

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
11 CRS 14680

STATE OF NORTH CAROLINA,)
)
 vs.) TRANSCRIPT OF HEARING
)
 AMANDA LEA ROSE,) VOLUME II of II
) November 30, 2011
 Defendant.)

Transcript of hearing in the General Court of Justice, Superior Court Division, held in Forsyth County, Winston-Salem, North Carolina, commencing during the November 28, 2011 Criminal Session, before the Honorable V. Bradford Long, Judge presiding.

A P P E A R A N C E S

For the State: Brian M. Taylor, Esq.
Assistant District Attorney
P.O. Box 20083
Winston-Salem, North Carolina 27120

For the Defendant: Pro Se

Reported by: Gregory S. Mizanin, RPR, CRR
Official Court Reporter
Office: (336) 779-6649

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The Court's Review of Ms. Rose's Notice of Objections

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Wednesday, November 30, 2011

9:43 a.m.

MR. TAYLOR: Page 7, number 24, Mandie Rose.

THE COURT: Miss Rose, would you be kind enough to come up, please, ma'am. Thank you.

MR. TAYLOR: With the Court's permission -- And, Miss Rose, if we get to a logical stopping place, I might let Mr. Tucker come through with the plea on his client, and we'll just pick up where we left off.

MS. ROSE: Okay.

THE COURT: All right.

(Document handed to the Court.)

(Pause from 9:44 a.m. to 9:46 a.m.)

THE COURT: Let the record reflect the Court has received a paper writing entitled Notice of Objections from Miss Amanda Lea Rose, which reads as follows:

"Comes Amanda Lea Rose under special appearance, as previously noticed, for the specific reason to submit to this notice of objection -- as previously noticed, for the specific reason to submit this Notice of Objections to the following errors" --

And you guys would have to forgive me; my

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1 two years of Latin are failing me.

2 -- "f-i-e-r-i f-a-c-i-a-s in court on the
3 28th day of November by Judge Long, to wit: Amanda Lea
4 Rose (Rose)."

5 Okay. Let's just go through these one at a
6 time.

7 1st. "Filed no motion with the Court at
8 any time and objects to the Court's reference of Rose's
9 Jurisdictional Challenge as such."

10 Miss Rose, what I said was you had filed
11 several paper writings with the Court. I thought one of
12 them was entitled Motion, but I will read into the record
13 what -- how they are specifically entitled.

14 MS. ROSE: Thank you.

15 THE COURT: Paper writing filed today's
16 date entitled Notice of Objections consisting of four
17 pages.

18 A writing filed by the district attorney's
19 office entitled -- which was filed November 23rd, 2011 --
20 entitled Responsive Brief on Constitutionality and
21 Jurisdiction.

22 A paper writing filed October 10th, 2011 --
23 which has a typewritten name of Amanda Lea Rose,
24 Respondent, but has not been executed or dated -- entitled
25 Notice of Void Judgment, State of North Carolina,

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1 Plaintiff, versus Amanda Lea Rose, Respondent on Special
2 Appearance.

3 A document that does not contain a
4 file-stamped date entitled Notice of Pretrial Special
5 Appearance to Challenge Jurisdiction, citing N.C.G.S.
6 15A-952(d), State of North Carolina, Plaintiff, versus
7 Amanda Lea Rose, Respondent; this document to be three
8 pages long; again, at the conclusion -- four pages long --
9 at the conclusion of this document having the typewritten
10 name Amanda Lea Rose. It has not been executed or dated.

11 A Memorandum of Law which does not contain
12 a filed-stamped date entitled State of North Carolina,
13 Plaintiff, versus Amanda Lea Rose, Respondent, consisting
14 of 30 pages -- 31 pages; again, containing the typewritten
15 name Amanda Lea Rose, Respondent, with a line for a date.
16 The document is not dated and is not executed. Also
17 containing a Certificate of Service, which is not dated
18 and is not executed.

19 A document which does contain a file stamp
20 from -- a file stamp from the clerk's office entitled
21 Affidavit of Citizenship and Domicile, consisting of two
22 pages; a document which does not contain a file stamp from
23 the clerk's office, which at the top reads Proclamation,
24 consisting of four pages.

25 A document written in the form of a letter

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1 addressed To Whom It May Concern, without a file stamped
2 date; Respectfully Submitted 10th of October 2011, with
3 typewritten name Amanda Lea Rose; no signature.

4 A second document entitled To Whom It May
5 Concern, without a file stamped date; Respectfully
6 Submitted, typewritten name Amanda Lea Rose; no signature.

7 A document entitled Addendum to Memorandum
8 of Law, without a file stamped date, consisting of four
9 pages; no date; no signature. The name Amanda Lea Rose,
10 Respondent, typed at the bottom. Certificate of Service;
11 no date; no signature. Amanda Lea Rose typed at the
12 bottom.

13 A document entitled Notice of
14 Prearrestment Special Appearance filed August 26, 2011,
15 consisting of four pages; no signature. Name Amanda Lea
16 Rose typed at the bottom.

17 A document entitled Memorandum of Law --
18 the Court is uncertain whether this is the same Memorandum
19 of Law, which was referenced earlier -- filed August 26,
20 2011, consisting of 31 pages; signed with the date of
21 August 24, 2011; executed by Amanda Lea Rose; including a
22 Certificate of Service dated August 24, 2011, executed by
23 Amanda Lea Rose.

24 Another document entitled Affidavit of
25 Citizenship and Domicile, filed August 26, 2011,

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1 consisting of two pages.

2 Another document addressed To Whom It May
3 Concern, dated August 24, 2011, with the typewritten name
4 Amanda Lea Rose; bearing no signature.

5 Another document entitled Proclamation,
6 consisting of four pages.

7 Another document which does not contain a
8 title or a file-stamped mark, but is addressed to -- as
9 best the Court is able to read -- Governor W. W. Holden,
10 and dated Raleigh, July 1st, 1868; written in a very fluid
11 script, containing at least one other handwritten page --
12 two other handwritten pages; and also containing a
13 typewritten page, which appears to address constitutional
14 issues and is executed by several persons; signed by "the
15 Order of and on Behalf of the Inhabitants of North
16 Carolina, North Carolina present, the North-Carolina
17 American Republic is hereby reestablished (of necessity)."

18 All right. To the extent that the Court
19 characterize any paper writing filed by Miss Rose as a
20 motion, the record is now corrected with the name of each
21 paper writing filed by Miss Rose that is contained in
22 11 CRS 1464 -- 80.

23 I think, Miss Rose, what you're asking for
24 is really in the form of -- or in the nature of a motion,
25 but I won't refer to them as motions. You filed numerous

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1 paper writings with the Court under various headings and
2 various types of -- denominating them in different ways,
3 but I will not refer to them any further as motions; I
4 will try to refer to them by the name of the document.

5 Okay. Number 2. "Objects to being tried
6 on the merits of the alleged case prior to a final
7 resolution of the Jurisdictional Challenge in the
8 Appellate Courts."

9 Well, Miss Rose, we haven't ruled on your
10 jurisdictional challenge at the trial level. And I don't
11 mean to be pedantic or talking down to you in any way
12 because I know that you understand in North Carolina,
13 appellate courts will not grant advisory opinions. The
14 appellate courts only review the work of the trial courts.
15 So the appellate courts will not review your
16 jurisdictional challenge until you have a ruling from a
17 trial court judge up or down with your jurisdictional
18 challenge. At that time they will review it; they won't
19 review it prior to that. So you can't have a
20 jurisdictional challenge in appellate courts of North
21 Carolina until you obtain a ruling in the trial court as
22 to your jurisdictional challenge.

23 Number 3. "Objects to the failure of Judge
24 Long to certify for appeal the apparent denial of Rose's
25 Jurisdictional Challenge."

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1 The only thing that's been denied,
2 Miss Rose -- if you'll remember, I asked you to elect to
3 either represent yourself, hire your own lawyer, or seek a
4 court appointed lawyer. And in a very nice, civil way --
5 which I appreciate -- you told me that you prefer -- and
6 I'm paraphrasing; I don't have a copy of the transcript --
7 in a very nice way you told me that you prefer not to make
8 that election; that you didn't want to do that.

9 So what happened was I made the election
10 for you and said you'd be representing yourself, since you
11 did not tell me you wanted to hire a lawyer or have your
12 court appointed lawyer. We have not reached your
13 jurisdictional challenge, and your jurisdictional
14 challenge has not been denied.

15 Your failure to state whether you wish to
16 have a court appointed, privately retained counsel, or
17 represent yourself, we've gotten -- we have to get past
18 that hurdle to get to your jurisdictional challenge to
19 determine what to do with the case. And since you refused
20 to make an election to move the case to first base, I made
21 the election for you and said that you had elected -- by
22 your refusal to elect, that you in fact elected to
23 represent yourself. Okay --

24 MS. ROSE: If I can speak to this.

25 THE COURT: Absolutely. Yes, ma'am.

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1 MS. ROSE: And that's -- the purpose is --
2 for that statement is the challenge of jurisdiction could
3 be challenged at any time. And it is my understanding
4 that to go ahead and proceed with a waiver of counsel form
5 would in fact place me under the jurisdiction of the Court
6 without having the hearing beforehand.

7 THE COURT: Well, that's -- I don't know --
8 that's simply not correct. We can't -- you are charged
9 with an offense for which there's a possibility -- I'm not
10 saying that's what's going to happen; I don't know what
11 your criminal record is, if any -- you're charged with an
12 offense for which there is at least a possibility that you
13 could be jailed in North Carolina. That requires us to
14 determine -- because you have the constitutional right to
15 be represented by counsel in a case where you might be
16 jailed, where your liberty is at stake, we're required to
17 determine whether you wish to hire your own counsel, or
18 have court appointed counsel appointed to represent you as
19 appointed by the state, or represent yourself.

20 We have to do that before we can proceed
21 with any motions or anything else in the case or -- I
22 won't call them motions -- proceeding with the ruling upon
23 your objections that you have filed in the case before we
24 can do anything else. As you refused -- and I'm not here
25 to quarrel with you or be difficult -- as you refused the

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1 election, the election was made for you. I determined
2 that you waived your right to both court appointed and
3 privately retained counsel by your refusal to make the
4 election. And that's all that's happened.

5 So you have the right when it comes down --
6 I don't know what's gonna happen. You may win your
7 motion. If you lose your motion, you may win your case in
8 front of the jury. If there is -- there's nothing left --
9 there's nothing left to appeal, you win. But if you lose
10 your motion and lose the case in front of the jury and do
11 appeal the case, then all these things, all these rulings
12 will be before the Court. The ruling I made where I
13 elected to say that you have waived counsel, that will be
14 before the Court of Appeals. All of it will be reviewed
15 by the Court of Appeals.

16 Now, I'm not trying to deceive you or
17 require of you obtaining the transcript and filing the
18 appropriate briefs and objections and motions with the
19 Court of Appeals. And that's kind of a complicated
20 process; and I'm not trying to deceive you about that. I
21 don't know where the case is gonna go. I don't know if
22 we'll get that far. So I'm sort of, you know -- I just
23 don't want you to walk out of here and think something's
24 gonna happen automatically when in fact that that's not
25 the case.

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1 But your objection to my failure to certify
2 the appeal for the apparent denial of your jurisdictional
3 challenge is overruled because we haven't got to that.
4 What's happened so far is you've been denied court
5 appointed and privately retained counsel because of your
6 failure to elect. That will be something that you can
7 appeal, should the case become in a posture where you have
8 things to appeal, but we haven't reached your
9 jurisdictional challenge yet.

10 4. "Objects to being tried in the same
11 week as the apparent 'arraignment' in violation of
12 specific statutes prohibiting the same."

13 Okay. You're gonna have to tell me which
14 statutes.

15 MS. ROSE: 15A-943. That would be your
16 General Statute.

17 (Pause from 10:03 a.m. to 10:05 a.m.)

18 THE COURT: Okay. Where is she on the
19 calendar, Mr. Taylor?

20 I'm sorry. Where is Miss Rose on the
21 calendar?

22 MR. TAYLOR: Miss Rose appears on our trial
23 calendar -- it was given T-6 on Monday. It appears at
24 page 7, number 24, which is the bottom of that page. It
25 does not go on to the following page.

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1 It appears from my file that the case would
2 have appeared on the district attorney's arraignment
3 calendar on October the 10th, when I believe Judge Spivey
4 initially dealt with the case.

5 THE COURT: Okay. You were on the
6 arraignment calendar earlier, Miss Rose. I don't
7 remember, you know, how much we talked about this in
8 depth. I think I at least alluded to it from the bench.

9 The clerk's notes indicated Judge Spivey
10 denied you a court appointed attorney. I could not find
11 an order from Judge Spivey in the file that denied you a
12 court appointed attorney, which is why I went back through
13 the arraignment process to sort of double down and make
14 sure we had that -- make sure we had something in the file
15 that reflected what your choice was about counsel. Okay?

16 So you really weren't on the arraignment
17 calendar this time. And I will grant you that since the
18 file does not reflect -- the clerk's notes reflect that
19 Judge Spivey denied you counsel, and that I then -- while
20 you were not on the arraignment calendar but on the trial
21 calendar, I then arraigned you a second time, according to
22 the clerk's notes, and advised you the right to counsel
23 and determined that you had elected to represent yourself.
24 I'll grant you, that's a little bit of a gray area. And
25 you may have an issue to talk about -- if you were to be

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1 convicted, you may have an issue to talk about with the
2 Court of Appeals, the fact that we couldn't find any
3 record of you being arraigned other than the clerk's notes
4 from a few weeks back; although in your Notice of
5 Objections, you made reference to actions taken by Judge
6 Spivey; and then because I couldn't find any written
7 record of it, I felt compelled to go through the
8 arraignment process again. You may have something to talk
9 about with the Court of Appeals if it comes down to that.
10 I don't know.

11 But let's see. Where are we?

12 "Objects to being tried the same week as
13 the apparent 'arraignment' in violation of" --

14 As to Objection 4, the Court finds that the
15 defendant was previously before the Court as reflected in
16 the clerk's notes in October of 2011 for arraignment on
17 this charge before the Honorable Judge Ronald Spivey, one
18 of the senior resident Superior Court Judges of this
19 district; that the clerk's notes reflect Judge Spivey
20 denied the defendant counsel; that the Court -- while
21 allowing for the Court missing the document -- could not
22 after diligent search in the file locate an order from
23 Judge Spivey denying the defendant counsel; therefore, out
24 of an abundance of caution, the Court during this week of
25 Superior Court when the defendant was on the trial list

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1 arraigned the defendant a second time, and in an order
2 previously dictated in the file -- strike that -- in the
3 record found that the defendant by her failure to elect
4 had elected to represent herself.

5 Okay. If that's a mistake, it's in the
6 record. Your objections will be filed; it's of the
7 record.

8 Listen, you're in front of a judge who
9 freely -- I'm a human being, and if I mess something up,
10 that's what the Court of Appeals is up there for. This
11 has got nothing to do with you and your sort of special
12 objections about special appearances and lack of
13 constitutionality. It happens every day in court. It
14 happens every day in court with people who come in here
15 and want their cases heard, want the Court to exercise
16 jurisdiction over them. If somebody leaves here, and
17 says, "Well, I think the judge got that wrong, the judge
18 misinterpreted that statute, the judge didn't apply that
19 case correctly," it happens every day. If it's wrong and
20 you have a case -- and the case becomes in the posture
21 later -- it becomes that it is to be appealed, then the
22 Court of Appeals will have an opportunity to straighten me
23 out.

24 But it's all on record. There's nothing --
25 we don't do anything by smokescreen up here. Or at least

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1 I don't. Everything will be placed in the record. All of
2 your objections will be placed on the record. All of my
3 rulings are placed on the record.

4 Okay. Number 5. "Objects to Judge Long's
5 failure to protect Rose's rights at all times and sua
6 sponte as they arise; one said failure being indicated by
7 the use of a skillfully and deceptively applied traverse
8 to subtly and coercively subject Rose to the jurisdiction
9 of the court through issuing and applying, sua sponte,
10 form AOC-CR-227, revised June -- 6/97 in direct opposition
11 to Rose's declared position."

12 Listen. There's nothing magical about that
13 form. We don't have to use that form. We can write it
14 out on a piece of paper. We can dictate it in the record.
15 The form, there's nothing magical about the form or the
16 form number or the AOC form number or when it was revised.

17 If what you're saying is, "Judge, I
18 disagree with the fact that you found that I was
19 representing myself because you have exercised
20 jurisdiction over me," to the extent this is the only
21 jurisdiction that's been exercised over you; you've been
22 brought into court; you've been asked what you wanted to
23 do about a lawyer; you refused to elect -- because of
24 that, I made an election for you. We haven't reached your
25 jurisdictional issues.

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1 Some of these sort of apply on the -- these
2 objections sort of apply on the same ground over and over
3 again. You know, if you disagree with my actions in
4 denying you court appointed counsel or denying you the
5 right to have retained your own attorney, as I've said,
6 that's on the record.

7 And if you were -- if your jurisdictional
8 challenges are denied -- which we're a long way away from
9 there -- if you were tried before the jury and if you were
10 convicted and you do appeal the case and you appeal it
11 correctly, the Court of Appeals accepts your appeal, then
12 all this stuff is of record. And the Court of Appeals
13 will rule on every bit of it.

14 I mean, I don't know --

15 MS. ROSE: The part that I'm objecting to,
16 Your Honor, is actually the part at the very end that
17 says: "That I knowingly, willingly, understandingly
18 consent to trial." That's actually the part -- that would
19 be the reason that I would not sign that waiver, because I
20 can't consent to trial if I haven't been -- jurisdiction
21 hasn't been proven yet. I think that was part of your
22 oral order.

23 THE COURT: I don't -- yeah. That's what I
24 was thinking. I was thinking we didn't use that form,
25 so through issuing --

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1 Here's what your objection is: "Through
2 issuing and applying, sua sponte, form AOC-CR-227, revised
3 June of '97." I don't remember using that form.

4 MS. ROSE: I think what my issue is, that
5 it was pretty much verbatim. Your order, the verbal order
6 for waiver of counsel was pretty much verbatim with
7 respect to the form.

8 THE COURT: Let me see the form, just the
9 waiver of counsel form.

10 (Document handed to the Court.)

11 MS. ROSE: I think that in your oral order
12 one of your last points was that I "understand and
13 appreciate the consequences of her decision. The
14 defendant has voluntarily, knowingly, and intelligently
15 elected in open Court to be tried in this action." And
16 that's what --

17 THE COURT: Okay. Well, I don't remember
18 saying anything like that. What I said was you're
19 proceeding to trial -- I think as a person proceeding pro
20 se to trial. And I think I specifically said, you know,
21 that you refused to make an election; because you refused
22 to make an election, the Court was doing it for you.

23 I mean, that's a whole different world than
24 saying you willingly or voluntarily are giving up your
25 right to counsel, or you're willingly or voluntarily

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1 ceding to the jurisdiction of the Court. I mean, we're
2 gonna have a jurisdictional hearing on your motion, and I
3 think maybe you just misheard something. I don't think I
4 said anything like that you voluntarily submit to the
5 jurisdiction of the Court.

6 MS. ROSE: No. It was just that one line
7 that I object to at the end; and I think that was just the
8 last part of your order, your oral order, if I remember
9 correctly.

10 THE COURT: "That the defendant has
11 voluntarily, knowingly, and intelligently elected in open
12 court to be tried in this action?"

13 MS. ROSE: I believe your words were
14 something else, like "willingly, knowingly, and
15 understandingly submitted yourself to trial," something in
16 that form. I'm not sure exactly. Just covering bases.

17 THE COURT: All right. Paragraph 5,
18 objection denied.

19 Okay. 6. "Objects to no written order
20 being issued by Judge Long denying Rose's Jurisdictional
21 Challenge."

22 Again, we hadn't done that yet. Okay?
23 There can't be an order before we've had the hearing.

24 Okay. 7. "Objects to Judge Ronald
25 Spivey's prejudicial behavior when he stated in open court

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1 on October 10th, 2011, that the Court would find it had
2 jurisdiction prior to any hearing or evidence being
3 presented contradicting Rose's position."

4 I'm not sure -- I wasn't here to hear Judge
5 Spivey's words. Of course, I'm in a little bit of a
6 predicament trying to figure out what your objection was.
7 But it sounds like what he's saying is what I've been
8 telling you before; there's a trial before any evidence
9 has been presented.

10 The Court will be required if we proceed to
11 trial -- in other words, there won't be a trial until,
12 one, your jurisdictional challenge is heard; and if you
13 lose your jurisdictional challenge or the Court
14 determines -- in other words, the Court determines it has
15 jurisdiction, only then will evidence be heard, and only
16 then will you have a trial. So I'm not sure exactly what
17 you're objecting to.

18 MS. ROSE: Judge Spivey when I was here for
19 a continuance in October -- when I said that, I was
20 actually requesting a jurisdictional challenge here, he
21 said, quote, "I'm going to find jurisdiction in your
22 case," end quote. And so that was obviously a prejudicial
23 statement because no evidence had been stated, nothing but
24 a -- other than a continuance --

25 THE COURT: Okay. Other than what you just

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1 told me Judge Spivey said in open court, there's no record
2 of it in this file. There's no order from Judge Spivey in
3 this file saying that he found jurisdiction, so -- I don't
4 know what he said to you in open court, but there's been
5 no ruling on your jurisdictional challenge. Okay?
6 There's nothing in this file -- not one piece of paper --
7 that says anything about your jurisdictional challenge
8 being ruled on by a judge.

9 So, you know -- I know Judge Spivey; and as
10 you can imagine, I guess we're friends, and he's a very
11 nice fellow; and I can't imagine him doing anything that's
12 untoward or being rude to you or mean to you or saying
13 that he's gonna rule on this before he's heard the motion.
14 He's too good of a judge for that.

15 But let's assume for the sake of argument
16 he didn't -- let's assume for the sake of argument I'm
17 finding jurisdiction; that was an error; and that's not in
18 the file. That's not the law of this state. Your
19 jurisdictional challenge has not been heard. So I don't
20 know what Judge Spivey said to you, but there's nothing to
21 object from because your jurisdictional challenge has not
22 been heard yet.

23 All right. 8. "Object to Judge Long's
24 acting as counsel for and representing Rose by entering on
25 the record form AOC-CR-227" --

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1 Well, if what you mean, if you want to
2 strike AOC-CR-227, revised June '97, which was not
3 entered.

4 MS. ROSE: Correct.

5 THE COURT: If what you mean was that the
6 Judge -- that I denied you counsel and said you're
7 proceeding on your own because you have refused to make an
8 election --

9 Now, as we said now a couple of times, some
10 of these things overlap. My ruling -- this young man
11 right here is taking down every word you and I are saying.
12 My ruling is in the record. Every word of it. He's sworn
13 and duty-bound not to worry about what I think the record
14 should be; not to worry about what you think the record
15 should be; but to write down every word as it's said. So
16 my ruling is preserved in the record, and -- if the case
17 goes that far, and the Court of Appeals will have a chance
18 to review it and your objections to it.

19 Okay. 9. "Objects to the failure of the
20 Court to properly 'arraign' Rose by failing to read the
21 alleged charges and ask for a plea, which is mandated by
22 statute."

23 I don't know anything that requires to ask
24 for a plea. Again, the record will -- the record will
25 reveal what the record reveals. I don't know what Judge

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1 Spivey did. There's a record of what Judge Spivey did.
2 Just like what you and I are saying to one another,
3 there's a record of what Judge Spivey did. I assume that
4 it will reflect what the defendant -- excuse me -- what
5 the clerk's records show, that he denied you counsel, even
6 if that somehow didn't make it into the file. But I'm
7 certain that I told you what you're charged with and the
8 maximum possible penalties. And that will be in the
9 record.

10 I don't remember talking about a plea.
11 You're free -- you correct me if I'm wrong -- your
12 objections, your paper writings all lead me to the
13 conclusion that you are vehemently denying that the Court
14 has jurisdiction over you or the right to prosecute you
15 for these charges. If you want to discuss a plea with the
16 district attorney, you're free to do that, and I'll give
17 you all the time to do that and let the record so reflect.

18 I mean, I'm not trying to shortstop you
19 from trying to enter some type of plea in this matter. If
20 you want to talk to the DA about resolving the case, I'm
21 fine with that. And you will not be foreclosed from doing
22 that. But there's no statute that requires me to inquire
23 of you and the district attorney if there's been a plea
24 entered. And you will arraigned as far as the charges and
25 the punishments you could receive, but your objections

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1 will be of record.

2 All right. Next, 10. "Objects to the ex
3 parte hearing with the Clerk of Court, Court Reporter, and
4 Assistant District Attorney outside of Rose's hearing and
5 participation, which Rose had a substantive and procedural
6 right to attend."

7 And I have not engaged in any ex parte
8 hearing with the clerk of court, the court reporter, the
9 assistant district attorney. So I don't know which judge
10 you're talking about or what hearing you're talking about
11 or ex parte communications you're talking about, but
12 you're gonna have to clue me in because I don't know what
13 you're talking about.

14 MS. ROSE: This happened on Monday, and you
15 actually requested the court reporter and the clerk come
16 to the bench right after I think the first time that I was
17 up. And then the discussion with the DA was done after --

18 THE COURT: The court reporter and the
19 clerk were called to the bench -- and I'll place them both
20 under oath if you wish -- the court reporter and the clerk
21 were called to the bench to inform them that I had an
22 eye -- an ophthalmologist appointment in Asheboro, North
23 Carolina, at 3:45 p.m., and to allow them to plan their
24 day accordingly as I would be required to leave court at
25 2:45 p.m. in order to make my ophthalmologist appointment

The Court's Review of Ms. Rose's Notice of Objections

1 at 3:45 p.m.

2 And further, I informed them that I had a
3 continuing judicial education program Friday. I had not
4 had the opportunity to speak to the clerk or the court
5 reporter; they're required to be in court when I'm in
6 court; and they were called to the bench to inform them of
7 my schedule for the week and so they could plan
8 accordingly.

9 MS. ROSE: Thank you for the clarification.

10 THE COURT: Yes, ma'am.

11 The DA and I have had no ex parte
12 communication about this case. The district attorney's
13 charged with prosecuting the docket.

14 And, Miss Rose, I don't know how long you
15 were here that day. I would say probably the district
16 attorney approached the bench four times, five times, six
17 times in that day -- I don't know -- to say, "Judge, this
18 is what's coming up next," or "Judge, this is -- we're
19 okay to take a lunch break," and convey information like
20 that to the Court. It has nothing to do with any
21 particular case; and your case has not been discussed ex
22 parte.

23 MS. ROSE: Thank you.

24 THE COURT: All right. Number 11.

25 "Objects to the Court's allowance of the submittal of the

The Court's Review of Ms. Rose's Notice of Objections

1 DA's 'Responsive Brief on Constitutionality and
2 Jurisdiction' out of time and one day before the scheduled
3 hearing, denying Rose's procedural due process."

4 Okay. Let's see. I forgot when the DA
5 filed his brief.

6 MS. ROSE: 23 of November.

7 THE COURT: Okay. And what was the --
8 let's see.

9 Monday was what day, Madam Clerk?

10 MS. ROSE: 28th. I'm sorry.

11 CLERK: 28th.

12 MS. ROSE: I'm sorry.

13 THE COURT: When did you get a copy of it,
14 Miss Rose?

15 MS. ROSE: I received it on Friday evening
16 on the holiday weekend by U.S. Mail.

17 THE COURT: And you're saying one day
18 before the scheduled hearing?

19 MS. ROSE: About one business day, correct.

20 THE COURT: Okay.

21 MS. ROSE: And the Notice of Prearraignment
22 Special Appearance that I filed actually requests that the
23 prosecution's proof be in writing and provide at least 30
24 days prior to arraignment in order to file rebuttal; and I
25 think seeing as I filed my paperwork before the 10th of

The Court's Review of Ms. Rose's Notice of Objections

1 October, that that would have given the prosecution ample
2 time to be able to do that.

3 THE COURT: All right. Well, I don't deny
4 that you could have had more time to review their brief;
5 but nonetheless, you had more than 48 hours over the
6 weekend to look at it before the Court began on Monday.
7 And your objection to the Court considering the DA's
8 responsive brief for failure of the DA to file it in that
9 timely fashion is denied. Again, that's on record. If
10 that's an error and the case gets to the Court of Appeals,
11 they'll have an opportunity to review it.

12 All right. Number 12. "Objects to being
13 denied substantive and procedural due process, a
14 substantive right, by being denied the above merits as
15 stated in Rose objections."

16 I'll ask you to interpret this for me. As
17 I interpret this, this is a catchall saying that since all
18 the 11 above in your opinion have not been complied with,
19 then you have been denied substantive and procedural due
20 process, and your rights have been violated.

21 MS. ROSE: Correct.

22 THE COURT: Okay. The Court has placed its
23 ruling on all the objections on the record, and the
24 Objection 12 is denied.

25 Okay. Let's see if I can find -- hold on

Argument by Ms. Rose

1 one second. Let me make sure I get all of this in the
2 record.

3 (Pause in the proceedings at 10:26 a.m.)

4 THE COURT: Madam Clerk, would you make
5 sure that we file this document entitled, please, Notice
6 of Objections that is stamp-filed today, including a
7 document attached which appears to be a photocopy of the
8 North Carolina registration card and a Certificate of
9 Service executed by Miss Amanda Lea Rose. If you make
10 sure those get filed and stamped today's date.

11 CLERK: Yes, sir.

12 THE COURT: Thank you, ma'am.

13 Okay. All right. It is my understanding,
14 Miss Rose, that you have filed several paper writings,
15 which we went through as court began, that are in
16 essence -- however we want to characterize them -- a
17 jurisdictional challenge to the right of this court to
18 have personal jurisdiction over you to proceed with this
19 trial. Is that correct?

20 MS. ROSE: Personal and territorial. Yes.
21 That's right.

22 THE COURT: All right. Okay. We're ready
23 to hear your jurisdictional challenges, ma'am.

24 MS. ROSE: Okay. As noted here and as on
25 the record several times, I am here on special

Argument by Ms. Rose

1 appearance --

2 REPORTER: I can't hear, Your Honor.

3 THE COURT: You're doing fine, Miss Rose.

4 You're talking too fast. If you'll slow down just a
5 little bit. As I said, it is essential that the court
6 reporter write down every word that everybody says. So if
7 you'll just slow down just a wee bit so he can keep up
8 with you.

9 Thank you very much. Go ahead.

10 MS. ROSE: As noted on the form, I am
11 not -- I am a resident of the State of North Carolina but
12 not of the State of North Carolina purportedly created by
13 the Reconstruction Acts of the 39th Congress. And the
14 affidavit I have submitted has established that.

15 Also, on page 2 of that document:

16 "Amanda Lea Rose claims that two states
17 named 'The State of North Carolina' have purportedly
18 entered the American Union. One entered on November 21st,
19 1789, as an original party to the United States
20 Constitution. The other purportedly entered the Union on
21 June 25th, 1868, as a 'new state.'"

22 I am here challenging the lawfulness of the
23 new state, and I claim that all Congressional
24 Reconstruction Acts purporting to annul the original state
25 through conquest, subjugated its citizenry, and create a

Argument by Ms. Rose

1 new state and admit said new state into the American Union
2 in times of declared national peace, without the consent
3 of the free people -- or the body politic -- being
4 represented during the passage of said Congressional Acts,
5 that it's repugnant to and in violation of the Fifth
6 Article of Amendment of the Constitution of the United
7 States stating that: "No person shall be deprived of
8 life, liberty, or property without due process of law."

9 And I think I have also submitted -- if
10 not, there are Congressional Acts of the 39th Congress,
11 which is just a printout of the actual Reconstruction
12 Acts.

13 And I'm stating that: "The purported
14 'State' prosecuting this action does not meet the lawful
15 requirements, which would give it legal standing as a
16 state of freemen, whose government and laws originate from
17 the consent of the governed," because of the
18 Reconstruction Acts once again.

19 And that I do not meet the minimum contact
20 requirements necessary to be brought within the
21 jurisdiction of said State.

22 And there can only be one lawful
23 jurisdiction calling itself the State -- or the
24 Republic -- of North Carolina because the United States
25 Constitution Article 4, Section 3, clause 1 states: "No

Argument by Ms. Rose

1 new state shall be formed or erected in the form or
2 jurisdiction of another state."

3 And so my remedy in said --

4 Well, before I get to the remedy, by
5 memorandum is a point-by-point historical review of the
6 history of North Carolina and its chain of title and with
7 the war between the states. It pick-ups with the
8 Reconstruction, which was done in 1867 after peace had
9 been declared after the states were supposedly readmitted
10 back into the Union, according to the Congressional
11 Record; and as such, the freemen of North Carolina were
12 not allowed to participate in the establishment of
13 supposed new government, which the Reconstruction Acts
14 required; and as such, the current state does not have an
15 unbroken chain of title over the soil of North Carolina.

16 As such, this state was reestablished as
17 written on the proclamation and as well as the Declaration
18 of Reestablishment in 1997. And is a -- is the de jure
19 state with the lawful chain of title to the soil of North
20 Carolina, and I am a citizen of that de jure state -- or
21 de jure.

22 My Latin is not very good either.

23 And as such, all I am requesting rather
24 simply is for the state to put on record its
25 constitutional foundations and to prove its chain of

Argument by Ms. Rose

1 custody of title to the soil of North Carolina.

2 THE COURT: Okay. You helped me understand
3 your argument a little bit; but that's what a lot of folks
4 on both sides died for in the Civil War -- or wasn't it --
5 to determine whether or not the Union was divisible and
6 states could freely join and leave. And I thought at the
7 end of it we resolved that -- you know, my family having
8 lived in the South all its life as far back as the memory
9 of man runneth not, but I thought we resolved that with
10 the states of the Union being indivisible, and that the
11 southern states weren't free to leave.

12 And I guess what I'm having a little bit
13 difficult time is accepting your notion that North
14 Carolina left the Union and was not part of the United
15 States of America when that's -- I believe that's what --
16 that's pretty much what the Civil War was involving.

17 MS. ROSE: You're correct. But also my
18 assumption is as far as secession, was that secession
19 wasn't in the history of the United States. And I
20 mentioned that in my memorandum, that it is in fact we
21 seceded from Britain with the Declaration of Independence,
22 and we seceded from the Articles of Confederation.

23 So while that's not my issue at hand as far
24 as the legality of secession, it's also -- it was stated
25 in the Congressional Record before the war started that

Argument by Ms. Rose

1 this war was not going to be one for conquest or
2 subjugation.

3 And then after the war was over, the
4 Reconstruction Acts -- essentially Congress took power and
5 said that we are going to decide that this is for the
6 purposes of conquests and subjugation and in requiring
7 Fourteenth Amendment to be passed before the states were
8 allowed to be readmitted into the Union. They -- well, as
9 it was in the Fourteenth Amendment, that anybody who had
10 participated in the rebellion could not vote. So it was
11 an election of the carpetbaggers and the newly freed
12 blacks, but that no one -- I think that was the fourth
13 section of the Fourteenth Amendment, which had been much,
14 much later struck.

15 But at the time they were not allowed to
16 participate in the government, and as such the body
17 politic of the government changed and the ones that were
18 being elected as in the surrender letter for Governor
19 Holden and -- Governor Worth to Governor Holden, who was
20 appointed as the governor, he stated that he doesn't
21 recognize the new government because it was not put in
22 place by the consent of the people that would be governed;
23 which is the essential essence of the government, is to be
24 put in place by the consent of the governed.

25 So a lot of people try to say that it was

Argument by Ms. Rose

1 readmitted into the Union when in fact it was not
2 readmitted into the Union because a brand new government,
3 which was established through Military Order 120, was --
4 completely changed the body politic, and therefore changed
5 the government itself and created a broken chain of title.

6 That was a really long sentence.

7 THE COURT: Broken chain of title from the
8 adoption of the United States Constitution?

9 MS. ROSE: From the North Carolina State
10 Constitution of November 21st, 1789, because of course
11 then the states then had the state's rights, and then it
12 was the state's. We were a Union and not a nation, and
13 the Fourteenth Amendment required us to become national
14 citizens. And because we were not allowed to participate
15 in that as a -- well, not myself personally -- but
16 ancestors were not allowed to participate in that election
17 or with the validation of the Fourteenth Amendment, then a
18 new government was created by Congress, and as such did
19 not include the freemen of North Carolina or many of the
20 other states. We stand in a very unique position because
21 we do have the surrender letter from the elected governor
22 to Governor Holden.

23 THE COURT: Well, that's a letter from
24 Governor Worth --

25 MS. ROSE: Worth. Yes, sir. Yes.

Argument by Ms. Rose

1 THE COURT: That says what?

2 MS. ROSE: It's in the paperwork, Your
3 Honor. And that was the one that was handwritten by the
4 governor, and it states:

5 "State of North Carolina Executive
6 Department, Raleigh, July 1st, 1868.

7 "Governor W. W. Holden, Raleigh, North
8 Carolina.

9 "Sir, yesterday morning I was verbally
10 notified by Chief Justice Pearson that in obedience to a
11 telegram from General Canby, he would today at 10 a.m.
12 administer to you the oaths required preliminary to your
13 entering upon the discharge of the duties of Civil
14 Governor of the state; and that thereupon you would demand
15 possession of my Office.

16 "I intimated to the Judge my opinion that
17 such proceeding was premature, even under the
18 Reconstruction legislation of Congress, and that I should
19 probably decline to surrender the Office to you.

20 "At sundown yesterday evening I received
21 from Colonel Williams, Commandant of this Military Post,
22 an extract from the General Orders Number 120 of General
23 Canby as follows:

24 "Headquarters second military district,
25 Charleston, South Carolina, 30it 68."

Argument by Ms. Rose

1 And then General Orders Number 120, and
2 this is an extract.

3 "To facilitate the organization of the new
4 state government, the following appointments are made. To
5 be governor of North Carolina, W. W. Holden, Governor
6 elect, vice Jonathan Worth, removed to be Lieutenant
7 Governor elect of North Carolina, Tod R. Caldwell,
8 Lieutenant Governor elect to fill our original vacancy.
9 To take effect July 1st, 1868, on the meeting of the
10 General Assembly of North Carolina.

11 "I do not recognize the validity of the
12 late election under which you and those cooperating with
13 you claim to be invested with the civil government of the
14 state. You have no evidence of your election save a
15 certificate of a major general of the United States Army.
16 I regard all of you as in effect appointees of the
17 military power of the United States and not as -- quote --
18 'deriving your powers from the consent of those you claim
19 to govern.'

20 "Knowing, however, that you are backed by
21 military force here -- which I would not resist if I
22 would -- I do not deem it necessary to offer a futile
23 opposition but vacate the office without the ceremony of
24 actual eviction, offering no further opposition than this,
25 my protest.

Argument by Ms. Rose

1 "I would submit to actual expulsion in
2 order to bring before the Supreme Court of the United
3 States the question as to the constitutionality of the
4 legislation under which you claim to be the rightful
5 governor of the state if the past action of that tribunal
6 furnished any hope of a speedy trial. I surrender the
7 office to you under what I deem military duress without
8 stopping as the occasion would well justify.

9 "To comment upon the singular coincidence
10 that the present State Government is surrendered, as
11 without legality, to him whose own official sanction, but
12 three years ago, declared it valid.

13 "I am, very Respectfully, Jonathan Worth,
14 Governor of North Carolina."

15 THE COURT: Well, some interesting
16 sidelines, though. First of all, Governor Worth was from
17 Asheboro; and Worth Street is named -- the street that
18 runs in front of the courthouse is named for Governor
19 Worth. And he was a Whig, which is also unusual, that --
20 I guess that's why they removed him from power, because he
21 was a Republican in essence. So I don't know what that
22 was all about.

23 But wasn't Holden later impeached?

24 MS. ROSE: Yes. He was the only one
25 impeached in North Carolina I believe.

Argument by Ms. Rose

1 THE COURT: That's my recollection. And he
2 was a terrible governor.

3 But if you'll notice in the protest letter
4 by Governor Worth, what does Governor Worth consider the
5 only alternative he has? Well, he says, "Well, I can stay
6 here and go through the formal ceremony of being evicted;
7 or if I thought we had a chance of getting this done in a
8 speedy fashion, I would take this matter to the United
9 States Supreme Court and have them rule on the legality or
10 the constitutionality of" -- I believe he says -- "me
11 being removed from office and being replaced by
12 appointment of the" -- I don't know what they call it --
13 "auditor general -- major general down in Charleston."

14 So Governor Worth in his letter in essence
15 says, "You know, I will be willing to submit to a ruling
16 by the United States Supreme Court on the
17 constitutionality of this; but, you know, if that body --
18 if the length of time it takes getting anything resolved
19 up there gave you any hope of getting this done, that's
20 what I would do, but it's not gonna be done in a timely
21 fashion, so I'm not gonna mess with it." That's in
22 essence, again, me paraphrasing the Governor's words.

23 So it seems to me what he did in this
24 letter, Governor Worth would mightily protest being
25 removed by the commandant down in South Carolina, says you

Argument by Ms. Rose

1 know -- in essence says, "I'm under the authority of the
2 Constitution of the United States; I will consent to the
3 jurisdiction of the United States Supreme Court; I just
4 don't have enough time to do it." So that would seem to
5 me to sort of undercut what you're offering the letter to
6 say that -- as I understand it.

7 I'll let you be heard. Go ahead.

8 MS. ROSE: As far as your paraphrasing, I
9 agree. However, I would say that since he is pointing out
10 that it is military force here that is trying to assume
11 power, that he does not agree with that; and because of
12 the Reconstruction Acts being in his mind at least
13 unconstitutional, that he would not recognize said
14 government either. And it's not that I don't recognize
15 the nine states' constitution; I do not recognize that the
16 Fourteenth Amendment was passed lawfully because of the
17 change in body politic.

18 And the case has come up and the
19 constitutionality has come up many times since
20 Reconstruction; and in my memorandum of law, I point out
21 several of those. The first being the Supreme Court in
22 *Mississippi v. Johnson*, 4 Wall. 475, the Court dismissed
23 on the technical ground that the Court had, quote, "no
24 jurisdiction of the bill to enjoin the President in the
25 performance of his official duties."

Argument by Ms. Rose

1 I also have several other cites here as
2 well.

3 THE COURT: Excuse me for being rude and
4 interrupting you. You have to understand that what you're
5 talking about is a -- I mean, totally would subvert and
6 turn on its head constitutional law of the United States.

7 The Fourteenth Amendment is the vehicle --
8 and I'm sure through your studies -- of which you've so
9 astutely set out all these different arguments and showing
10 yourself to be a student of history of the law -- I'm sure
11 that you understand that the Bill of Rights as we refer to
12 the first ten Amendments did not originally apply to the
13 states; they applied only to the federal government.

14 MS. ROSE: Correct. The chains of the
15 government essentially.

16 THE COURT: And that until the 20th
17 Century, the 1900s, they still didn't apply it to the
18 states. And then the Fourteenth Amendment I think says,
19 "No state shall deprive due process of law, equal
20 protection of laws," that sort of thing. And so through
21 the due process clause of the Fourteenth Amendment, the
22 United States Supreme Court use that vehicle to find that
23 there's certain rights that are so rooted and fundamental
24 in Anglo-American jurisprudence -- that there's certain
25 rights that are so rooted in Anglo-American jurisprudence

Argument by Ms. Rose

1 that they are fundamental and must be accorded to each
2 person whether against a state government or the federal
3 government.

4 Now, they first announced that in the case
5 of *Palko versus Connecticut*, where poor ol' Palko was
6 being tried by the State of Connecticut for a murder, he
7 was acquitted. Connecticut came up with more evidence and
8 they tried him again. And they convicted him the second
9 time. And so Palko appealed and said, "Wait a minute,
10 wait a minute. You know, double jeopardy should apply.
11 If I was in federal court, double jeopardy would foreclose
12 this." Well, the Court renounced what was called the
13 Palko doctrine to say their rights that are up there that
14 are so rooted in our jurisprudence, that they are
15 fundamental and they must be protected and they do apply
16 to the states, but -- and here's the little twist, the
17 O. Henry twist for Palko -- they found at that time that
18 double jeopardy is not one of them, so he was
19 electrocuted.

20 But in later cases, case by case by case by
21 case by case by case by case, they extended these rights
22 that applied to the federal government to individuals --
23 well, they said that these rights protected individuals in
24 the state court as well, and eventually they went back --
25 a little bit late for Palko -- found double jeopardy as

Argument by Ms. Rose

1 also one of them.

2 So I go through all of that to say that the
3 Fourteenth Amendment is the vehicle upon which -- the
4 lynchpin of much of the constitutional law of the United
5 States since the 1920s. And, I mean, you have to
6 understand the concept that you're espousing, that the
7 Fourteenth Amendment has not been properly ratified, it
8 has not been properly part of the Constitution because
9 certain people are not allowed to vote on it -- I mean,
10 that would, that would sort of upset the whole apple cart.

11 MS. ROSE: I'd like to clarify just --

12 THE COURT: Yeah, please. Please.

13 MS. ROSE: I'm not arguing against the
14 Fourteenth Amendment. It's that Congress forced the
15 states to recognize the Fourteenth Amendment before they
16 were, quote, allowed back into the Union as subjugated
17 states under --

18 THE COURT: So your argument --

19 MS. ROSE: -- natural citizenship.

20 THE COURT: So your argument is that
21 because the state legislatures were -- and I'm not trying
22 to put words in your mouth -- as I understand it, elected
23 or consisted of those who were elected by carpetbaggers
24 recently --

25 MS. ROSE: Freed slaves.

Argument by Ms. Rose

1 THE COURT: -- freed African-American
2 slaves and others as opposed to --

3 MS. ROSE: The residents of the State of
4 North Carolina.

5 THE COURT: -- the Caucasian citizens of
6 the state --

7 MS. ROSE: Any that had actually resided
8 there.

9 THE COURT: -- that these legislatures were
10 somehow illegitimate and therefore not constitutionally
11 composed or comprised to allow them to vote on the
12 Fourteenth Amendment. Is that right or not right? You
13 correct me.

14 MS. ROSE: The issue is still whether or
15 not Congress had the right to do all that after it had
16 declared peace and after the states had been, quote --
17 well, after the war was over, peace had been declared, and
18 everything had been cleared according to the original
19 objective of the war, which was not to subjugate and all
20 that.

21 That -- my issue is whether or not Congress
22 had the constitutional authority to nullify the state
23 government that was there through the Reconstruction Acts
24 and put a new one in its place requiring it to pass the
25 Fourteenth Amendment, which is not consent of the governed

Argument by Mr. Taylor

1 regardless. If you acquire a state in order to be, quote,
2 readmitted into the Union from which it's supposed to be
3 already a member to pass this law and not law -- the
4 people that are actually residents of this state who --
5 according to the verbiage in the Fourteenth Amendment who
6 have not participated in the rebellion were not allowed to
7 vote, then it's not consent of the governed.

8 THE COURT: Okay. All right.

9 Mr. Taylor.

10 MR. TAYLOR: Yes, Your Honor.

11 Well, I am not as much a student of history
12 as Miss Rose. However, I would point out, first, that to
13 the extent that this is about what would have been the
14 consent of the governed in the 1800s, there are any number
15 of people who at that time under those frameworks would
16 not have been allowed to have any voice at all; African
17 Americans, women, people who didn't own property.

18 So to draw the distinction that because
19 people were excluded from the process, the process is
20 therefore invalid, I think it's somewhat flawed on its
21 face given what is common knowledge for who was allowed to
22 make those decisions at the time, who was given a voice,
23 and who was denied it for whatever reason. Nobody is
24 saying that was right, but that's the reality that
25 existed.

Argument by Mr. Taylor

1 So that would be my first contention.

2 Secondly, to get into this -- while it's a
3 fascinating academic discussion -- to come into a state
4 court and to ask Your Honor to invalidate a ratified
5 amendment to the United States Constitution is -- well,
6 number one, something that a state court judge couldn't do
7 anyway. It falls -- for any judge for that matter --
8 under the doctrine of something that's nonjusticiable,
9 that's back in a political question. I addressed that in
10 the brief.

11 I know that in some of the writings that
12 Miss Rose has submitted, they address that as well saying
13 that it's a tool for -- I don't have the direct language
14 in front of me -- used as a -- if used as a defense, which
15 government abuses and interpretations are procedurally
16 given immunity is yet another abuse in treatment against
17 the people. That may be the way that they feel about it,
18 but that's nonetheless the reality that we face.

19 Courts don't invalidate -- and for a court
20 to hold that an amendment to the Constitution is itself
21 unconstitutional is beyond existential; and we're now
22 approaching the ridiculous, even if the Court had that
23 power, which we don't.

24 Now, I'll concede that we have to show some
25 jurisdiction over Miss Rose, and we're prepared to do

Argument by Ms. Rose

1 that. In criminal cases we would contend this is gonna be
2 personal service of a criminal summons, citation, warrant,
3 et cetera; some criminal process upon the defendant that
4 subjects her to the jurisdiction of the Court. The
5 rest -- not to say this flippantly, and with all due
6 respect to Miss Rose -- is academic.

7 THE COURT: Yes, ma'am. I'll give you last
8 argument.

9 MS. ROSE: I do not have a full written
10 response to Mr. Taylor's brief, but I would like to point
11 out a few things that I saw on that.

12 THE COURT: Thank you.

13 MS. ROSE: Using the political question
14 doctrine and the government's duty to guarantee a
15 Republican form of government is simply a tactic the state
16 is attempting in order to avoid the issues of law. While
17 it is above the -- while the above is true of the
18 government, they still have to stay within the boundaries
19 of the United States Constitution. They cannot issue
20 bills of attainder, annul, and abolish existing state
21 governments, create new states, or commit treason; all of
22 those as a means to guarantee the Republican form of
23 government.

24 And also as far as the -- the
25 unconstitutionality of what the Court can take care of --

Argument by Ms. Rose

1 let me see if I can -- on point number 2, Mr. Taylor says:
2 "The defendant seeks among other things for the
3 prosecution to remove its action to federal court to
4 invalidate the state constitution."

5 The only way that the state constitution
6 could be invalidated is if it was in fact not lawfully
7 created. And the Court's position is to decide whether or
8 not -- and it may not be this court per se -- but the
9 Court's position is to determine whether or not the
10 executive and legislative branches are operating under the
11 bounds of the Constitution, be that state or federal. And
12 so I do believe it's under the -- I believe it's the job
13 of the Court to in essence determine whether or not that's
14 the case.

15 As far as point 4 goes, the Court has
16 jurisdiction over the defendant, that's subject matter and
17 that's not what I'm challenging. I am actually
18 challenging personal and territorial jurisdiction.

19 THE COURT: Now, help me understand
20 something, please, ma'am. I'm familiar with the concept
21 of subject matter jurisdiction and personal jurisdiction.
22 I'm a little bit confused about what you mean by
23 territorial jurisdiction. Can you explain that to me a
24 little bit?

25 MS. ROSE: That involves the state being

Argument by Ms. Rose

1 erected -- the new state of the 1868 Reconstruction Acts
2 being erected within the same boundaries of the 1789
3 state, the de jure State of North Carolina as such that
4 it's a violation of whichever one I just said -- that's
5 Article 5 of the Constitution says you can't do that.

6 But as such, that's -- that's two states
7 covering the same territory. And since the original
8 state -- the de jure state has been reestablished and it's
9 been operating since 1997 and I'm a citizen of that state,
10 I can't be a citizen of two different body politics. I
11 can't be a citizen of the de facto state and the de jure
12 state as well.

13 And so while both states are existent
14 within the boundaries of what's called North Carolina,
15 only one can prove the allegiance, reciprocity, and
16 unbroken chain of title. And the de jure state has this
17 because I believe that the Reconstruction Acts that
18 created the new state do not have it.

19 THE COURT: Okay. Let's take about a
20 20-minute break, and I'll -- I may need longer than that.
21 Let me go back here and look through this again and see if
22 I can figure out what we need to do.

23 (Recess taken from 10:59 a.m. to
24 11:52 a.m.)

25 THE COURT: This matter comes on pursuant

The Court's Findings

1 to the defendant's challenge to the personal and
2 territorial jurisdiction of this court to prosecute the
3 defendant for the offenses of no operator's license and
4 expired tags.

5 The Court in entering this ruling
6 considered thoroughly various documents filed by the
7 defendant containing various titles that are all located
8 in the court file, and a memorandum filed by the district
9 attorney's office as well as arguments of Miss Rose, the
10 defendant, which were advanced in open court, and that of
11 the district attorney's office.

12 As best understood by the Court, the
13 defendant argues that the Court lacks personal and
14 territorial jurisdiction over her as follows:

15 One. As best understood by the Court, the
16 defendant argues that during the period of American
17 history commonly referred to as Reconstruction, that the
18 United States Government required the former members of
19 the Confederate States of America, including North
20 Carolina, to ratify the Fourteenth Amendment to the United
21 States Constitution to be properly reconstructed as a
22 state with the full rights of other states.

23 The defendant further contends that the
24 state legislature at the time was constituted and elected
25 by persons that did not include white male citizens who

The Court's Findings

1 were barred from participating in the election.

2 Therefore, the defendant argues that the legislature was
3 improperly constituted and elected and could not therefore
4 properly adopt the Fourteenth Amendment, and that its
5 adoption is therefore void.

6 Two. Again, as best understood by this
7 Court, the defendant further argues that the Constitution,
8 specifically citing the Fifth Article, prevents one state
9 from forming another state within its own boundaries.

10 The defendant argues that the process of
11 Reconstruction required North Carolina to form a new state
12 within the boundaries of the State of North Carolina that
13 existed prior to secession; again, in violation of the
14 constitutional provisions of the Fifth Article of the
15 United States Constitution; and thus the current North
16 Carolina government is illegitimate and there exists a de
17 jure State of North Carolina -- parenthesis -- as
18 denominated by the defendant -- closed parenthesis --
19 again, as best understood by the Court stemming from the
20 government that ratified the United States Constitution
21 initially wherein legitimate sovereign power of the state
22 exist.

23 This sovereign power, as best understood by
24 the Court in the arguments advanced by the defendant, now
25 resides in the persons or ancestors of those white male

The Court's Findings

1 voters who were denied the right to participate in the
2 election following the conclusion in the election process
3 following the conclusion of the Civil War during
4 Reconstruction.

5 Thus, the defendant argues the state does
6 not have territorial jurisdiction over her as the
7 properly -- strike that -- as the current state of North
8 Carolina -- strike that -- as the current state government
9 of North Carolina is improperly constituted and
10 unconstitutional.

11 This Court finds that the United States
12 Supreme Court -- in rulings too numerous to set out
13 here -- have implicitly or explicitly upheld the
14 constitutionality of the Fourteenth Amendment on numerous
15 occasions.

16 The Court finds that the United States
17 Supreme Court used the Fourteenth Amendment Due Process
18 Clause as the basis of much if not all of the
19 jurisprudence concerning the rights of citizens to be free
20 from intrusion by state government. The United States
21 Supreme Court has upheld the Fourteenth Amendment in
22 extending to each citizen the right of equal protection
23 from the laws of state government.

24 Next. This Court finds that the North
25 Carolina Supreme Court -- in ruling after ruling again too

The Court's Ruling

1 numerous to cite -- has either implicitly or explicitly
2 upheld the constitutionality and legitimacy of the
3 currently existing North Carolina State government that
4 has existed, that traces its roots to Reconstruction by
5 determining in its rulings the legitimacy and
6 constitutionality of various laws passed by the
7 legislature in the last 160-some years.

8 The Court therefore finds and concludes
9 there is no merit to the jurisdictional challenge of the
10 defendant.

11 The Court denies the defendant's motion to
12 dismiss these citations for lack of personal and
13 territorial jurisdiction.

14 The Court orders that the State of North
15 Carolina --

16 The Court decrees that the State of North
17 Carolina has both personal, subject matter, and to the
18 extent that there is such a notion as territorial
19 jurisdiction, territorial jurisdiction over the defendant.

20 To this ruling, the defendant in open court
21 objects and excepts.

22 Okay. My ruling's on the record. Your
23 objection to it is on the record. Your exception to it is
24 on the record.

25 Now, here's where we can go from here.

1 You're entitled under -- oddly enough -- you're entitled
2 to a right to a trial by a jury as determined by the
3 United States Supreme Court through the Fourteenth
4 Amendment. You're entitled to a trial by jury.

5 Now, another way to resolve this -- and if
6 you want your trial, we'll have the trial -- if what you
7 want is a ruling up or down by the Court of Appeals or
8 perhaps ultimately by the Supreme Court on my
9 jurisdictional ruling, what we can do is this: You can
10 enter into a transcript of plea, and we can write out on
11 there "the defendant reserves the right to appeal the
12 Court's jurisdictional rulings to the North Carolina Court
13 of Appeals," and then you can enter what's called an
14 Alford guilty plea, which means you do not accept
15 responsibility; that you plead not guilty but do not
16 resist a finding of guilt by the Court.

17 I'm just laying all our cards on the table.
18 If what you wanna do is try -- I've not discussed this
19 with the district attorney. There's been no discussion
20 between he and I about this case. If you wanna do that,
21 I'll charge you the court cost, I'll remit the court cost,
22 you can appeal it to the North Carolina Court of Appeals
23 and have your day if you wish to make law with the North
24 Carolina Court of Appeals and say, "Here's Long, he's
25 totally off base, he doesn't know what he's talking about,

Motion by Ms. Rose

1 here's my constitutional challenge, I want you guys to
2 rule on this"; or call 30 jurors in up here, put 12 in the
3 box, start asking questions, and set a jury. It's up to
4 you.

5 If you want five minutes to think about it,
6 I'll give you five minutes to think about it. If you know
7 what you wanna do right now, you can tell me what you
8 wanna do right now, and that's what we're gonna do.

9 You want a few minutes to ponder about it?

10 MS. ROSE: Sure.

11 THE COURT: Let's let court stand at ease
12 for five minutes.

13 (Court at ease from 12:04 p.m. to
14 12:14 p.m.)

15 THE COURT: Let the record reflect that the
16 Court adjourned -- or let court stand at ease to allow
17 Miss Rose an opportunity to consider her options at this
18 point.

19 Yes, ma'am. What would you like to do?

20 MS. ROSE: I would like your order or
21 ruling to be certified and printed so that I can file an
22 interlocutory appeal.

23 THE COURT: Okay. Well, it's within my
24 discretion to certify a ruling as interlocutory and give
25 you a right to immediate appeal in this particular case.

1 I'll deny that motion. That's of record. And the Court
2 can always rule that's of error as well.

3 Let the record reflect that the defendant
4 has requested that the Court certify the Court's
5 jurisdictional ruling as interlocutory and allow the
6 defendant to immediately appeal that order. The
7 defendant's request that the Court certify that that
8 ruling be immediately appealable without a hearing on the
9 merits is denied in the Court's discretion.

10 Okay. So now that brings us back again
11 that ruling -- your request is of record, your denial of
12 this is on record. When your request is denied, it's
13 automatically noted you object to it since you're the one
14 that requested it. It's denied.

15 Now, that brings us back to one of two
16 things we can do now. As the DA I assume is not gonna
17 dismiss this case, that leads us to two options we got.

18 One is to call in the jury, select the
19 jury, and try this case to a jury and let the jury
20 determine your guilt or innocence.

21 Two is for you to enter what's known as an
22 Alford plea, which means that you would accept that the
23 Court is able to find you -- that the Court finds you
24 guilty in this matter without you pleading guilty; you do
25 not plead guilty, but you do not resist a finding of

1 guilt. And it would be specifically stated on there that
2 you reserve the right to appeal one, this court's
3 jurisdictional -- adverse jurisdictional rulings to you;
4 and, two, the Court's adverse rulings as to your right to
5 immediate appealability of the ruling.

6 Which, in other words, the Supreme Court --
7 or the Court of Appeals could say, one, "Yes, the judge
8 messed up, he should have allowed you to appeal this
9 interlocutory." Or, two, the immediate appealability in
10 this particular case is not a big deal one way or the
11 other because if they find that we don't have jurisdiction
12 over you, it doesn't make any difference whether we try it
13 for a jury trial or if the jury convicts you or if you
14 enter a transcript and if the transcript is entered
15 against you with a guilty verdict.

16 If the Court finds that there's no
17 jurisdiction, that does away with the case. If the Court
18 of Appeals were to find that we do not have the
19 jurisdiction, as you assert, to try you in this case, then
20 the Court will reverse your conviction, whether through a
21 transcript or by a jury or whether it's appealable or
22 immediately appealable at the conclusion of the case.

23 MS. ROSE: Well, I'd like to ask a question
24 as far as clarification.

25 THE COURT: Sure.

1 MS. ROSE: First of all, I -- just to
2 summarize your ruling and just to be sure as far as the
3 points that you pointed out, I think you mentioned that in
4 most of your ruling about the Fourteenth Amendment, which
5 is not what I'm here to base my jurisdiction on. I'm
6 actually basing my jurisdiction on the constitutionality
7 of the Reconstruction Acts and not of the Fourteenth
8 Amendment.

9 THE COURT: Okay.

10 MS. ROSE: Because the Reconstruction Acts
11 are actually the documents created by Congress to annul
12 the states that were in existence.

13 And also --

14 THE COURT: And, again, as I said -- and
15 this is in no way disparaging you; I did my best to follow
16 you; you talked a lot about the Fourteenth Amendment --
17 and I said as best understood by the Court.

18 Let the record be corrected that the
19 defendant is not asserting lack of jurisdiction through
20 the Fourteenth Amendment, but by the Reconstruction Acts;
21 that as I understand, required the states to adopt the
22 Fourteenth Amendment.

23 Correct?

24 MS. ROSE: Correct. That was the
25 requirement in the Reconstruction Acts.

1 Also, I don't have any proof from the state
2 regarding that as like in *State versus Batdorf*, that the
3 prosecution has to provide the proof beyond a reasonable
4 doubt that I have in fact -- that they are in fact a
5 lawful government with the unbroken chain of title; and I
6 don't have any of that information or cites or anything in
7 writing. And as such, if the state proceeds, then I will
8 not participate in any further actions of the Court.

9 THE COURT: Okay. Well, listen, Miss Rose,
10 you've been polite, you have been well spoken, and I
11 appreciate that very much. I've tried to treat you
12 likewise. I understand. And, again, I think you think
13 maybe this is something personal to you. It happens every
14 day in court. It happened yesterday in court which we
15 tried two DWIs. One fellow had two lawyers who were well
16 schooled and, you know, we went over, it took more time
17 than this did --

18 MR. TAYLOR: Three-and-a-half hours.

19 THE COURT: -- to hear a motion to suppress
20 this gentleman's DWI. I denied their motion after we
21 heard on and on and on and on the evidence and arguments
22 of counsel and the handed-up cases and talked about it,
23 and I found certain facts and entered a ruling and denied
24 their motion to suppress. Well, they disagree with that.
25 You know, the folks sitting at this table disagree with

1 it. They've got the right to appeal that.

2 If they disagree with it, if they think the
3 Court of Appeals would reverse me and say, "You know, Long
4 sort of missed the boat there," we did it twice, we did it
5 yesterday morning, we did it yesterday afternoon. That's
6 what court's all about. Every ruling -- and I'm not
7 trying to personally -- I say this -- that I make -- every
8 ruling that a superior court judge makes is subject to
9 review by the appellate courts.

10 MS. ROSE: I understand.

11 THE COURT: I understand that you disagree
12 with this ruling, and I appreciate that, and we're not
13 quarrelling with one another. I mean, that's how I made
14 my living. I mean, every ruling I make -- I understand
15 this is very important to you and you deem it, you know,
16 bedrock -- I understand your argument. You deem this --
17 the legitimacy of the state's government is in question in
18 your mind.

19 But, I mean, whether it's for that reason,
20 for another reason because they think the constitutional
21 rights were violated, everything I do is -- people have to
22 decide every day whether the state -- if the ruling goes
23 against the state, if they're gonna appeal it; if it goes
24 against the defendant, whether the defendant is gonna
25 appeal it.

1 So I appreciate the fact that you've been
2 so polite as you've advanced your arguments. I've entered
3 my ruling. I appreciate the fact that you disagree with
4 it. You may or may not have a chance to argue about it in
5 the Court of Appeals.

6 But here's what I'm trying to get to. The
7 fact that the ruling -- the ruling has been entered, that
8 denies your jurisdictional -- your jurisdictional
9 objections and now that -- for the trial level -- for the
10 trial level, that's over with. That's a card laid; a card
11 played. That's no different than you coming in here and
12 saying, "Judge, I've been charged with drug trafficking,
13 or I've been charged with DWI and the trooper the
14 sheriff's detective, the investigating officer, the State
15 of North Carolina has violated my constitutional rights
16 by, you know, an illegal search, by an illegal seizure of
17 my person."

18 And those are constitutional bedrock
19 principles, and you vehemently disagree with that, and
20 then we have a hearing, and then that ruling goes against
21 you. You have a right to take that ruling up and have the
22 Court of Appeals or the Supreme Court talk about it and
23 decide whether it was right or wrong. But before it gets
24 there, we have to determine your guilt or innocence. And
25 we hadn't got to that point, yet. So we're gonna have to

1 do that.

2 And I understand you said, "Judge, I'm not
3 gonna participate further." We've only got two ways of
4 doing it, Miss Rose, and one is to call in a jury. If we
5 call in a jury, as I told you when I gave you your rights
6 as a person proceeding to trial, there will be 12 jurors
7 up there. I will turn to you as I do to Mr. Taylor; ask,
8 "Do you have any questions of these jurors?" Ask them any
9 questions, whether they had no operator's license, whether
10 their cousin was a highway patrolman, that kind of stuff.

11 You'll have an opportunity to do that; to
12 cross-examine your accusers here. I assume -- I haven't
13 even looked at the ticket -- I assume it's this highway
14 patrolman seated here, since he's in the courtroom with
15 the DA. Cross-examine him; cross-examine any other
16 witnesses the state has. You will have the right to put
17 on evidence. That's one way we can do it.

18 The other way we can do it is for you to
19 enter a transcript of plea. And I can't -- there's no
20 other way I can short-circuit it or make it less painful
21 for you to get your case to the Court of Appeals so you
22 can have your day up there.

23 So you're gonna have to tell me what you
24 wanna do, one way or the other.

25 MS. ROSE: My objection to the jury trial

1 is that I don't believe it will be a jury of my peers
2 unless members of the de jure state were in the jury pool.

3 And, secondly, I'm not -- my signature on
4 any plea transcript, despite what you've said about
5 reserving my right to appeal still in -- as a signature
6 would -- and an acknowledgement of the Court would place
7 me under jurisdiction.

8 THE COURT: Okay. What about if you sign
9 it under this proviso: "Executed under protest"? And
10 further that the Court finds -- and I'll write this down
11 there -- that the signature of the defendant does not
12 convey any jurisdiction to this court which is not
13 established pursuant to the -- the defendant's signature
14 does not convey any jurisdiction to this court which is
15 not established by any rulings concerning the
16 jurisdiction --

17 In other words, if you lose in the Court of
18 Appeals and they say we do have jurisdiction over you,
19 then, you know, your signature's on the document and
20 everything stands. If the Court of Appeals says, "Wow,
21 you know what, she's right, we hadn't thought about that,
22 this is sort of a novel legal issue, we haven't thought
23 about that; and, you know, she's right, we have no
24 jurisdiction over her," then your signature -- in other
25 words, the stream can flow to higher than its source. If

1 the Court of Appeals says we have no jurisdiction over
2 you, your signature on this document would not convey
3 somehow extra jurisdiction that the Court of Appeals found
4 that we didn't have. You see what I'm saying?

5 MS. ROSE: (Indicating.)

6 THE COURT: Okay. Listen, I'm not trying
7 to make it complicated. Here's what's gonna happen. I
8 understand you disagree with me. I've entered the ruling.
9 We've gotta move on. I've gotta call for jurors, or you
10 gotta tell the DA you'll sign the transcript and do
11 something. I'll do one or the other, and I'm just asking
12 you which do you want to do. It's your call, your
13 election. And if you say you don't wanna do anything,
14 I'll have to call in the jurors. Which is not a threat,
15 it's just what I gotta do. I mean, that's where we gotta
16 go.

17 This is Superior Court. You can't try the
18 case -- you can't try a criminal case to a judge in
19 Superior Court. You had the opportunity to do that in
20 District Court. And, you know, you -- what I'm saying is
21 you're kind of working your way through the system. The
22 next level is the appellate courts, but we've gotta --
23 until you're convicted, you don't have anything to appeal.

24 MS. ROSE: I understand.

25 THE COURT: Unless you're convicted.

1 And, you know, the jury may find you not
2 guilty, and the whole thing's over with; you don't have
3 anything to appeal then.

4 MS. ROSE: I just don't think that's in
5 jurisdictional expediency.

6 THE COURT: I agree with you. It's
7 probably not gonna be expedient. But we gotta do
8 something. We gotta do something, one way or the other.

9 All right. I'll give you another five
10 minutes to talk to your friends back there and decide what
11 you wanna do. I'll give you five more minutes, but you
12 need to give me a decision in five minutes about whether
13 you wanna call a jury.

14 (Court at ease from 12:28 p.m. to
15 12:33 p.m.)

16 THE COURT: Yes, ma'am.

17 MS. ROSE: I will enter with -- the plea
18 transcript with the stipulations that it does not provide
19 any additional jurisdiction and do so under duress.

20 THE COURT: Well, I'd rather not put the
21 words "duress" on there because it makes it look like I'm
22 forcing you to do it. You've got the right to have a jury
23 trial. But I'll allow you to sign it that you convey
24 jurisdiction to this court other than what's found by the
25 North Carolina Court of Appeals; that you reserve your

1 right to appeal all rulings entered by this court
2 concerning jurisdiction; and that your signature conveys
3 no additional jurisdiction to the Court.

4 I can't let you sign it saying "I'm signing
5 under duress" because that makes it look like I forced you
6 to do it. I'm not forcing you to it. I'm telling you now
7 we can have a jury trial and start --

8 MS. ROSE: I understand. But as I
9 mentioned before the jury trial wouldn't -- wouldn't be
10 either efficient or wouldn't establish the jurisdictional
11 issue anyway, so it's moot.

12 Also if -- and I think I asked for this
13 before -- if I could just get a copy of what you wrote as
14 far as your ruling --

15 THE COURT: All of that will be in the
16 record, and you'll get a copy of that all -- here's what's
17 going to happen. I'm not trying to mislead you -- I'm not
18 trying to --

19 If you enter this transcript, then you'll
20 have ten days to appeal. Of course you can appeal as soon
21 as the transcript is entered, you can appeal the
22 jurisdictional rulings of the Court, then it's up to you
23 to cause a complete transcript of all this hearing to be
24 entered as well as whatever happened Monday as well as
25 whatever happened in front of Judge Spivey, prepare all

1 that, have all that prepared by the court reporters,
2 prepare a brief that cites -- sets out and cites where you
3 know the court was in error and cites to the transcript
4 where these rulings were made and complies with the
5 rules -- there are appellate rules, which I'm not
6 pretending to be familiar with --

7 MS. ROSE: I have made myself familiar very
8 recently, and it's not fun.

9 THE COURT: That's what I was gonna say --
10 I just wanna make sure you understood that. I don't want
11 to sandbag -- whether you agree or disagree, I don't want
12 anybody to come out of here sandbagged or not
13 understanding what's going on. There are very complex
14 rules in the Court of Appeals about what fonts you can
15 use, what kind of type, how much words you can put on a
16 page, what size paper you have to use, and all that stuff.
17 You have to comply with all those rules and then perfect
18 your appeal to the North Carolina Court of Appeals.

19 So I mean, it's -- it is for a layman --
20 for layman and for me -- when I was in private practice, I
21 never took anything to the Court of Appeals, so I'm not
22 picking on you by saying a layman -- it would be a
23 challenge for me to refamiliarize myself with the rules of
24 the Court of Appeals, and to try and appeal something
25 would be a challenge for me. And I'm not damning you with

1 comparing you to me; I'm just saying -- I don't want you
2 to leave here under the mistaken impression that somehow
3 zip, zam, zim, this is gonna be in Raleigh. It's sort of
4 a complicated.

5 MS. ROSE: I have two other cases in Wilkes
6 County that are before the Court of Appeals now, so --

7 THE COURT: Great. Then you know what I'm
8 talking about.

9 MS. ROSE: At least now I have a format for
10 the record now.

11 THE COURT: Okay. Fantastic. Do you want
12 to do the transcript?

13 MS. ROSE: Sure.

14 THE COURT: Okay. Mr. Taylor, could you
15 help her prepare a transcript of plea; could you put on
16 there specifically that the defendant reserves her right
17 to challenge the Court's jurisdictional ruling of the
18 North Carolina Court of Appeals; and, secondly, that the
19 defendant's entry of this transcript of plea does not
20 convey any jurisdiction on the Court, which is not found
21 or confirmed by the North Carolina Court of Appeals?

22 MR. TAYLOR: Okay.

23 THE COURT: Okay?

24 MR. MUNCY: Your Honor, I had some real
25 quick pertinent information for her. Would you mind if --

1 THE COURT: Well, technically you're not
2 supposed to advise her, but I'll give a chance -- while
3 Mr. Taylor's drafting this, I'll give her a chance to go
4 back and speak to you.

5 MR. MUNCY: This actually involves what
6 he's --

7 THE COURT: I'm gonna give her a chance to
8 come back and speak to you.

9 REPORTER: Can I get your name, please.

10 MR. MUNCY: Cliff Muncy, M-u-n-c-y.

11 THE COURT: Let the record reflect that a
12 gentleman stood up from the first row of the courtroom by
13 the name of Cliff Muncy and asked to be allowed to speak
14 to Miss Rose -- I beg your pardon -- excuse me, please --
15 concerning the entry of the transcript.

16 (Court at ease from 12:38 p.m. to
17 12:59 p.m.)

18 MR. TAYLOR: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 MR. TAYLOR: What I've done in the box for
21 the plea arrangement is try to record as best I can what
22 you said from the transcript as it exists now before
23 anybody signs, other than I'm gonna give the two of you an
24 opportunity to go over whatever terminology you wanna use.

25 THE COURT: Hold on one second.

1 (Pause in the proceedings at 1:00 p.m.)

2 THE COURT: Okay. Let's see what it says.

3 "One, state will dismiss expired
4 registration charge."

5 MR. TAYLOR: She's come into compliance
6 with that.

7 THE COURT: Fantastic. Wonderful.

8 "Two, defendant enters this plea pursuant
9 to Alford and signs this form under protest and upon
10 condition that this plea will not convey any jurisdiction
11 upon the Court which is not established by any court's
12 rulings concerning jurisdiction."

13 Okay. And we need to --

14 MR. TAYLOR: Your Honor, if that language
15 is acceptable to Miss Rose, I'll need to reapproach to get
16 her to sign the appropriate part on the form.

17 MS. ROSE: That is acceptable.

18 THE COURT: And I've written on the front
19 of it: "Defendant reserves her right to appeal the
20 jurisdictional rulings of this court."

21 Okay. Here you go.

22 (Pause from 1:02 p.m. to 1:04 p.m.)

23 MR. TAYLOR: May I approach, Your Honor?

24 THE COURT: Yes, sir.

25 (Document handed to the Court.)

The Court's Inquiry of Ms. Rose

1 THE COURT: Miss Rose, would you prefer to
2 be affirmed or swear on the testament?

3 MS. ROSE: I'll swear on the testament.

4 THE COURT: Would you swear Miss Rose in,
5 please.

6 CLERK: Do you solemnly swear you'll give
7 true answers to the Court, so help you God?

8 MS. ROSE: I do.

9 THE COURT: Normally we have you stand,
10 Miss Rose, but you're with child, you're welcome to remain
11 seated.

12 All right. Ma'am, is your name Amanda Lea
13 Rose?

14 MS. ROSE: Yes.

15 THE COURT: Are you able to hear and
16 understand me?

17 MS. ROSE: Yes.

18 THE COURT: Let the record reflect that the
19 Court in its own hand is writing the answer to each of the
20 questions pursuant to the sworn testimony rendered in open
21 court by Miss Rose.

22 Miss Rose, do you understand that you have
23 the right to remain silent and that any statement you make
24 in this matter may be used against you?

25 MS. ROSE: Yes.

The Court's Inquiry of Ms. Rose

1 THE COURT: Ma'am, would you please tell me
2 what grade level you're able to read and write.

3 MS. ROSE: College.

4 THE COURT: Thank you.

5 Miss Rose, are you under the influence of
6 any alcohol, drugs, narcotics, pills, or medicines of any
7 type?

8 MS. ROSE: No.

9 THE COURT: And do you know when the last
10 time you used any such substance was, ma'am?

11 MS. ROSE: Never.

12 THE COURT: Thank you. Makes it easy.

13 I'm striking the first clause of the
14 sentence of paragraph 5 of the transcript that says:
15 "Have the charges been explained to you by your lawyer?"

16 Ma'am, do you understand the nature of the
17 charges and the elements of the charges?

18 MS. ROSE: I do.

19 THE COURT: May I put yes?

20 MS. ROSE: Yes.

21 THE COURT: Thank you, ma'am.

22 And I'm striking clause -- question 6(b):
23 "Are you satisfied with the attorney's legal services?"
24 And striking the word "your lawyer" in 6(a).

25 Ma'am, have you considered possible

The Court's Inquiry of Ms. Rose

1 defenses to the charges?

2 MS. ROSE: Yes, sir.

3 THE COURT: And I'm writing "inapplicable"
4 in 6(b).

5 Ma'am, do you understand that you have the
6 right to plead guilty and to be tried by a jury in this
7 matter?

8 MS. ROSE: Yes.

9 THE COURT: Do you understand that at this
10 trial you would have the right to confront and
11 cross-examine the witnesses against you?

12 MS. ROSE: Yes.

13 THE COURT: Are you offering any
14 aggravating factors in this matter, Mr. Taylor?

15 MR. TAYLOR: No, Your Honor.

16 THE COURT: All right. The Court finds
17 that 7(c) is inapplicable and will write "NA" in the
18 Court's own hand in answer to 7(c).

19 Ma'am, most importantly, do you understand
20 that by pleading guilty, you give up these valuable
21 constitutional rights that you and I have just discussed
22 as well as other valuable constitutional rights that we
23 have not discussed, all of which pertain to your right to
24 a trial by jury?

25 Do you understand that by pleading guilty,

The Court's Inquiry of Ms. Rose

1 you're giving up these constitutional rights such as the
2 right to confront and cross-examine the witnesses against
3 you?

4 MS. ROSE: Yes.

5 THE COURT: Did I ask you that question, do
6 you understand that you have the right to confront and
7 cross-examine the witnesses against you?

8 MS. ROSE: Yes. You did.

9 THE COURT: Thank you. I appreciate your
10 help, ma'am.

11 All right. And you have told me that you
12 are a citizen -- I'm writing "inapplicable" to question 8,
13 which concerns citizenship. That is not a felony.

14 The Court finds that number 9 is
15 inapplicable.

16 Ma'am, do you understand that your plea of
17 guilty or no contest may limit your right to appeal this
18 case?

19 And I'm specifically putting down here -- I
20 put an asterisk after number 10 -- this does not apply to
21 your right to challenge the jurisdictional rulings of this
22 court; that would be more that you -- you might not be
23 eligible to appeal where the highway patrolman, you know,
24 did what he was supposed to do while out there that day as
25 opposed to the constitutional underpinnings of your

The Court's Inquiry of Ms. Rose

1 argument.

2 MS. ROSE: Okay. So that would concern the
3 merits versus constitutionality?

4 THE COURT: Right.

5 MS. ROSE: Yes.

6 THE COURT: Do you understand that your
7 plea of guilty may limit your right to appeal the case?

8 MS. ROSE: Yes.

9 THE COURT: And the next one -- question 11
10 revolves around blood evidence or tissue evidence, and
11 there's none in this case.

12 And let the record reflect the Court has
13 put an asterisk after number 10; and at the bottom of this
14 asterisk, the Court has written: "The defendant preserves
15 the right to appeal the jurisdictional rulings of this
16 court."

17 And, Sheriff, could you pick this up?

18 I'm gonna ask both the DA and Miss Rose to
19 initial that, please.

20 (Pause in the proceedings at 1:09 p.m.)

21 (Document handed to the Court.)

22 THE COURT: Thank you both.

23 Thank you, ma'am.

24 This is pursuant to an Alford guilty plea,
25 ma'am. Do you now consider it to be in your best interest

The Court's Inquiry of Ms. Rose

1 to plead guilty to the charges as just described in the
2 Court -- I beg your pardon -- we don't have those listed.
3 I skipped a step.

4 What's the case file number?

5 MS. ROSE: 014680.

6 THE COURT: Thank you.

7 (Pause in the proceedings at 1:10 p.m.)

8 THE COURT: Ma'am, do you understand that
9 pursuant to this plea transcript in 11 CRS 14680, you are
10 pleading guilty to the offense of no operator's license, a
11 class 2 misdemeanor, maximum possible punishment 60 days'
12 confinement? Is that correct?

13 MS. ROSE: I'm not pleading guilty, I am
14 not contesting. What is that? You said earlier that I'm
15 not offering --

16 THE COURT: Do you wanna plead guilty --

17 You got two different ways you can go. You
18 can plead no contest, or you could plead guilty pursuant
19 to *State v. Alford*. I think I sort of misspoke before.
20 You're actually entering a guilty plea in *State v. Alford*,
21 but you're saying that you now consider it to be in your
22 best interest to plead guilty; and that the Court may
23 treat you as guilty whether or not you in fact admit that
24 you're guilty.

25 In a no contest plea, also you do not

The Court's Inquiry of Ms. Rose

1 put -- you don't put up any contest. You're not
2 technically pleading guilty, but you don't put up any
3 contest, and you understand that the Court will treat you
4 as being guilty to either one of those.

5 I'll let you pick whether you wanna do it
6 no contest or pursuant to *State v. Alford*.

7 MS. ROSE: Well, they sounded identical to
8 me.

9 THE COURT: We'll, they're pretty close. I
10 mean, I'll tell you the truth; I would be hard pressed to
11 explain the differences to you. And I'm sure there are
12 legal scholars who can, but I'll let you elect --

13 MS. ROSE: I'll go with the *State*
14 *v. Alford*.

15 THE COURT: All right. Ma'am, is it now
16 correct that you enter a guilty plea pursuant to the rules
17 of *State v. Alford* in 11 CRS 1468 to no operator's
18 license, a class 2 misdemeanor, a maximum possible
19 punishment 60 days' confinement, is that correct?

20 MS. ROSE: Yes.

21 THE COURT: Do you now consider it to be in
22 your best interest pursuant to *State v. Alford* to plead
23 guilty to the charges I have just described?

24 MS. ROSE: Yes.

25 THE COURT: Ma'am, do you understand that

The Court's Inquiry of Ms. Rose

1 upon your Alford guilty plea, you'll be treated as being
2 guilty by the Court, whether or not you in fact admit that
3 you are guilty?

4 MS. ROSE: Yes.

5 THE COURT: Ma'am, you understand that the
6 courts of this state agree to a plea arrangement, is that
7 correct?

8 MS. ROSE: Yes.

9 THE COURT: And you have agreed to plead
10 guilty pursuant to *State v. Alford* to a plea arrangement,
11 is that correct; that is that the district attorney would
12 dismiss one charge in exchange for your plea of *State v.*
13 *Alford* to the other charge?

14 MS. ROSE: Yes.

15 THE COURT: Listen carefully. Here are the
16 terms of the plea arrangement that the district attorney
17 has given to me, which he said he had reviewed with you.

18 One. The state will dismiss expired
19 registration charge. See page 2, side two.

20 Two. The defendant enters this plea
21 pursuant to *State v. Alford*, and signs this form under
22 protest and upon the condition that this plea nor this
23 form convey any jurisdiction upon this court, which is not
24 established by any rulings concerning jurisdiction.

25 Ma'am, is the plea arrangement that I've

The Court's Inquiry of Ms. Rose

1 just read into the record correct as describing your full
2 plea arrangement between yourself and the State of North
3 Carolina?

4 MS. ROSE: Yes.

5 THE COURT: Other than the plea arrangement
6 between yourself and the State of North Carolina, has
7 anyone promised you anything or threatened you in any way
8 to cause you to accept this plea?

9 MS. ROSE: No.

10 THE COURT: Do you enter this plea of your
11 own free will, fully understanding what you are doing?

12 MS. ROSE: Yes.

13 THE COURT: Do you agree that there are
14 facts to support your Alford guilty plea, and do you
15 consent to the district attorney summarizing the facts
16 that are related to the evidence, related to the factual
17 basis?

18 Again, this is not jurisdiction; this is
19 factual basis. Like the trooper pulled you over on
20 such-and-such date on such-and-such highway, and you
21 either didn't produce a license or whatever the status of
22 your license was. That's the factual basis we're
23 referring to.

24 Do you agree there are facts to support the
25 entry of your Alford guilty plea? And I'll write in

The Court's Inquiry of Ms. Rose

1 "guilty plea." It just says "plea." "Alford guilty
2 plea." And do you agree that the district attorney can
3 summarize the evidence related to the factual basis?

4 MS. ROSE: And I can -- should I find that
5 there was fault in the facts? Can I still object to that?

6 THE COURT: Well, no. Not technically. I
7 mean, I don't want to throw a monkey wrench in this, but
8 if you don't agree that there's --

9 MS. ROSE: Like specific facts concerning
10 the --

11 THE COURT: Well, I guess what I'm saying
12 is this: Sometimes lawyers stand up and say, "Well,
13 Judge, we would quibble a little bit with the state's
14 facts, but we're not trying to -- you know, we don't agree
15 with the exact recitation issued by the state of the
16 facts, but we're gonna go ahead with the entry of the
17 plea."

18 MS. ROSE: Right.

19 THE COURT: So I'm not sure -- you know,
20 you could stand up and say, "Well, I can't agree with
21 every fact, but I wanna enter the guilty plea and get this
22 over with," I guess.

23 MS. ROSE: Yes.

24 THE COURT: Okay. So the answer is yes?

25 MS. ROSE: The answer is yes.

The Court's Inquiry of Ms. Rose

1 THE COURT: All right, ma'am. Do you have
2 any questions?

3 Are you offering any points, sentencing
4 points?

5 MR. TAYLOR: Your Honor, there's one prior.
6 We'd say she was a level 2 for misdemeanor sentencing.
7 It's a traffic matter out of Ashe County from 2002. But I
8 wouldn't wanna be heard further on it.

9 THE COURT: Ma'am, do you have any
10 questions concerning what I've said to you or anything
11 else connected with your case?

12 MS. ROSE: No, sir.

13 THE COURT: Do you now personally accept
14 the plea arrangement that we earlier read into the record?

15 MS. ROSE: Yes.

16 THE COURT: And you have signed this,
17 Amanda Lea Rose, is that correct?

18 MS. ROSE: Yes. That's correct.

19 THE COURT: Thank you, ma'am.

20 All right. Mr. District Attorney.

21 MR. TAYLOR: Yes, Your Honor.

22 Your Honor, by way of factual basis, we'd
23 tender Trooper Palmiter.

24 THE COURT: Yes, sir.

25 Would you swear him in, please.

The State's Factual Basis

1 CLERK: Do you solemnly swear the testimony
2 you'll give to be the truth, whole truth, and nothing but
3 the truth, so help you God?

4 THE WITNESS: I do.

5 THE COURT: Thank you.

6 TPR. PALMITER: My first name is Brian
7 B-r-i-a-n; last name is P-a-l-m-i-t-e-r. I'm employed
8 with the North Carolina Highway Patrol; and currently I'm
9 stationed here in Winston-Salem, Forsyth County; assigned
10 to the Collision Reconstruction Unit.

11 At the time I met Miss Rose, what first
12 drew my attention to her was -- I was assigned to work
13 preventative patrol on May 10th; it was a Tuesday; the
14 assigned shift I was working was 6 a.m. to 3 p.m. in the
15 afternoon. I noticed -- I was traveling on U.S. 421 near
16 the work zone near Clemmons and had observed a -- it was
17 just south of the work zone -- observed a 1995 Volvo,
18 white in color with an expired registration tag. I had
19 stopped, proceeded to perform a traffic stop, and we had
20 turned onto Jonestown Road and traveled east a little bit
21 and had stopped Miss Rose.

22 When I approached the vehicle, she was
23 polite and cooperative with me; was able to produce a
24 photo ID. I can't recall exactly what type of ID it was,
25 but it was a photo ID, and she gave me also the vehicle's

Argument by Ms. Rose

1 registration. I explained to her why I had stopped her
2 for the registration, and she was able to give me some --
3 an address and date of birth also.

4 I proceeded to check the vehicle's
5 registration through our DCI system, which is part of the
6 SBI -- just gives me vehicle records -- and found that the
7 vehicle did have an expired tag at the time. It actually
8 had expired January 15th of 2011, which should have had a
9 December tag on it, 2010.

10 I had also performed a driver's license
11 check with her driver's license through DCI, also by name,
12 date of birth, and found that her driver's license had
13 expired on her birthday, April 19th of the same year,
14 2011. I issued the citation, advised her of her court
15 date, and that was the last I had talked to her.

16 THE COURT: Thank you, Trooper.

17 All right. Any questions for the trooper,
18 ma'am?

19 MS. ROSE: I do have issue with some of the
20 things he said.

21 THE COURT: You may have a seat, Trooper.

22 Yes, ma'am. I'm listening.

23 MS. ROSE: I did not provide a photo ID
24 because I do not have one; and I did not provide a date of
25 birth to the trooper.

The Court's Findings

1 As far as technicality goes, we were not --
2 he was not traveling on U.S. 421; he was stopped. And we
3 were not anywhere near Jonestown Road; we were actually on
4 Peace Haven traveling south when he initiated the traffic
5 stop and so -- which is without the photo ID is probably
6 why he entered on my citation that my name was "Mandi,"
7 M-a-n-d-i, because I never gave him anything besides that.

8 THE COURT: Okay.

9 MS. ROSE: And that is all I have there.

10 THE COURT: Thank you, ma'am.

11 I understand your objection to the
12 jurisdiction of this court, but just for the record, you
13 don't question that you were driving a motor vehicle on
14 this occasion and whether you had one or didn't have one
15 or think the state has to right to issue it or not issue
16 it.

17 Two things that you don't contest:
18 Number 1, you're operating a motor vehicle on the streets
19 or highways of the State of North Carolina somewhere in
20 Forsyth County on this date; and, 2, that you failed to
21 produce a valid North Carolina driver's license; is that
22 correct?

23 MS. ROSE: That's correct.

24 THE COURT: All right. The Court makes the
25 following findings of fact beyond a reasonable doubt based

The Court's Findings

1 upon the sworn testimony rendered in open court by the
2 defendant, the factual basis recitation by the district
3 attorney, and the statements of defense's counsel.

4 One. That the defendant is competent to
5 stand trial.

6 Two. The defendant is aware and
7 understands her constitutional rights.

8 Three. The defendant -- strike that.
9 There is no legal counsel.

10 Three -- I'm so used to doing them in
11 order -- there's a factual basis of the entry of the plea.

12 Next. That the plea is entered into by the
13 defendant freely, knowingly, understandingly, and
14 voluntarily.

15 Next. The plea is the informed choice of
16 the defendant.

17 Next. The Court finds and concludes that
18 this plea is entered pursuant to *State v. Alford*; and that
19 the defendant reserves her right to appeal this court's
20 jurisdictional rulings.

21 Based upon the foregoing, it's hereby
22 ordered that the plea be recorded by the Clerk of Superior
23 Court of Forsyth County, and is accepted by the Court.

24 Upon recording by the clerk in
25 11 CRS 14680, the defendant is found guilty of no

1 operator's license, class 2 misdemeanor, prior misdemeanor
2 sentencing level 1 in this matter. Order the defendant
3 pay the cost. Remit the cost.

4 Okay. All right. Now, the case is over at
5 the trial level. It's all done in a little box. The case
6 is over at the trial level. If you want the Court of
7 Appeals to review this decision, ma'am, it's up to you to
8 order a transcript, the cost of the transcript -- first,
9 you have to enter notice of appeal. Second you have to
10 order a transcript. The cost of the transcript is on you.
11 You have to make a contract with the court reporter to
12 pay for the transcript, and then you have to comply with
13 the rules, the appellate rules in getting all the brief
14 and all the things that you have to file with the Court of
15 Appeals in by a certain date. And I don't know when that
16 is, but I do know the clock starts running when you give
17 notice of appeal. You can give notice of appeal right now
18 and I'll order it be docketed, or you can give it anytime
19 within the next ten days.

20 MS. ROSE: I'll provide that in writing
21 within the next ten days as well as requesting a contract.
22 And I believe that the clock actually starts ticking
23 either after the notice of appeal or when I receive the
24 contract and receive the transcripts.

25 THE COURT: I'm not -- listen. It's just

1 like I tell lawyers, you probably know more about this
2 than I do. I don't have to. I'm the one who everything I
3 say is getting appealed. I'm not the one who has to
4 appeal it, so I don't know when the clock runs.

5 MS. ROSE: But I have 30 days from that day
6 to provide Mr. Taylor with the record.

7 THE COURT: That all sounds right. But if
8 you're asking me to confirm that or advise you, I cannot.
9 So I'm not telling you that. I know you have ten days
10 from today's date to enter your notice of appeal and
11 I'll -- if you wanna give it now, I'll enter it now. If
12 you want to wait and give it in writing later, that's fine
13 too. It's your preference to give it later.

14 MS. ROSE: Mm-hmm.

15 THE COURT: Let the record reflect that the
16 defendant indicated yes, that she would give her notice of
17 appeal later in writing.

18 **(Hearing concludes at 1:25 p.m.)**

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CERTIFICATE

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

I, Gregory S. Mizanin, the officer before whom the foregoing proceedings was taken, do hereby certify that said hearing, pages 19 through 105, is a true, correct, and verbatim transcript of said proceeding.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

This 8th day of February, 2012.



Gregory S. Mizanin, RPR, CRR
Official Court Reporter
21st Judicial District
P.O. Box 20099
Winston-Salem, NC 27120
336.779.6649