

1 STATE OF NORTH CAROLINA  
 2 COUNTY OF MACON

IN THE GENERAL COURT OF JUSTICE  
 SUPERIOR COURT DIVISION  
 FILE NO. 10 CRS 050329

3 -----  
 4 STATE OF NORTH CAROLINA )

TRANSCRIPT

5 VS. )

Volume II of V

6 ISAAC HUTCHINSON BIRCH )  
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(pgs. 7 - 16)

8  
 9 The above-captioned case coming on for hearing at 9:51 a.m.  
 10 at the criminal session of the Superior Court of Macon  
 11 County, Franklin, North Carolina, before the Honorable Judge  
 12 Bradley B. Letts, Judge Presiding, and the following  
 13 proceedings were had, to wit:

14 A P P E A R A N C E S

15 For the State:

16 Ashley Hornsby Welch, Assistant District Attorney  
 17 T. Jason Arnold, Assistant District Attorney  
 18 Macon County Courthouse  
 P.O. Box 288  
 Franklin, NC 28744

19 For the Defendant:

20 Pro Se

21 June 2, 2010

23 Reported by:

24 Diane L. Thommes, CSR, RPR  
 Certified Realtime Reporter

25 REQUEST DATED: June 21, 2010 DATE DELIVERED: June 24, 2010

1 MS. HORNSBY WELCH: Your Honor, on the add-on  
2 docket, Margin No. 1, your Honor, he wanted to address the  
3 judge about a continuance.

4 The State is not opposed to that, 6/28. I believe  
5 he wanted to talk about his attorney.

6 THE COURT: Good morning, Mr. Birch.

7 MR. BIRCH: Good morning.

8 Did I speak to you yesterday? Yes.

9 What did you want to do about an attorney?

10 MR. BIRCH: Well, I want to seek counsel. As far  
11 as exactly what I'm going to do, I'm not a hundred percent  
12 sure yet.

13 THE COURT: Did you want to hire your own, or did  
14 you want a court-appointed --

15 MR. BIRCH: I haven't come to that decision either.  
16 Most likely if I do, it will be hired.

17 THE COURT: I'm going to -- well, do you want to go  
18 ahead and apply today and we can appoint somebody, and then  
19 if you decide to hire someone --

20 MR. BIRCH: I'm not ready to do that at this time,  
21 sir.

22 You had mentioned yesterday that you had put in a  
23 writ or -- excuse me -- a waiver of counsel, and I would  
24 like to do a verbal retraction on that, please.

25 THE COURT: A verbal retraction?

1           MR. BIRCH: Uh-huh. That's *State versus Elliott*,  
2 49 NC Appellate.

3           THE COURT: Mr. Birch, did you want to hire your  
4 own attorney?

5           MR. BIRCH: I'm not sure. I do want to seek  
6 counsel.

7           THE COURT: Do you want the Court to appoint you a  
8 lawyer, or do you want to hire your own attorney?

9           MR. BIRCH: I'm not sure about whether I'm going to  
10 hire one, and I don't think I want a court-appointed one.

11          THE COURT: Let's just deal with one issue, and  
12 that's the court-appointed. Do you want me to appoint you  
13 an attorney from the Court?

14          MR. BIRCH: Not at this time.

15          THE COURT: Then I'm going to ask that you sign a  
16 waiver of a court-appointed counsel, not a hired attorney.

17          MR. BIRCH: May I see the form?

18          THE COURT: Of course. Come on up.

19          Mr. Birch, all that says is that you're just  
20 waiving the opportunity for court-appointed counsel at this  
21 time. Now, circumstances may change. And when you -- if  
22 you would let me finish, please. Circumstances may change,  
23 so as you go to attempt to hire an attorney, if you're not  
24 able to, we can always make that inquiry. It's always done  
25 anew.

1           So if you decide you're not able to hire an  
2 attorney, we can certainly reconsider a court-appointed  
3 attorney.

4           MR. BIRCH: I definitely understand that. The only  
5 thing I'm in opposition to, sir, is the certificate of  
6 judge. Right here it says, "Defendant has voluntarily,  
7 knowingly and intellectually -- intelligently elected in  
8 open court to be tried in this action." I don't know if you  
9 have read my paperwork or not, what I have filed --

10          THE COURT: I did read it yesterday.

11          MR. BIRCH: Okay. And just by the nature of that,  
12 I don't -- I don't feel comfortable with signing that.  
13 Because you're going to sign this in conjunction with me,  
14 correct, if I were to sign it?

15          THE COURT: Yes. Okay. All right. So I'll  
16 just -- I guess we can have this conversation for a long  
17 time, but I just need to get your response.

18          Are you asking me to appoint you a court-appointed  
19 attorney?

20          MR. BIRCH: No, I am not. Not at this time.

21          THE COURT: Mr. Birch, are you able to hear and  
22 understand me?

23          MR. BIRCH: Yes, I am.

24          THE COURT: Are you now under the influence of any  
25 alcohol, drugs, or narcotics?

1 MR. BIRCH: No.

2 THE COURT: And how old are you, sir?

3 MR. BIRCH: 34.

4 THE COURT: Have you completed high school?

5 MR. BIRCH: Yes.

6 THE COURT: And I don't mean this inappropriately,  
7 but are you able to read and write?

8 MR. BIRCH: Yes.

9 THE COURT: And do you suffer from any mental or  
10 physical handicaps that I need to be made aware of?

11 MR. BIRCH: Not that I'm aware of.

12 THE COURT: Okay. Good.

13 Do you understand that you have the right to be  
14 represented by an attorney?

15 MR. BIRCH: Yes. I understand that's a Sixth  
16 Amendment right according to the Bill of Rights.

17 THE COURT: Do you understand that you may request  
18 a lawyer be appointed for you if you're not able to hire a  
19 lawyer, and one will be appointed if you cannot afford to  
20 pay for one?

21 MR. BIRCH: Yes, I do.

22 THE COURT: Do you understand that if you decide to  
23 represent yourself, you must follow the same rules of  
24 evidence and procedure that a lawyer appearing in this court  
25 must follow?

1           MR. BIRCH: I do have a question to that as far as  
2 like *Haines vs. Kerner* and several other Supreme Court cases  
3 in regard to form versus function.

4           THE COURT: Well, I'll just simply ask the question  
5 again.

6           Do you understand that if you decide to represent  
7 yourself, you must follow the same rules of evidence and  
8 procedure that a lawyer appearing in this court must follow?

9           MR. BIRCH: I don't really understand that.

10          THE COURT: All right. Do you understand if you  
11 decide to represent yourself, the Court will not give you  
12 legal advice concerning defenses, jury instructions, or  
13 other legal issues that may be raised in the trial?

14          MR. BIRCH: Yes, sir.

15          THE COURT: Do you understand that I must act as an  
16 impartial judge in this case?

17          MR. BIRCH: Yes, I do.

18          THE COURT: That I will not be able to offer you  
19 legal advice, and I must treat you the same as I would treat  
20 an attorney, just as I would not offer legal advice to the  
21 district attorney?

22          MR. BIRCH: I understand that.

23          THE COURT: Do you understand that you're charged  
24 with driving while impaired, and if you're convicted of that  
25 charge, you can be imprisoned for a maximum punishment of

1 two years in the Department of Corrections?

2 MR. BIRCH: I understand that.

3 THE COURT: With all these things in mind, do you  
4 wish to ask me any questions about anything that I've just  
5 said to you?

6 MR. BIRCH: What are the sentencing guidelines?  
7 Where are those found?

8 THE COURT: Sentencing guidelines?

9 MR. BIRCH: Yeah.

10 THE COURT: 15(a).

11 MR. BIRCH: 15(a)?

12 THE COURT: Uh-huh. And with driving matters,  
13 that's also in Chapter 20.

14 MR. BIRCH: Chapter 20?

15 THE COURT: Yes, sir.

16 Now, Mr. Birch, with all these things in mind, do  
17 you waive your right to a court-appointed attorney?

18 MR. BIRCH: I do not have desire at this time to  
19 have a court-appointed attorney.

20 THE COURT: That's fine. And it's my understanding  
21 that you refuse to sign the waiver of court-appointed  
22 attorney today.

23 MR. BIRCH: Yes, because I am in opposition to the  
24 certificate of judge.

25 THE COURT: I will note your objection. I will

1 enter the waiver without your signature and over your  
2 objection.

3 Now, what day do you have in July for this  
4 gentleman, give him some time to hire an attorney?

5 MS. HORNSBY WELCH: We have got the June 28th date,  
6 and then after that we have got a September the 27th date.

7 THE COURT: June 28th or September the 7th?

8 MR. BIRCH: September the 7th would be more  
9 appropriate for me.

10 THE COURT: I'm sorry. September 27th.

11 MR. BIRCH: September 27th would be better for me,  
12 sir.

13 THE COURT: 9/27. We'll see you back on that day.

14 MR. BIRCH: All right. Thank you.

15 THE COURT: Thank you.

16 (Whereupon, the proceedings were  
17 concluded at 9:58 a.m.)

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## CERTIFICATE

STATE OF NORTH CAROLINA )

COUNTY OF MACON )

I, DIANE L. THOMMES, the officer before whom the foregoing proceeding was taken, do hereby certify that said proceeding, pages 7 through 14, inclusive, is a true and 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.

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Diane L. Thommes, CSR, RPR  
Certified Realtime Reporter  
Official Reporter

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2 COUNTY OF MACON

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FILE NO. 10 CRS 050329

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4 STATE OF NORTH CAROLINA

CERTIFICATE

5 VS.

OF

6 ISAAC HUTCHISON BIRCH

DELIVERY

7 -----  
8 This is to certify that the transcript  
9 proceedings held on June 1, 2010 in the above-entitled case  
10 was originally requested on the 21st day of June, 2010, and  
11 was delivered and/or mailed to the attorney(s) of record as  
12 indicated below originally on the 24th day of June, 2010,  
13 and hereby was delivered and/or mailed to the attorney(s) of  
14 record as indicated below a second time on the 26th day of  
15 December, 2010.

16  
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