

1996

Layton City v. Daniel Longcrier : Brief of Appellee

Utah Court of Appeals

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Kristina M. Neal; Gary R. Crane; Layton city Prosecutor; Attorneyf or Appellee.

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IN THE UTAH COURT OF APPEALS

LAYTON CITY

Plaintiff and Appellee

vs.

DANIEL LONGCRIER

Defendant and Appellant

Case No. 960499-CA

Priority No. 2

BRIEF OF APPELLEE

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STATEMENT OF JURISDICTION

Jurisdiction is conferred upon the Utah Court of Appeals by virtue of Utah Code Ann. § 78-2A-3 (e).

STATEMENT OF THE ISSUES

1. Whether the Trial Court erred in denying the defendant court appointed counsel or an opportunity to retain counsel when the defendant faced no actual imprisonment as a result of his conviction.
2. Whether the Trial Court erred in denying the defendant a continuance on the date of trial when the city was prepared and present with witnesses and the defendant had ample time to obtain an attorney.
3. Whether the Trial Court erred in denying the defendant's motion for a new trial when, because the defendant did not have the right to counsel, there was no error that had an adverse effect upon the rights of the defendant.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution Sixth Amendment

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Utah Constitution, Article I, Section Twelve (in relevant part)

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed.

Utah Code Ann. § 77-1-6 (1)(a)

- (1) in criminal prosecutions the defendant is entitled:
- (a) To appear in person and defend in person or by counsel.

Utah Code Ann. § 77-32-2

Counsel shall be assigned to represent each indigent person who is under arrest for or charged with a crime in which there is a substantial probability that the penalty to be imposed is confinement in either jail or prison if:

- (1) The defendant requests it; or
- (2) The Court on its own motion or otherwise so orders and the defendant does not affirmatively waive or reject of record the opportunity to be represented.

Utah Code Ann. § 76-5-102 (in relevant part)

- (1) Assault is:
 - (a) an attempt, with unlawful force or violence, to do bodily injury to another;
 - (b) a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; or
 - © an act, committed with unlawful force or violence, that causes or creates a substantial risk of bodily injury to another.
- (2) Assault is a class B misdemeanor.
- (3) Assault is a class A misdemeanor if the person causes substantial bodily injury to another.

Utah Code Ann. § 76-3-204 (in relevant part)

A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:

- (1) In the case of a class A misdemeanor, for a term not exceeding one year;
- (2) In the case of a class B misdemeanor, for a term not exceeding six months;

- (3) In the case of a class C misdemeanor, for a term not exceeding ninety days.

Utah Code Ann. § 76-3-301 (in relevant part)

- (1) A person convicted of an offense may be sentenced to pay a fine, not exceeding:
- (a) \$10,000 for a felony conviction of the first degree or second degree;
 - (b) \$5,000 for a felony conviction of the third degree;
 - © \$2,500 for a class A misdemeanor conviction;
 - (d) \$1,000 for a class B misdemeanor conviction;
 - (e) \$750 for a class C misdemeanor conviction or infraction conviction; and
 - (f) any greater amounts specifically authorized by statute.

Utah R. Cr. P. 24 (a)

The court may, upon motion of a party or upon its own initiative, grant a new trial in the interest of justice if there is any error or inpropriety which had a substantial adverse effect upon the rights of a party.

STATEMENT OF THE CASE

The plaintiff/appellee, Layton City, a political subdivision of the State of Utah, charged the defendant/appellant, Daniel Longcrier, by information with one count of Assault, a class B misdemeanor, on June 16, 1995. (R. at 5.) On August 23, 1995, the defendant appeared in Second District Court, Layton Department, for an arraignment and entered a plea of not guilty. (R. at 1.) On October 11, 1995, the defendant appeared in the Second District Court, Layton Department, for a pre-trial conference. The pre-trial conference date had been changed to October 18, 1995, and on October 18, 1995, the defendant appeared in court at a pre-trial conference. (R. at 1.) At the pre-trial conference, no negotiation was reached and therefore the case was set for trial. (R. at 1.) While the defendant was at the court for the pre-trial conference, he asked the city prosecutor if he could have an attorney. (R. at 93, 95.) The prosecutor indicated to the defendant that appointment of counsel was a decision for the judge of the trial court. (R. at 93, 95.)

On February 21, 1996, the day of trial, the city prosecutor was present with witnesses and prepared for trial. (R. at 68.) Before the trial began, the defendant asked the trial judge for an attorney. (R. at 68.) The trial court judge denied the defendant's request for an attorney, denied the defendant's request for a continuance in order to retain counsel, and ordered that the trial proceed. (R. at 68.) The trial proceeded, and the defendant was not represented by counsel. At the conclusion of the trial, the defendant was found guilty of Assault, a class B misdemeanor, and a sentencing hearing was scheduled for February 23, 1996. (R. at 1.)

At the sentencing hearing on February 23, 1996, the defendant was represented by counsel, Michael A. Jensen. Defendant's counsel filed a written motion to the trial court for an arrest of judgment or a new trial. (R. at 18-23.) The trial court heard oral argument from the attorneys on the defendant's motion and took the matter under advisement. (R. at 2.) An evidentiary hearing was scheduled for April 16, 1996, and at that hearing the trial court heard evidence regarding what the defendant new about his rights to an attorney and when he new it. (R. at 2, 86-107.) The court again took the matter under advisement. On July 9, 1996, Judge K. Roger Bean of the Second District Court, Layton Department, entered a written memorandum decision which denied the defendant's request for a new trial. (R. at 3, 67-69.)

On July 22, 1996, the trial court sentenced the defendant to pay a total fine and accessment of \$600.00 and also ordered the defendant to enroll in an anger management course for eight weeks. (R. at 73-74.) The defendant filed his notice of appeal on July 23, 1996. (R. at 75-77.)

SUMMARY OF ARGUMENT

The questions that the defendant argues in his brief all relate to one specific issue, the defendant's right to counsel. The right to counsel, while a fundamental right, is not an absolute right and our courts have limited that right. The United States Supreme Court has created a line of demarcation from which to determine whether a criminal defendant has the right to counsel. The Court concluded that no defendant may be sentenced to a term of imprisonment unless he has been afforded the right to the assistance of counsel for his defense. The Court distinguished actual imprisonment from the mere threat of imprisonment, and determined that the mere threat of imprisonment was not enough to warrant the assistance of counsel. While the United States Supreme Court's cases dealt with the right to appointed counsel, the reasoning applied by the court applies to the right to private counsel as well. The right to private counsel is not an absolute right to which all courts must defer.

In this case, the defendant's right to counsel, whether appointed or private, never attached. Therefore, although the defendant was not represented by counsel at his trial, his constitutional right to counsel was not violated.

The defendant also argues that the trial court, in denying a continuance for the defendant to obtain counsel, violated his right to counsel. However, when a continuance implicates the sixth amendment right to counsel, the right to select counsel must be balanced against the orderly administration or justice. The defendant first asked the trial judge for counsel or the opportunity to obtain counsel on the day of trial when the city was present with witnesses and prepared to proceed. The defendant had been present before the judge on at least three prior occasions in court and did not inquire about his right for counsel or ask the judge about obtaining counsel.

The trial judge properly concluded that because the defendant's request was untimely that the orderly administration of justice outweighed the defendant's request for a continuance.

The defendant also argues that the trial court erred in denying the defendant's motion for a new trial because the trial judge failed to make an inquiry into the defendant's competence or his desire to represent himself. Apparently, this inquiry may have resulted in a waiver of counsel by the defendant. However, where the defendant's right to counsel did not attach, no waiver of counsel is necessary because the defendant's constitutional right to counsel was not violated. In essence, because the defendant's right to counsel did not attach, the trial court's denial of the defendant's motions was proper.

ARGUMENT

The Defendant argues three questions in his brief: whether the trial court erred in denying the Defendant court appointed counsel or the opportunity to retain counsel; whether the trial court erred in denying the Defendant a continuance of the day of trial so that he might obtain counsel; and whether the trial court erred in denying the Defendant's motion for a new trial. However, as the Defendant has stated in his brief, all of these questions turn on one underlying issue: whether the Defendant had the constitutionally protected right to have an attorney represent him at his trial. In fact, the Defendant did not have the right to have counsel represent him at this trial, and therefore, the trial court did not err in any its denials to the Defendant.

I. The Defendant's right to counsel is not implicated in this case because he was not subject to imprisonment.

The United States Constitution grants the accused the "Assistance of counsel for his defence," and the Utah Constitution gives criminal defendants the "right to appear and defend in person and by counsel." U. S. Const., amend. VI.; Utah Const., Art. I, Sec. 12. See Utah Code Ann. § 77-1-6(1)(a); Utah R. Crim. P. 17 (1996). These broad grants of rights to the accuse have been interpreted by the courts to be less than absolute and are subject to specific limitations.

The United States Supreme Court has created a line of demarcation from which to determine whether a criminal defendant has the right to counsel. The Court in 1972 held that "no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." Argersinger v. Hamlin, 407 U.S. 25, 37 (1972). Seven years later, the Court confirmed that "the central premise of Argersinger--that

actual imprisonment is a penalty different in kind from fines or the mere threat of imprisonment-- is eminently sound and warrants adoption of actual imprisonment as the line defining the constitutional right to appointment of counsel.” Scott v. Illinois, 440 U.S. 367, 373 (1979). The Court concluded by stating:

We therefore hold that the Sixth and Fourteenth Amendments to the United States Constitution require only that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense.

Id. at 374. The ruling and analysis of Argersinger and Scott have been adopted and applied in this State. Salt Lake City v. Grotepas, 906 P.2d 890 (Utah 1995); Murray City v. Robinson, 848 P.2d 161 (Utah App. 1993); City of St. George v. Smith, 828 P.2d 504 (Utah App. 1992).

The Defendant has argued the decisions that have limited the right to counsel to cases in which imprisonment has been ordered have all dealt with the right to appointed counsel. While it is true that many Defendants in those cases have been represented by appointed counsel, the reasoning of those cases and the limitation of the right to counsel has been applied in Utah where a Defendant was represented by private counsel as well.

The Utah Supreme Court recently addressed a claim of ineffective assistance of counsel in the case of Salt Lake City v. Grotepas, 906 P.2d 890 (Utah 1995). The Defendant in this case was charged with criminal trespass, an infraction in violation of Salt Lake City Code § 11.36.130, and hired his own attorney who represented the Defendant at trial. The Defendant was convicted and was sentenced to pay a Fifty Dollar (\$50.00) fine. The Defendant then brought an appeal, alleging that his trial counsel was ineffective.

Before addressing any ineffective assistance of counsel claim, the Utah Supreme Court, citing the Scott case, stated “ . . . the United States Supreme Court has acknowledged that the right to counsel provided for by the Sixth Amendment is not absolute but that ‘decided cases [have] departed from the literal meaning of the Sixth Amendment.’ Scott v. Illinois, 440 U.S. 367, 372 (1979).” Grotepas, 906 P.2d at 892. Upon determining that the right to counsel is not guaranteed in all cases, the Utah Supreme Court went on to say, “(f)urthermore, the right to effective assistance of counsel is dependant on the right to counsel itself.” Id. at 893 (citing Shippely v. State, 570 A.2d 1159, 1166 (Del. 1990)). Following the Scott analysis and finding the Defendant was not sentenced to any jail term, the Utah Supreme Court then ruled, “(a)ccordingly, because Grotepas’ Sixth Amendment rights were not implicated in this matter, the Court of Appeals erred in concluding that Grotepas could bring an ineffectiveness of counsel claim.” Id. at 893.

As stated, the Defendants in the United State Supreme Court’s cases have all had appointed counsel. Therefore, the Court’s statements have all been in the context of appointed counsel. However, as the Grotepas Court recognized, the right to effective assistance of counsel, (and appointed counsel) derives from the right to counsel itself. Id. at 893. If there is no right to counsel, there is no right to appointed counsel (and no right to effective assistance of counsel, as in Grotepas). The Court in Grotepas reasoned that to give a defendant with his own attorney the right to effective assistance of counsel in a case where an indigent person is not entitled to the assistance of an attorney, let alone effective assistance, would give the wealthier defendant a right that an indigent person would not have under the same circumstances. Id.

The same is true with the right to counsel itself. Certainly if a defendant wants to procure

his own counsel in a case where no jail is or is likely to be given, a case in which an indigent person would not be appointed counsel, the court cannot stop a defendant from doing so.

However, to give a defendant with the means of hiring his own attorney the unlimited, absolute right to do so in a case in which an indigent defendant would have no such right to counsel at all, and to declare that the defendant with his own attorney has had his constitutional rights violated by being denied counsel would be soundly unfair.

It is important in this analysis to distinguish between the right of any accused person to obtain his own counsel and an absolute right of a defendant to have counsel represent him, to which a trial court must defer. Any defendant is entitled to timely hire an attorney and bring that attorney to court to represent him in court, regardless of whether the charge is one in which any jail is or is likely to be given. However, in a case where no jail time is or is likely to be given, a defendant does not have the absolute right to have an attorney represent him, a right to which the court must defer at any time, whether it be an appointed attorney or one of his own hiring. The Grotepas Court reasoned that “(f)rom a pragmatic point of view, courts cannot help but struggle to find some rational, fair line beyond which the absolute right to counsel becomes merely a privilege to be provided in the sound discretion of the trial judge.” Id. (quoting Wall v. Purdy, 321 F.Supp. 367, 369 (S.D.Fla 1971), vacated, 465 F.2d 933 (5th Cir. 1972)). This fair line is actual imprisonment.

II. The trial court did not err in denying court appointed counsel for the Defendant or in denying the Defendant an opportunity to retain counsel when the Defendant faced no actual imprisonment as a result of his conviction.

A. The Defendant was not entitled to court appointed counsel.

The Defendant argues that he would have been entitled to court appointed counsel if he were indigent because he faced a substantial probability of jail time. Utah statute provides:

Counsel shall be assigned to represent each indigent person who is under arrest for or charged with a crime in which there is a substantial probability that the penalty to be imposed is confinement in either jail or prison if: (1) the defendant requests it; or (2) the court on its own motion or otherwise so orders and the defendant does not affirmatively waive or reject of record the opportunity to be represented.

Utah Code Ann. § 77-32-2 (1996).

The Defendant in this case was charged with one count of Assault, a Class B Misdemeanor (R. 5), an offense which carries a maximum sentence of imprisonment for a period not to exceed six months or a fine not to exceed \$1,000. Utah Code Ann. § § 76-3-204, 76-3-301 (1996). However, whether or not the Defendant were indigent, he would not have qualified for court appointed counsel. The question before the Defendant went to trial is whether there is a substantial likelihood of jail time. Utah Code Ann. § 77-32-2 (1996). Since this was the first offense for the Defendant, it is unlikely that he would have been subject to jail time, and therefore, if the trial judge found the Defendant indigent, counsel would not have been appointed.

It is important to note that the United States Supreme Court has distinguished between the “mere threat of imprisonment” and “actual imprisonment,” and has determined that it is actual imprisonment that is the “line defining the constitutional right to appointment of counsel.” Scott v. Illinois, 440 U.S. 367, 373 (1979).

Utah courts have applied these rulings to cases. In the case of Murray City v. Robinson, 848 P.2d 161 (Utah App. 1993), the defendant was convicted for driving on a suspended drivers license and expired registration. Each of those offenses was punishable by “a fine not to exceed

One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed six (6) months or both such fine and imprisonment.” Id. at 162. Robinson, in this appeal, was requesting that she be provided transcripts at public expense in order for her to appeal her case. The Court of Appeals stated, “(T)he right of an indigent to receive a transcript at public expense in a criminal case derives from the constitutional right to appointment of counsel.” Id. The Court goes on to cite the Scott case and emphasizes the language of “actual imprisonment as the line defining the constitutional right to appointment of counsel.” Id. The Court concludes by stating:

The court’s order reveals that the judge denied preparation of the transcripts at public expense in part because Robinson, while she may have faced the ‘mere threat of imprisonment’ did not at any time face actual imprisonment. Moreover, we need not speculate about Robinson’s potential sentence because Robinson’s conviction resulted in a fine only. Thus, the Court correctly determined she was not entitled to counsel or to transcripts pursuant to Section 77-32-5.

Id.

In addition, a defendant in City of St. George v. Smith, 828 P.2d 504 (Utah App. 1992), was convicted of driving on a suspended license and was sentenced to serve six (6) months in the Washington County Jail. The defendant was initially appointed counsel; however, the City erroneously moved for the withdrawal of appointed counsel in a mistaken interpretation of an earlier case. The City had mistakenly read the case law to indicate that when cities perform the prosecution, counsel need not be appointed for indigent defendants. However, “the determinative criteria is whether the defendant is likely to be imprisoned, not the entity that undertakes prosecution. Id. at 506.

The Defendant in the case at bar was convicted of Assault, a Class B Misdemeanor. However, simply because a Class B Misdemeanor has a maximum term of imprisonment of six

months, the Defendant would not be entitled to court appointed counsel, because his lack of criminal history means that there is not a high probability that he would be sentenced to serve time in jail.

In this case, as in the Murray City case, because sentence has already been imposed, it is not necessary to rely on pre-trial speculation as to whether the Defendant's sentence would include imprisonment; it is simple to do a retrospective analysis. The Defendant was sentenced to pay a fine of \$600.00, (R. at 73-74), and was not subject to "actual imprisonment." The court could not sentence the Defendant to serve any jail time unless he had been represented by counsel or had waived representation on the record, and the judge properly did not include jail time in the Defendant's sentence.

B. The Defendant was not required to waive his right to the assistance of counsel.

It is well established that a defendant must waive his or her right to counsel "knowingly and intelligently." State v. Hamilton, 732 P.2d 505, 507 (Utah 1986)(citing Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975) and Carnley v. Cochran, 369 U.S. 506, 82 S.Ct. 884, 8 L.Ed.2d 70 (1962)). Moreover, there is scant evidence in the record in this case that the Defendant "intelligently and understandingly rejected the offer" of counsel. Id.

However, the inquiry as to whether or not the Defendant was required to waive his right to counsel assumes that the Defendant's right to counsel was implicated in this matter. As explained above, the Defendant's Sixth Amendment right to counsel was not implicated in this case, and therefore, the inquiry regarding the Defendant's waiver is premature. The Defendant did not have the right to court appointed counsel because he was not likely to be sentenced to a

term of imprisonment, nor was he actually sentenced to a term of imprisonment. Utah Code Ann. § 77-32-2 (1996). Therefore, there is no requirement that he waive his right to appointed counsel on the record.

III. The trial court properly denied the defendant's request for a continuance on the date of trial to obtain counsel when the City was prepared and present with witnesses and the defendant had ample time to obtain an attorney.

The trial court's decision to deny the Defendant's motion for a continuance is reviewed under an abuse of discretion standard. State v. Williams, 712 P.2d 220, 222 (Utah 1985); State v. Cabututan, 861 P.2d 408, 413 (Utah 1993). In the Cabututan case, the trial judge determined that any further delay would lessen the chance that all of the witnesses would be able to be present to testify at trial. Given the fact that the counsel had more than two and one-half months to prepare for trial, the court denied the defendant's request for a continuance, and the decision was upheld by the Utah Supreme Court. Id.

Furthermore, when the defendant's Sixth Amendment rights may be implicated, the a balance must be struck between the defendant's right to counsel and the administration of justice. U.S. v. Burton, 584 F.2d 485, 489 (D.C. Cir. 1978). The Burton court stated that the administration of justice must be looked at in light of the surrounding facts and circumstances and listed several factors to be considered:

length of the requested delay; whether other continuances have been requested and granted; the balanced convenience or inconvenience to the litigants, witnesses, and counsel, and the court; whether the requested delay is for legitimate reasons, or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance which gives rise to the request for a continuance; whether the defendant has other competent counsel prepared to try the case; whether denying the continuance will result in identifiable prejudice to defendant's case, and if so, whether this prejudice is of a material or substantial nature; the complexity of the case; and other relevant factors which may appear in the context of any particular case.

Id. at 491.

The Defendant indicates in his brief that the circumstances of this case favor a continuance. However, although the Defendant had not requested any prior continuances, he had been in court three times prior to the day of trial: an arraignment of August 23, 1995, a canceled pre-trial on October 11, 1995, and a pre-trial on October 18, 1995. (R. at 1.) The trial was then held February 21, 1996, nearly six months after the Defendant first appeared for arraignment. Id. The Defendant had plenty of time to procure his own counsel during this period and failed to do so. He then made his request at a time when the City was present with witnesses and prepared to proceed. (R. at 85.)

The trial court noted in its Memorandum of Decision that the Defendant had been in court three times and received two Notices of Pre-Trial and one Notice of Trial, each with lines present for “Defendant,” where he signed, and “Defendant’s Attorney,” printed within less than an inch of each other on the form. (R. at 67-68.) Given this, the Defendant should have realized that he had the opportunity to obtain some form of counsel, and if he had questions, he should have inquired of the judge at that time.

In indicating the Defendant’s request for a continuance for the Defendant to obtain his attorney was untimely, (R. at 68), the trial court cited a Utah Supreme Court case, State v. Penderville, 272 P.2d 195 (Utah 1954). In that case, on the day before trial, the court received a letter from the defendant complaining about the service of his attorney and asking for a continuance so he may obtain other counsel. Although the case was overturned on another point, the trial court noted the Utah Supreme Court’s comments regarding delay: “An accused may not, however, having once elected to proceed with the aid of counsel for purposes of delay or to

obstruct the proceeding against him, advance successfully an insincere claim of his right to defend in person.” Id.

Given that the Defendant had plenty of time to obtain his own counsel and the inconvenience and delay it would cause for the court and the witnesses, it was not an abuse of discretion for the trial judge to deny the Defendant’s request for a continuance.

IV. The trial court properly denied the defendant’s motion for a new trial where there was no error that had an adverse effect upon the rights of the defendant.

The Utah Rules of Criminal Procedure state that the court may “grant a new trial in the interest of justice if there is any error or impropriety which had a substantial adverse effect upon the rights of a party.” Utah R. Cr. P. 24(a) (1996).

In the case before this court, there was no error, and the Defendant’s rights were not affected. The Defendant did not have the right to court appointed counsel because he was charged with assault when he had no prior criminal history, and therefore, jail time would not likely be imposed. Moreover, the trial judge did not sentence the Defendant to any jail time, since he was not represented by an attorney. The Defendant was also not entitled to obtain his own counsel. As explained, his right to counsel did not attach in this case due to the lack of imprisonment. However, the Defendant is entitled to obtain his own counsel in a timely fashion and then have that attorney represent him at this his trial. However, where the Defendant had six months to procure his own attorney and did not, and then on the day of trial asks the judge either for court appointed counsel, to which he is not entitled, or for time to obtain his own attorney, the judge does not abuse his discretion in denying the Defendant’s request for a continuance.

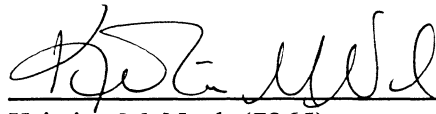
Because the Defendant’s right to counsel did not attach, and because the trial court did

not abuse its discretion in denying the request for a continuance, the motion for a new trial was properly denied.

CONCLUSION

The defendant did not have the right to counsel to represent him in this trial, whether appointed counsel or private counsel. Because the defendant's right to counsel was not implicated, the trial court's denial of the defendant's motion for a continuance and motion for a new trial was proper. The City respectfully requests that the Court of Appeals affirm the trial courts judgment in this case.

DATED this 18th day February, 1997.



Kristina M. Neal (7265)
Layton City Prosecutor

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing BRIEF OF APPELLEE, postage pre-paid, to the following, on this 18th day of February, 1997.

Michael A. Jensen, #7231
Attorney at Law
First Interstate Plaza, Suite 900
170 South Main Street
Salt Lake City, Utah 84101-1655

A handwritten signature in dark ink, appearing to read 'K. M. Neal', is written over a horizontal line.

Kristina M. Neal
Layton City Prosecutor