

STATE OF NORTH CAROLINA
COUNTY OF MOORE

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 15 CRS 520

STATE OF NORTH CAROLINA)	
)	
VS.)	
)	TRANSCRIPT OF
DAMIEN OMAR SULLIVAN,)	
)	BENCH TRIAL
Defendant.)	
_____)	

FEBRUARY 2 AND 4, 2016

Transcript of bench trial in the General Court of Justice, Superior Court Division, held in Moore County, Carthage, North Carolina, commencing during the Criminal Session, before the Honorable Kenneth F. Crow, Judge presiding.

A P P E A R A N C E S:

CRAIG SLAGLE
Assistant District Attorney
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On behalf of the State

Stephan Lapping
Attorney at Law
105 East Barrett Street
Carthage, NC 28327
On behalf of the Defendant

1 (The case of the State of North Carolina versus
2 DAMIEN OMAR SULLIVAN, Moore County case 15 CRS
3 520, was called for hearing on February 2, 2016
4 at 2:31 p.m. The defendant and counsel were
5 present.)

6 MR. SLAGLE: Your Honor, if we can address one of
7 Mr. Lapping's matters. On page 33, line 33, Damien Sullivan.
8 If Your Honor please, Mr. Lapping has a document for the
9 Court to review.

10 MR. LAPPING: Your Honor, I have a waiver of jury
11 trial that's been executed by my client, if I may approach.

12 THE COURT: This is a class I felony, if I'm not
13 mistaken, of voter fraud?

14 MR. SLAGLE: That is correct.

15 MR. LAPPING: That's correct.

16 THE COURT: Mr. Lapping requested the Court to
17 consider the matter without the jury. I understand the
18 prosecutor might not have a dog in the fight, but as a
19 courtesy, you have been kept in the loop.

20 Do you have any objection?

21 MR. SLAGLE: No, Your Honor.

22 THE COURT: I understand that the parties also
23 contemplate that Mr. Lapping will prepare a document that
24 tends to memorialize facts that are not in dispute, and he's
25 going to take the initiative to do that for tomorrow and set

1 this matter up for hearing on Thursday morning.

2 Have I stated it correctly, gentlemen?

3 MR. LAPPING: Yes, Your Honor.

4 MR. SLAGLE: Yes, Your Honor.

5 THE COURT: And it's appropriate -- excuse me -- if
6 appropriate the Court will entertain those stipulated facts
7 and then maybe rule on any pretrial motions.

8 Is that correct, gentlemen?

9 MR. LAPPING: Yes, sir.

10 MR. SLAGLE: Yes, sir.

11 THE COURT: Very well. We'll set this matter for
12 hearing Thursday morning at 9:30. Mr. Slagle, I understand
13 you got other matters set up for about 11:00 o'clock so do
14 you have any objection if we push this matter to 9:30 in the
15 morning and deal with this first?

16 MR. SLAGLE: No.

17 THE COURT: Mr. Lapping?

18 MR. LAPPING: That would be fine, Your Honor.

19 THE COURT: 9:30 Thursday morning.

20 MR. SLAGLE: Thank you, Your Honor.

21 (Proceedings adjourned at 2:32 p.m.)

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1 (The case of the State of North Carolina versus
2 DAMIEN OMAR SULLIVAN, Moore County case 15 CRS
3 520, was called for hearing on February 4, 2016
4 at 10:11 a.m. The defendant and counsel were
5 present.)

6 THE COURT: Whenever y'all are ready.

7 MR. SLAGLE: Your Honor please, next matter, this
8 comes from the trial calendar, page 33, line 33, Your Honor,
9 Damien Sullivan. He is present in the courtroom with his
10 attorney, Mr. Lapping.

11 Your Honor, this was going to be the next
12 matter State would call for trial this term. The defendant
13 did file a written waiver of his right to a jury trial which
14 I believe was provided to the Court.

15 THE COURT: He has. We've made the findings wherein
16 the defendant understands that he has a right to have a jury
17 trial with 12 folks sitting in judgment, and that the
18 judgment would have to be unanimous before they could convict
19 him.

20 Mr. Lapping has gone over that with him, and
21 the Court received the form, I believe it was Tuesday, we got
22 it on Tuesday and we put the finding on the record that the
23 defendant had knowingly, intelligently waived his right to a
24 jury trial.

25 MR. SLAGLE: Yes, sir. This morning Mr. Lapping,

1 myself and the defendant all signed what is titled
2 "Stipulation" under 15 CRS 0520. I believe it should have
3 made a copy to the Court file at this time.

4 MR. LAPPING: Your Honor, I have an extra copy if
5 the Court needs it.

6 THE COURT: Ms. Cynthia, can you take about a five
7 minute break while I read this material?

8 We're off the record.

9 (Recess from 10:13 a.m. to 10:18 a.m.)

10 THE COURT: Ms. Cynthia, we're back on the record.
11 The parties have asked the Court to take care of a couple
12 matters pretrial. They had contemplated the same when we
13 adjourned on Tuesday afternoon.

14 Mr. Lapping had indicated that he was going to
15 be filing an oral motion to dismiss the charges, and that
16 even in the light most favorable to the State there was
17 simply no element of intent present here, and inasmuch as
18 there was no intent, and the State could not prove the same,
19 that that would be a fatal flaw to the State being able to
20 secure a conviction for voter fraud, which does in fact
21 contain the element of intent, namely, that the defendant
22 intended to act in a fraudulent fashion. So Mr. Lapping has
23 made his oral motion to dismiss.

24 To the credit of the parties, they have been
25 able to reduce some facts down to stipulation, and they have

1 styled up a document titled "Stipulation," which details
2 seven facts that the parties have agreed are not in
3 controversy, and they are these, Ms. Cynthia.

4 The Court will hand the stipulation to the
5 court reporter to allow her to enter them into the record.

6 (The following was entered by the court
7 reporter using the document titled
8 "Stipulation":)

9 At the time of the alleged offense
10 defendant was a citizen of Jamaica, living
11 in Moore County, North Carolina, on a valid
12 K3 visa.

13 In 2005 while residing in Aberdeen,
14 North Carolina, defendant applied for a
15 North Carolina driver's license at the
16 Aberdeen office of the North Carolina
17 Division of Motor Vehicles (DMV).

18 Defendant presented his official
19 Jamaican passport as identification to
20 officials at DMV and gave his place of birth
21 as Kingston, Jamaica.

22 The DMV official processing defendant's
23 license application asked defendant if he
24 wished to register to vote, and defendant
25 replied affirmatively.

1 Defendant voted on May 6, 2008, and
2 November 8, 2008, in Moore County, at which
3 time defendant was still a citizen of
4 Jamaica.

5 On April 26, 2011, the Moore County
6 Board of Elections canceled defendant's
7 voter registration and notified defendant by
8 mail of the cancellation.

9 Defendant was interviewed by the
10 investigator for the Moore County District
11 Attorney on or about March 24, 2015, and
12 gave a voluntary statement admitting the
13 foregoing facts.

14 THE COURT: The Court has given the stipulation with
15 the seven stipulated facts to the court reporter. She's
16 entered the same into the record.

17 The Court has read them. I've also read the
18 statute. I've read the indictment.

19 Mr. Lapping, it's your oral motion. I'll hear
20 you, sir, as to why the Court should dismiss this case before
21 the Court starts taking additional evidence.

22 MR. LAPPING: Thank you, Your Honor. I think this
23 matter turns certainly on the element included in
24 G.S.163-275(7), the statute that underlies this indictment,
25 that states: "For any person with the intent to commit a

1 fraud," and in this -- in this particular case it would be
2 the last section, "to vote illegally at any primary or
3 election."

4 I don't think there's any dispute with regard
5 to the facts that Mr. Sullivan did in fact vote twice in
6 2008, and I don't think there's any dispute that as a citizen
7 of the country of Jamaica as opposed to the United States
8 that he was not eligible to vote.

9 However, I don't believe the State has any
10 evidence with regard to the -- to Mr. Sullivan making a false
11 representation or concealing any material fact, either past
12 or existing, which would be a requirement to prove fraud.

13 I think with regard to misrepresentation, the
14 undisputed facts are that he presented to the official of the
15 Department of Motor Vehicles an official Jamaican passport
16 which identifies him as a Jamaican citizen, and that in that
17 process of applying for driver's license with DMV indicated
18 that he was born in Kingston, Jamaica.

19 So certainly no mis -- evidence of
20 misrepresentation of his citizenship status or that he
21 concealed in fact with regard to the uncontroverted,
22 undisputed evidence, he did not conceal and clearly disclosed
23 the fact that he was a Jamaican citizen at the time, and
24 that -- that he was born there and was not a United States
25 citizen.

1 So we say the State has no evidence with regard
2 to any intent to commit a fraud as fraud would be defined
3 under North Carolina law.

4 Without the ability to prove that intent, Your
5 Honor, we would say the State cannot, in the light most
6 favorable to the State, that these facts do not support a
7 charge that Mr. Sullivan with the intent to commit a fraud
8 illegally voted, and move the Court to dismiss this.

9 THE COURT: I've received as Defendant's Exhibit
10 Number 1 a copy of the statute. Mr. Lapping has taken the
11 liberty to highlight the pertinent provision under
12 subparagraph (7) there which indicates, "for any person
13 with," highlighted, "intent to commit a fraud." So I've
14 received that.

15 Do you care to be heard further on your motion,
16 sir?

17 MR. LAPPING: No, Your Honor.

18 THE COURT: Mr. Slagle, first of all I commend you
19 for allowing Mr. Lapping to make this motion orally,
20 accepting notice, agreeing to be heard. I also commend you
21 for allowing the stipulation which clearly streamlines the
22 business before the Court.

23 I will certainly hear you in your comments --

24 MR. SLAGLE: Yes, Your Honor. Thank you.

25 THE COURT: -- in opposition of motion to dismiss.

1 MR. SLAGLE: If Your Honor please, I just want to
2 make sure one thing is clear. Mr. Lapping indicated in his
3 soliloquy that defendant voted twice in 2008. I want to be
4 clear for the record the stipulation and the indictment both
5 state that he voted in the primary election, May 6, 2008, and
6 then again the general election, November 4, 2008. There was
7 no allegation he voted twice in one single election.

8 Your Honor, State would ask that you deny the
9 motion at this stage. We have agreed to a stipulation of the
10 facts. I will not tell the Court that the State would put on
11 any witnesses or any other evidence that would not track
12 what's in the seven paragraphs of the stipulation.

13 However, the State would ask the Court deny the
14 motion for the fact that the Court knows seldom is there
15 direct evidence of intent in any case. It's a question for
16 the finder of fact, which in this matter of course would be
17 Your Honor, but the State would ask that Your Honor look at
18 the evidence and stipulation in the light most favorable to
19 the State and deny the defendant's motion at this stage of
20 proceeding, Judge.

21 Don't wish to be heard any further than that.

22 THE COURT: Thank you, Mr. Slagle. Mr. Slagle,
23 since this is a bench trial, since I'm already satisfied you
24 exercise a good deal of discretion, and you do it
25 appropriately in my dealings with you this week, I've been

1 able to form my opinion.

2 Can you proffer to the Court what your evidence
3 would be of intent, other than the fact that the gentleman
4 presented himself to DMV to get a driver's license --

5 MR. SLAGLE: Your Honor, I --

6 THE COURT: -- and then unsolicited was asked if he
7 wanted to register to vote. He did. He voted in the
8 primary, as he thought he should be able to do. He voted in
9 the general, as he thought he should be able to do. Was then
10 notified not to vote anymore, and he did not vote anymore,
11 yet he was charged and indicted with voter fraud.

12 And so I understand the situation that you're
13 in. Clearly even in the light most favorable to you, those
14 are not favorable facts to prosecute for fraud, but
15 nevertheless, unfavorable facts does not necessarily equate
16 to a dismissal.

17 So what I'm looking for now, if you don't mind,
18 sir, is an oral presentation by the prosecutor in way of a
19 proffer as to what the evidence would be as to the
20 defendant's intent to act fraudulently.

21 MR. SLAGLE: Your Honor, with the exception of
22 what's in the stipulation, those seven paragraphs, as I stand
23 here before you I cannot tell the Court that the State would
24 have any additional witnesses or physical evidence of intent
25 on behalf of Mr. Sullivan.

1 THE COURT: Okay. Then the Court would find that
2 based on these stipulated facts, the statements from Counsel,
3 the embellished argument from Mr. Lapping, and the informal
4 proffer from the prosecutor, that it would be an exercise in
5 futility for the Court to be able to hear evidence in this
6 matter and then make findings that the State has been able to
7 prove each and every element of this offense, especially
8 beyond a reasonable doubt, most pertinent as to element of
9 intent.

10 I commend the prosecutor. A lot of prosecutors
11 sometimes get lost in seeking convictions as opposed to
12 justice. This one did not. He was candid with the Court,
13 forthcoming. He had a duty to prosecute and prosecute
14 zealously on behalf of the State. I feel that he has done
15 so.

16 I also feel that he did not want to jeopardize
17 his credibility with the Court, was truthful, candid and
18 forthcoming. Sometimes a prosecutor's job is to seek justice
19 as much as convictions. I think you've done that.

20 Most respectfully the Court would allow the
21 motion from Mr. Lapping to dismiss the charge.

22 Mr. Lapping, I will have the clerk prepare just
23 a simple, what is it, a 600 form? 601 form? Okay. You see
24 how close I was. Okay. The 305 form which dismisses the
25 charge.

1 Would you submit your fee application to the
2 Court, please, sir?

3 MR. LAPPING: I will, Your Honor. Thank you.

4 THE COURT: Anything else folks?

5 MR. SLAGLE: No, Your Honor. Thank you very much.

6 MR. LAPPING: Thank you very much.

7 THE COURT: Have a good day, sir.

8 (Proceedings concluded at 10:29 a.m.)

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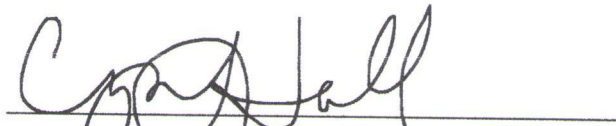
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CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings taken at the February 2, 2016, Session of the Moore County Superior Court is a true and accurate transcript of the proceedings taken by me and transcribed by me. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This the 22nd day of March, 2016.

A handwritten signature in cursive script, appearing to read 'Cynthia L. Hall', is written over a horizontal line.

CYNTHIA L. HALL, RPR
Official Court Reporter 19D