

STATE OF NORTH CAROLINA  
 COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE  
 SUPERIOR COURT DIVISION  
 FILE #: 15 CRS 153-155, 164

STATE OF NORTH CAROLINA,

VS.

**ORDER**

BROOKE McFADDEN COVINGTON,  
 SARAH COVINGTON ANDERSON,  
 JUSTIN BROCK COVINGTON,  
 ROBERT LOUIS WALKER, JR.  
 Defendants.

.....

THIS CAUSE coming on to be heard and being heard before the undersigned Judge Presiding over the Criminal Session of Rutherford County, State of North Carolina during the August 3, 2015 Session Criminal Term of Court upon Motion of the State of North Carolina to Disqualify the Attorneys for the Defendants, to wit: Mark Morris, Joshua Farmer, Andrea Farmer and the law firm of Tomblin, Farmer & Morris, P.L.L.C. (hereinafter referred to as "Law Firm") filed July 24, 2015. After a review of the Court file, testimony of Mr. John Byrd, Attorney, designated as an Expert in the field of criminal law, hearing of legal arguments by counsel for the State and the Defendants, the Court hereby makes the following

**FINDINGS OF FACT:**

1. The Defendants have been charged with the following offenses:

Defendant:	Charge:	Felony Class:	Misdemeanor Class:	Date of Offense:
<b>Brooke Covington</b>	Second Degree Kidnapping	E		January 27, 2013
"	Simple Assault		2	
<b>Sarah C. Anderson</b>	Second Degree Kidnapping	E		January 27, 2013
"	Simple Assault		2	
"	Assault Inflicting Serious Injury by Strangulation	H		

<b>Justin Covington</b>	Second Degree Kidnapping	E		January 27, 2013
"	Simple Assault		2	
<b>Robert Walker, Jr.</b>	Second Degree Kidnapping	E		January 27, 2013
"	Simple Assault		2	
<b>Adam Bartley</b>	Second Degree Kidnapping	E		January 27, 2013
"	Simple Assault		2	

2. The alleged victim in each of the above criminal charges is one Richard Matthew Fenner III.
3. True Bills of Indictment were returned on the above respective Defendants on or about January 20, 2015. The Defendants voluntarily appeared, were arrested on or about January 30, 2015. The Word of Faith Fellowship, Inc. posted bond for each of their release from custody.
4. Each of the Defendants as well as each of the aforesaid Attorneys for the Defendants is a member of The Word of Faith Fellowship, Inc.
5. Subsequent thereto, the Defendants each waived their right to assigned counsel and employed the aforesaid attorneys, indiscriminately, in the law firm of Tomblin, Farmer & Morris, P.L.L.C. to represent them in the defense of these criminal charges.
6. In the course of employment of the law firm of Tomblin, Farmer & Morris, P.L.L.C, each of the aforesaid Defendants executed extensive and exhaustive Fee Agreement and Authority to Represent each and every Defendant in the defense of these criminal allegations. In addition thereto and as part of the Fee Agreement and Authority to Represent the Defendants, each Defendant executed a Notice and Waiver of Conflict of Interest, Consent to Joint Representation (hereinafter referred to as "Notice & Waiver").
7. This Notice & Waiver disclosed to each Defendant the possibility that a conflict of interest could arise in the joint representation of all the Defendants. Each Defendant acknowledged that they understood the following:
  - a. Each Defendant has a right to a conflict-free assistance of counsel by his/her own lawyer;
  - b. Each Defendant believes that his/her mutual interests will be best served by the sharing of information, documents, factual information, etc. with the other Defendants and that the Law Firm is free to exchange this information with the other Defendants.
  - c. Even though the interests of the Defendants is generally consistent, the Defendant acknowledges that differences may arise in the future but that it

is in all of the Defendants' best interests to have the single law firm represent them.

- d. The Law Firm believes that it will be able to provide competent and diligent representation to each Defendant, this representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation and that the representation of multiple co-defendants in the same criminal case is not prohibited by law.
  - e. Defendants can consult with their own separate outside attorney at any time during the litigation of these criminal cases.
  - f. Each Defendant will inform the Law Firm if the Defendant feels that a conflict has arisen immediately and vice-versa. The Law Firm will consider the option to withdraw its representation of any co-defendant who the conflict may involve.
  - g. Potential dangers are considered in the multiple representation of co-defendants including the State's offer of a plea bargain to a defendant and the potential harm it could cause to the remaining defendants. State's offer of a plea to a lesser charge in exchange for testimony against the other defendants and the harm this could cause.
  - h. If a defendant is called to testify in his own behalf, the limitations placed upon the attorney to interrogate the defendant balancing matters that the defendant has told the attorney in confidence.
  - i. The offer of evidence that could be potentially harmful to a defendant's case and the conflict presented when the attorney must elect to object to such evidence, allow the same to come into evidence without objection or offer evidence which may be harmful to other co-defendants.
  - j. The right of the individual defendant to revoke this consent but the right of the Law Firm to continue representing the remaining co-defendants.
  - k. If a defendant withdraws consent, the fact that the Court may deny permission to withdraw if postponement of the trial is required.
  - l. The Law Firm retains the right to withdraw representation at any time without withdrawing representation from all of the co-defendants.
8. The aforesaid attorneys and Law Firm have appeared on behalf of the five defendants at various stages of the proceedings and have filed pleadings on their behalf.
9. The Defendants, Sarah Anderson, Justin Covington and Brooke McFadden Covington have sought and obtained opinions from various law firms which have indicated that each of them is free to employ the services of the Law Firm and the respective attorneys subject to the aforesaid Fee Agreement and extensive Waiver of Potential Conflict of Interest set forth above and executed by each of them. While this is an opinion of the individual attorney employed by the respective co-defendant and this Court has considered the respective opinions, this Court is not convinced that these potential conflict of interest issues are waivable by the co-defendants due to the number of defendants,

the issues involved in the trial of this matter and potential for breach of confidence of one or more co-defendants against the interests of another co-defendant(s).

10. Attorney Joshua Farmer indicated that he contacted the N.C. State Bar inquiring about the potential conflict of interest in the representation of five co-defendants and that the personnel of the State Bar indicated that he and his Law Firm could ethically represent these five co-defendants.
11. Mr. Garland Byers, Assistant District Attorney, responsible for the prosecution of these criminal indictments, consulted with Mr. Mark Morris and indicated to Mr. Morris that a potential non-waiverable conflict of interest existed in the representation of five co-defendants. In addition, Mr. Byers informed Mr. Morris that he would be extending a favorable plea offer to one of the co-defendants, Mr. Adam Christopher Bartley, who had a more extensive criminal record than the other co-defendants. This plea offer included dismissal of the felony charge and allowed Defendant Bartley to plead to the misdemeanor charge in exchange for truthful testimony against the other co-defendants. This plea offer was extended to Mr. Morris, Attorney for Defendant Bartley on or about July 22, 2015.
12. On August 3, 2015, Defendant Bartley executed an Informed Consent to allow the Law Firm to continue representation of the remaining co-defendants even though this continued representation of the Law Firm for the remaining four co-defendants may become material adverse to the interests of Defendant Bartley.
13. On August 3, 2015, the Law Firm filed a Motion to Withdraw from representation of the Defendant Bartley due to the fact that Defendant Bartley had retained other counsel to represent Defendant Bartley in this matter, to wit: Robert Denton of Morganton, NC.
14. Mr. John Byrd, Attorney was qualified as an Expert in Criminal Law having more than 40 years in the practice of criminal law primarily as a defense attorney handling every type of case from speeding tickets to many serious cases including first degree murders. In addition, Mr. Byrd served as a District Court Bar Councilor for District 29A for three years. As a Bar Councilor, Mr. Byrd dealt with committees considering charges against lawyers by the public. Mr. Byrd testified concerning the difficulty of handling cases of co-defendants represented by the same defense attorney or defense law firm. Mr. Byrd correctly explained that in a criminal trial, one of the primary concerns of counsel is to avoid a conflict of interest with co-defendants. This is the reason for appointment of different counsel for each defendant allegedly participating in the same criminal activity. Each defendant has a right to present their own story as to the events or non-events which have occurred. In addition, testimony of one defendant may implicate

or exculpate another co-defendant. A conflict of interest in this type of case can occur at any time during the trial, resulting in a defense attorney being placed in a difficult situation of breaching confidences with another co-defendant. Once a trial begins and a conflict of interest arises, it is difficult to correct resulting in a mistrial of the action and misuse of judicial resources. These are some of the reasons that the Court almost always appoints separate legal counsel for each co-defendant in a case arising out of the same alleged criminal activity. The appointment of separate counsel usually occurs in the initial phase of criminal proceedings to preserve the right of the defendant to confidence with his/her own attorney. In counties with a public defender office, the public defender will customarily only represent one defendant in a case involving multiple defendants, farming out the other defendants to other defense counsel thereby eliminating the possibility of a conflict of interest.

15. The Office of the District Attorney is charged with the responsibility of representing the citizens of the State of North Carolina and also to assure the Defendant receives a fair trial as well as insuring that the due process rights of a defendant are protected.
16. Rule 1.7 of the Canons of Ethics for the N.C. State Bar states as follows:

A lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A “concurrent conflict of interest” is defined as:

  - a. A case where the representation of one client will be directly adverse to another client or
  - b. A case where the representation of one or more clients may 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.
17. Revised Rule 1.7(23) states: “The potential for conflicts of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant”.
18. The fact that Co-Defendant Adam Christopher Bartley has been offered a plea bargain in exchange for truthful testimony of Mr. Bartley against the other four co-defendants raises the distinct possibility of a conflict of interest, breach of previous confidences to the defense counsel, difficulty in effective cross examination of Mr. Bartley as well as other procedural issues.
19. While the co-defendants have apparently each stated their contention of complete and total innocence to members of the Law Firm, the extensive waivers executed by the co-defendants to the Law Firm, and the potential for conflict of interest where one co-defendant is offered a plea agreement to testify against the other co-defendants is too great of risk to be disregarded by this Court.

20. Another more substantial risk is a claim by one or more of the co-defendants is a later allegation of ineffective assistance of counsel. This enhances the possibility of reversal by an appellate court, motion for appropriate relief which results in a second trial dealing with these matters.

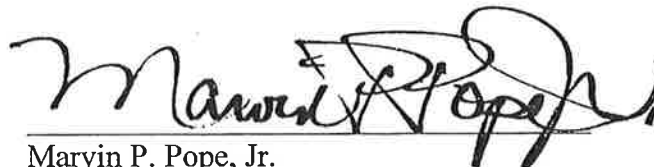
**BASED UPON THE FOREGOING FINDINGS OF FACT, THE COURT  
MAKES THE FOLLOWING CONCLUSIONS OF LAW:**

1. This matter is properly before the Court, by Consent of the parties, and the Court has jurisdiction of the subject matter of this action.
2. A Superior Court Judge has concurrent jurisdiction with the N.C. State Bar with regard to disqualification of attorneys to represent defendants in particular cases and matters per N.C.G.S 84-36. Such disqualification, where appropriate assures that a client's substantial interest in a client's loyalty is protected. The disqualification of an attorney by the court does not mean that the attorney has violated a specific disciplinary rule.
3. The representation of five co-defendants in this cause of action (now four co-defendants) is a concurrent conflict of interest which exists and cannot effectively be waived by a defendant absent knowledge of what a co-defendant may testify on behalf of the State against the remaining co-defendants.

**BASED UPON THE FOREGOING FINDINGS OF FACT AND  
CONCLUSIONS OF LAW IT IS HEREBY ORDERED AND DECREED AS  
FOLLOWS:**

1. The State of North Carolina's Motion to Disqualify Counsel be and is hereby **GRANTED**.
2. The Law Firm of Tomblin, Farmer & Morris, P.L.L.C, Attorneys Mark Morris, Joshua Farmer, Andrea Farmer and their associates are disqualified from representing any of the above named defendants in the matters captioned above.
3. The District Attorney is hereby directed to calendar this matter for hearing to allow the Court to advise the respective remaining co-defendants of their right to counsel, either appointed or execution of a waiver of counsel.

DATE: August 6, 2015



Marvin P. Pope, Jr.  
Superior Court Judge

Cc: Garland F. Byers, Jr., Assistant District Attorney  
Joshua B. Farmer, Attorney for the Defendants  
Mark N. Morris, Attorney for the Defendants