

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)	
)	
v.)	<u>From MACON</u>
)	
ISAAC HUTCHISON BIRCH)	

MOTION TO STRIKE AND DISMISS

TO: THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES OF THE NORTH CAROLINA COURT OF APPEALS

The State of North Carolina, by and through Roy Cooper, Attorney General, and Jess D. Mekeel, Assistant Attorney General, respectfully requests that this Court enter an order striking defendant's brief and dismissing defendant's appeal. In support of this motion, the undersigned shows as follows:

PROCEDURAL HISTORY AND REASONS TO ALLOW MOTION

1. At approximately 2:30 a.m. on 26 March 2010, Isaac Hutchison Birch ("defendant") was arrested and charged with driving while impaired ("DWI").
2. Defendant's case was heard at the 30 September 2010 Criminal Session of Macon County Superior Court, the Honorable Mark E. Powell, Judge presiding. (T. vol. V).
3. At the conclusion of the trial, a jury found defendant guilty of DWI (R. p. 121; T. p. 72), and the trial court imposed a Level Five punishment consisting of sixty (60) days imprisonment, suspended upon, *inter alia*, completion of twelve (12) months unsupervised probation. (R. pp. 124-25).

4. Defendant gave notice of appeal in open court. (T. p. 75).¹

5. Both at trial and now on appeal, defendant has proceeded *pro se*.

6. On 6 December 2010, the transcripts were delivered, and on 28 January 2011, defendant served on the State the proposed record on appeal. (R. p. 137).

7. The Record on Appeal was settled by operation of law, filed on 8 March 2011, docketed on 14 March 2011, and mailed to the parties on 15 March 2011. (R. p. 1).

8. On 14 April 2011 - the date defendant's brief was due - defendant filed a motion for an extension of time, seeking an additional sixty (60) days. The State did not object to the motion, and that same day, the Court allowed in part defendant's motion, granting an extension of thirty (30) days and providing that defendant shall file his brief on or before 16 May 2011. A copy of the Court's Order is attached hereto as Exhibit A.

9. As shown by the documents attached hereto as Exhibit B, defendant electronically filed his brief on 17 May 2011.

10. Although only one day late, defendant nevertheless failed to timely file his appellate brief *as ordered by this Court*, notwithstanding the fact that (a) defendant was granted an additional thirty (30) days to file his brief, and (b) defendant's 237-page historical and ontological argument against the State of North Carolina's legitimacy and very existence substantially echoes

¹It appears a written notice of appeal also was filed. (R. p. 126). However, like much of the Record on Appeal, the Notice of Appeal is virtually illegible.

- and at times copies verbatim - his memorandum of law submitted to the trial court nearly a year ago on 21 May 2010. (*Compare* Def br., with R. pp. 22-105).

11. The Rules of Appellate Procedure "apply to everyone - whether acting *pro se* or being represented by all of the five largest law firms in the state." *Bledsoe v. County of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999).

12. Pursuant to Rule 13(c) of the Rules of Appellate Procedure, "[i]f an appellant fails to file and serve a brief within the time allowed, the appeal may be dismissed on motion of an appellee or on the court's own initiative." N.C. R. App. P. 13(c); see also N.C. R. App. P. 25(a).

WHEREFORE, the State respectfully requests that defendant's untimely brief be stricken and the appeal dismissed.

Electronically submitted, this the 17th day of May, 2011.

Roy Cooper
ATTORNEY GENERAL

/s/ ELECTRONICALLY SUBMITTED
Jess D. Mekeel
Assistant Attorney General

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
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N.C. State Bar No. 35444

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing MOTION TO STRIKE AND DISMISS upon DEFENDANT by placing a copy of same in the United States Mail, first class postage prepaid, addressed as follows:

Isaac Hutchison Birch
462 Judd Duvall Lane
Franklin, North Carolina 28734

This the 17th day of May, 2011.

/s/ ELECTRONICALLY SUBMITTED
Jess D. Mekeel
Assistant Attorney General



North Carolina Court of Appeals

JOHN H. CONNELL, Clerk

Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

From Macon
(10CRS50329)

Fax: (919) 831-3615
Web: <http://www.nccourts.org>

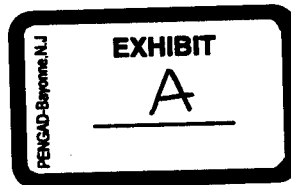
Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

No. 11-299

STATE OF NORTH CAROLINA

v

ISAAC HUTCHISON BIRCH



ORDER

The following order was entered:

The motion filed in this cause on the 14th of April 2011 and designated 'Motion to Extend Time to File Brief' is allowed in part. Defendant-appellant's brief shall be filed on or before 16 May 2011.

By order of the Court this the 14th of April 2011.

WITNESS my hand and official seal this the 14th day of April 2011.

John H. Connell
Clerk, North Carolina Court of Appeals

Copy to:

Mr. Isaac Hutchison Birch, Attorney at Law, For Birch, Isaac Hutchison
Mr. Jess D. Mekeel, Assistant Attorney General, For State of North Carolina

North Carolina Court of Appeals

Docket Sheet

State v Birch

Case Number: 11-299

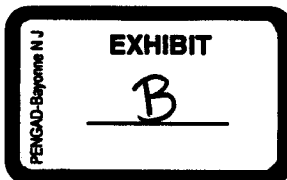
As of: 05/17/2011

Case Closed: No Close Date: Case Type: Criminal (Crim_othr) Mediation: No

STATE OF NORTH CAROLINA

V

ISAAC HUTCHISON BIRCH



Docket Date: 03-14-2011 File Date: 03-09-2011 File Time: 08:00 Acquired Date: 03-09-2011
 Bond Collected: No Docket Fee: No Pauper: No Print Deposit: No State Appeals: No

[REDACTED]

Venue: Macon (30A) Heard In: Superior Courts

To SC: From SC:
 [REDACTED]

Location: Macon (30A)

Judge: Mark E. Powell

Case #: 10CRS50329

[REDACTED]

Argue Date: #

[REDACTED]

[REDACTED]

Document	Date Filed	Cert of Service	Rec/Brf Due	Resp. Due	Resp. Recvd	Mailed Out	Ruling	Ruling Date
(1) RECORD	03-09-2011					03-15-2011		
(2) MOTION	04-14-2011	04-13-2011					Allowed	04-14-2011
(3) APPELLANT BRIEF	05-17-2011					05-17-2011		

1 - RECORD
 Filed: 03-09-2011 @ 08:00:00
 FOR: Defendant-Appellant Birch, Isaac Hutchison
 BY : Mr. Isaac Hutchison Birch

2 - MOTION MOTION TO EXTEND TIME TO FILE BRIEF (Allowed) - 04-14-2011

Filed: 04-14-2011 @ 09:13:20
 FOR: Defendant-Appellant Birch, Isaac Hutchison
 BY : Mr. Isaac Hutchison Birch

The following order was entered:

The motion filed in this cause on the 14th of April 2011 and designated 'Motion to Extend Time to File Brief' is allowed in part. Defendant-appellant's brief shall be filed on or before 16 May 2011.

By order of the Court this the 14th of April 2011.

3 - APPELLANT BRIEF

Filed: 05-17-2011 @ 01:13:56
 FOR: Defendant-Appellant Birch, Isaac Hutchison
 BY : Mr. Isaac Hutchison Birch

Financial Information

Charges

Date Charged	Charge Type	Amount Charged	Amount Paid	Document	Pages	Receipt #	Date Paid
03-15-2011	Printing	245.00	245.00	RECORD	140	R032052811	03-28-2011
05-17-2011	Printing	414.75	0.00	APPELLANT BRIEF	237		

Exhibits

Received CD of Transcript with certificate of delivery from Diane L. Thommes, Court Reporter 12-30-2010

Exhibit A - 3 Copies

 Transcript electronically filed

Date Filed: 03-21-2011
 Transcript-State vs. Birch-June 1, 2010-Vol. 1 of 5.pdf
 Date Filed: 03-21-2011
 Transcript-State vs. Birch-June 2, 2010-Vol. 2 of 5.pdf
 Date Filed: 03-21-2011
 Transcript-State vs. Birch-September 28, 2010-Vol. 3 of 5.pdf
 Date Filed: 03-21-2011
 Transcript-State vs. Birch-September 29, 2010-Vol. 4 of 5.pdf
 Date Filed: 03-21-2011
 Transcript-State vs. Birch-September 30, 2010-Vol. 5 of 5.pdf

Parties

Party Name	Role
State of North Carolina	Plaintiff-Appellee
Birch, Isaac Hutchison	Defendant-Appellant

Attorneys

Attorney for Defendant-Appellant - Birch, Isaac Hutchison
 Mr. Isaac Hutchison Birch [Primary Attorney]
 Attorney at Law

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Attorney for Plaintiff-Appellee - State of North Carolina

Mr. Jess D. Mekeel [Primary Attorney]

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NC DEPARTMENT OF JUSTICE

P.O. Box 629
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Mekeel, Jess

From: efilings@sc.nccourts.org
Sent: Tuesday, May 17, 2011 9:13 AM
Subject: Document has been Approved for case number 11-299

The document (Appellant Brief for case State v Birch numbered 11-299), submitted to the Court of Appeals by Isaac Birch on May 17, 2011, has been Approved by the clerks office. The document is available "as served" at the following website: www.ncappellatecourts.org. To access this document, you can use the "Search" key on the left side of the main page. Once the search page is accessed, please key in the party of the case. It is suggested that you may wish to "hit" the "Full Text Search" key which will assist you if you are not sure of the party in the case but know the title of the case. Please note that although most documents can be accessed within an hour of being served, it can take up to 4 hours for the document to be uploaded onto the electronic filing server. If you still have any problems accessing this document, please call the Supreme Court Clerk's Office at (919) 831-5700 or the Court of Appeals Clerk's Office at (919) 831-3600, and they will assist you in fin

ding the document that you have been served. You should be able to download the document and/or print it from the electronic filing site. Once a number has been assigned to this case, please feel free to use the case number for future documents received in the case. Please note that service of this document on opposing counsel by e-mail or any other method approved by the rules of appellate procedure is still required of the filing party.

Appellant Brief - COA11-299 State v Birch

**Docket Number: 11-299****Title: State v Birch**

Available:	Yes
Date Filed:	May 17, 2011
Type:	Appellant's Brief
Attorney:	Birch
Represents:	Appellant
Party:	Isaac Hutchison Birch

Filed Document

Brief 11-299.pdf