

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

FORSYTH COUNTY

2011 NOV 23 AM 10:36

FILE NO. 11 CRS 014680

STATE OF NORTH CAROLINA,

BY

Responsive Brief on Constitutionality  
and Jurisdiction

V.

AMANDA LEA ROSE,

Defendant

**I. The Defendant's Claims are Non-Justiciable**

The Defendant in the instant case asserts that "two States named 'The State of North Carolina' have purportedly entered into the American Union." The Defendant further challenges the Court's jurisdiction based on:

"the lawfulness of said 'new State' and claims that all Congressional Reconstruction Acts purporting to annul the original State through conquest, subjugate its Citizenry, create a 'new State' and 'admit' said new State into the American Union in times declared national peace, without the consent of the free people and without the free people being represented during the passage of said Congressional Acts is repugnant to and in violation of the Fifth Article of Amendment of the Constitution of the United States of America..."

Challenge at 2. The Defense assertion as to jurisdiction falls under the political doctrine and is non-justiciable. This type of policy argument is appropriate for the legislature, not the courts. In Baker v. Carr, the Court held that the political question doctrine applies when a case is based on

"... the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government or an unusual need for questioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question."<sup>1</sup>

<sup>1</sup> Baker v. Carr, 369 U.S. 186, 210, 82 S. Ct. 691, 706 (1962).

Importantly, reviewing courts "are mandated to construe any legislative enactment so as to save its constitutionality, if possible, and to avoid a strict interpretation that will result in an absurd and unconstitutional result."<sup>2</sup>

Here, the Defendant seeks to have the court invalidate the State Constitution, all laws which have been promulgated under its authority by the North Carolina General Assembly, and any common law that the courts have made since the late 1700s. To grant the Defendant's motion and nullify the State Constitution would indeed "result in an absurd and unconstitutional result" which need not be elaborated on further in our brief. The only claim that is justiciable before the court is the criminal matter of which the defendant was charged.

During defendant's attempt to turn a blatant traffic violation into a constitutional law question, the defendants state that "The political question doctrine, if used as a defense in which governmental abuses and usurpations are procedurally given immunity, is yet another abuse and treason against the people." Challenge at 6. This argument is misguided and void of any clear knowledge of constitutional law and interpretation.

The political question doctrine is closely linked to the concept of justifiability, as it comes down to a question of whether or not the court system is an appropriate forum in which to hear the case. Because the Defendant is arguing that regardless of her criminal actions there is no forum in the State of North Carolina for the State to afford her due process, she is in fact making a constitutional argument and not a jurisdictional challenge. By the Defendant's challenge, it is clear that the State is not seeking immunity but that the Defendant herself is seeking immunity from all crimes, wrongs, and actions done within the State of North Carolina. Such an argument simply cannot stand.

## **II. What the Defendant is Seeking Is Unconstitutional**

The Defendant seeks, among other things, for the "[p]rosecution remove this action to Federal Court" to invalidate the State Constitution. This remedy is in direct conflict with the North Carolina Constitution.

First, the court has no power to declare the North Carolina Constitution null or unconstitutional. Outside the very oaths that each judge in the State of North Carolina take, the North Carolina Constitution provides the specific ways in which the Constitution can be amended. The judiciary is not part of that process and therefore lacks any authority to issue such a ruling. *See*, N.C. Const. Art. XIII.

Assuming, *arguendo*, the court has the authority to repeal the North Carolina Constitution; it is prohibited from doing so. *See*, N.C. Const. Art. I, § 7 (All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised).

---

<sup>2</sup> *Cooke v. Futrell*, 37 N.C. App. 441, 444, 246 S.E.2d 65, 67 (1978), *State v. Fowler*, 197 N.C. App. 1, 13-14 (N.C. Ct. App. 2009).

If the Defendant seeks a constitutional revision or amendment, the North Carolina Constitution provides for such a process. N.C. Const. Art. XIII, §1-4.

### **III. The Defendant Has Not Met Their Burden to Challenge Constitutionality**

The Defendant has not met their burden on proof to require a hearing on their claim of constitutionality. In challenging the constitutionality of a statute (In this case, the North Carolina Constitution) the burden of proof is on the challenger, and the statute must be upheld unless its unconstitutionality clearly, positively, and unmistakably appears beyond a reasonable doubt or it cannot be upheld on any reasonable ground."<sup>3</sup> When examining the constitutional propriety of legislation, the courts "presume that the statutes are constitutional, and resolve all doubts in favor of their constitutionality."<sup>4</sup>

There can be no doubt that there are multiple reasonable grounds that the North Carolina Constitution can be upheld. Because the Defendant has failed to meet their burden of proof, and erroneously attempted to shift the burden to the State, their constitutional claim should be dismissed.

The Defendant continually attempts to hide their constitutionality claim and base it on jurisdiction. However, this is simply a misguided attempt to shift the burden and seek the State prove beyond a reasonable doubt that there is jurisdiction. In essence, the Defendant is asking the court to find that the laws of North Carolina as written do not apply to her. This is a constitutional argument. And, as such, her claim must fail.

### **IV. The Court Has Jurisdiction Over the Defendant**

Despite the Defendant's assertion to the contrary, the State of North Carolina has established jurisdiction beyond a reasonable doubt in the case at bar.

Article 4, § 2 of the North Carolina Constitution allows for the general courts of justice.<sup>5</sup> The North Carolina Constitution provides for the Superior Courts and District Courts<sup>6</sup>. Under N.C. Gen. Stat. 7A-270 and N.C. Gen. Stat. 7A-271, the district court has original jurisdiction for the trial of all criminal actions below the grade of felony, that is, of all prosecutions for misdemeanors; and the district court has exclusive original jurisdiction of all misdemeanors except in the four specific instances defined in subdivisions (a)(1), (a)(2), (a)(3) and (a)(4) of G.S. 7A-271.<sup>7</sup>

Under N.C. Gen. Stat. 7A-271(a)(5), the superior court has exclusive, original jurisdiction over all criminal actions not assigned to the district court division by this

---

<sup>3</sup> Guilford Co. Bd. of Education v. Guilford Co. Bd. of Elections, 110 N.C. App. 506, 511, 430 S.E.2d 681, 684 (1993).

<sup>4</sup> State v. Evans, 73 N.C. App. 214, 217, 326 S.E.2d 303, 306 (1985).

<sup>5</sup> The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

<sup>6</sup> Superior Courts have original jurisdiction throughout the State. N.C. Const. Art. 4, § 3.

<sup>7</sup> State v. Wall, 271 N.C. 675, 157 S.E.2d 363 (1967).

Article, except that the superior court has jurisdiction to try a misdemeanor when a misdemeanor conviction is appealed to the superior court for trial *de novo*, to accept a guilty plea to a lesser included or related charge.

The Defendant was charged with driving with out a valid license issued by the North Carolina Division of Motor Vehicles under N.C. Gen. Stat. 20-7(a). The punishment for such an offense is a class two misdemeanor. The Defendant was properly before the District Court of Forsyth County, North Carolina and had a trial *pro se*. Upon a verdict of guilty, the Defendant timely appealed her matter for a trial *de novo* to the Superior Court division of Forsyth County. Therefore, the Superior Court has jurisdiction to hear this criminal matter.

The only other question is whether the Defendant is properly before the court. Historically, North Carolina was among a minority of states regarding a challenge to jurisdiction as an affirmative defense with the burden of persuasion resting upon the defendant.<sup>8</sup> In Batdorf; however, the court rejected that precedent and adopted instead the majority rule requiring the State, when jurisdiction is challenged, to prove beyond a reasonable doubt that the crime with which defendant is charged occurred in North Carolina.<sup>9</sup>

The Defendant cites in her own submissions to the court that she was born and currently resides within Winston-Salem, North Carolina. Here, we have a signed Affidavit of citizenship and domicile signed by defendant Amanda Lea Rose. The affidavit states that Defendant was born in Winston Salem, North Carolina on 19<sup>th</sup> day of April 1981. Furthermore, Defendant has been an inhabitant of North Carolina since April 19, 1981. This is far beyond a reasonable doubt that Defendant lives in North Carolina.

The defendant uses obscure historical references to personally void the Fourteenth Amendment to the United States Constitution and the laws of North Carolina. Ever since the Constitution's inception, state and federal governments have adhered to the constitution's lawful authority as provided by the Executive, Legislative, and Judicial branches of the government. The Fourteenth Amendment states that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. Const. Amend. XIV, § 1. Again, the state has a signed affidavit from the defendant stating her place of birth, and where she has lived since 1981 as Winston-Salem, North Carolina. Although the defendant rescinds her signature on her North Carolina Drivers License, the fact that she had a North Carolina Drivers License shows beyond a reasonable doubt that the defendant was, and still is, under North Carolina's jurisdiction.

Upon information and belief, the Defendant does not seem to contest that she was, in fact, driving on a public street or highway within Forsyth County, North Carolina. Because the

---

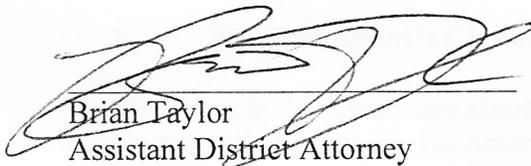
<sup>8</sup> See State v. Golden, 203 N.C. 440, 166 S.E. 311 (1932).

<sup>9</sup> State v. Batdorf, 293 N.C. 486, 494, 328 S.E.2d 497, 502-03; see State v. Petersilie, 334 N.C. 169, 432 S.E.2d 832 (1993).

crime that the State is alleging that the Defendant committed occurred within Forsyth County, North Carolina, the Defendant is properly before the Superior Court division on Forsyth County and the State has proven jurisdiction beyond a reasonable doubt. Therefore, the Defendant's motion to dismiss for lack of jurisdiction should be denied.

WHEREFORE, the state has established beyond a reasonable doubt that the State of North Carolina has jurisdiction over the defendant and the Defendant has failed to meet her burden as to the constitutional claims. As such, the State respectfully requests that this Court dismiss the Defendant's motions.

Respectfully submitted this the 22nd day of November, 2011.



Brian Taylor  
Assistant District Attorney  
21<sup>st</sup> Prosecutorial District