

1996

# Layton City v. Daniel Longcrier : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Michael A. Jensen; Attorney for Appellant.

Kristina M. Neal; Gary R. Crane; Layton city Prosecutor; Attorney for Appellee.

---

## Recommended Citation

Brief of Appellant, *Layton City v. Longcrier*, No. 960499 (Utah Court of Appeals, 1996).  
[https://digitalcommons.law.byu.edu/byu\\_ca2/375](https://digitalcommons.law.byu.edu/byu_ca2/375)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

UTAH COURT OF APPEALS  
BRIEF

UTAH  
DOCUMENT  
KFU

50  
.A10

DOCKET NO. 960499-CA

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 APPELLANT

Appeal from Judgment of Conviction and Denial of Motion for New Trial of  
Second Judicial District Court, Layton Division,  
Davis County, State of Utah  
Honorable K. Roger Bean, Second District Court Judge

Kristina M. Neal #7265  
Layton City Prosecutor  
Layton City  
437 North Wasatch Drive  
Layton City, Utah 84041  
(801) 546-8530; FAX: 546-8535  
Attorney for  
Plaintiff/Appellee

Michael A. Jensen, #7231  
Attorney at Law  
First Interstate Plaza, Suite 900  
170 South Main Street  
Salt Lake City, Utah 84101-1655  
(801) 575-5000; FAX: 575-5006  
Attorney for  
Defendant/Appellant

FILED

JAN 02 1997

COURT OF APPEALS

**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 APPELLANT**

---

**Appeal from Judgment of Conviction and Denial of Motion for New Trial of  
Second Judicial District Court, Layton Division,  
Davis County, State of Utah  
Honorable K. Roger Bean, Second District Court Judge**

---

Kristina M. Neal #7265  
Layton City Prosecutor  
Layton City  
437 North Wasatch Drive  
Layton City, Utah 84041  
(801) 546-8530; FAX: 546-8535  
Attorney for  
Plaintiff/Appellee

Michael A. Jensen, #7231  
Attorney at Law  
First Interstate Plaza, Suite 900  
170 South Main Street  
Salt Lake City, Utah 84101-1655  
(801) 575-5000; FAX: 575-5006  
Attorney for  
Defendant/Appellant

## TABLE OF CONTENTS

JURISDICTION OF THE COURT .....	5
ISSUES PRESENTED FOR REVIEW, STANDARD OF REVIEW, AND PRESERVATION OF ISSUE .....	5
STATUTORY PROVISIONS .....	8
United States Constitution, SIXTH AMENDMENT: .....	8
Utah Constitution, ARTICLE I, SECTION 12 .....	8
Utah Code Ann. § 77-1-6(1)(a), 6(1)(f), (6)(2)(d) (1995) .....	8
Utah Code Ann. § 77-32-1 .....	9
Utah Code Ann. § 76-5-102 .....	9
Utah Code Ann. § 76-3-204 .....	9
Utah Rules of Criminal Procedure, Rule 17 .....	10
STATEMENT OF THE CASE .....	10
SUMMARY OF ARGUMENT .....	14
ARGUMENT .....	15
I. <u>Daniel possessed the fundamental right to the assistance of counsel at his trial.</u> .....	15
II. <u>The trial court erred in denying court appointed counsel for Daniel or denying         him an opportunity to retain counsel because the trial court failed to make any         inquiry into Daniel's indigence, competence, or his desire to represent himself</u> .....	19
a. <u>If indigent, Daniel was entitled to court appointed counsel.</u> .....	19
b. <u>Daniel never waived his right to the assistance of counsel.</u> .....	21
III. <u>The trial court erred in denying Daniel a continuance on the day of trial so that         he could retain counsel because such denial effectively denied Daniel's         fundamental right to counsel.</u> .....	23

IV. <u>The trial court erred in denying Daniel's motion for new trial because the trial court forced Daniel to represent himself at trial without making any inquiry into Daniel's competence or his desire to represent himself.</u>	26
CONCLUSION .....	28
CERTIFICATE OF SERVICE .....	29
ADDENDUM INDEX .....	30
Addendum 1 .....	30
Layton City Police Report, dated June 16, 1995 .....	30
Addendum 2 .....	30
Evidentiary Hearing Transcripts, dated April 16, 1996 .....	30
Addendum 3 .....	30
Trial Prelude Transcripts, dated February 21, 1996 .....	30
Addendum 4 .....	30
Layton City Letter, dated March 26, 1996 .....	30
Addendum 5 .....	30
Memorandum of Decision, dated June 14, 1996, served July 9, 1996 .....	30

## TABLE OF AUTHORITIES

### Cases Cited

<i>Argersinger v. Hamlin</i> , 92 S. Ct. 2006, 407 U.S. 31 .....	15, 18
<i>Carnley v. Cochran</i> , 369 U.S. 506, 82 S. Ct. 884, 8 L.Ed.2d 70 (1962) .....	21
<i>City of St. George v. Smith</i> , 828 P.2d 504 (Utah App. 1992) .....	16
<i>Crookston v. Fire Ins. Exch.</i> 860 P.2d 937 (Utah 1993) .....	7
<i>Horrell v. Utah Farm Bureau Ins. Co.</i> , 909 P.2d 1279 (Utah App. 1996) .....	7
<i>Salt Lake City v. Grotepas</i> , 906 P.2d 890 (Utah 1995) .....	16
<i>Scott v. Illinois</i> , 99 S. Ct. 1158, 440 U.S. 367 .....	15, 16, 18
<i>State v. Cabututan</i> , 861 P.2d 408 (Utah 1993) .....	6, 23
<i>State v. Frampton</i> , 737 P.2d 183 (Utah 1987) .....	21, 22
<i>State v. Hamilton</i> , 732 P.2d 505 (Utah 1986) .....	21
<i>State v. McDonald</i> , 295 Utah Adv. Rep. 9 (Utah App. 1996) .....	6, 21
<i>State v. Owens</i> , 753 P.2d 976 (Utah App. 1988) .....	26
<i>State v. Pena</i> , 869 P.2d 932 (Utah 1994) .....	6
<i>State v. Penderville</i> , 272 P.2d 195 (Utah 1954) .....	25, 25
<i>State v. Ruple</i> , 631 P.2d 874 (Utah 1981) .....	21
<i>U.S.A. v. Burton</i> , 584 F.2d 485 (D.C. Cir. 1978) .....	6
<i>U.S.A. v. Nichols</i> , 654 F. Supp. 1541 (Utah C.D. 1987) .....	23

## **Constitutional Provisions, Statutes, and Rules of Criminal Procedure**

UNITED STATES CONSTITUTION, SIXTH AMENDMENT .....	8, 16
UTAH CONSTITUTION, ARTICLE I, SECTION 12 .....	8, 16
§ 76-3-204, <i>U.C.A.</i> .....	9, 19
§ 76-3-301, <i>U.C.A.</i> .....	10, 19
§ 76-5-102, <i>U.C.A.</i> .....	9
§ 77-1-6, <i>U.C.A.</i> (1995) .....	8, 16
§ 77-32-1, <i>U.C.A.</i> .....	9, 19, 20
Rule 17, <i>Utah R. Crim. P.</i> .....	10, 12, 16

## **JURISDICTION OF THE COURT**

Jurisdiction is conferred upon this Court by virtue of § 78-2a-3(e), U.C.A.

## **ISSUES PRESENTED FOR REVIEW, STANDARD OF REVIEW, AND PRESERVATION OF ISSUE**

1. **Issue:** Whether the trial court erred in denying the Defendant/Appellant court appointed counsel or an opportunity to retain counsel when the Defendant/Appellant expressly and repeatedly requested an attorney and where the trial court failed to make any inquiry into the Defendant's/Appellant's indigence, competence, or his desire to represent himself.

**Standard of Review:** The Defendant/Appellant believes this issue is a question of law and is therefore reviewed for correctness. *See State v. McDonald*, 922 P.2d 776, 781, 295 Utah Adv. Rep. 9, 11 (Utah App. 1996); *State v. Pena*, 869 P.2d 932, 935-40 (Utah 1994) (issue of waiver of constitutional rights is reviewed for correctness).

**Preservation of Issue:** This issue was raised in the form of a Motion to Arrest Judgment two days following the Defendant's/Appellant's conviction at a bench trial, and the Defendant/Appellant timely filed on July 22, 1996, his Notice of Appeal. (R. 18, 75.)

2. **Issue:** Whether the trial court erred in denying the Defendant/Appellant a continuance on the day of trial so that he could retain counsel where such denial implicates the Defendant's/Appellant's fundamental right to counsel.

**Standard of Review:** This issue is a matter of discretion and is reviewed under an abuse of discretion standard, i.e., no reasonable basis for the decision. *See State v. Cabututan*, 861 P.2d 408, 413 (Utah 1993). However, when a continuance is sought to retain or replace counsel, greater scrutiny is required. *See U.S.A. v. Burton*, 584 F.2d 485, 489 (D.C. Cir. 1978).

**Preservation of Issue:** This issue was raised in the form of a motion for a new trial two days following the Defendant's/Appellant's conviction at a bench trial, and the Defendant/Appellant timely filed on July 22, 1996, his Notice of Appeal. (R. 18, 75.)

3. **Issue:** Whether the trial court erred in denying the Defendant's/Appellant's motion for new trial where the trial court had forced the Defendant/Appellant to represent himself at trial and where the trial court had failed to make any inquiry into the Defendant's/Appellant's competence or his desire to represent himself.

**Standard of Review:** This issue is a matter of discretion and is reviewed under an abuse of discretion standard, except where the court's ruling is based upon a conclusion of law, and then it is reviewed for correctness. *See Crookston v. Fire Ins. Exch.* 860 P.2d 937, 938 (Utah 1993); *Horrell v. Utah Farm Bureau Ins. Co.*, 909 P.2d 1279, 1280 (Utah App. 1996). In this case, the trial court denied a new trial because (1) the Defendant/Appellant had no right to counsel, or (2) the Defendant/Appellant untimely requested counsel. The trial court's reasons are believed to be incorrect conclusions of law, and therefore, the standard of review in the instant case should be reviewed for correctness.

**Preservation of Issue:** This issue was raised in the form of a Motion to Arrest Judgment two days following the Defendant's/Appellant's conviction at a bench trial, and the Defendant/Appellant timely filed on July 22, 1996, his Notice of Appeal. (R. 18, 75.)

## 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 accusation; 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 defence. (emphases added).

### UTAH CONSTITUTION, ARTICLE I, SECTION 12 (in 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 in 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. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense. (emphasis added).

### UTAH CODE ANN. § 77-1-6(1)(a), 6(1)(f), (6)(2)(d) (1995):

(1) In criminal prosecutions the defendant is entitled:

(a) To appear in person and defend in person or by counsel;

....

(f) To a speedy public trial by an impartial jury of the county or district where the offense is alleged to have been committed;

....

(2) In addition:

....

(d) A wife shall not be compelled to testify against her husband nor a husband against his wife; . . .  
(emphasis added).

**UTAH CODE ANN. § 77-32-1, *et seq.***(pertinent part):

Each county, city, and town shall provide for the defense of indigent persons in criminal cases in the courts and various administrative bodies of the state in accordance with the following minimum standards:

(1) provide counsel for every indigent person who faces the substantial probability of the deprivation of the indigent defendant's liberty;  
(emphasis added).

**UTAH CODE ANN. § 76-5-102** (pertinent 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  
(c) 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.  
(emphasis added).

**UTAH CODE ANN. § 76-3-204** (pertinent 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.  
(emphasis added).

UTAH CODE ANN. § 76-3-301 (pertinent 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;
  - (c) \$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.
- (emphasis added).

UTAH RULES OF CRIMINAL PROCEDURE, RULE 17 (pertinent part):

- (a) In all cases the defendant shall have the right to appear and defend in person and by counsel. . . .
- (c) All felony cases shall be tried by jury unless the defendant waives a jury in open court with the approval of the court and the consent of the prosecution.
- (d) All other cases shall be tried without a jury unless the defendant makes written demand at least ten days prior to trial, or the court orders otherwise. No jury shall be allowed in the trial of an infraction.
- (emphasis added).

## STATEMENT OF THE CASE

1. The Plaintiff/Appellee, Layton City (“City”), a political subdivision of the State of Utah, initiated this action on July 21, 1995, pursuant to § 76-5-102, *U.C.A.*, against the Defendant/Appellant, Daniel Longcrier (“Daniel”), by issuing a summons for “Simple Assault.” (R. 1, 8.) Daniel was charged by Information with assaulting his female friend, and the mother of their child, on June 16, 1995. (R. 5.) The police officer’s report indicates that he “observed no physical signs or injury” on the girlfriend.<sup>1</sup> (Police Report

---

The Plaintiff/Appellee filed its “Response to Defendant’s Request for Discovery” on February 28, 1996 (R. 24). Although the Response clearly states that a copy of the police report is attached, such report is missing from the Record. For completeness and for reference, Daniel has attached hereto a copy of the police

at 4, attached hereto as Addendum 1.) Two months subsequent to the alleged assault, Daniel and his alleged victim were married.

2. Daniel, a nineteen year old young man who completed only the tenth grade, resides in Bountiful, Utah. (R. 92; Hr'g Tr. at 7, lines 20-21, attached hereto as Addendum 2.) Daniel has no record of any other criminal or traffic violations. (R. 37.)

3. On October 11, 1995, Daniel appeared without counsel at a pre-trial conference. (R. 1.) The following week the trial court scheduled the trial on February 21, 1996. (*Id.*)

4. Upon departing the pre-trial conference, Daniel asked the City's Prosecutor if he could have an attorney. (R. 93, 95; Hr'g Tr. at 8, lines 3-4, at 10, lines 21-25, Addendum 2.) The Prosecutor indicated to Daniel that any appointment of counsel was up to the judge of the trial court. (*Id.*)

5. Sometime prior to the trial date, Daniel telephoned the trial court and asked whether he could have an attorney. (R. 93; Hr'g Tr. at 8, lines 7-9, Addendum 2.) He was told by a clerk that when he arrived at the court he should ask the judge for an attorney. (*Id.*)

6. On February, 21, 1996, the day of trial, Daniel asked Judge Bean for an attorney. (R. 68; R. 85, Trial Tr. at 3, lines 13-15, attached hereto as Addendum 3.) Without any inquiry of Daniel's indigence, competence, or desire to represent himself, Judge Bean denied Daniel's request for an attorney, denied a continuance for Daniel to retain counsel,

---

report referenced in the Plaintiff's/Appellee's Response as Addendum 1

and immediately forced Daniel to proceed to trial. (*Id.* at lines 13-17.)

7. During the trial, Daniel was not represented by counsel; he presented no defense whatsoever. (R. 1.)

8. Since Daniel was without counsel through all proceedings prior to and during the trial, Daniel failed to request a jury trial as required by Rule 17(d), *Utah R. Civ. P.*

9. During the trial, the Prosecutor called Daniel's wife as a witness to testify against him in direct violation of Daniel's rights to not have his wife testify against him. (R. 1.) When her testimony was not helpful to the Prosecution's case, the Prosecutor entered into evidence, against the objections of Daniel, his wife's prior written statement. (R. 12, 15.)

10. Daniel, without any legal representation, was found guilty of a Class B Misdemeanor at a bench trial held on February 21, 1996. (*Id.*)

11. Upon conviction, but prior to sentencing, Daniel then sought help for the first time from his present counsel. (R. 93-94; Hr'g Tr. at 8-9, lines 25-8, Addendum 2.)

12. Immediately after being found guilty, the City's Prosecutor recommended "jail time" to the trial court. (R. 1.) However, after Daniel retained counsel the following day and said counsel filed a Motion for a new trial, the City's Prosecutor offered to withdraw his recommendation for jail time in an effort to plea bargain Daniel's case. (City's Letter, dated March 26, 1996, attached hereto as Addendum 4.)

13. At the sentencing hearing on February 23, 1996, Daniel was represented by his present counsel who filed a written motion to the trial court for Arrest of Judgment or a New Trial. (R. 2, 16-23.) Instead of proceeding with sentencing, the trial court heard

oral argument from the attorneys on Daniel's Motion and then took the matter under advisement. (R. 2, 67.)

14. The trial court scheduled a second hearing on the issue of what Daniel knew about his rights to an attorney and when he knew it. (R. 2.) That hearing was held on April 16, 1996, and the trial court again took the matter under advisement. (R. 2-3, 107.)

15. On July 9, 1996,<sup>2</sup> Judge K. Roger Bean entered a written and signed decision which denied Daniel's request for a new trial. (R. 3, 67.) Judge Bean's decision admits that he "made no inquiry as to whether [Daniel] qualified for appointed counsel" because the Court "considered the request untimely." (R. 68; Mem. of Decision at 2, attached hereto as Addendum 5.) The trial court also relied on a line of cases set forth in the City Prosecutor's brief and which brief opposed Daniel's motion for a new trial. (R. 69; Mem. of Decision at 3, Addendum 5.) Finally, the trial court plainly admits that it "did not have the opportunity to determine whether" Daniel qualified or not for a court appointed attorney. (*Id.*)

16. On July 22, 1996, the trial court sentenced Daniel. (R. 73-74.) The trial court imposed a fine of \$800.00 and 90 days in jail, with \$200 of the fine and the jail time suspended upon payment of the fine. (*Id.*) The trial court also imposed a requirement that Daniel enroll in an anger management course for eight weeks. (*Id.*) Daniel filed his Notice of Appeal the following day, July 23, 1996.

---

<sup>2</sup> Although Judge Bean's Memorandum of Decision, (R. 67 ), is dated June 14, 1996, it was not filed and served until July 9, 1996

## SUMMARY OF ARGUMENT

The central, underlying issue in Daniel's appeal is whether or not he possessed a fundamental right to retain counsel to assist him in his defense. This is not to be confused with whether Daniel had a right to court appointed counsel, which depends on whether he was indigent and whether he faced the substantial probability of jail time. If Daniel enjoyed the right to retain counsel to assist him, not court appointed counsel, then the trial court clearly erred in not permitting him an opportunity to retain counsel, in not granting a continuance long enough for Daniel to retain such counsel, and in not granting Daniel's request for a new trial because his fundamental rights were clearly infringed.

The entire line of cases dealing with the issue of an accused's right to counsel are all predicated on court appointed counsel. The City's Prosecutor filed an opposition memorandum in response to Daniel's motion for a new trial, and the cases cited therein all deal with court appointed counsel or court paid transcripts. The trial court incorrectly relied on those cases, and Daniel believes, that the trial court became confused as to the central issue in this matter: whether Daniel has a fundamental right, irrespective of whether incarceration is involved, to retain his own counsel.

If the trial court's theory were to hold, then any court that was prepared to avoid imposing jail time could then deny any defendant, rich or poor, the right to bring counsel to represent him or her in any criminal proceeding. Such a position would extend *Argersinger* and *Scott* well beyond their intended boundaries. The implications are profound and most disturbing; they cannot be correct and cannot stand.

The trial court failed to provide even a modicum of fairness to Daniel. The trial court provided no instructions, printed or otherwise, for accused indigents to follow in obtaining court appointed counsel. The trial court could easily see that Daniel was young, inexperienced, and he never presented any defense during his brief thirty minute trial. Despite these observations, the trial court failed to conduct any colloquy with Daniel regarding his indigence, competence, or his desire to represent himself. The burden on the trial court was slight; the burden placed on Daniel, because of the trial court's failure to act in the interests of justice, was and remains heavy.

## **ARGUMENT**

Although this appeal presents three issues, they are all interrelated. The underlying question to all three issues is whether or not Daniel possessed the fundamental right to the assistance of counsel at his trial. If he had no right to counsel or if the denial of counsel was harmless, then Daniel's appeal lacks merit. Appropriately, this underlying question is paramount to the analysis of the three issues presented and is analyzed first.

### **I. Daniel possessed the fundamental right to the assistance of counsel at his trial.**

Our Constitutions grant fundamental rights to persons accused of crimes. Specifically, accused persons are entitled to "have the assistance of counsel" or to "appear and defend in person and by counsel." U.S. Const., Sixth Am.; Utah Const., Art. I., Sec. 12. This right is also granted by Utah's laws:

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

§ 77-1-6(1)(a), *U.C.A.*

(a) In all cases the defendant shall have the right to appear and defend in person and by counsel. . . .

Rule 17, *Utah R. Crim P.*

This right has enjoyed immense success over the years.<sup>3</sup> The courts have also extended this right to indigent persons by requiring our various governments to provide free counsel to indigent persons in criminal cases. *See Scott v. Illinois*, 99 S. Ct. 1158, 440 U.S. 367, 59 L.Ed.2d 383 (1979); *Argersinger v. Hamlin*, 92 S. Ct. 2006, 2012, 407 U.S. 31, 37, L.Ed.2d 530 (1972). Notwithstanding this right, the United States Supreme Court and the Utah Supreme Court have each limited the right to enjoy court appointed counsel to cases where the accused faces a substantial probability of imprisonment or is actually sentenced to serve jail time. *Id.*; *see also Salt Lake City v. Grotepas*, 906 P.2d 890, 892 (Utah 1995) (while right to court appointed counsel is a fundamental right, it is not absolute); *City of St. George v. Smith*, 828 P.2d 504, 506 (Utah App. 1992) (trial court erred by granting the city's motion to withdraw appointed counsel where there was a substantial probability of jail time).

In *Argersinger*, the United States Supreme Court rejected Florida's curtailment of court appointed counsel to cases where the imprisonment was six months or longer. *Argersinger*, 92 S. Ct. at 2009. The Court strongly reaffirmed the need for counsel in

---

<sup>3</sup> For an excellent discussion of the right to assistance of counsel, *see Argersinger v. Hamlin*, 92 S. Ct. 2006, 407 U.S. 31, L.Ed.2d 530 (1972).

criminal cases, including misdemeanors and minor offenses:

The requirement of counsel may well be necessary for a fair trial even in a petty-offense prosecution. We are by no means convinced that legal and constitutional questions involved in a case that actually leads to imprisonment even for a brief period are any less complex than when a person can be sent off for six months or more. *Id.* at 2010.

The Court also expressed its concern that less serious cases may be short-changed in our very busy courts:

In addition, the volume of misdemeanor cases, far greater in number than felony prosecutions, may create an obsession for speedy dispositions, regardless of the fairness of the result. The Report by the President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* 128 (1967), states:

"For example, until legislation last year increased the number of judges, the District of Columbia Court . . . had four judges to process the preliminary stages of more than 1,500 felony cases, 7,500 serious misdemeanor cases, and 38,000 petty offenses and an equal number of traffic offenses per year. An inevitable consequence of volume that large is the almost total preoccupation in such a court with the movement of cases. The calendar is long, speed often is substituted for care . . . Inadequate attention tends to be given to the individual defendant, whether in protecting his rights, [or] sifting the facts at trial, . . . The frequent result is futility and failure." *Id.* at 2011.

The Court also cited several studies, including one by the American Civil Liberties Union, *Legal Counsel for Misdemeanants, Preliminary Report* 1 (1970):

"One study concluded that "[m]isdemeanants represented by attorneys are five times as likely to emerge from police court with all charges dismissed as are defendants who face similar charges without counsel." *Id.* at 2012 (emphasis added).

The limitations imposed by governments and the courts, state and federal, relate solely to court appointed counsel. There are no known limitations to retained or privately paid counsel. The underlying balancing force against providing free counsel to indigents with no limitations and in all cases is the social cost:

In *Argersinger* the Court rejected arguments that social cost or a lack of available lawyers militated against its holding, in some part because it thought these arguments were factually incorrect. But they were rejected in much larger part because of the Court's conclusion that incarceration was so severe a sanction that it should not be imposed as a result of a criminal trial unless an indigent defendant had been offered appointed counsel to assist in his defense, regardless of the cost to the States implicit in such a rule. *Scott*, 99 S. Ct. 1158 at 1162-63 (emphasis added).

In essence, the entire line of cases dealing with defining limitations on the right to counsel, deal exclusively with court appointed counsel. It is important and necessary to this analysis to clearly distinguish between the right to the assistance of counsel and the right to the assistance of court appointed counsel. While Daniel may have been entitled to court appointed counsel at his trial, the trial court admits, without any apologies, that it failed to make any inquiry on the issue of whether or not Daniel was indigent. (R. 68, 85; Trial Tr. at 3, lines 13-15, Addendum 3.) Daniel's appeal, however, does not depend on his indigence.

The core argument presented herein is that Daniel had a right to have counsel assist him at trial, regardless of whether such counsel was court appointed or whether Daniel independently retained counsel. Notwithstanding Daniel's status as an indigent, the record is clear that Daniel was in fact able to retain his present counsel, even if such

counsel was retained on a *pro bono* basis.

Layton City's Prosecutor filed a memorandum in opposition to Daniel's motion for a new trial. (R. 34-39.) None of the arguments made by the City contend that Daniel had no right to retain counsel. All of the cases cited by the City are those in which the limitation on the right to counsel refers to the right to court appointed counsel. *See id.* The City misapprehends the concept which the courts have articulated that the right to counsel is "not absolute." *See id.* The courts intended that phrase to mean the "right to court appointed counsel is not absolute."

**II. The trial court erred in denying court appointed counsel for Daniel or denying him an opportunity to retain counsel because the trial court failed to make any inquiry into Daniel's indigence, competence, or his desire to represent himself.**

**a. If indigent, Daniel was entitled to court appointed counsel.**

From the foregoing analysis, Daniel clearly had a right to retain counsel to assist him in his defense at trial. Whether he was entitled to court appointed counsel is yet to be determined. If, however, he qualified as an indigent, Daniel would have been entitled to court appointed counsel because he faced the substantial probability of jail time. *See* § 77-32-1, *U.C.A.* Daniel was charged with a Class B Misdemeanor. (R. 5.) Such offense carries with it a potential penalty of jail time "not exceeding six months" and a fine "not exceeding \$1,000." §§ 76-3-204, 76-3-301, *U.C.A.*

Not having any sentencing statistics for Judge Bean's court nor statistics of sentences for "simple assaults" in the Second Judicial District, the only information

available to assess the likelihood of jail time is the City's recommendation for a penalty. Immediately following Daniel's conviction, the City recommended "jail time due to aggravated circumstances." (R. 1.) It was only after Daniel's present counsel filed a motion for a new trial did the City offer to retreat from its "jail time" recommendation. *See City's Letter, Addendum 4.*)

"The City is willing to reduce the charge from assault to one of disorderly conduct, a class "C" Misdemeanor. Upon Mr. Longcrier's plea of guilty to that amended charge, the City will recommend that no jail time be imposed, . . ." (Addendum 4.)

If the Court were generally inclined to follow the City's sentencing recommendations, Daniel certainly faced "the substantial probability of deprivation of the indigent defendant's liberty." *See* § 77-32-1, *U.C.A.* Ironically, the City's memorandum in opposition to a new trial focused on the fact that the trial court could not impose jail time because Daniel had not been represented by counsel at trial. (R. 34-39.) If that was, or is, the City's understanding of the law, then the City was disingenuous by recommending jail time for Daniel immediately following Daniel's trial when the City knew at the time of its recommendation that Daniel had not been represented by counsel. (R. 1.) If the City truly believed that Daniel should be incarcerated in the interests of justice, the City should have urged the trial court to either appoint counsel for Daniel or permit him time to retain counsel of his choice. Following that course would have permitted the City to adhere to its convictions that Daniel deserved jail time. Instead, the path followed by the City obviously and admittedly now precludes such an outcome.

**b. Daniel never waived his right to the assistance of counsel.**

Although the trial court and the City suggested during the hearings on Daniel's motion for a new trial that Daniel had waived his right to counsel by his actions, it is well established that a defendant must waive his or her right to counsel "knowingly and intelligently." See e.g. *State v. Frampton*, 737 P.2d 183, 187 (Utah 1987)(assistance of counsel is personal and may be waived by a competent accused if the waiver is knowingly and intelligently); *State v. Hamilton*, 732 P.2d 505, 507 (Utah 1986)(record must show that an accused was offered counsel but intelligently and understandingly rejected the offer)(citing *Carnley v. Cochran*, 369 U.S. 506, 82 S. Ct. 884, 8 L.Ed.2d 70 (1962); *State v. Ruple*, 631 P.2d 874, 876 (Utah 1981)(record failed to demonstrate that defendant knowingly and intelligently waived his right to counsel); *State v. McDonald*, 922 P.2d 776, 786 (Utah App. 1996)(even though trial court failed to make an ideal inquiry into whether defendant made an intelligent waiver, the trial court correctly determined defendant knowingly, intelligently, and voluntarily waived his right to counsel).

There is no indication in the record that Daniel ever desired to represent himself. There is no evidence whatsoever in the record that Daniel waived his right to counsel. The trial court admits that it "made no inquiry as to whether [Daniel] qualified for appointed counsel." (R. 68; Mem. of Decision at 2, Addendum 5.) The trial court appears to draw significance from the fact that there was a space for "Defendant's Attorney" on the court's Notice of Pretrial and its Notice of Trial, and such designation

was “five-eighths” or “one-half” of an inch within Daniel’s signature. (*Id.* at 1,2.)

Apparently, the trial court attempts to infer that Daniel had waived his right to counsel and was conveying by his actions that he desired to represent himself.

Notwithstanding such inference, the trial court falls far short of any sort of “colloquy” with Daniel as suggested in *Frampton*, 737 P.2d at 187. In fact, the trial court set forth in its Memorandum of Decision its entire brief colloquy with Daniel. (R. 68; Mem. of Decision at 2, Addendum 5.):

Court: Is the City ready to proceed?

Mr. Garside: We are, your honor.

Court: Mr. Longcrier, are you ready to proceed?

Mr. Longcrier: I need an attorney. They said, when I called, that I could ask for one.

Court: Just have a seat, sir. The Court denies your request for a continuance so that you could get a lawyer, and you may proceed, Mr. Garside.

The foregoing is the entire colloquy between the trial court and Daniel. It is clear that the trial court made no effort to inquire whether Daniel desired to represent himself. Further, there is no evidence advanced by the trial court or the City that Daniel ever expressed any desire or intention to represent himself.

The instant case parallels *Ruple*, 631 P.2d at 876. In *Ruple*,

the defendant here at the time of trial had not finished the twelfth grade of school and suffered from minimal brain disfunction as well as dyslexia. While the defendant had been in the court before, mostly on juvenile charges, the record does not reveal that he had ever gone through a trial or

had even witnessed a trial the likes of which he was about to conduct.

The record does not demonstrate that the defendant “knowingly and intelligently” made his choice to represent himself. The judgment below is reversed and the case is remanded for a new trial. *Id.* at 786.

Daniel failed to advance beyond the tenth grade in school. He has never been in court prior to this case because he has no prior arrests or violations. (R. 37.) Most importantly, the trial court failed to establish by any means that Daniel waived his right to counsel, whether such counsel was to be court appointed or retained by Daniel.

**III. The trial court erred in denying Daniel a continuance on the day of trial so that he could retain counsel because such denial effectively denied Daniel’s fundamental right to counsel.**

While the trial court has wide discretion in granting or denying a continuance, when such continuance implicates a fundamental right such as a defendant’s right to counsel, the trial court’s actions should be scrutinized more closely. *See State v. Cabututan*, 861 P.2d 408, 413 (Utah App. 1993); *U.S.A. v. Nichols*, 654 F. Supp. 1541 (Utah C.D. 1987)(right to counsel to be balanced against the orderly administration of justice); *U.S.A. v. Burton*, 584 F.2d 485, 489 (D.C. Cir. 1978)(when continuance implicates Sixth Amendment right to the assistance of counsel, right to select counsel must be balanced against the orderly administration of justice). What is a reasonable delay depends on all the surrounding facts and circumstances. *Burton*, 584 F.2d at 490. The court in *Burton*, articulated several factors to be considered in balancing the defendant’s right to counsel with the orderly administration of justice:

. . . the length of the requested delay; whether other continuances have

been requested and granted; the balanced convenience or inconvenience to the litigants, witnesses, 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.

In the instant case, Daniel had not sought any prior continuance. The trial was simple, lasting only about thirty minutes; the police officer involved was not present for the trial. The continuance was for the sole purpose of allowing Daniel sufficient time to obtain counsel. Daniel was not provided any instructions on how to apply for a court appointed attorney except that he was merely told to "ask the judge." (R. 93, 95; Hr'g Tr. at 8 lines 7-9, Addendum 2.) The burden on the trial court to grant a continuance was slight. The minor delay in collecting any monetary fines from Daniel, assuming he were found guilty, posed very little burden on the State; Daniel's freedom was not an issue since he could not be incarcerated. On balance, it seems that Daniel's right to retain counsel far outweighs any burdens such continuance would impose on the trial court and its orderly administration of justice.

Finally, the record reflects that Daniel's sole source of information concerning a court appointed attorney came either from the City or one of the trial court's clerks. (R. 93, 95; Hr'g Tr. at 8, lines 3-4, 7-9, Addendum 2.) Daniel was never provided any written instructions. He relied on what the court's clerk told him. *Id.* When he arrived at

the trial court, he asked for an attorney. (R. 68; Mem. of Decision at 2, Addendum 5.) Unfortunately, the trial court barely gave him the time of day. *Id.* Daniel asked for an attorney. *Id.* The trial court, quickly, abruptly, and with no dialogue with Daniel, denied his request and immediately proceeded to trial. *Id.*

Interestingly, the trial court's reliance on *State v. Penderville*, 272 P.2d 195 (Utah 1954), actually supports Daniel's position. The court in *Penderville* was reversed because the court failed to permit the defendant his right to represent himself. *Id.* at 199. The defendant, who initially had counsel, requested to represent himself the day before trial, but he wanted more time to prepare for trial. *Id.* The trial court was of the opinion that the application by the defendant was a made in bad faith. *Id.* However, Utah's Supreme Court opined in *Penderville*:

Regardless of what we may conclude to be the motives of the defendant, he failed in the effort and no delay was occasioned by his having made the application [for a continuance]. Can it be said that the appellant lost his right to defend in person by his unsuccessful effort to have his trial postponed to get other counsel? We think not. The right to defend in person certainly should no be denied an accused in a situation where he must either choose to use it or proceed with counsel in whom he has lost confidence. We hold that the court erred in denying appellant the right to try his case without the aid of counsel and that because of this error he is entitled to a new trial. *Id.*

An accused's constitutional rights to defend (1) in person or (2) with the assistance of counsel appear as co-equal rights. A person either defends with counsel or by self-representation. The court in *Penderville* held that a defendant had a fundamental right to make a last minute change from being represented by counsel to self-representation. *Id.*

In the instant case, Daniel desired to be represented by counsel. Even if, *arguendo*, he had earlier expressed a desire to represent himself, the trial court had a duty to honor Daniel's request to be represented by counsel, notwithstanding his request was made at the beginning of the trial. A short continuance is more efficient than a new trial. It also promotes greater justice.

**IV. The trial court erred in denying Daniel's motion for new trial because the trial court forced Daniel to represent himself at trial without making any inquiry into Daniel's competence or his desire to represent himself.**

In Utah, a trial court may grant a motion for 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." *State v. Owens*, 753 P.2d 976, 978 (Utah App. 1988). There can be no doubt that Daniel's rights were substantially and adversely infringed by having no counsel to represent him at trial. He could have requested a jury trial; without counsel he was unaware of Rule 17. His wife's testimony and her prior written statement were used against him. (R. 1, 12, 15.) The police officer was not present to testify that he "observed no physical signs or injury," nor was his report entered into evidence. (R. 1., Police Report at 4, Addendum 1.) Daniel presented no defense. (R. 1.) In essence, Daniel's lack of counsel at trial was devastating to him.

The trial court appeared to deny Daniel's request for a new trial based on an incorrect legal conclusion. The trial court relied on the line of cases presented by the City in its opposition memorandum. (R. 69; Mem. of Decision at 3, Addendum 5.):

The Prosecutor's argument, set forth in his brief, that the Defendant has no right to the assistance of counsel unless he is sentenced to incarceration, is also directly in point. Most of the cases cited there refer to court appointed counsel. Because of the timing of Defendant's request for appointed counsel, the court did not have the opportunity to determine whether he qualified or not. *Id.*

The trial court's Decision infers that Daniel had no right to retain counsel of his own. Yet, Daniel clearly has a right to counsel, even though he may not have a right to court appointed counsel. The trial court never made this distinction. Accordingly, the trial court's legal conclusion, on which it based in part or whole its denial of Daniel's motion for a new trial, is so flawed that it undermines the very footing on which the trial court's denial of a new trial stands.

It is also remarkable, sadly so, that the trial court could choose to characterize its brief encounter with Daniel on the day of trial as not having an "opportunity" to determine whether Daniel qualified as an indigent. The trial court clearly had an opportunity to take a few minutes to engage Daniel in some sort of colloquy about his indigence, competence, or his desire to represent himself. Instead, in its rush to clear another misdemeanor from the calendar, the trial court ignored Daniel's fundamental rights.

Equally remarkable, the trial court consumed considerable trial court time in hearings on Daniel's request for a new trial. Such time exceeded by a factor of two the combined amount of time for the initial trial plus the estimated time for a new trial. Yet, the trial court seems to base much of its reasoning on an efficiency theory. That is, the

reason for denying Daniel's request for an attorney was in part because his request came to the trial court's attention at the last minute, thereby potentially creating a thirty minute gap in the trial court's calendar that day, February 21, 1996.

### CONCLUSION

Daniel clearly has a right to retain counsel to assist him in his defense. The trial court denied him this fundamental right, which substantially and adversely affected him when he was found guilty after bench trial and without mounting any defense. The trial court also erred by not granting a continuance so that Daniel could retain counsel; and again erred by not granting Daniel's request for a new trial when it was clear that Daniel's fundamental rights were trampled upon. The Court of Appeals should reverse the judgment below. The better view, however, and in the interests of justice, the Court of Appeals should not burden Daniel or the trial court with another trial, albeit brief; it should dismiss the charge against Daniel.

DATED this 2nd day of January 1997.

A handwritten signature in cursive script, appearing to read "Michael A. Jensen", written over a horizontal line.

MICHAEL A. JENSEN, Esq. (7231)  
Counsel for Daniel Longcrier

**CERTIFICATE OF SERVICE**  
Court of Appeals Case No. 960499-CA  
Second District Court, Layton, Case No. 951001606

**LAYTON CITY**

v.


**DANIEL LONGCRIER**

---

I, Michael A. Jensen, Counsel for Daniel Longcrier in the above action, hereby certify that on this day I personally served Layton City and the Second District Court, Layton Division, with two true and correct copies of the foregoing BRIEF OF APPELLANT by personally depositing copies thereof with the United States Postal Service, postage prepaid, to:

Kristina M. Neal  
Layton City Prosecutor  
City of Layton  
437 N. Wasatch Drive  
Layton, Utah 84041  
(801) 546-8530  
FAX: 546-8535

DATED this 2nd day of January 1997.

  
\_\_\_\_\_  
MICHAEL A. JENSEN, Esq.

## **ADDENDUM INDEX**

### **Addendum 1**

Layton City Police Report, dated June 16, 1995

### **Addendum 2**

Evidentiary Hearing Transcripts, dated April 16, 1996

### **Addendum 3**

Trial Prelude Transcripts, dated February 21, 1996

### **Addendum 4**

Layton City Letter, dated March 26, 1996

### **Addendum 5**

Memorandum of Decision, dated June 14, 1996, served July 9, 1996

Tab 1

LAYTON CITY POLICE DEPARTMENT  
COMPLAINT QUESTIONNAIRE

DATE OF REQUEST 6-16-95

DR#  
IN#

9503486  
2317951

RECEIVED  
JUN 21 1995  
LAYTON CITY ATTORNEY

1. COMPLAINANT (Officer): B. King

Agency: LAYTON P.D.

2. DEFENDANT(S):

A. Name DANIEL LONGCIEER DOB 7-29-76

Address 512 N 2200 W LAYTON, UTAH 84041

B. Name \_\_\_\_\_ DOB \_\_\_\_\_

Address \_\_\_\_\_

C. Name \_\_\_\_\_ DOB \_\_\_\_\_

Address \_\_\_\_\_

3. REQUESTED OFFENSE(S):

NEED: WARRANT \_\_\_\_\_ SUMMONS \_\_\_\_\_

Defendant(s) (Circle)

(A) B C 1. Crime ASSAULT (DOMESTIC VIOLENCE) UCA Citation 9.56.010

Date of Offense \_\_\_\_\_ Location \_\_\_\_\_

A B C 2. Crime \_\_\_\_\_ UCA Citation \_\_\_\_\_

Date of Offense \_\_\_\_\_ Location \_\_\_\_\_

A B C 3. Crime \_\_\_\_\_ UCA Citation \_\_\_\_\_

Date of Offense \_\_\_\_\_ Location \_\_\_\_\_

A B C 4. Crime \_\_\_\_\_ UCA Citation \_\_\_\_\_

Date of Offense \_\_\_\_\_ Location \_\_\_\_\_

4. PHYSICAL EVIDENCE: (Weapons, fingerprints, photos, controlled substances, etc.)

Description of Evidence Present Location Chain (By Witness No.)


Comments: (note any special circumstances)


LAYTON POLICE DEPARTMENT  
Crime Report

Report Date: 06-16-95

Report #Id : 231795.AP043 DR# 9503443  
IN# 231795

DR# 9503443

IN# 231795

CODE	OFFENSE DESCRIPTION
1313	Simple Assault
3805	Domestic Violence

Weapon, Force or Means used-  
03,21,33

Apparent Motive-

03,11  
Location of Occurrence-  
512 N 2200 W

	Date	Time
OCC. ON:	06-16-95	21:00
OR BTWN:		
REPORTED:	06-16-95	

**Source: F Field**

## Connecting reports-

Investigative divisions, units, persons notified-

ADDITIONAL PEOPLE INVOLVED

CODES: S-Suspect, V-Victim, W-Witness, C-Complainant, F-Father, M-Mother

V1	Name: OWEN, STEPHANIE Addr: 512 N 2200 W CSZ: Layton, UT 84041 AKA:	DOB: 12-13-75 Sex: F Race: W HP: 547-1798 Testify: Yes	Age: 19 Eth. N WP:
S1	Name: LONGCRIER, DANIEL Addr: 512 N 2200 W CSZ: Layton, UT 84041 AKA:	DOB: 07-29-76 Sex: M Race: W HP: 547-1798 Testify:	Age: 18 Eth. N WP:
W1	Name: PHILLIPS, JOHN Addr: 512 N 2200 W CSZ: Layton, UT 84041 AKA:	DOB: 04-29-75 Sex: M Race: W HP: 547-1798 Testify:	Age: 20 Eth. N WP:
W2	Name: PHILLIPS, KEHLI Addr: 512 W 2200 W CSZ: Layton, UT 84041 AKA:	DOB: 04-08-78 Sex: F Race: W HP: 547-1798 Testify:	Age: 17 Eth. N WP:

The Details of this report can be found in the consheet.  
Consheet Id is G:\CONSHEET\231795AP.043

Supervisor	P#	Reporting Officer(s)	P#	Assmt.	Rep. Off. Signature
		KING, BRADLEY J	P043	PTL	
Assigned to: P# Assmt.		Date/Time Reproduced			Div/Clk To Whom

Submit to C/A	Active	Other	Immediate F/U	Pending	Inactive
---------------	--------	-------	---------------	---------	----------

LAYTON CITY POLICE DEPARTMENT  
CONTINUATION SHEET

-----  
PAGE: 1                      RID: 231795.AP043                      DR#: 9503443  
OFFICER: King  
SUBJECT: Family fight  
-----

On 06-16-95 at 2330 hours, RO responded to 2200 W on a family fight prior. RO spoke to the victim, a 19 year old female. RO determined an assault took place. RO also spoke to two witnesses. RO was unable to locate the suspect. RO did complete a complaint questionnaire.

On 06-16-95 at 2330 hours, a Stephanie Owen at 512 N 2200 W contacted this agency regarding a fight with her live in boyfriend. Stephanie indicated that the boyfriend had left the area, but she wished to speak to an officer.

RO did speak to Stephanie at her home. Stephanie indicated that she had been assaulted by her boyfriend, Daniel Longcrier. Stephanie also stated that Daniel brandished a knife also. Stephanie stated that she and Daniel have a child together and do live together.

Stephanie provided the following facts to RO. Stephanie and Daniel began arguing in Bountiful at 1800 hours. Stephanie stated Daniel is regularly using crank (methamphetamine) and that he was under the influence on this date. Stephanie stated that Daniel tried to get some money from her to buy crank. Stephanie stated Daniel tried to take her planner and she refused. Daniel twisted her neck and hit her. This occurred in Bountiful.

Stephanie stated at 2100 hours, at their home, Daniel placed a stereo, television, vcr, and computer in his truck. Stephanie stated that Daniel was going to pawn the items to buy more crank. Stephanie stated she tried to get the computer back and a fight ensued. Stephanie stated that she took Daniel's keys and that Daniel pulled a knife out and pointed the knife at her. Stephanie stated that Daniel demanded to have his keys back. Stephanie stated that a friend, John Phillips and his wife Kehli Phillips were present. Stephanie stated John stepped in and Daniel threw the knife out into the street. Stephanie stated that Daniel then ripped her clothes off. RO did observe a pair of levis that were torn open. Stephanie stated Daniel was slapping at her and calling her names. Stephanie stated Daniel then left with another friend, but later returned to get his truck.

RO observed no physical signs or injury on Stephanie. RO asked Stephanie if she would like to speak to a victim's advocate. Stephanie declined. RO did have Stephanie, John, and Kehli, complete witness statements.

RO was not able to locate Daniel. RO did complete a complaint questionnaire for assault against Daniel. RO did ask Stephanie to contact RO if Daniel returned home.

RO has no further details at this time. eor 6-19-95 mak

Tab 2

1 IN THE SECOND JUDICIAL DISTRICT COURT

2 IN DAVIS COUNTY, STATE OF UTAH

3 LAYTON DIVISION

4  
5  
6  
7  
8 LAYTON CITY )

9 Plaintiff, )

10 vs. )

Case No. 951001606

11 DANIEL LONGCRIER )

12 Defendant )

13  
14  
15  
16 BEFORE THE HONORABLE K. ROGER BEAN

17 -----  
18 April 16, 1996

19  
20  
21  
22 Evidentiary Hearing

## A P P E A R A N C E S

For Plaintiff: Susan L. Hunt  
Assistant Prosecutor  
City of Layton  
437 N. Wasatch Drive  
Layton, Utah 84041

For Defendant: Michael A. Jensen  
900 First Interstate Plaza  
170 South Main  
Salt Lake City, Utah 84101-1655

1 April 16, 1996

3:00 P.M.

2 PROCEEDINGS

3  
4 THE COURT: Miss Hunt, do you have, is that your understanding, do you have  
5 evidence.

6 MS. HUNT: Your Honor, it is my understanding that this was set for an evidentiary  
7 hearing, but it's the city's position, at this point, that really the court does not need to hold an  
8 evidentiary hearing because, and I don't know if the court has had an opportunity to read the  
9 memorandum that's been prepared by Mr. Garside on this, but--

10 THE COURT: I'm part way through that, but we were at judges' meetings when  
11 that was filed and I simply haven't had a chance--

12 MS. HUNT: That's right. I knew that the court, Your Honor, had been out of town  
13 and so, but the city's position, basically, is that the only issue to be resolved by the court is  
14 whether or not the defendant had a right to appointed counsel and that if the court finds that the  
15 defendant did have such a right, then the court probably should vacate the trial. But it's the  
16 city's position that, and recommendation, that the court proceed to sentencing in this matter and  
17 the city's recommendation is that the court impose no jail time on the defendant, but only impose  
18 a fine for this matter. And then the city takes the position that if the court imposes no jail time,  
19 that there's no actual jail time for this offense, then the defendant has no right to counsel. And,  
20 therefore, there is no need to make any finding in the record that the defendant knowingly and  
21 voluntarily waived that right because there isn't such a right. And there's a recent Utah case on  
22 this, Salt Lake City v. Grotepas where the defendant was charged with an infraction and the  
23 court ordered the defendant to pay a fine as a result of that. The defendant was represented by  
24 counsel at trial and then appealed the conviction on the basis of ineffective assistance of counsel.  
25 And the court decided that because the defendant had no right to counsel, then the court could

1 not consider whether or not the counsel was effective or ineffective simply because there was  
2 no right to counsel to begin with. And there's some prior Utah case law that says even though  
3 in Grotepas you have a situation where the defendant was charged with an infraction, and there  
4 was no possibility of jail time, the court took that clear, the U.S. Supreme Court and the Utah  
5 Courts, that the proper inquiry is not whether or not there is a possibility of jail time, but whether  
6 there is actual jail time imposed on the defendant. And, so in this case, if there were no jail time  
7 imposed on Mr. Longcrier as part of his sentence for this offense, that he would have no right  
8 to counsel. And there being no right to counsel, there's no need for the court to make any  
9 inquiry into whether or not he normally and voluntarily waived his right to counsel. So that's  
10 the position the city is taking and I think based on that, it really would be moot for the court to  
11 hold an evidentiary hearing as to what the defendant knew. If the court were to find that, for  
12 example, that the defendant talked to me in the hall and asked about appointed counsel and I told  
13 him very clearly and plainly that he would have to request counsel from the court and explained  
14 to him the whole procedure for doing that, even if the court found that that happened, and the  
15 court made no finding in the record that the defendant voluntarily and knowingly waived his right  
16 to counsel, then the court still would be precluded from imposing any jail time, as I read the case  
17 law. So whether or not that occurred is really a moot issue.

18 THE COURT: Alright, thank you. Mr. Jensen, why don't you go ahead.

19 MR. JENSEN: Your Honor, Mr. Garside responded to our Motion for a new trial,  
20 and I received it on Friday, and cited a line cases, all of which related to the taxpayers picking  
21 up appointed counsel or taxpayer paid transcripts. There was not a single case cited which  
22 denied the defendant the right to counsel. It is only balancing the need for counsel and the  
23 possible imposition or penalty of imprisonment, but none of them dealt with why the counsel---

24 THE COURT: Doesn't the Grotepas case expressly deal with the right to counsel in  
25 a criminal case?

1           MR. JENSEN: Only for indigents. All of those were indigents. All of those were  
2 taxpayers and if you read the Scott case ----

3           THE COURT: Well, it doesn't turn on any tax question. You're not saying to the  
4 court it turns on the question of the taxpayers being involved. It really turned on the question  
5 whether or not that defendant had the right to counsel period.

6           MR. JENSEN: No.

7           THE COURT: It didn't?

8           MR. JENSEN: No, Your Honor. In fact, they rely on the Scott case, which is the  
9 U.S. Supreme Court case on which they rely, all of this derives, and the Scott case was simply  
10 on indigency. And if you read the text of that case, you will see that this was really a balancing  
11 to preserve the rights guaranteed in the Constitution versus the rights of burdening the courts  
12 with providing counsel for every little petty offense.

13          THE COURT: Have you read Grotepas?

14          MR. JENSEN: Yes, I have.

15          THE COURT: Did he not have his own counsel at trial?

16          MR. JENSEN: Yes, he did.

17          THE COURT: And didn't the appeal go up on ineffective counsel?

18          MR. JENSEN: It did, Your Honor.

19          THE COURT: Well, what does that have to do with taxes?

20          MR. JENSEN: Well, I'm just saying that the whole line case, all those were indigent  
21 cases.

22          THE COURT: Grotepas wasn't indigent.

23          MR. JENSEN: No, but what they were doing is they were analogizing ineffective  
24 counsel claims to all of the indigent claims. And besides, Grotepas is simply an infraction. There  
25 was never any possibility of imprisonment.

1 THE COURT: Yes, well I'm saying, yes, you're right.

2 MR. JENSEN: Oh, yes, on that--

3 THE COURT: That was precisely the point of the Court of, of the Supreme Court  
4 when they reversed the Court of Appeals.

5 MR. JENSEN: Yes, but what I'm saying is, what I'm trying to suggest is that the  
6 infraction, okay, never had the possibility of imprisonment.

7 THE COURT: Yes, that's correct.

8 MR. JENSEN: Now, if we follow the theory that the prosecution would like this court  
9 to adopt, what it is really saying is that this court, from here after, could deny counsel [to a  
10 defendant] whether he wanted to pay for it himself or not, as long as you didn't impose  
11 imprisonment, you can't have counsel. And so if the court looked at the record before and  
12 decided that this was not a case in which it was going to impose imprisonment, but was just  
13 going to impose a conviction of penalty, this court could then say, "sorry, you don't have a right  
14 to counsel." "I don't care whether you can pay for it or not, you have no right to counsel."  
15 And we never reached that point in this case. This defendant was never given an opportunity to  
16 either select his own counsel or get court appointed counsel. And so, you can't take these line  
17 of cases as now saying that every defendant that comes before this court is going to be denied  
18 counsel, or, if they are imprisoned, then they have a right of appeal, but if they aren't imprisoned,  
19 tough. You know, you could impose a thousand dollars, two thousand dollar fine, conviction,  
20 whatever, but you don't have a right to counsel. These line of cases are very different than the  
21 present case, Your Honor.

22 THE COURT: Do you really think that the necessary extension of what Ms. Hunt is  
23 arguing for is that the court could deny counsel even if the defendant wanted to retain his or her  
24 own counsel?

25 MR. JENSEN: You bet, because that's exactly what has happened in this case. This

1 individual, Daniel, did not choose to have his own counsel. He didn't choose not to have  
2 counsel at all.

3 THE COURT: What did he choose? Tell me what he chose.

4 MR. JENSEN: He thought, he was under the impression, that when he came to this  
5 court, he was going have court appointed counsel.

6 THE COURT: Can you tell the court where he got that idea?

7 MR. JENSEN: Well, if we can put him on the stand, Your Honor. Would that be  
8 alright?

9 THE COURT: Sure, you can put him on. He needs to be sworn. Would you raise  
10 your right hand to be sworn?

11 CLERK: Do you solemnly swear that the testimony about to be given is the truth, the  
12 whole truth and nothing but the truth, so help you God?

13 MR. LONGCRIER: I do.

14 MR. JENSEN: Mr. Longcrier, would you please tell the court when you first  
15 requested--

16 THE COURT: Mr. Jensen, I think we better make a record. We better make a record  
17 on his name and his address so that we know who he is.

18 MR. JENSEN: Oh, okay, I'm sorry. Would you please state your name and address  
19 for the record?

20 MR. LONGCRIER: My name is Daniel Longcrier. I live at 418 West Center Street  
21 in Bountiful, Utah.

22 THE COURT: Please go ahead.

23 MR. JENSEN: Mr. Longcrier, sometime earlier this year, there was a hearing, a plea  
24 hearing. Can you tell us what happened at that hearing regarding an attorney?

25 MR. LONGCRIER: I really can't remember everything that happened. I can't

1 remember, really

2 MR JENSEN You can't remember anything?

3 MR LONGCRIER Yea, I talked, at the plea, I talked to Miss Hunt outside and she  
4 said that, um, I asked her if I could have an attorney and she said, um, I don't know her exact  
5 words, but basically, she told me I had to come to the court for an attorney

6 MR JENSEN So, then what did you do next?

7 MR LONGCRIER So, let's see, I called the court house and they told me, I talked  
8 to the secretary She told me that when I got to court, I could have one appointed to me All  
9 I had to do is talk to the judge

10 MR JENSEN And then what happened when you got to court?

11 MR LONGCRIER I asked the prosecuting attorney if I had a lawyer and he told me  
12 I didn't And I asked him if I could get one and he told me that I couldn't

13 MR JENSEN And where did that conversation take place?

14 MR LONGCRIER It's just outside, in the court house lobby

15 MR JENSEN Before the trial?

16 MR LONGCRIER Yea, before

17 MR JENSEN Let's just make this very clear He said to you, you asked him if you  
18 had an attorney?

19 MR LONGCRIER Yea, and he said that if I didn't have one, then I couldn't have  
20 one

21 MR JENSEN So if you didn't have one, you couldn't have one

22 MR LONGCRIER Well, I think his words were, um, you don't have an attorney,  
23 and I told him no And he said, well, that's too bad And I said, can I get one, and he just didn't  
24 answer me nothing, just basically said no

25 MR JENSEN Had you sought out a private attorney any time in between?

1 MR LONGCRIER No, I didn't

2 MR JENSEN And why didn't you?

3 MR LONGCRIER I thought that I would be granted one when I came to court

4 MR JENSEN Your Honor

5 THE COURT Thank you You may sit down Ms Hunt, you may cross examine

6 MS HUNT I don't have any questions

7 THE COURT The court has a couple of questions Mr Longcrier, do you watch  
8 TV?

9 MR LONGCRIER A little bit

10 THE COURT Did you get the idea from watching television sets, pardon me,  
11 television programs that deal with legal cases, that the court would appoint for you from that  
12 source?

13 MR LONGCRIER I don't see what you mean

14 THE COURT Did you ever watch a law case, court case on television where  
15 appointment of an attorney was the subject matter of the program?

16 MR LONGCRIER No, not really

17 THE COURT Tell us, where did you get the idea that the court would appoint a  
18 lawyer for you?

19 MR LONGCRIER I called the secretary and she said I could get one appointed

20 THE COURT Did she just say it just that way or did she put some qualifications on  
21 it

22 MR LONGCRIER She said, I asked her, I said, I need to get a court appointed  
23 attorney How do I go about getting one and she said, just come in on the day of your trial and  
24 ask the judge for one

25 THE COURT And so, did you do that?

1 MR LONGCRIER Well, I kind of got the feeling that I wasn't going to be  
2 appointed one

3 THE COURT Well, did you ask the judge for a lawyer?

4 MR LONGCRIER No

5 THE COURT Why didn't you ask the judge for a lawyer?

6 MR LONGCRIER I didn't know how to get in contact with the judge

7 THE COURT When you were in the court, you came in and entered a plea, did you  
8 ask for one then?

9 MR LONGCRIER At the plea?

10 THE COURT Well, at any time Have you ever asked the court for a lawyer?

11 MR LONGCRIER I did right before my trial

12 THE COURT On the day of trial?

13 MR LONGCRIER On the day of trial, I asked for one

14 THE COURT At any time before that, did you request a lawyer?

15 MR LONGCRIER From the state, no, not except for when I called to the court  
16 house

17 THE COURT In other words, when you first came in for what we call arraignment,  
18 you didn't ask for one then and at the time you entered your plea in this case, you didn't ask for  
19 a lawyer at that time, I guess?

20 MR LONGCRIER No, I didn't know I was suppose to

21 THE COURT And then when you came back for pre-trial is that when you talked  
22 to Ms Hunt?

23 MR LONGCRIER Um, I believe so

24 THE COURT And she told you to ask the court for a lawyer?

25 MR LONGCRIER I don't remember exactly what she said, but it was something

1 about that.

2 THE COURT: But, at the pre-trial, you didn't do that?

3 MR. LONGCRIER: No.

4 THE COURT: Why didn't you do that?

5 MR. LONGCRIER: I wasn't aware that I was suppose get in touch with you right  
6 away. (inaudible).

7 THE COURT: But the clerk had told you that you should ask the judge?

8 MR. LONGCRIER: Yea.

9 THE COURT: When did you expect you would ask the judge?

10 MR. LONCRIER: She said to come in the day of my trial and the judge would  
11 grant one to you.

12 THE COURT: Those are her words?

13 MR. LONGCRIER: Not her exact words, no.

14 THE COURT: What are her exact words as near as you remember?

15 MR. LONGCRIER: I called on the phone. I asked, I need to get a court appointed  
16 attorney and --

17 THE COURT: But, I think you mentioned that you were talking to Ms. Hunt and I  
18 think you quoted her words a moment ago. I'm asking you to tell the court what you can  
19 remember about her words, not a telephone call.

20 MR. LONGCRIER: Oh.

21 THE COURT: When you were here at pre-trial talking to Ms. Hunt, what did she  
22 say?

23 MR. LONGCRIER: The only thing I remember about our conversation was that she  
24 told me that I had to come to the court house. I don't remember her exact words. (inaudible)

25 THE COURT: Do you know who Ms. Hunt is?

1 MR. LONGCRIER: Yea.

2 THE COURT: Did you come to a pre-trial and have a face to face conversation with  
3 her?

4 MR. LONGCRIER: I can't remember if it was my pre-trial or my plea that we talked.

5 THE COURT: She wouldn't have been here for your plea if we assume----

6 MR. LONGCRIER: It was my pre-trial.

7 THE COURT: Alright and what did she tell you about getting a lawyer appointed at  
8 the pre-trial hearing?

9 MR. LONGCRIER: I don't remember.

10 THE COURT: Thank you. Mr. Jensen, anything further?

11 MR. JENSEN: I have just a couple of questions, Your Honor.

12 THE COURT: Yes. Redirect. You can ask whatever you want that's relevant.

13 MR. JENSEN: Did you, at any time, on the day of the trial or any time prior,  
14 expressly state that you wanted to waive your right to counsel?

15 MR. LONGCRIER: No.

16 MR. JENSEN: Were you ever asked if you wanted to waive your right to counsel?

17 MR. LONGCRIER: I can't remember if I was asked that question.

18 MR. JENSEN: Did you ever express to the court or anyone else that you wanted to  
19 represent yourself?

20 MR. LONGCRIER: No.

21 MR. JENSEN: That's all, Your Honor.

22 THE COURT: Thank you. Anything Ms. Hunt?

23 MS. HUNT: No.

24 THE COURT: You may step down, Mr. Longcrier. Do you want to complete your  
25 presentation, Mr. Jensen, to the court?

1 MR. JENSEN: Yes, Your Honor. It is very clear a defendant like Daniel has a right  
2 to either represent himself or to have counsel. If he chooses one, he has waived the other. If he  
3 chooses to represent himself, he's waived his right to counsel. But he has to make some  
4 expressed waiver for that to happen. In this case, there is no evidence that he ever desired to  
5 represent himself or waived his right for counsel. The record is just the opposite. It's very clear  
6 that he thought he was going to be represented by counsel. He asked to be represented by  
7 counsel.

8 THE COURT: When did he ask? When did he ask?

9 MR. JENSEN: Well, he asked on those two occasions.

10 THE COURT: Well, he asked on one, he testified about. He said he asked at the time  
11 of trial, but he wasn't----

12 MR. JENSEN: He asked Your Honor on the day of trial, that's correct. But he  
13 didn't, (inaudible) at the same, he didn't say (inaudible) have the presence of mind to say, well,  
14 if I can't get a court appointed counsel, then I want to see if I can get some other counsel.

15 THE COURT: But on the day of trial, Mr. Jensen, surely you wouldn't expect if  
16 parties are here prepared to go ahead that the court's going to grant a continuance for him to go  
17 and seek counsel when he's already been told that he should have requested it earlier than that.  
18 You wouldn't expect the court to say, yes, we're going to stop everything now and send these  
19 witnesses home so you can go and talk about counsel, to see if you can get counsel or whatever  
20 you would like to do.

21 MR. JENSEN: Well, it certainly would have been appropriate even if you were in the  
22 middle of the trial if the counsel became ineffective for the courts to protect the rights of the  
23 defendant by making sure that due counsel was appointed (inaudible).

24 THE COURT: That's Ms. Hunt's argument, though. If the court isn't going to  
25 imprison, he doesn't have that right.

1 MR. JENSEN: But the point is, at the time, there is no assurance. The prosecution  
2 at the very time that he was being denied counsel was recommending prison time.

3 THE COURT: Well, jail time. Imprisonment.

4 MR. JENSEN: Imprisonment, confinement. That was the situation. So at that  
5 particular time, he had no rights to represent himself, I mean, to have counsel. That's all I'm  
6 saying. And, furthermore, because of what actually transpired at the trial, that is, his wife was  
7 compelled to get on the witness stand against him.

8 THE COURT: Does that strike -- do you practice much criminal law?

9 MR. JENSEN: No, I don't, Your Honor.

10 THE COURT: Let me, would you believe that every day in courts along the Wasatch  
11 front, parties are subpoenaed, maybe are reluctant to testify and come to court, and would rather  
12 not testify, but unless they have a privilege and exercise it, or unless they have a 5th amendment  
13 privilege and exercise, they have to testify. That's the way it works.

14 MR. JENSEN: But a wife cannot be compelled to testify against her husband.

15 THE COURT: If she invokes her privilege.

16 MR. JENSEN: It's his privilege.

17 THE COURT: If he invokes the privilege. Neither one did.

18 MR. JENSEN: That's what I'm saying that without counsel....

19 THE COURT: Well, can I presume with him sitting there, or any court presume with  
20 him sitting there, that he has not chosen to represent himself?

21 MR. JENSEN: I think there has to be an express, the court has a duty to--.

22 THE COURT: No, no.

23 MR. JENSEN: Oh, yes, Your Honor, in the case of Ruple The case is so clear, in  
24 fact, it's so parallel to this situation, State v. Ruple

25 THE COURT: What was the in charge in that case?

1 MR. JENSEN: Your Honor, I can't find it quickly here. I have the case here with me,  
2 but I can find it in just a moment.

3 MS. HUNT: I can tell it was a felony.

4 THE COURT: Ms Hunt.

5 MS. HUNT: The charge. I think it was a distribution of marijuana felony charge  
6 in that case.

7 THE COURT: It was a felony charge?

8 MS. HUNT: Yes.

9 THE COURT: That's all I needed to know, thank you.

10 MR. JENSEN: Well, I don't know if it was a felony charge. We'll look at it and see.  
11 But what I'm suggesting is that the defendant in that case parallels Daniel very, quite a bit, in  
12 terms of his education. The court took that into consideration, and took into consideration his  
13 education. He did not finish high school. He was dyslexia. He had never had experience. He  
14 had never had experience in a trial before, had no possible way of properly representing himself.  
15 And the court said that the trial court erred. It should have taken that into account; it should  
16 have given him and looked at his rights very carefully in that case.

17 THE COURT: OK, I'll look at that. Anything else you want to tell the court?

18 MR. JENSEN: There is one other, one other case that I would like to also look at.  
19 It is also very relevant to that. And that is State v. Drobel, a 1991 case.

20 THE COURT: What state is that in?

21 MR. JENSEN: Utah. 815 P.2nd 724. Again, he asked to represent himself which  
22 the court granted. He was convicted. Again, the issue really is the competency of the individual  
23 to be able to represent himself in a court like this. But, in this case, again, he never said he  
24 wanted to represent himself and he never said he wanted to waive the right to counsel. And  
25 that's the, I think that's really the crux of it here is--

1 THE COURT: Well, you may be right, but I guess you're not saying to the court that  
2 if a person chooses to exercise his or her constitutional right to represent himself, it doesn't  
3 matter how much education he has, does it?

4 MR. JENSEN: Well, it may not matter except that the court should make a reasonable  
5 inquiry as to the person's competence to be able to do that before they let them represent  
6 themselves. And both those the cases addressed that issue. The court had a duty to make an  
7 inquiry of the individual to see if they reasonably could [represent themselves]. You certainly  
8 wouldn't let a totally incompetent person say, "I want to represent myself," when they really  
9 couldn't do that, because you would know that they couldn't possibly have a fair trial under  
10 those circumstances.

11 THE COURT: I don't know. I suppose if a totally incompetent person, I would  
12 concede that. You don't claim that Mr. Longcrier falls in that category?

13 MR. JENSEN: No, I don't, Your Honor, but I'm just suggesting that the cases I've  
14 just cited took into account the degree of their sophistication and their knowledge and their  
15 competency, and that was a factor.

16 THE COURT: Alright.

17 MR. JENSEN: Is there anything else, Your Honor?

18 THE COURT: I think not. Thank you and I'd like to hear from Ms. Hunt if she has  
19 anything she would like to tell the court.

20 MS. HUNT: No, no. First of all, counsel's summary of the city's position  
21 (inaudible) thing that (inaudible) defendant any counsel (inaudible). But what this case boils  
22 down to is whether or not defendant has the right to appointed counsel, and while the court at  
23 this point, it's kinda difficult to go back and determine whether or not the defendant was indigent  
24 for the purpose of the simple reason, we assume (inaudible). Assuming that the defendant is  
25 indigent, um, (inaudible) but even assuming that the defendant was indigent, (inaudible) actually

1 imposes jail time to this defendant, there is never any right to court appointed counsel. And if  
2 there's not a right to court appointed counsel, then there's no need to vacate the trial that  
3 happened. The defendant, whether he waives his right to counsel, the court does not need to ask  
4 defendants who aren't entitled, who don't have those rights to counsel, whether or not they  
5 waive their right to go out and hire their own attorney. It's just for those that choose to do that.  
6 I think we should assume that everybody knows that you go out and hire an attorney to represent  
7 them unless they're told otherwise and they never would be told that. For a defendant to come  
8 to court and say I didn't know I could hire an attorney to represent me because the court never  
9 told me that, it is beyond the realm of comprehension. But the cases cited by the city all are on  
10 the point of right to counsel. And the case that counsel talked about, as far as the case that  
11 involves the defendant's request for a transcript, provided at taxpayer's expense, that's Murray  
12 City v. Robinson. The way that the court decided that was that the court said the issue of  
13 whether or not a transcript will be provided is totally dependent on whether or not the defendant  
14 in this case had a right to counsel.

15 THE COURT: To court appointed counsel.

16 MS. HUNT: Court appointed counsel, that's right. And in this case, the court said  
17 that there having been no actual jail time imposed for the offense, there is no right to counsel or  
18 court appointed counsel. And therefore, there is no right to have transcripts provided at  
19 taxpayer's expense. And the court in that decision stated Robinson, while she may have faced  
20 the mere threat of imprisonment (inaudible). Moreover, we cannot speculate about Robinson's  
21 potential sentence, because Robinson's conviction resulted in a fine only. And so, it's the city's  
22 position that if the court in this case does not impose jail time, then there's no need to go back  
23 and say at the time of the trial, was there a potential for jail time? There's no need to speculate  
24 about that. In fact, if the court imposes absolutely no jail time for this offense, there is no right  
25 for court appointed counsel. Then there's no need for anyone to ever ask the defendant whether

1 or not he wanted to waive his right to counsel, if there wasn't a right. And the courts have said  
2 a right to counsel is a fundamental right; it is not an absolute right. (Inaudible), so again, the city  
3 recommends that the court proceed with sentencing, and sentence the defendant to pay a fine and  
4 the possibility of a counseling program and a term of probation, but not impose any jail time.  
5 (Inaudible)

6 THE COURT: Alright, thank you. Mr. Jensen, you get the last word.

7 MR. JENSEN: It is true that Mr. Longcrier didn't secure private counsel. The  
8 prosecution suggests that he had that right and he could have done that, and just because he  
9 didn't, they can't be blamed. But the issue is, and I believe from his testimony here today, that  
10 he was under the clear perception that an attorney would be appointed for him here. I don't  
11 think that was unreasonable. It's a simple trial. The trial shouldn't last more than 30 minutes.  
12 It's a simple case. I don't believe the prosecution prepared very much for this. They didn't have  
13 to.

14 THE COURT: Well, I don't think you would know about that, Mr. Jensen.

15 MR. JENSEN: Well, I do for the sense that they told me how long the trial was.

16 THE COURT: Well, I don't know that that would tell you how long they prepared  
17 for it.

18 MR. JENSEN: Oh, the prosecution.

19 THE COURT: Yes, that was your statement.

20 MR. JENSEN: It's speculation. It's a very simple case. All I'm saying is that he was  
21 under the perception that he was going to have a court appointed attorney. So when he arrives  
22 here and he was denied that, now - I don't know if it was one day or two days when I was called  
23 - so when he was denied that on the day of trial, I was called either that night or the next day  
24 because the sentencing was either the next day or two days later. So he did take action once he  
25 was told by the court that he couldn't have a court appointed attorney. There was never an

1 inquiry as to whether he was indigent or not, and so there can't be anything based on whether  
2 he is or is not indigent. That was never at issue because it was never inquired of him. In fact,  
3 at the last hearing, Mr. Garside contended that Daniel Longcrier probably would not qualify for  
4 a court appointed attorney. It's just his speculation.

5 THE COURT: Well, is it your position before the court today in arguing this motion  
6 that he should have been offered court appointed counsel and, that if offered, he would have  
7 qualified?

8 MR. JENSEN: No, not at all. That's just backwards. You have to first be qualified  
9 and then have a court appointed attorney.

10 THE COURT: Well, a--

11 MR. JENSEN: In his own mind--

12 THE COURT: Something has to trigger the whole discussion about court appointed  
13 counsel, doesn't it?

14 MR. JENSEN: In his own mind, because of his low income, he lives in subsidized  
15 housing, and he gets Medicaid and he gets other state assistance, in his own mind, he thought  
16 that he probably would qualify for some kind of appointed counsel. Whether he does or he  
17 doesn't is a fact question that would have to be determined; but it was never inquired, so he just  
18 thought he was going to have it.

19 THE COURT: What do you think should trigger that inquiry?

20 MR. JENSEN: When he asked for a court appointed attorney.

21 THE COURT: In court?

22 MR. JENSEN: Absent any other instructions or directions, yes.

23 THE COURT: OK.

24 MR. JENSEN: He was told to come to court.

25 THE COURT: When did he ask in court?

1 MR. JENSEN: It was my understanding at the beginning of the trial.

2 THE COURT: OK, don't you think that's an unreasonable point at which a party  
3 should ask for counsel?

4 MR. JENSEN: I think it would only be unreasonable if the person asking had some  
5 prior knowledge or understanding or instructions or something. But this person--

6 THE COURT: Wasn't his testimony here on the witness stand that Ms. Hunt did tell  
7 him at pre-trial? He had to ask the court for court appointed counsel and he didn't ask for it at  
8 the pre-trial.

9 MR. JENSEN: I understand he asked Ms. Hunt after the pre-trial on the way out. So  
10 he went home, and subsequent to then he called the court. If he had asked before (inaudible),  
11 I could understand that.

12 THE COURT: That's what I assumed his testimony meant. See, the pre-trial is  
13 between counsel and the party first, before they ever come into court. They talk then. They  
14 don't talk afterwards. I don't know what Ms. Hunt's recollection of that is. Ordinarily, the  
15 discussion with Ms. Hunt would be before he came into court.

16 MR. JENSEN: My client told me that it was on the way out, afterwards. So what I'm  
17 saying, I don't think that's unreasonable for him to ask at that point in time because that's the  
18 limit of his knowledge. It would have been a very small burden on the court to simply say,  
19 "Now, are you really prepared to represent yourself on this or would you rather seek private  
20 counsel?" But there was no inquiry made.

21 THE COURT: Mr. Jensen, as you say, you don't practice criminal law much, but I  
22 suppose if you went into circuit court and watched how misdemeanor cases flow, you would  
23 realize how impractical that is. If the court were to ask people, are you sure you want to go  
24 ahead now, or do you feel that you would like to have counsel, in 90% of the cases, the  
25 defendant would say, oh yes, I guess I better go talk to counsel. And you wouldn't be trying any

1 misdemeanor cases. We have to cover that ground ahead of the time of the trial. It simply  
2 makes no sense to get to the trial time with witnesses sitting here and counsel ready to go and  
3 have a party say, oh, gee, I guess I really need a lawyer. You can see that can't you?

4 MR. JENSEN: Again, I can see it has to be balanced with the defendant's rights for  
5 counsel. By the same token, if you're in the middle of the trial, if he had retained me or  
6 somebody else, I was here and died in front of this court, the court would certainly grant a  
7 continuance to get new counsel.

8 THE COURT: Well, yes, that's a whole different ball game there.

9 MR. JENSEN: Why is it?

10 THE COURT: It's a totally unexpected event where he has brought counsel with him  
11 and he expects to have the assistance of counsel and doesn't have it suddenly. And that's a  
12 whole different ball game than for him to come here and create the impression with everyone  
13 concerned that he's got to represent himself. That he's made that choice. He has not requested  
14 counsel before the beginning of the trial. He's going to represent himself and then he doesn't  
15 like the outcome of the trial, so a day later, he called you. Now that's the kind of scenario we  
16 have, isn't it?

17 MR. JENSEN: Except for one thing.

18 THE COURT: OK, what?

19 MR. JENSEN: Clearly, all the evidence that's been put before this court shows that  
20 Mr. Longcrier expected counsel to represent him at his trial. There's nothing to the contrary.  
21 Nobody has been able to present any evidence to the contrary to that.

22 THE COURT: Well, when you're trying to look into a person's mind, you know,  
23 being a law trained person, that we have to look at the outward indicia, the outward indications,  
24 and it's hard to know what his expectation was unless we look at the way he behaved. He  
25 behaved as a person who came to court expecting to represent himself and not expecting to have

1 counsel. That's what his behavior showed us.

2 MR. JENSEN: Even though he asked for counsel?

3 THE COURT: No he didn't ask for counsel until the moment of trial, and he's not  
4 about to get counsel at the moment of the trial when that's his first request of the court. Isn't  
5 that true, here? Doesn't all the evidence show, including his statements here on the witness  
6 stand, that he made no request for trial until the commencement of the trial.

7 MR. JENSEN: He was told by the court personnel that that was the procedure.

8 THE COURT: No, I don't accept that he was told that that was the procedure. He  
9 was told somewhere along the line, he testified, by telephone call to the clerk that he should ask  
10 the court for counsel. And I gather from the time frame that he testified about that, that it came  
11 prior to the pre-trial. You're saying it was afterwards?

12 MR. JENSEN: Oh, yes. Oh, definitely. I believe it was the day before the trial. He  
13 was told to come to the court and ask for counsel. (Inaudible). If you would like, we could put  
14 him on the stand. It was very clear that he was told to come to court at his trial and ask for  
15 counsel. Based on that, there was no other expectation that he had.

16 THE COURT: Alright. Anything further? I'll look at the cases you cited and the  
17 ones Ms. Hunt cited and make a decision.

18 MR. JENSEN: Thank you, Your Honor.

19 THE COURT: Alright. Thank you Ms. Hunter.

20

21

22 (Proceedings concluded)

23

24

25

Tab 3

LAYTON CITY	)	
Plaintiff,	)	
vs.	)	Case No 951001606
DANIEL LONGCRIER	)	
Defendant	)	

February 21, 1996

## Trial Prelude

## A P P E A R A N C E S

For Plaintiff:

Steven L. Garside

Assistant Prosecutor

City of Layton

437 N. Wasatch Drive

Layton, Utah 84041

For Defendant:

Michael A. Jensen

Attorney at Law

900 First Interstate Plaza

170 South Main

Salt Lake City, Utah 84101-1655

February 21, 1996

3 00 P M

PROCEEDINGS

THE COURT We'll continue with the court's afternoon calendar The clerk will call our next matter

CLERK Layton City v Daniel Longcrier, Case No 951001606 (inaudible)

THE COURT Is Mr Longcrier present in court? He doesn't answer Have you heard from him?

MR GARSIDE Yes, Your Honor

THE COURT Mr Longcrier would you stand up please? We would like you to come up to this table over here on your left, sir Is the city ready to proceed?

MR GARSIDE We are, Your Honor

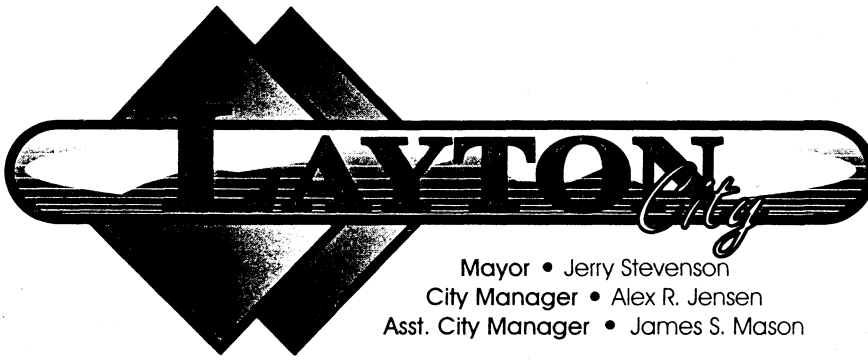
THE COURT Mr Longcrier, are you ready to proceed?

MR LONGCRIER I need an attorney They said that when I called that I could ask for one

THE COURT Just have a seat, sir The Court denies your request for a continuance so that you can get a lawyer You may proceed, Mr Garside

(Proceedings concluded)

Tab 4



Mayor • Jerry Stevenson  
City Manager • Alex R. Jensen  
Asst. City Manager • James S. Mason

• Office of the City Attorney •  
Gary R. Crane • City Attorney  
Telephone: (801) 546-8530  
FAX: (801) 546-8535

March 26, 1996

Michael A. Jensen  
Attorney at Law  
First Interstate Plaza, Suite 900  
Salt Lake City, Utah 84101-1655

Re: Layton City vs. Daniel Longcrier

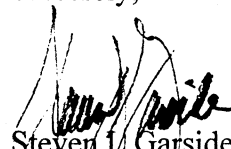
Dear Mr. Jensen:

This letter is in response to your request that I reduce to writing the proposed plea negotiation. This is per our telephone conversation on Friday, March 22, 1996. The City is willing to reduce the charge from assault to one of disorderly conduct, a class "C" Misdemeanor. Upon Mr. Longcrier's plea of guilty to that amended charge, the City will recommend that no jail time be imposed, that the Defendant be given the opportunity to do community service in lieu of fines, or a combination thereof, and that the Defendant be required to attend counseling to address this incident.

With regard to our discussion regarding expungement, the applicable provision is § 77-18-12(2)(d). As stated, it is a three (3) year period.

If the aforementioned is not your understanding of my proposal, please contact me immediately to alleviate any misunderstandings. Otherwise, I await your response.

Sincerely,

  
Steven L. Garside  
Assistant City Attorney  
SLG/dw

## Tab 5

SECOND CIRCUIT COURT, STATE OF UTAH

DAVIS COUNTY, LAYTON DEPARTMENT

MEMORANDUM OF DECISION

STATE OF UTAH, by and through  
LAYTON CITY, a Municipal Corporation,  
Plaintiff,

v.

DANIEL LONGCRIER,  
Defendant

Case No. 951001606

Date 6-14-96

Judge Bean

MATTER: DEFENDANT'S MOTION FOR ARREST OF JUDGMENT OR NEW  
TRIAL

The Court took Defendant's alternative Motion under advisement to consider the arguments advanced by counsel at the hearing, the authorities cited by each side, and the history of the case's progression from arraignment to the filing of that Motion.

Defendant was charged with assault by Information filed July 21, 1995. A Summons and Order for booking was issued that same day and served on Defendant by delivery to his mother August 14, 1995. Defendant appeared for arraignment August 23, 1995. He appeared alone, representing himself. He entered a not guilty plea and pretrial was set for October 11, 1995. Defendant received a Notice of Pretrial that had lines for "Defendant", "Plaintiff's Attorney" and "Defendant's Attorney" printed within less than an inch of each other on the form. Defendant's signature on the Notice is within five-eighths of an inch of the reference to "Defendant's Attorney." Defendant was given a copy of the Notice.

The pretrial had to be reset to a week later, but Defendant did not receive notice of the new date because he'd moved and had not given the clerk his new address. Defendant appeared for pretrial on October 11, 1995, and was told about the new date. Defendant appeared alone, representing himself, on that date. He was given

a copy of the Notice of the new setting; it referred to "ATTORNEY FOR DEFENDANT" just above the line for Defendant's signature.

Defendant appeared for pretrial on October 18, 1995, and discussed the case with the prosecutor. No negotiation was reached between them and the case was set for trial on February 21, 1996. Again, Defendant's signature appears approximately one-half inch from the reference to "Defendant's Attorney" on the Notice of Trial. Defendant appeared alone, representing himself, at the pretrial.

On February 21, 1996, the case was called for trial. Defendant appeared alone, representing himself. When the court asked the parties if they were ready to proceed, the following colloquy occurred:

Court: Is the city ready to proceed?

Mr. Garside: We are, your honor.

Court: Mr. Longcrier, are you ready to proceed?

Mr. Longcrier: I need an attorney. They said, when I called, that I could ask for one.

Court: Just have a seat, sir. The Court denies your request for a continuance so that you could get a lawyer, and you may proceed, Mr. Garside.

The Court considered the request untimely, and for that reason made no inquiry as to whether Defendant qualified for appointed counsel. The trial proceeded and Defendant was convicted on the evidence presented.

In *State V. Penderville*, 2 Utah 2d 281, 272 P.2d 195 (Utah 1954), the Utah Supreme Court dealt with the reverse situation, but its observations about a continuance are pertinent. The Court said:

On December 2, 1952, the trial court set the case for trial December 17, 1952. On the day before the trial was to commence the trial court received a letter from appellant complaining about the service being rendered by his attorney and requesting a postponement of the trial to enable him to procure other counsel. Immediately after receipt of the letter the trial court had the appellant brought before him to discuss appellant's request. A transcription of shorthand notes of the conversation had between the trial court and appellant constitutes a part of the record. This record does not reveal a showing on the part of the

appellant to the effect that his attorney had been unfaithful or incompetent in preparing appellant's case, nor does it show that appellant or his attorney were not ready for trial. The court did not err in denying appellant's application for a postponement. . . . The Constitution of this State provides: 'In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel' Const. art. 1, § 12. . . . It is generally, if not universally held that the accused in a criminal proceeding who is sui juris and not mentally incompetent has the right to conduct his own defense without the aid of counsel. 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.

That decision was reversed on appeal because the trial court allowed appointed counsel to represent the defendant, in spite of the defendant's expressed desire to represent himself, a right the court should have afforded him. But the Court's comments about delay are on point for this case.

The prosecutor's argument, set forth in his brief, that the Defendant has no right to the assistance of counsel unless he is sentenced to incarceration, is also directly in point. Most of the cases cited there refer to court-appointed counsel. Because of the timing of Defendant's request for appointed counsel, the Court did not have the opportunity to determine whether he qualified or not.

The Court denies Defendant's alternative Motion, and resets sentencing for Monday, July 22, 1996, at 10:30 a.m. The clerk will notify both Defendant and defense counsel. If that date or time is not convenient, counsel should telephone the clerk and request a different setting.

The Court apologizes to counsel for the delay in getting this decision reduced to writing and mailed.

  
\_\_\_\_\_  
Judge

Case No: 951001606 MC

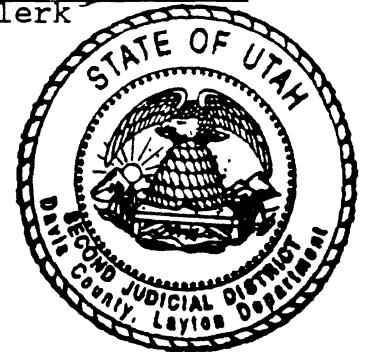
Certificate of Mailing

I certify that on the 9<sup>th</sup> day of July, 1996,  
I sent by first class mail a true and correct copy of the  
attached document to the following:

MICHAEL A JENSEN  
Atty for Defendant  
FIRST INTERSTATE PLAZA  
170 SOUTH MAIN, SUITE 900  
SALT LAKE CITY UT 84101

Circuit Court Clerk

By: [Signature]  
Deputy Clerk



**Circuit Court, State of Utah**  
**Davis County, Layton Department**  
425 North Wasatch Drive, Layton, Utah 84041  
(801) 546-2484

<div>Layton City</div> <div>Plaintiff</div> <div>vs</div> <div>Daniel Longcrier 60 West 1950 South Bountiful, UT 84010</div> <div>Defendant</div>	<div><b>Notice of Sentencing</b></div> <div>Case No.: 951001606 MC</div>
---	--

You will please take notice that the above entitled case is set for

**Sentencing**

in the Circuit Court, Layton Department, 425 Wasatch Drive, Layton, Utah.

Date: **July 22, 1996**

Time: **10:30 a.m.**

Courtroom: **1**

A copy of this notice was mailed, postage pre-paid, to the above named defendant and to:

Michael Jensen  
Attorney for Defendant  
First Interstate Plaza  
170 South Main, Suite 900  
Salt Lake City, UT 84101

**YOUR FAILURE TO APPEAR AS INDICATED ON THIS FORM COULD RESULT  
IN A BENCH WARRANT FOR YOUR ARREST.**

Dated: July 9, 1996.

  
Court Clerk

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (*including auxiliary communicative aids and services*) during this proceeding should call the A.D.A. Clerk at ~~451-4409~~, at least three working days prior to the proceeding.