that the prosecution team be "neutral and unbiased" as to Mr. Coffey; yet Mr. Waters worked to undermine the neutrality and objectivity of the prosecution team through private communications directly with the prosecution team about the prosecution.

11. At the time of these problematic communications, the prosecution team was acting as Mr. Waters' delegee, under N.C.G.S. § 7A-64 (authorizing out-of-district attorney to be temporary assistant to District Attorney), exercising Mr. Waters' sole constitutional power to prosecute within Mr. Waters' prosecutorial district on the basis that Mr. Waters had a conflict of interest. Accordingly, the members of the prosecution team were

temporary assistants within Mr. Waters' District Attorney's Office for the purposes of prosecuting Mr. Coffey in Granville County.

12. While acting as temporary assistants within Mr. Waters' prosecutorial office, the prosecution team failed to screen Mr. Waters from the prosecution.

13. Because the prosecution team was acting as temporary assistants within Mr. Waters' prosecutorial office, a presumption applies that Mr. Waters' conflict was imputed to the prosecution team, and that presumption can only be overcome if the prosecution team meets "a very strict standard of proof" to prove, "by submitting 'objective and verifiable evidence,' . . . that 'specific institutional mechanisms have sufficiently screened the 'infected' attorney." *United States v. Goot*, 894 F.2d 231, 235 (7th Cir. 1990), *cert. denied*, 498 U.S. 811 (1990) (setting for test for imputed conflict between prosecutors); *see State v. Smith*, 258 N.C. App. 682, 688 (2018) (recognizing that the North Carolina Supreme Court in *State v. Camacho*, 329 N.C. 589, 600 (1991), "adopted the balancing test established by . . . *United States v. Goot.*").

14. The prosecution team did not screen Mr. Waters and cannot meet the "very strict standard of proof" to show, through "'objective and verifiable evidence' . . . , that 'specific institutional mechanisms have sufficiently screened [Mr. Waters]." *Goot*, 894 F.2d at 235.

15. Therefore, Mr. Waters' conflict of interest has been imputed to the prosecution team.

16. An imputed conflict of interest is an actual conflict of interest. *See, e.g.*, *Goot*, 894 F.2d 231, 235; *Smith*, 258 N.C. App. at 688 ("*[B]ecause the government had sufficiently screened the [conflicted prosecutor] from the prosecution*," the motion to recuse was denied. (Emphasis added)); *United States v. Campbell*, 491 F.3d 1306, 1311 (11th Cir. 2007) ("The fact that an imputed conflict is, by definition, an indirect conflict does not mean that an imputed conflict is somehow merely a potential conflict. In the instant case, as a matter of law, [person A]'s actual conflict was imputed to and, therefore, became [person B]'s actual conflict.").

17. A prosecutor with an "actual conflict of interest" must be recused—for, *inter alia*, where a prosecution is tainted by an actual conflict of interest, the prosecution violates the due process and equal protection provisions of the North Carolina and United States Constitutions, as well as the Rules of Professional Conduct. *See, e.g., Young*, 481 U.S. at 810–12. *Cf. Camacho*, 329 N.C. 589, 600, 406 S.E.2d 868, 875 (1991) ("[W]e conclude that the balancing test applied in *Goot* satisfies the requirements of the fifth and sixth amendments to the Constitution of the United States and article I, sections 19 and 23 of the Constitution of North Carolina.").

18. Accordingly, the prosecutors on this case must be recused due to their actual conflict of interest. *Young*, 481 U.S. at 814 ("[W]e establish a categorical rule against the appointment of an interested prosecutor, adherence to which requires no subtle calculations of judgment.").

19. Moreover, because prosecutors with an actual conflict of interest sought and obtained the instant charges, those charges must be dismissed pursuant to the due process and equal protection provisions of the North Carolina and United States Constitutions. *See, e.g., id.* at 812–14 (recognizing that prosecution by a conflicted prosecutor is a structural error that completely "undermines confidence in the integrity of the criminal proceeding") ("[A]ppointment of an interested prosecutor is . . . an error whose effects are pervasive. Such an appointment calls into question, and therefore requires scrutiny of, the conduct of an entire prosecution, rather than simply a discrete prosecutorial decision. Determining the effect of this appointment thus would be extremely difficult. A prosecution contains a myriad of occasions for the exercise of discretion, each of which goes to shape the record in a case, but few of which are part of the record.") ("Given the fundamental and pervasive effects of such an appointment, we therefore hold that harmless-error analysis is inappropriate in reviewing the appointment of an interested prosecutor in a case such as this.").

FACTUAL BACKGROUND

The Defendant, Mr. Chad Coffey, is a more than 20-year veteran of the Granville County Sheriff's Office. He was the head of the narcotics division.

Mr. Coffey was a vocal supporter of (now former) Granville County Sheriff, Brindell Wilkins. Sheriff Wilkins was very popular in Granville County, receiving 75% of the vote in his last contested election.

Mr. Waters (licensed 2005) is a long-time defense lawyer who became District Attorney in 2015. Although Mr. Waters won the primary election across the four counties in his district, he lost handily in Granville County, securing only 31% of the vote in 2014 in his last contested election. Sheriff Wilkins was an outspoken supporter of Mr. Waters' opponent, who received 69% of the Granville County vote.

Immediately after securing his position as District Attorney by winning the Democratic primary (there was no Republican candidate), but prior to taking office, Mr. Waters was hired as defense counsel for a former deputy of the Granville County Sheriff's Office named Joshua Freeman. Sheriff Wilkins had recently fired Mr. Freeman from the Granville County Sheriff's Office for misconduct, and Mr. Freeman was facing domestic violence allegations for which he obtained legal representation from Mr. Waters.

Mr. Freeman would later be charged with DWI and cocaine possession charges, both of which were founded upon solid evidence, and both sets of charges were dismissed after Mr. Waters took office—the first by Mr. Waters personally,[1] the second by Mr. Waters' assistant,

[1] The dismissal form that Mr. Waters filled out and signed to dismiss his former client's DWI states that officer Shawn Spence is a "Necessary witness, and that Mr. Waters "deemed [Mr. Spence] not credible" allegedly for "perjury committed in Tyrrell County." Exhibit 3. However, Mr. Spence was not a necessary witness; there were at least two other witnesses, and Mr. Freeman's blood alcohol was over the legal limit per a blood alcohol test administered pursuant to a search warrant. *Id.* Additionally, Mr. Freeman consented to the officers searching his phone, and the phone provided detailed information regarding the illegal purchasing of prescription medications and

upon information and belief, at Mr. Waters' instruction.[2] Exhibits 3 at 5 & 4 at 13. Coffey was one of the lead investigators both for Mr. Freeman's DWI case (which was based on a blood test confirming that Mr. Freeman's blood alcohol level was over the legal limit, Exhibit 3 at 1) and for Mr. Freeman's cocaine possession case (which was based on a videotape of Mr. Freeman purchasing cocaine during a sale witnessed by officers, cocaine found in Mr. Freeman's vehicle (and on his debit card), and on Mr. Freeman's own admission, Exhibit 4 at 16-18).

When Mr. Waters was the private defense lawyer for Mr. Freeman, Mr. Freeman made a series of allegations about misconduct in the office from which he had recently been fired, the Granville County Sheriff's Office. Soon thereafter, Mr. Waters began a campaign to instigate a federal investigation and prosecution of these allegations. A federal investigation ensued, during which Mr. Waters met with FBI agents on seven or eight occasions, according to Mr. Waters' later witness statement to a State Bureau of Investigation agent. The federal investigation was launched on or about September 22, 2014, and it lasted at least one year. It was then closed for lack of sufficient evidence to substantiate the allegations of Mr. Freeman and Mr. Waters. The FBI elected not to recommend charges and did not refer the matter for investigation or prosecution by state law enforcement agencies.

After the federal investigation was closed without action, Mr. Waters contacted state law enforcement authorities numerous times about starting an investigation, and eventually would personally request that Ms. Freeman lead a state investigation into the same and other related allegations. Exhibit 5. Mr. Waters told Ms. Freeman that he was not sure whether a federal investigation had been opened. *Id.* Upon information and belief, based on Mr. Waters' later statements to the SBI, this statement was false.

Mr. Waters was one of the first witnesses, if not the very first witness, interviewed by the SBI in the investigation that Ms. Freeman had been asked to lead. During his interview, Mr. Waters made a series of allegations against Mr. Coffey, including (1) that Mr. Coffey committed obstruction of justice by utilizing a probationer as an informant, and (2) that Mr. Coffey engaged in misconduct in the treatment of a particular informant, Ms. Westall.

On July 2, 2020, Ms. Freeman obtained a two-count indictment that parroted Mr. Waters' allegations. But even a superficial review of these allegations shows that they are unfounded, and the first of which the State has elected to voluntarily dismiss.

First, there is no basis in law for the theory that utilizing a probationer as an informant is illegal. The only basis for this theory is Mr. Waters' own belief that this practice is against the law. For, as Mr. Waters would later text Ms. Freeman in response to defense questions about the validity of the probationer-as-informant obstruction theory, "I don't have a written policy/it's the law. If you called me as a witness[,] I'd reference several conversations." Exhibit 6 at 3. Mr.

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cocaine, *id.*, and he had, in fact, been caught in a sting operation purchasing cocaine between the time he was charged with DWI and when Mr. Waters dismissed that charge, Exhibit 4. Finally, Mr. Spence had been *acquitted* of perjury prior to Mr. Waters dismissing Mr. Freeman's DWI.

[2] The stated basis for this dismissal was merely "prosecutorial discretion." Exhibit 4 at 13.

Waters' theory of illegality is, in essence, that he (Mr. Waters) says that this practice of using an informant who is on probation is against the law, so it is against the law. Ms. Freeman decided to charge Mr. Coffey with a felony offense on the basis of this facially defective theory. The prosecution team has since dismissed this charge.

Second, with regard to the Westall allegation, Ms. Freeman would charge Mr. Coffey with obstruction of justice based on the allegation that Mr. Coffey allegedly provided "false and misleading information in a police investigative report indicating that [Westall] was contacted multiple times by [Mr. Coffey] and requested to provide assistance as a confidential informant and that she failed to provide such assistance, when in fact she did provide assistance to the defendant in his capacity as a law enforcement officer investigating violations of the controlled substance laws." July 2, 2020 Indictment, 20 CRS 223, Count II (Granville County). This allegation is not supported by the face of the police report in question, which reads, "Westall [failed] to provide *the promised assistance*," of "helping to arrest the persons she knew who sold controlled substances." Exhibit 7 at 5 (emphasis added). Thus, the indictment conflicts with the plain language of the police report. And even a cursory review of the facts establishes that Ms. Westall did not fulfill her promise—and therefore that the police report was accurate—because Ms. Westall continued to engage in serious criminal conduct, failed to continue her efforts to cooperate, and, most importantly, did not cooperate in a fashion that resulted in the arrest of anyone.

Moreover, this allegation is based primarily on text messages obtained from a phone allegedly belonging to Ms. Westall that Mr. Waters had in his possession for, according to Mr. Waters, "a long time" before providing it to investigators. According to an FBI interview of Ms. Westall's Probation Officer, Fred Robertson, Mr. Waters met with Ms. Westall and discussed "what all she had on the phone" and whether "she could erase it," and Mr. Waters obtained possession of the phone that day, which appears to have been April 11, 2017. Exhibit 8 at 3-4, 6.[3] Notably, on April 11, 2017, a number of text messages and pictures were accessed and deleted from this phone. Exhibit 9. This information deleted in April 2017 was incriminating for, and undermined the credibility of, Ms. Westall. *See id.* at 4 (screenshot of text message showing effort by Westall to blackmail someone).[4] Mr. Waters would later acknowledge being aware that Ms. Westall "had gone in and deleted some [items]."

After Ms. Freeman obtained the indictments, Ms. Freeman wrote to Mr. Waters, confirming that Mr. Waters personally selected Ms. Freeman to be the prosecutor:

> As discussed, out of the ongoing criminal investigation into operational irregularities within the Granville County Sheriff's Office Drug interdiction unit *which you asked me to lead . . .* , the Grand Jury of Granville County returned indictments against Chad Coffey on last Thursday for two felony counts of

[3] Mr. Robertson stated that this meeting occurred the same day that he transferred Ms. Westall's probation, Exhibit 8 at 4, which was, upon information and belief, April 11, 2017, the same day that judgment was entered placing her on probation and ordering that probation may be transferred. Exhibit 8 at 6.

[4] Due to the nature of the deleted (but recovered) content, undersigned counsel have not attached most of that material, but will have a copy of same to provide to the Court at the upcoming hearing on this matter.

> obstruction of justice. By way of this email . . . , I am memorializing my understanding that *it is your request* pursuant to [N.C.G.S. §] 7A-64 *that I be appointed* to handle this matter and any other related cases.

Exhibit 1 (emphasis added).

Notably, under the referenced statute, N.C.G.S. § 7A-64 (entitled "Temporary Assistance for District Attorneys"), a lawyer other than the elected District Attorney of the prosecutorial district where the charges are being brought or one of their regular Assistant District Attorneys can be appointed as a temporary assistant to the district attorney's office to handle a case "only upon a showing by the requesting district attorney supported by facts" that:

(1) "Criminal cases have accumulated on the dockets . . . beyond the capacity of the district attorney and the district attorney's full-time assistants," such that the appointment is necessary "to keep the dockets reasonably current";

(2) "The overwhelming public interest warrants the use of additional resources for the speedy disposition of cases involving drug offenses, domestic violence, or other offenses involving a threat to public safety";

(3) "There is a conflict of interest"; or

(4) "A county within the jurisdiction of the requesting district attorney is subject to a disaster declaration by the Governor."

N.C.G.S. § 7A-64(b).

Mr. Waters identified the statutory basis for the appointment under § 7A-64 as a conflict of interest, writing, "I am of the opinion that a neutral and unbiased determination of whether to charge is vital to the proper administration of justice." Exhibit 1.

In other words, Mr. Waters stated, in writing, in order to make the legally required factual showing necessary to persuade the Administrative Office of the Courts to agree to allow Mr. Waters to delegate his exclusive constitutional power to prosecute Mr. Coffey to his desired out-of-district delegee that he (Mr. Waters) has a "conflict of interest." *See* N.C.G.S. § 7A-64(b)(3). Mr. Waters did not state that his conflict of interest was based on him being a witness; instead, he identified his conflict of interest as one based on his inability to make "neutral and unbiased determination[s]." Exhibit 1.

Notwithstanding his admitted conflict of interest, Mr. Waters was not screened from the investigation or prosecution of Mr. Coffey. As an initial matter, Mr. Coffey submits that the burden of proving that Mr. Waters was sufficiently screened must be on the prosecution. *See, e.g., Goot*, 894 F.2d at 235 (imposing burden on prosecution to overcome presumption of imputation); *Camacho*, 329 N.C. at 600 (adopting the test set forth in *Goot*). However, Mr. Coffey submits that the available evidence establishes that this screening did not occur. Specifically, Mr. Waters repeatedly suggested avenues for investigation through one-on-one text

messages with Ms. Freeman; Mr. Waters discussed the case with Ms. Freeman during private one-on-one conversations that were not reduced to any written report, but which conversations are reflected in text messages later obtained by Mr. Coffey pursuant to a court order; Mr. Waters remained on the list of individuals copied on nearly every investigative report[5]; and Mr. Waters instigated ill-will toward Mr. Coffey through private text messages with Ms. Freeman. .

More specifically, among many other relevant communications that show a lack of sufficient screening of Mr. Waters—and fail to show the prosecution team treating Mr. Waters at arm's length—the following exchange occurred on October 31, 2020. The exchange begins with Mr. Waters sending via text messages to Ms. Freeman screenshots of Facebook posts by Mr. Coffey's wife that were critical of the prosecution. Ms. Freeman responds to Mr. Waters:

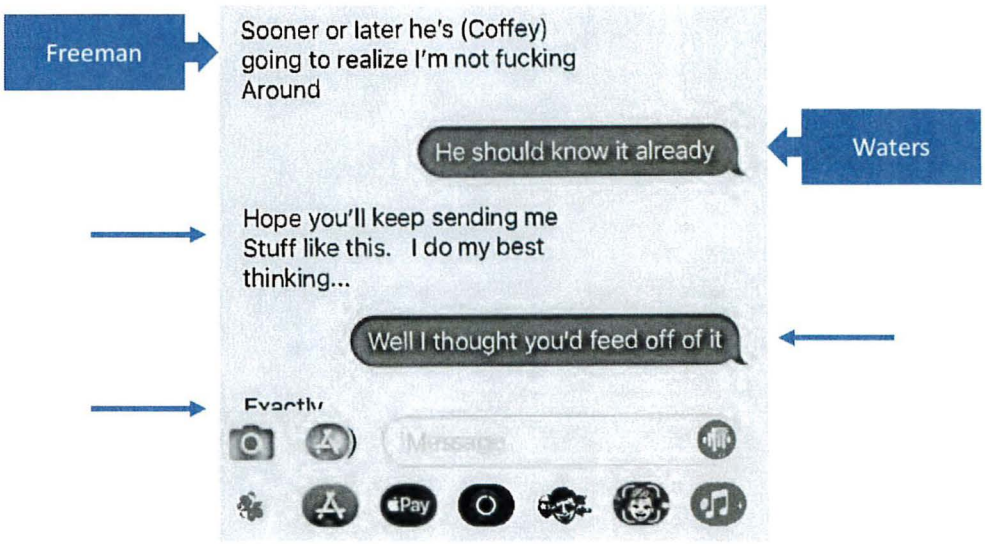

Exhibit 2 at 1. Thus, rather than remind Mr. Waters of any screening provisions, Ms. Freeman affirmatively requested that Mr. Waters "keep sending" her material related to Mr. Coffey's case. These text messages were not provided in discovery as a matter of course (as would be required by statute and the North Carolina and United States Constitutions if Mr. Waters was being treated as a mere witness[6]). Instead, these statements were provided only after a Superior Court

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[5] Mr. Coffey understands from conversations with the prosecution team that Mr. Waters did not access these reports through the online portal. However, (1) the fact that his name remained on the copy line of nearly every report shows that the investigative and prosecution team did not screen Mr. Waters; and (2) it remains unclear whether Mr. Waters nonetheless obtained copies of these reports.

[6] *See, e.g.*, *State v. Lewis*, 365 N.C. 488, 501 (2012) ("[E]xculpatory evidence is 'evidence that is either material to the guilt of the defendant or relevant to the punishment to be imposed,' [*California v. Trombetta*, 467 U.S. 479, 485 [(1984)], including impeachment evidence, *State v. Soyars*, 332 N.C. 47, 63, 418 S.E.2d 480, 490 (1992). The State's failure to disclose such evidence, whether in good faith or bad, violates the defendant's constitutional rights. *Brady v. Maryland*, 373 U.S. 83, 87 (1963)."); *State v. Lynn*, 157 N.C. App. 217, 221–22 (2003) ("A defendant is constitutionally entitled to all exculpatory evidence, including impeachment evidence, in the possession of the State. The State . . is under a duty to disclose [such] matters in its possession." (quoting *State v. Chavis*, 141 N.C. App. 553, 556 (2000))); *Kearney v. Bolling*, 242 N.C. App. 67, 73 (2015) ("[B]ias or interest [i]s grounds of impeachment' because '[e]vidence of a witness' bias or interest is a circumstance that the jury may properly consider when determining the weight and credibility to give to a witness' testimony.'" (quoting *Willoughby v. Kenneth W.*

judge ordered production of any communications (including text messages) between Ms. Freeman and Ms. Waters related to the case. Exhibit 10.

Five days after this text exchange, Ms. Freeman would charge Mr. Coffey with an additional 10 felonies. These charges were based almost entirely on uncorroborated statements of informants—statements that would likely fail to establish probable cause if utilized in support of a search warrant.[7] Moreover, the allegations by these informants are seriously undermined by contemporaneous witness statements, police reports, and evidence submission reports—which documents the prosecution team largely did not obtain until after bringing the charges.

The available communications also show Mr. Waters making suggestions about how the investigation should proceed, including Mr. Waters texting Ms. Freeman as follows:

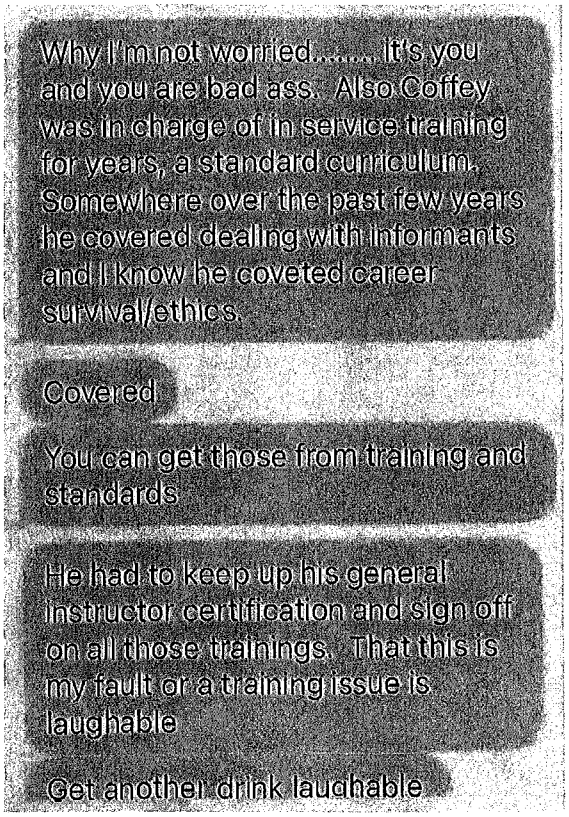

Exhibit 6 at 9.

Wilkins, M.D., P.A., 65 N.C. App. 626, 638 (1983))); N.C.G.S. § 15A-903(a)(1)(a) (requiring disclosure of witness statements)).

[7] *Cf.*, *e.g.*, *State v. Collins*, 160 N.C. App. 310, 315 (2003), *aff'd*, 358 N.C. 135, 591 S.E.2d 518 (2004) (Uncorroborated statements of unreliable informants fail to establish probable cause.); *United States v. Miller*, 925 F.2d 695, 698 (4th Cir.), *cert. denied*, 502 U.S. 833 (1991) ("An informant's tip is rarely adequate on its own to support a finding of probable cause.").

Ms. Freeman and her prosecution team would do what Mr. Waters suggested and "g[o]t [records] from training and standards." *Id.* In reliance on those and related records, the prosecution team would then indict Mr. Coffey for 28 felonies—14 of which were based on a theory never-before utilized that, by putting allegedly false or misleading records into his bosses' personnel folders at their insistence, Mr. Coffey committed the "infamous" felony offense of common law obstruction of justice; and the other 14 were based on a theory directly foreclosed by appellate precedent.[8] When attempting to support the legitimacy of these charges, the State could identify no prior charges anywhere in the State or the country brought on the theory that such conduct constitutes obstruction of justice.

The first two sets of charges—which were brought in 2020—were set for trial on January 18, 2022. On January 5, 2022, the State moved to continue those charges to avoid the necessity of an evidentiary hearing related to Mr. Coffey's allegation that the prosecution team violated the Constitution and § 7A-64 due to the prosecution team failing to screen Mr. Waters. That day, the prosecution team set the final set of charges—which were brought on October 26, 2021—for trial on January 31, 2022. The prosecution team then objected to Mr. Coffey's motion to continue the trial on these nearly brand-new charges.

On February 1, 2021, the Superior Court ordered Mr. Waters to disclose his text messages with Ms. Freeman about this matter. Exhibit 10. Mr. Waters did not comply for over eight months. Exhibit 11 at 5 (noting date of production as October 8, 2021). Even then, Mr. Waters coordinated with Ms. Freeman, obtaining the messages she had produced rather than independently producing them himself. Exhibit 6 at 1 (Email from Freeman to Waters attaching text message "These are the ones we have already turned over."). As noted above, those messages show substantive communications about this matter between Mr. Waters and the prosecution team.

Mr. Coffey now moves this Honorable Court to recuse the prosecution team on the ground that Mr. Waters' admitted conflict of interest has been imputed to the prosecution team such that the prosecution team has an actual conflict of interest. Mr. Coffey additionally moves the Court to dismiss the instant charges because the charges were brought by a prosecution team that was then burdened by an actual conflict of interest.

Ultimately, Mr. Coffey agrees with Mr. Waters' statement to the Administrative Office of the Courts: "[A] neutral and unbiased determination of whether to charge is vital to the proper administration of justice." Exhibit 1. A "neutral and unbiased determination" has not been made here. Accordingly, the prosecutors who are laboring under an actual conflict of interest should be recused; the charges brought by conflicted prosecutors should be dismissed; and any prosecution should proceed only if a truly "neutral and unbiased determination of whether to charge" has occurred.

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[8] In *State v. Mathis*, 261 N.C. App. 263, 282–83, 819 S.E.2d 627, 640 (2018), the court held that to retain something is not within the definition of "obtain" for the purposes of obtaining property by false pretense charge. *Id.* ("While the State likens 'retaining' to 'obtaining,' we conclude retain is not within the definition of obtain. . . . Thus the trial court erred by denying Defendant's motion to dismiss the obtaining property by false pretenses charge."). Notwithstanding this binding precedent, the prosecution team charged Mr. Coffey with 14 counts of obtaining property by false pretense for allegedly assisting others in retaining certain regulatory certifications.

DISCUSSION

I. RECUAL IS REQUIRED BASED ON THE ACTUAL CONFLICT OF INTEREST OF THE PROSECUTION TEAM.

a. Prosecutors laboring under an actual conflict of interest must be recused.

The United States Supreme Court has explained that recusal is necessary when the prosecutor is laboring under an actual conflict of interest.

> It is a fundamental premise of our society that the state wield its formidable criminal enforcement powers in a rigorously disinterested fashion, for liberty itself may be at stake in such matters. We have always been sensitive to the possibility that important actors in the criminal justice system may be influenced by factors that threaten to compromise the performance of their duty. . . .
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> It is true that we have indicated that the standards of neutrality for prosecutors are not necessarily as stringent as those applicable to judicial or quasi-judicial officers. This difference in treatment is relevant to whether a conflict is found, however, not to its gravity once identified.
>
> We may require a stronger showing for a prosecutor than a judge in order to conclude that a conflict of interest exists. Once we have drawn that conclusion, however, we have deemed the prosecutor subject to influences that undermine confidence that a prosecution can be conducted in disinterested fashion.
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> Furthermore, appointment of an interested prosecutor creates an appearance of impropriety that diminishes faith in the fairness of the criminal justice system in general. The narrow focus of harmless-error analysis is not sensitive to this underlying concern.
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> If a prosecutor uses the expansive prosecutorial powers to gather information for private purposes, the prosecution function has been seriously abused even if, in the process, sufficient evidence is obtained to convict a defendant. Prosecutors "have available a terrible array of coercive methods to obtain information," such as "police investigation and interrogation, warrants, informers and agents whose activities are immunized, authorized wiretapping, civil investigatory demands, [and] enhanced subpoena power." C. Wolfram, Modern Legal Ethics 460 (1986). The misuse of those methods "would unfairly harass citizens, give unfair advantage to [the prosecutor's personal interests], and impair public willingness to accept the legitimate use of those powers." *Ibid.* . . .
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> [Thus,] [a] concern for actual prejudice in such circumstances misses the point, for what is at stake is the public perception of the integrity of our criminal justice system. . . . Society's interest in disinterested prosecution therefore would not be

> adequately protected by harmless-error analysis, for such analysis would not be sensitive to the fundamental nature of the error committed.

Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787, 810–12 (1987) (internal citations and footnote omitted) (originally three paragraphs).

In short, the presence of a prosecutor laboring under a conflict of interest in a prosecution is "a fundamental error that 'undermines confidence in the integrity of the criminal proceeding.'" *United States v. Sigillito*, 759 F.3d 913, 927–29 (8th Cir. 2014) (quoting *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 810 (1987)). Indeed, allowing a conflicted prosecutor to represent the government in a criminal matter is such a fundamental error that the defendant need not show prejudice resulting from the error. *Sigillito*, 759 F.3d at 928. This is so because

> [a]ppointment of an interested prosecutor is . . . an error whose effects are pervasive. Such an appointment calls into question, and therefore requires scrutiny of, the conduct of an entire prosecution, rather than simply a discrete prosecutorial decision. Determining the effect of this appointment thus would be extremely difficult. A prosecution contains a myriad of occasions for the exercise of discretion, each of which goes to shape the record in a case, but few of which are part of the record.

Young, 481 U.S. at 812–13.

Thus, the United States Supreme Court made clear that, although the standard for finding the existence of a conflict of interest is higher for a prosecutor than it is for a judge, once a conflict of interest exists, the constitutional requirement for recusal is the same. *Young*, 481 U.S. at 810–11, 814 ("[W]e establish a categorical rule against the appointment of an interested prosecutor, adherence to which requires no subtle calculations of judgment."). Of course, "[t]he immutable fact when deciding a . . . challenge under the North Carolina Constitution is: '[The Court] cannot construe the provisions of the North Carolina Constitution to accord the citizens of North Carolina any lesser rights than those which they are guaranteed by parallel federal provisions in the federal Constitution.'" *See M.E. v. T.J.*, 275 N.C. App. 528, 542 (2020) (quoting *Libertarian Party of N.C. v. State*, 200 N.C. App. 323, 332 (2009) (citation omitted), *aff'd as modified*, 365 N.C. 41 (2011)). Accordingly, because the presence of a prosecutor laboring under an actual conflict of interest violates due process under the United States Constitution, it also violates the due process and related provisions of the North Carolina Constitution.

Moreover, the North Carolina Supreme Court also recognizes the requirement to recuse prosecutors laboring under an actual conflict of interest, including an imputed conflict of interest. In *Camacho*, the North Carolina Supreme Court expressly adopted the balancing test set forth in *United States v. Goot*, 894 F.2d 231, 235 (7th Cir. 1990), *cert. denied*, 498 U.S. 811 (1990), as the test for determining whether recusal of a prosecutor is required under "the fifth and sixth amendments to the Constitution of the United States and article I, sections 19 and 23 of the Constitution of North Carolina." *State v. Camacho*, 329 N.C. 589, 600 (1991); *accord State v.*

Smith, 258 N.C. App. 682, 688 (2018) (*Camacho* "adopted the balancing test established by . . . *United States v. Goot.*").

Under *Goot*, "disqualification is required" when a prosecutor is laboring under an actual conflict of interest, including an imputed conflict of interest. *Goot*, 894 F.2d at 235 ("[D]isqualification [of prosecutors] is required when screening devices were not employed or were not timely employed."); *see also United States v. Campbell*, 491 F.3d 1306, 1311 (11th Cir. 2007) ("The fact that an imputed conflict is, by definition, an indirect conflict does not mean that an imputed conflict is somehow merely a potential conflict. In the instant case, as a matter of law, [person A]'s actual conflict was imputed to and, therefore, became [person B]'s actual conflict.").

Therefore, if prosecutors are laboring under an actual, including an imputed, conflict of interest, recusal is required under the North Carolina and United States Constitutions.

b. Because the prosecutors cannot rebut the presumption of imputation, the prosecutors have an actual conflict of interest.

It is a basic and well-known requirement when addressing situations involving a lawyer's conflict of interest that the conflicted lawyer be formally screened from participation in the matter.

The North Carolina Supreme Court has expressly adopted the requirement to screen conflicted lawyers in order to comply with the United States and North Carolina Constitutions. As noted above, the *Camacho* Court adopted the test set forth in *United States v. Goot*, 894 F.2d 231 (7th Cir. 1990), *cert. denied*, 498 U.S. 811, 111 S.Ct. 45, 112 L.Ed.2d 22 (1990). *Camacho*, 329 N.C. at 600 ("[W]e conclude that the balancing test applied in *Goot* satisfies the requirements of the fifth and sixth amendments to the Constitution of the United States and article I, sections 19 and 23 of the Constitution of North Carolina.").

In *Goot*, the court explained that a presumption of imputation applies and that "a very strict standard of proof must be applied to the rebuttal of this presumption and any doubts as to the existence of an asserted conflict must be resolved in favor of disqualification." 894 F.2d at 235 (quoting *LaSalle Nat. Bank v. County of Lake*, 703 F.2d 252, 257 (7th Cir. 1983)) (original alterations omitted).

The *Goot* court elaborated that the presumption can be rebutted only "by submitting 'objective and verifiable evidence,' which shows that 'specific institutional mechanisms' have sufficiently screened the 'infected' attorney." *Id.* (quoting *Schiessle v. Stephens*, 717 F.2d 417, 421 (7th Cir. 1983) and *LaSalle Nat. Bank*, 703 F.2d at 259). *See also, e.g., Smith*, 258 N.C. App. at 688 ("*[B]ecause the government had sufficiently screened the [conflicted prosecutor] from the prosecution*," the motion to recuse was denied. (Emphasis added)); *People v. Davenport*, 280 Mich. App. 464, 474–75, 760 N.W.2d 743, 750 (2008) ("To determine whether the prosecutor has rebutted the presumption of [imputation], the court must consider whether the prosecutor's office utilized formal screening procedures to insulate [the conflicted prosecutor], whether [the conflicted prosecutor] participated in any aspect of the prosecution of the case,

whether [the conflicted prosecutor] took part in discussions about the prosecution or otherwise revealed information to [the prosecution team], and whether [the conflicted prosecutor] had access to defendant's case file.").

The evidence shows that the prosecutors cannot satisfy this test, particularly under the "very strict standard of proof" that applies. *Goot,* 894 F.2d at 235. Accordingly, the prosecutors in this case have an imputed, and therefore actual, conflict of interest. They must be recused.

c. The fact that the prosecutors at issue were appointed under N.C.G.S. § 7A-64, as opposed to being full-time Assistant District Attorneys, is immaterial to the recusal analysis.

The presumption of imputation set forth in *Goot* and adopted by the North Carolina Supreme Court in *Camacho* typically applies to situations where the conflicted prosecutor is one of the assistants within a prosecutorial office. *See, e.g., Goot*, 894 F.2d at 234–35. However, the same analysis must apply here because, under N.C.G.S. § 7A-64, the prosecutors were appointed "to assist the requesting district attorney." N.C.G.S. § 7A-64. The elected district attorney has the sole constitutional power to prosecute criminal cases on behalf of the State "in the Superior Court *of his [or her] district.*" N.C. Const. Art. IV, § 18 (emphasis added); *State v. Wilson*, 139 N.C. App. 544, 550 (2000) ("[T]he clear mandate of North Carolina Constitution art. IV, § 18, . . . is that 'the responsibility and authority to prosecute all criminal actions . . . is vested solely,' with the various elected district attorneys." (quoting *Camacho*, 329 N.C. at 593)); *accord* N.C.G.S. § 7A-61 (providing statutory authority for district attorneys to prosecute criminal cases "in the superior and district courts of the district attorney's prosecutorial district"). Therefore, just like Assistant District Attorneys, the prosecutors in this case had no power to prosecute Mr. Coffey in Granville County except as delegees of Mr. Waters' prosecutorial power, and their authority to prosecute was as "assist[ants] [to] the requesting district attorney." N.C.G.S. § 7A-64. Indeed, the bill that provided authority for the prosecutors to prosecute Mr. Coffey in Granville County, § 7A-64(b)(3), was entitled, in relevant part, "An act . . . to allow for temporary assistance for district attorneys when there is a conflict of interest," S.L. 2017-158, and the statutory title is "Temporary Assistance for District Attorneys." N.C.G.S. § 7A-64. Thus, under § 7A-64, the prosecutors at issue were Temporary Assistant District Attorneys within Mr. Waters' office for the purpose of the Granville County cases. Accordingly, the presumption of imputation applied to the prosecutors at issue in this case just as it applied to the full-time Assistant District Attorneys within Mr. Waters' office.

Moreover, the fact that the prosecutors are simultaneously operating as Wake County prosecutors in this matter makes no difference because conflicts of interest, by definition, attach to the individual lawyers and thus followed the prosecutors from their effective temporary office in Granville County back to their regular Wake County office.

In sum, because Mr. Waters' admitted conflict of interest was imputed to Ms. Freeman and to Ms. Pomeroy, due to lack of screening of Mr. Waters from the Granville County matters, Ms. Freeman and Ms. Pomeroy have an actual conflict of interest that attaches to them personally and prohibits their participation in this matter under the due process and equal protection provisions of the United States and North Carolina Constitutions.

d. The Court should reject the argument that Mr. Waters does not have a conflict of interest.

The prosecutors may suggest that Mr. Waters does not have a conflict of interest. This was a position briefly asserted by the prosecutors in a related hearing in Granville County. That argument must be rejected because it amounts to a claim that Mr. Waters delegated his exclusive constitutional power to prosecute in Granville County to the prosecutors in this case on the basis of a falsehood (*i.e.*, that he has a conflict of interest). The State simply cannot take one position for the purpose of delegating an exclusive and extensive constitutional power to prosecute a citizen and then take the opposite position in order to absolve the State of an ongoing constitutional violation.

Nor can the State credibly assert that Mr. Waters' conflict was merely a result of him being a witness in the case (1) because Mr. Waters stated that his conflict arose from his inability to make "neutral and unbiased determination[s]," Exhibit 1; and (2) because the State did not disclose communications with Mr. Waters as a matter of course, as would be required by the North Carolina and United States Constitutions if the prosecution team were merely treating Mr. Waters as a witness. *See See, e.g.*, *State v. Lewis*, 365 N.C. 488, 501 (2012) ("[E]xculpatory evidence is 'evidence that is either material to the guilt of the defendant or relevant to the punishment to be imposed,' [*California v. Trombetta*, 467 U.S. 479, 485 [(1984)], including impeachment evidence, *State v. Soyars*, 332 N.C. 47, 63, 418 S.E.2d 480, 490 (1992). The State's failure to disclose such evidence, whether in good faith or bad, violates the defendant's constitutional rights. *Brady v. Maryland*, 373 U.S. 83, 87 (1963)."); *State v. Lynn*, 157 N.C. App. 217, 221–22 (2003) ("A defendant is constitutionally entitled to all exculpatory evidence, including impeachment evidence, in the possession of the State. The State . . is under a duty to disclose [such] matters in its possession." (quoting *State v. Chavis*, 141 N.C. App. 553, 556 (2000))); *Kearney v. Bolling*, 242 N.C. App. 67, 73 (2015) ("[B]ias or interest [i]s grounds of impeachment' because '[e]vidence of a witness' bias or interest is a circumstance that the jury may properly consider when determining the weight and credibility to give to a witness' testimony.'" (quoting *Willoughby v. Kenneth W. Wilkins, M.D., P.A.*, 65 N.C. App. 626, 638 (1983))); N.C.G.S. § 15A-903(a)(1)(a) (requiring disclosure of witness statements)).

The State may also argue that a "conflict of interest" under N.C.G.S. § 7A-64(b)(3) is different than a "conflict of interest" for purposes of recusal under the North Carolina and United States Constitutions. This argument must be rejected as well. Subsection 7A-64(b)(3), providing for appointment of a temporary assistant district attorney where "[t]here is a conflict of interest," was added in 2017, S.L. 2017-158 (H.B. 236), long after the Supreme Court set forth the provisions for recusal of prosecutors based on a "conflict of interest." *See Camacho*, 329 N.C. 589 (1991). The bill relates to the same subject matter—*i.e.*, recusal/disqualification of a prosecutor—as the Supreme Court addressed in *Camacho*. Therefore, the General Assembly must be presumed to have intended that the term "conflict of interest" under N.C.G.S. § 7A-64(b)(3) have the same meaning as in the related case law. *Cf. Mitchell v. Boswell*, 274 N.C. App. 174, 180 (2020) (a statutory term is unambiguous when it "has a 'definite and well known sense in the law.'" (quoting *Fid. Bank v. N.C. Dep't of Revenue*, 370 N.C. 10, 19 (2017) (quoting *C.T.H. Corp. v. Maxwell*, 212 N.C. 803, 195 S.E. 36, 40 (1938) ("The rule applicable to the

construction of statutes is that when they make use of words of definite and well-known sense in the law, they are received and expounded in the same sense in the statute."))).

Moreover, because the elected district attorney has the "sole" "responsibility and authority to prosecute" all matters within his or her district, *Wilson*, 139 N.C. App. at 550, he or she may only delegate that power when such delegation is necessary. Otherwise, § 7A-64(b)(3) would provide a mechanism for elected district attorneys to circumvent the constitutionally mandated check on their tremendous discretionary power—*i.e.*, responsiveness to the people. *Cf.* Federalist No. 51 ("A dependence on the people is, no doubt, the primary control on the government."); *Young*, 481 U.S. at 811 ("Prosecutors 'have available a terrible array of coercive methods to obtain information.'").

This case provides a case-in-point for a serious potential misuse of N.C.G.S. § 7A-64. This prosecution stems from a concerted and long-running effort by Mr. Waters to instigate a criminal investigation of a political rival—that is, the (now former) Granville County Sheriff, Brindell Wilkins. Sheriff Wilkins was a tremendously popular official in Granville County. Sheriff Wilkins won the Democratic primary election in 2014 with 75% of the vote. Exhibit 12 (There was no Republican challenger in the general election). Sheriff Wilkins supported Mr. Waters' challenger, and Mr. Waters received only 31% of the vote in Granville County, with his challenger receiving 69%, in the 2014 primary. Exhibit 13. (Again, there was no Republican challenger in the general election).

By utilizing his prosecutorial power to indict a political rival, *i.e.*, Sheriff Wilkins—and high-ranking supporters of the Sheriff, such as Mr. Coffey—Mr. Waters could use his official power to achieve a significant political goal. If Mr. Waters did this himself, openly, he could suffer serious backlash from the people of Granville County, an important constituency for Mr. Waters. If, on the other hand, Mr. Waters could claim that he had recused himself and that an "independent" prosecutor made all relevant decisions—while secretly remaining involved in steering the prosecution—Mr. Waters could avoid responsibility to the electorate for the prosecutions of Mr. Waters' political rivals.

Whether Mr. Waters was able to effectively steer the prosecution is beside the point. *See, e.g., Brotherhood of Locomotive Firemen & Enginemen v. United States*, 411 F.2d 312, 319 (5th Cir. 1969) (holding that appointment of conflicted prosecutor is a due process violation even though "No possible whisper of a suggestion of a remote reflection on the [appointed] counsel . . . is intended or implied.").

The point is that in a constitutional system of checks and balances, the Court must ensure that such circumvention of the most important check on power—*i.e.*, electoral responsibility for official conduct—is not possible. For our system is based on checks and balances, not the assumption that public officials are angels. *Cf.* Federalist No. 51 ("If angels were to govern [people], neither external nor internal controls on government would be necessary.").

Only by finding that screening of the conflicted prosecutor is required when the prosecutor asserts the necessity of appointing a temporary out-of-district assistant due to a "conflict of interest" under § 7A-64(b)(3) can the Court ensure that public officials cannot use public-facing recusal to circumvent electoral responsibility for discretionary decision making.[9]

Finally, Mr. Coffey submits that the legislature could not have intended § 7A-64 to allow a prosecutor who asserts that he or she has a conflict of interest to not be screened from the prosecution. For it is an elementary requirement that a conflicted lawyer must be screened from the matter, and there is no basis for concluding that the General Assembly intended to provide an exception to this basic and fundamental requirement.

Ultimately, because the prosecutors in this case were exercising Mr. Waters' sole constitutional power to prosecute Mr. Coffey on the basis of Mr. Waters' asserted conflict of interest, the Court should find that Mr. Waters has a conflict of interest and reject arguments to the contrary.

II. THE CHARGES BROUGHT BY PROSECUTORS LABORING UNDER AN ACTUAL CONFLICT OF INTEREST MUST BE DISMISSED.

Because the presence of a prosecutor laboring under a conflict of interest in a prosecution is "a fundamental error that 'undermines confidence in the integrity of the criminal proceeding,'" *Sigillito*, 759 F.3d at 927–29 (quoting *Young*, 481 U.S. at 810), the presence of such a prosecutor "calls into question, and therefore requires scrutiny of, the conduct of an entire prosecution, rather than simply a discrete prosecutorial decision." *Young*, 481 U.S. at 812–13. Prejudice need not be shown. *Id.* Thus, such an error is "structural." Structural errors "deprive defendants of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . and no criminal punishment may be regarded as fundamentally fair." *Nedar v. United States*, 527 U.S. 1, 8–9 (1999) (internal quotation marks omitted). Because a conviction of charges brought by a conflicted prosecutor cannot "be regarded as fundamentally fair," the indictments in this case must be dismissed pursuant to the due process and equal protection provisions of the North Carolina and United States Constitutions.

CONCLUSION

Mr. Waters obtained the appointment of the prosecutors in this case—which arose out of the prosecution of one of Mr. Waters' political rivals—on the basis of a conflict of interest, writing, "I am of the opinion that a neutral and unbiased determination of whether to charge is vital to the proper administration of justice." He was then allowed, due to a lack of screening, to endeavor to undermine the neutrality and objectivity of the appointed prosecutors—and to do so in secret, that is, until a Superior Court Judge ordered the disclosure of his text messages.

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[9] It bears mentioning that the available evidence indicates that Mr. Waters endeavored to "pull strings" in secret—through private one-on-one meetings, calls, and text messages. It was a lack of required screening that made such efforts possible. Notably, but for a Superior Court Judge granting defense counsel access to the text messages between Ms. Freeman and Mr. Waters, none of Mr. Waters' involvement would be known.

In our system of government, the presence of a conflicted prosecutor is a constitutional violation of fundamental and structural character, and conflicts are presumed to be imputed to those who are sharing the constitutional prosecutorial power of the conflicted lawyer, which presumption can be rebutted only by meeting "a very strict standard of proof . . . [under which] any doubts as to the existence of an asserted conflict must be resolved in favor of disqualification . . . by submitting 'objective and verifiable evidence,' which shows that 'specific institutional mechanisms' have sufficiently screened the 'infected' attorney." *Goot,* 894 F.2d at 235 (citations omitted).

The prosecutors cannot meet this test. Accordingly, the prosecutors in this case have an imputed, and therefore actual, conflict of interest. They must be recused and the indictments they brought must be dismissed.

PRAYER FOR RELIEF

WHEREFORE, the Defendant, Chad Coffey, respectfully prays unto this Honorable Court for the following relief:

1) That the Court enter an order recusing the Wake County District Attorney from further participation in any prosecution of Mr. Coffey.

2) That the Court enter an order dismissing the indictments in this case and further relief.

3) For any further relief that the Court deems just and proper.

RESPECTFULLY SUBMITTED, this the 26th day of January, 2022.

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CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Motion was duly served upon the State of North Carolina by hand-delivering a copy of the same to the attention of N. Lorrin Freeman, District Attorney, and Kathryn Pomeroy-Carter, Assistant District Attorney, 10th Judicial District, Post Office Box 31, Raleigh, North Carolina 27602-0031.

THIS the 26th day of January, 2022.

Hart Miles
CHESHIRE PARKER SCHNEIDER, PLLC