

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 I of II
) November 28, 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

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The Court's Inquiry of Ms. Rose

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Monday, November 28, 2011

10:37 a.m.

MR. TAYLOR: Number 24, Mandie Rose. She's present and coming forward.

THE COURT: Thank you, sir.

MR. TAYLOR: I believe she has waived.

MS. ROSE: Good morning, sir.

THE COURT: Good morning.

Hold on one second. So you applied for court appointed counsel in October, is that right?

MS. ROSE: That's incorrect.

THE COURT: That's incorrect. Okay. I beg your pardon. I thought the clerk's notes reflected Judge Spivey denied you court appointed counsel along --

MS. ROSE: I had Judge Davis -- oh, I'm sorry. You're talking about -- that was entered against my consent, the waiver.

THE COURT: Okay. Well, listen. I don't know what you mean. I'm not sure. The clerk's notes say this: "October 10th, '11, Spivey denied court appointed counsel; continued November 28th."

So you're saying you didn't apply for a court appointed lawyer?

MS. ROSE: No, sir. And I was here on October 29th, not October 10th.

The Court's Inquiry of Ms. Rose

1 THE COURT: All right. Okay. I can't
2 explain the inconsistencies between your recollection and
3 the clerk's notes, but that's what the clerk's notes say.

4 MS. ROSE: I'm sorry. It was actually my
5 mistake. It was the 10th.

6 THE COURT: Let's make sure there's
7 something in here that addresses your right to court
8 appointed counsel in Superior Court; whether that's a
9 waiver of counsel that Judge Spivey denied counsel, or
10 whether you ever applied for it or not.

11 MS. ROSE: He entered the order against my
12 consent.

13 THE COURT: Okay. Tell me what "against
14 your consent" means.

15 MS. ROSE: That means I was asking for a
16 hearing to challenge jurisdiction. I'm here for a
17 prearraignment challenge of jurisdiction.

18 And he requested that I -- he asked me of
19 course for my -- what my waiver would be.

20 THE COURT: Answer?

21 MS. ROSE: Yes. Thank you.

22 And I refused to answer until I was --
23 until the challenge of jurisdiction had been answered; and
24 so he entered it for me.

25 (Pause from 10:40 a.m. to 10:41 a.m.)

The Court's Inquiry of Ms. Rose

1 THE COURT: Here's a waiver from District
2 Court, where you waived your right in front of Judge
3 Hartsfield in District Court.

4 MS. ROSE: That was done out of coercion.
5 I also entered a rescission of signature for that, as
6 well.

7 THE COURT: I believe you said "entered,"
8 is that correct?

9 MS. ROSE: Entered. I'm sorry.

10 THE COURT: Okay. Well, here's the bad
11 news for all of us: I can't find anything in here where
12 the clerk says Judge Spivey denied your right to court
13 appointed counsel. I don't see anything in here where
14 there's a formal order addressing your right to court
15 appointed counsel; whether you filled out an affidavit and
16 that was denied, or you waived your right. So here's what
17 we need to do. We need to address that now. Okay?

18 Now, Miss Rose, ma'am, you are charged with
19 operating a motor vehicle with no operator's license;
20 that's a class 2 misdemeanor in the State of North
21 Carolina. If you are convicted, you stand to receive a
22 maximum sentence of 60 consecutive days on the no
23 operator's license.

24 And you're also charged with operating a
25 motor vehicle with expired registration or tag; that's a

The Court's Inquiry of Ms. Rose

1 class 2 misdemeanor with a maximum possible sentence of 60
2 days' confinement. So your exposure to prison, if you
3 were to be convicted of both and you were to have one to
4 five prior misdemeanors -- and there's a lot of "ifs"
5 there -- and the judge gave you the maximum sentence on
6 both -- would be 120 consecutive days.

7 Now, ma'am, you have the right to represent
8 yourself; you have the right to hire your own lawyer; you
9 have the right to have a court appointed lawyer whose
10 costs will be paid for by the State of North Carolina to
11 represent you. Your eligibility for a court appointed
12 lawyer will be based upon an affidavit that you execute.
13 This affidavit concerns your income, expenses, property,
14 and debt. If you receive a court appointed lawyer at your
15 request and plead guilty, or are found guilty later in the
16 process, you may be required by the state to pay back the
17 State of North Carolina all or part of the cost of your
18 own attorney.

19 I understand that you're challenging the
20 Court's jurisdiction to try you in this matter, ma'am. We
21 have to -- the first order of business before we get to
22 jurisdiction of the Court, we must address your
23 representation. That is, whether you intend to represent
24 yourself, hire your own lawyer, or seek a court appointed
25 lawyer. Before there's any trial, before a jury is called

The Court's Inquiry of Ms. Rose

1 in here, you'll be heard on your motion, or your attorney
2 will be heard on your motion as to lack of jurisdiction
3 before any of that happens.

4 But the first order of business is sort
5 of -- I think the way it is in your head, we're sort of
6 putting the cart before the horse. We have to determine
7 what you're gonna do about a lawyer; then we put the
8 matter on to hear your motion as to jurisdiction. And the
9 fact that you have a lawyer does not somehow cede extra
10 jurisdiction -- some sort of jurisdiction that the Court
11 didn't have previously.

12 Of course you've been charged. You're in
13 court. I understand you say the Court -- your argument is
14 the Court doesn't have jurisdiction to proceed. We have
15 to determine what you're gonna do about a lawyer to
16 protect your rights. And I understand you say to protect
17 your rights, we should determine that we don't have the
18 jurisdiction to proceed. We need to determine whether you
19 want assistance in pursuing that motion or you wanna
20 pursue it by yourself; and, also, if that motion is
21 denied, possibly try this case to a jury by yourself.

22 So tell me what you wanna do about a
23 lawyer, please, ma'am.

24 MS. ROSE: I'll let the Court decide,
25 because I still maintain the same position that needs to

The Court's Findings

1 be decided beforehand.

2 THE COURT: And what is that, ma'am?

3 MS. ROSE: I'm sorry.

4 THE COURT: I didn't understand you.

5 MS. ROSE: I'm sorry. I'm maintaining that
6 the jurisdictional challenge needs to come before the
7 waiver, and so I'll let the Court decide.

8 THE COURT: Well, I'm the judge, and I've
9 decided that the right to counsel comes before the
10 jurisdictional challenge. So I'm asking you what you
11 wanna do about a lawyer.

12 MS. ROSE: I'm not in a position to say
13 because I'm here on special appearance as a respondent.

14 THE COURT: Mr. Reporter, would you please
15 place this in the form of an order, please.

16 The Court makes the following findings of
17 fact by a greater weight of the evidence:

18 One. The defendant, Mandie Rose, is
19 present in court proceeding pro se.

20 Two. The State of North Carolina is
21 present, represented by Mr. Brian Taylor.

22 Three. The defendant is charged with no
23 operator's license and operating a motor vehicle with an
24 expired tag.

25 Four. The Court informed the defendant

The Court's Findings

1 that these were class 2 misdemeanors, and the maximum
2 possible punishment to which she could be subjected is 120
3 days confinement in the North Carolina Department of
4 Corrections.

5 Next number. The notes of the Clerk of
6 Superior Court, Forsyth County, indicate that on October
7 the 10th, 2011, the defendant made an appearance before
8 the Honorable Ronald Spivey, and Judge Spivey denied the
9 defendant court appointed counsel.

10 (Pause from 10:50 a.m. to 10:51 a.m.)

11 THE COURT: The Court is unable to
12 locate -- under diligent search in the file -- an order
13 from Judge Spivey denying the defendant counsel, and
14 unable to locate an affidavit wherein the defendant
15 applied for court appointed counsel.

16 Next number. The file does contain the
17 defendant's waiver of court appointed counsel in District
18 Court.

19 Next number. In open court the defendant
20 was advised of the charges against her, the maximum
21 possible punishment, and her right to counsel.

22 Next number. The defendant declined to
23 inform the Court whether she wished to represent herself,
24 hire her own lawyer, or seek a court appointed lawyer.

25 Next number. The defendant informed the

The Court's Findings

1 Court that she was making a special appearance to contest
2 the jurisdiction of this court.

3 Next number. The court file is rife with
4 paper writings filed by the defendant under various
5 titles, including Memorandum of Law, which purport to
6 contest the jurisdiction of this court under what appears
7 to the Court numerous legal theories.

8 Next number. This Court finds and
9 concludes that the defendant has been properly advised of
10 the charges against her; the maximum possible punishment
11 she could receive upon conviction of the charges.

12 The Court further concludes -- finds and
13 concludes that the defendant is not under -- to the best
14 knowledge of the Court, the defendant is not under any
15 type of disability.

16 The Court further finds and concludes --
17 well, let me just --

18 How old are you, ma'am?

19 MS. ROSE: 30.

20 THE COURT: Did you graduate from high
21 school?

22 MS. ROSE: Yes, sir.

23 THE COURT: Are you able to read and write?

24 MS. ROSE: Yes, sir.

25 THE COURT: Have you ever been adjudicated

The Court's Order

1 as an incompetent in the State of North Carolina?

2 MS. ROSE: No, sir.

3 THE COURT: The Court further finds that
4 the defendant is 30 years of age; is a high school
5 graduate; is able to read and write; has never been
6 adjudicated as an incompetent in the State of North
7 Carolina.

8 The Court finds and concludes that she is
9 not under any known disability to the Court.

10 The Court further finds and concludes that
11 the defendant has been properly advised of the charges
12 against her and her right to counsel in this matter.

13 The Court further finds and concludes that
14 the defendant -- by her refusal to inform the Court after
15 the Court, in its opinion, has attempted to diligently
16 explain her rights to her -- that the defendant has
17 refused to make an election to counsel; that this
18 constitutes a waiver of counsel.

19 It's therefore ordered that the defendant
20 has waived her right to court appointed or privately
21 retained counsel, and is proceeding to trial pro se.

22 That will be one order.

23 Ma'am, I have determined that you're
24 proceeding to trial pro se in this matter. Your
25 jurisdictional challenge will be heard before the trial,

1 but you need to understand the following: As a person
2 proceeding to trial pro se, you need to understand that
3 means -- that's a fancy way of saying by yourself, without
4 a lawyer.

5 MS. ROSE: I understand.

6 THE COURT: I'm sure you do.

7 You need to understand, ma'am, that it will
8 be your responsibility, if this case proceeds to a jury
9 trial, to select 12 jurors and an alternate to hear this
10 case.

11 You need to understand that you'll be held
12 to the same Rules of Evidence as the district attorney.

13 You need to understand that if you are
14 convicted at the conclusion of this trial by the jury,
15 that the sentencing will be in the discretion of the
16 judge.

17 And you need to understand that you will be
18 subject to a sentence not to exceed 120 days in the North
19 Carolina Department of Corrections.

20 Do you understand that?

21 MS. ROSE: I understand, Your Honor.

22 THE COURT: Let the record further reflect
23 that the defendant --

24 And this will also be placed -- we can just
25 do a notice of this, Mr. Court Reporter.

1 -- the Court finds and concludes that the
2 defendant has been advised of her rights of a person
3 proceeding to trial pro se.

4 All right. Mr. DA, I'll leave it up to you
5 when and if you wanna call this, we need to resolve
6 Miss Rose's jurisdictional motion before we proceed to
7 hear the matter before the jury; determine whether it's
8 proper to in fact place the matter before the jury.

9 MR. TAYLOR: T-6.

10 THE COURT: Miss Rose, you're the sixth on
11 the trial list for this month, ma'am.

12 Do you have a way to get in touch with her,
13 Mr. DA?

14 MR. TAYLOR: Not at this -- not other than
15 a mailing address.

16 THE COURT: Ma'am, I need for you to --

17 Miss Rose, I understand you're contesting
18 jurisdiction, but I can't -- we can either do this one of
19 two ways: I can hold you here in the courtroom; or you
20 can give the clerk your name and your cell phone, address,
21 where we can reach you. If you can tell us you'll be back
22 in one hour upon being called by the clerk to return to
23 the courtroom -- I don't like to use -- I'd rather use the
24 nice Brad than the mean Brad; I'd rather be nice to you
25 than mean to you. But you also need to understand that if

1 you don't show back up within an hour, there will be an
2 order for arrest issued for you and secured bond set,
3 which means you have to stay in jail or post bond; one or
4 the other.

5 Can you tell me, can you be back up here in
6 an hour if we call you on your cell phone?

7 MS. ROSE: It's a possibility, but I can't
8 guarantee it because we're really limited in
9 transportation.

10 THE COURT: Okay. Well, I'm just trying to
11 cooperate with you and trying to help you and not impose
12 upon you so you'd have to be uncomfortable. So if you
13 can't tell me you'll be back up here in an hour, unless
14 you and the DA can work something out, I'd need for you to
15 have a seat in the courtroom this week.

16 MS. ROSE: Can I get the possibility for
17 two hours?

18 THE COURT: I'll let you have a seat out
19 there and talk to the DA when we take a break later today.
20 Two hours, that's usually -- that's usually too much for
21 me. But if the DA wants to agree to it, it's all right
22 with me.

23 Have a seat out there and we'll give you a
24 chance to talk to him. Okay. Thank you.

25 (The Court addresses unrelated matters from

Statement by Ms. Rose

1 10:57 a.m. to 12:37 p.m.)

2 MR. TAYLOR: Your Honor, I spoke with her
3 at the break. She does have some travel issues. I'm okay
4 with an hour-and-a-half standby. I'll do what I can for
5 her. If it looks like we'll reach it Thursday, for
6 example, I'll try to give her a call on Wednesday so she
7 can make arrangements.

8 MS. ROSE: Your Honor, if I can make a
9 statement beforehand?

10 THE COURT: Yes, ma'am.

11 MS. ROSE: I appreciate that.

12 I put all this information in back in June
13 when I made a special appearance. And the prosecution has
14 taken in excess of 90 days to respond to my initial
15 challenge, and I've only been given one day to rebut it.
16 I received it on the day of arraignment -- the day of
17 arraignment. And it was on a holiday weekend.

18 "This challenge brings up the
19 constitutionality of the Reconstruction Acts, and" --

20 THE COURT: Just a little bit slower. Back
21 up to "This challenge brings up the Reconstruction Acts."
22 The court reporter has to write down everything you say.
23 So just speak just a little bit slower.

24 Go back to "the Reconstruction Acts."

25 MS. ROSE: "This challenge brings up the

Statement by Ms. Rose

1 constitutional of the Reconstruction Acts, and I feel
2 that this court is attempting to rush this to trial
3 because of the sensitivity of the issue. The issue deals
4 with the constitutionality of the state by the policy of
5 prosecuting action. And as such, I would like it if you
6 would certify your order for appeal, please."

7 THE COURT: Miss Rose, I'll be perfectly
8 happy to certify anything we do for appeal. You have the
9 absolute right to appeal everything you wish to the North
10 Carolina Court of Appeals. But we haven't entered any
11 orders.

12 MS. ROSE: You entered the order earlier.

13 THE COURT: Concerning your right to
14 counsel?

15 MS. ROSE: Mm-hmm.

16 THE COURT: Okay. I will -- if you're
17 asking could I certify that for immediate appeal while the
18 case is pending, that motion is denied.

19 Anything else?

20 MS. ROSE: No. That's it. Thank you, Your
21 Honor.

22 THE COURT: All right. And you can be here
23 in an hour-and-a-half if the clerk calls you, is that
24 correct?

25 MS. ROSE: That is correct.

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THE COURT: Thank you so much, ma'am.

Could you step up to the clerk?

**(Hearing adjourns at 12:40 p.m. and resumes
November 30, 2011, at 9:43 a.m.)**

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 1 through 18, 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.



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