

1988

## Utah v. Ricki Gene Searcy : Brief of Respondent

Utah Court of Appeals

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Scott W. Holt; Attorney for Appellant.

Melvin C. Wilson, Kathi Sjoberg; Davis County Attorney\'s Office; Attorneys for Respondent.

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### Recommended Citation

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UTAH COURT OF APPEALS

BRIEF

UTAH  
DOCUMENT

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DOCKET NO. 880100 IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH, :

Plaintiff/Respondent :

BRIEF OF RESPONDENT

vs. :

RICKI GENE SEARCY :

Case No. 88-0100-CR

Defendant/Appellant. :  
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*Priority #2*

BRIEF OF RESPONDENT

Appeal from a conviction of Driving on Revocation  
in the Second Circuit Court, State of Utah,  
Davis County, Bountiful Department, the Honorable  
S. Mark Johnson, Judge, presiding.

\_\_\_\_\_  
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**FILED**

JUL 19 1989

COURT OF APPEALS



FILED

AUG 3 1989

DAVIS COUNTY ATTORNEY

MELVIN C. WILSON

COURT OF APPEALS

July 27, 1989

Utah Court of Appeals  
230 South 500 East #400  
Salt Lake City, Utah 84111

RE: State of Utah v. Ricki Gene Searcy  
Case No. 88-0100-CR

To whom it may concern:

This letter is in reference to the above entitled case now on appeal before the Utah Court of Appeals. Respondent's brief in this matter omitted the statement required by Rule 24(a) (6) of the Rules of the Utah Court of Appeals regarding determinative constitutional provisions, statutes, ordinances, rules and regulations.

Please be advised that there are no determinative constitutional provisions, statutes, ordinances, rules or regulations in this matter whose interpretation is determinative.

Sincerely,

Kathi Sjoberg  
Deputy Davis County Attorney



FILED

AUG 3 1989

DAVIS COUNTY ATTORNEY

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MELVIN C. WILSON

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Kathi Sjoberg  
Deputy Davis County Attorney

IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH, :  
Plaintiff/Respondent : BRIEF OF RESPONDENT  
vs. :  
RICKI GENE SEARCY : Case No. 88-0100-CR  
Defendant/Appellant. :  
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## TABLE OF CONTENTS

	<u>Page No.</u>
Table of Authorities . . . . .	3
Jurisdiction and Nature of Proceedings Below . . . . .	4
Statement of Issues . . . . .	4
Statement of the Case . . . . .	5
Statement of Facts . . . . .	5
Summary of Argument . . . . .	6
Argument . . . . .	6
Conclusion . . . . .	9

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page No.</u>
<u>In re Williams</u> , 341 P.2d 652 (Ore. App. 1959) . . . . .	7
<u>Smith v. Hudspeth</u> , 176 P.2d 262 (Kan. 1947) (cert. den.) 331 U.S. 852 (1948) . . . . .	7
<u>State v. Murphy</u> , 219 P. 629 (Mont. 1923) . . . . .	7
<u>State v. Scofield</u> , 224 P. 941 (Wash. 1924) . . . . .	7
 <u>STATUTES</u>	
78-2a-3(2) (d) U.C.A. (1953, as amended) . . . . .	4
77-35-26(4) (a) U.C.A. (1953, as amended) . . . . .	4
77-32-2 U.C.A. (1953, as amended) . . . . .	4, 6
41-2-136 U.C.A. (1953, as amended) . . . . .	5
 <u>RULES</u>	
Rule 26, Code of Criminal Procedure . . . . .	4

IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH, :  
Plaintiff/Respondent : BRIEF OF RESPONDENT  
vs. :  
RICKI GENE SEARCY : Case No. 88-0100-CR  
Defendant/Appellant. :  
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Brief of Respondent  
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JURISDICTION AND NATURE OF PROCEEDINGS BELOW

1. Jurisdiction is conferred upon the Utah Court of Appeals to hear this appeal by Utah Code Ann. Section 78-2a-3(2)(d) (1953, as amended), U.C.A. SECTION 77-35-26(4)(a) (1953, as amended), and Rule 26 of the Code of Criminal Procedure.

2. Defendant appeals from a conviction in the Second Circuit Court, State of Utah, Davis County, Bountiful Department.

STATEMENT OF ISSUES

The issue presented in this appeal is whether the Trial Court erred in failing to appoint counsel or to make an inquiry into a Defendant's eligibility for court appointed counsel when defendant had filed an Impecunious Affidavit after arraignment, but before trial.



### STATEMENT OF THE CASE

This is an appeal from a criminal conviction in which Defendant was convicted of driving while on an alcohol revocation in violation of U.C.A. Section 41-2-136 (1953, as amended).

### STATEMENT OF FACTS

During the discovery stage of proceedings on an offense unrelated to this case, the Bountiful City Prosecutor, Russell Mahon, learned that Defendant's driver's license had been revoked in 1981 for an alcohol related offense. Mr. Mahon observed the defendant drive to the courthouse on the day trial was to be held in the other matter and informed Bountiful City Police Officer Boyle, that Defendant would probably be driving the vehicle away from the courthouse after trial. Defendant did proceed to drive away from the courthouse, was stopped by Officer Boyle shortly thereafter, and arrested for driving on alcohol revocation in violation of U.C.A. Section 41-2-136.

Defendant requested counsel at the time of arrest and was told he would have to wait until the booking procedure was completed. He was subsequently arraigned and, after arraignment but before trial, he filed an Impecunious Affidavit with the court in which he asserted that he was unable to bear the expense of legal proceedings.

Trial was held on October 20, 1987, before the Honorable S. Mark Johnson, Judge of the Circuit Court in and for

Davis County, Department of Bountiful. The trial court made a finding at trial that Defendant had not been denied his right to counsel and found him guilty of driving on revocation.

Defendant has appealed from this conviction asserting that his right to counsel was denied contrary to Section 77-32-2, U.C.A.

#### SUMMARY OF ARGUMENT

The trial court followed the proper procedures and did not err in not appointing counsel for Defendant. There is a presumption under the law of the regularity of court proceedings. This presumption can only be overcome by a convincing showing that the proper procedures were not followed by the Court. Defendant has not overcome this presumption and therefore, this Court should affirm the Defendant's conviction.

#### ARGUMENT

THE TRIAL COURT FOLLOWED THE PROPER PROCEDURES WITH RESPECT TO DEFENDANT'S RIGHT TO COUNSEL AND DID NOT ERR IN NOT APPOINTING COUNSEL FOR DEFENDANT.

Defendant asserts that the trial court erred in not appointing counsel to assist him in his defense. Utah Code Ann. Section 77-32-2 provides for court appointed counsel and states:

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

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

Defendant contends that the filing of his Impecunious Affidavit was a request for counsel, and that he again requested counsel at trial. However, the transcript does not reflect this. The only mention of counsel at trial refers to the original request made by defendant at the time the traffic stop was made. (Transcript, hereinafter referred to as T., pp. 21-22). There is nothing in the record to indicate that Defendant was making a request for counsel at trial, nor is there any mention of his Impecunious Affidavit as being a request for counsel. The record and trial transcript in this case reflect that normal trial procedure was followed and Defendant has not established any irregularity in the trial court proceedings.

There is a generally recognized presumption that proper procedures are followed by the Court, absent a clear and convincing showing to the contrary. See e.g., Smith v. Hudspeth, 176 P.2d 262 (Kan. 1947) (cert. den.) 331 U.S. 852 (1948); State v. Murphy, 219 P.629 (Mont. 1923); State v. Scofield, 224 P. 941 (Wash. 1924); and In re Williams, 341 P.2d 652 (Ore. App. 1959). Defendant contends that his filing of an Impecunious Affidavit invoked an affirmative duty on the court to inquire into Defendant's eligibility for court appointed counsel. When an Impecunious Affidavit is filed, the Court makes an

inquiry into the financial status of the person filing the affidavit to determine if that person is entitled to assistance in presenting their case. The record does not reflect whether or not this inquiry was made. However, Defendant has made no showing in this case that the Court did not follow the proper procedures with regard to Defendant's right to counsel. Therefore, because of the presumption in favor of regularity of proceedings, we must assume that the Court made the proper inquiries, and that Defendant was not denied his rights.

In addition, because of Defendant's past contact and dealings with the trial court, Defendant should have known that if the Court did not inquire into his financial status on its own accord, he should bring this matter to the Court's attention at the earliest possible opportunity so as not to be denied his rights. In this case, there is nothing in the record or in the trial transcript which would support a finding that Defendant brought this matter to the attention of the Court after his arraignment before or at trial. In fact, Defendant referred to several documents at trial which he had filed with or wished to file with the Court. However, there is no mention of his Impecunious Affidavit or other request for court appointed counsel. (T. pp. 6, 7, 26, 27). The Court did make a finding at trial that Defendant had not been denied his right to counsel, referring to Defendant's arraignment. (T. p. 22). There is no assertion that Defendant requested counsel at the time of arraignment or that arraignment was not proper. Therefore, we

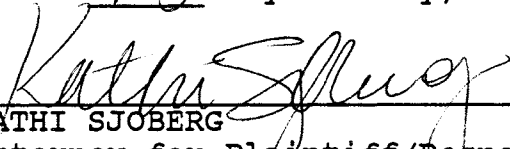
must assume that Defendant was properly arraigned and informed of his right to counsel at that time. The facts of this case do not support a finding that any subsequent request for counsel was made and wrongfully denied.

The State of Utah contends that the trial court followed the proper procedures at all stages of the proceedings in this case and made the proper inquiries into Defendant's financial status. Even if Defendant's filing of the Impecunious Affidavit did invoke an affirmative duty for the trial court to inquire into Defendant's financial status, it must be presumed that the trial court did so unless a convincing showing can be made to the contrary. The record is very sparse with regard to any mention of a request for counsel. However, there is nothing to indicate that the proper, standard procedures were not followed by the Court in this instance. Therefore, it must be found that the trial court did not err in failing to appoint counsel to assist Defendant.

#### CONCLUSION

The defendant has not made the required showing that the trial court did not follow proper procedures with regard to his right to court appointed counsel. Absent this showing, this court should not disturb the ruling of the trial court, but must find that Defendant was not denied his right to counsel, that the trial court followed the proper procedures with respect to Defendant's right to counsel, and uphold the decision of the trial court in convicting Defendant of Driving on Revocation.

RESPECTFULLY SUBMITTED this 18 day of July, 1989.

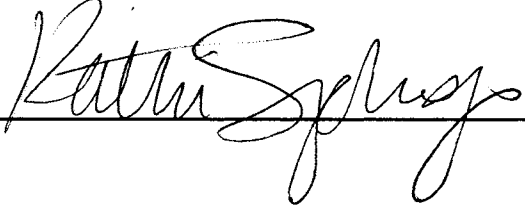
  
KATHI SJOBERG  
Attorney for Plaintiff/Respondent

CERTIFICATE OF SERVICE

This is to certify that on the 18 day of July, 1989, a true and correct copy of the foregoing Brief of Respondent was mailed with postage prepaid thereon, to the following:

SCOTT W. HOLT  
44 North Main  
Layton, Utah 84041

Attorney for Defendant/Appellant

  
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