

1988

Utah v. Ricki Gene Searcy : Brief of Appellant

Utah Court of Appeals

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BRIEF

UTAH
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DOCKET NO.

880100

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

)

Plaintiff-Respondent,

)

vs.

)

RICKI GENE SEARCY,

)

Defendant-Appellant.

)

BRIEF OF

DEFENDANT-APPELLANT

Case No. 88-0100-CR

2

NATURE OF PROCEEDINGS: APPEAL

APPEAL FROM THE SECOND CIRCUIT COURT, BOUNTIFUL DIVISION
DAVIS COUNTY, STATE OF UTAH
JUDGE JOHNSON

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FILED

JUN 5 1989

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STATEMENT OF ISSUE PRESENTED ON APPEAL

POINT ONE

THE TRIAL COURT ERRED IN NOT APPOINTING
COUNSEL TO ASSIST DEFENDANT-APPELLANT IN HIS
DEFENSE.

POINT TWO

THE TRIAL COURT ERRED BY NOT MAKING A
REASONABLE INQUIRY AS TO WHETHER DEFENDANT-APPELLANT
DESIRED APPOINTED COUNSEL.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,)	
)	Case No. 88-0100-CR
Plaintiff-Respondent,)	
vs.)	
RICKI GENE SEARCY,)	
Defendant-Appellant.)	2

BRIEF OF DEFENDANT-APPELLANT

STATEMENT OF JURISDICTION

This appeal is taken pursuant to the provision of Rule 3, Title II, Utah Rules of Appellate Procedure in which Defendant-Appellant appeals his conviction from the Circuit Court, Bountiful Division, Second District, Davis County, State of Utah.

NATURE OF PROCEEDINGS

This is an Appeal from a criminal conviction in which Defendant-Appellant was convicted of driving while on an alcohol revocation in violation of Section 41-2-36 UCA, as Amended, in that Defendant-Appellant was denied his right to Counsel contrary to Section 77-32-2 UCCP.

STATEMENT OF ISSUES

The issue presented in this appeal is:

1. Does the trial court have an affirmative duty to appoint Counsel pursuant to Section 77-32-2 UCCP under the factual setting of this case when the Defendant-Appellant, by filing of an Affidavit of Impecuniosity with the Court in which he requested all

of the relief he was entitled to.

STATEMENT OF FACTS

In response to Defendant's request for discovery in another unrelated case, Russell Mahon, a Bountiful City Attorney discovered that Defendant-Appellant's driver's license had been revoked due to two prior Driving under the Influence convictions. On the day that Defendant-Appellant's trial was to be held in the other case, Mr. Mahon informed a Bountiful City police officer of that fact and told the officer that Mr. Mahon believed that Defendant-Appellant would be leaving the building and driving on the streets on a revoked license. The officer, acting on this information, followed Defendant-Appellant as he drove from the Courthouse after the trial and stopped the Defendant-Appellant's vehicle and arrested Defendant-Appellant for driving while having his driver's license revoked in violation of section 41-2-136 UCA as amended while his driving privileges were revoked in violation of section 41-6-44 of a local ordinance in compliance with the requirements of Section 41-6-43.

At the time of arrest, Defendant-Appellant requested counsel to be made available, which the officer refused. Defendant-Appellant renewed his request for an attorney to be appointed to him by filing an Impecunious Affidavit with the Court, shortly after arraignment and prior to trial. At the time of trial, Defendant-Appellant again requested counsel and the Court denied Defendant-Appellant legal assistance.

SUMMARY OF ARGUMENT

Defendant-Appellant was denied the right to counsel. The trial court erred by not appointing an attorney to assist Defendant-Appellant with his defense as guaranteed by the U.S. Constitution and statutes.

ARGUMENT

POINT ONE

THE TRIAL COURT ERRED IN NOT APPOINTING COUNSEL TO ASSIST DEFENDANT-APPELLANT IN HIS DEFENSE.

Defendant-Appellant's right to have counsel to assist him in the preparation of his defense to pending criminal charges is an absolute and fundamental right secured by the Constitution and guaranteed by statute.

Section 77-32-2 UCCP provides:

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

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

In the instant case, the Defendant-Appellant requested counsel at the time of arrest which was denied by the arresting officer (T.P. 21 L 1-6, T.P. 21 L 25-P22L22). Subsequent to the time of trial, the Defendant-Appellant filed with the Court an Affidavit of Impecuniosity (File p6). The Court should have, upon receipt of this document, either appointed an attorney to represent Defendant-Appellant or made some inquiry as to whether he desired an

attorney or was waiving his rights to an attorney. Although it appears in reading the rule cited above, if the Defendant-Appellant does not request an attorney (which the record is silent upon) that it is discretionary whether the Court appoints an attorney or not. In the instant case however, Defendant-Appellant's filing of an Impecunious Affidavit together with the request contained therein should have placed the court on notice that the Defendant-Appellant was asking the Court for counsel to assist him in his defense. The Impecunious Affidavit contains the following language (file p5): "... that I verily believe I am justly entitled to the relief sought by such legal proceedings." Although the affidavit fails to expressly state a request for an attorney, it does ask for whatever relief a filing of such an affidavit would merit, appointed counsel being one of the benefits which Defendant-Appellant would be entitled to.

POINT TWO

THE TRIAL COURT ERRED BY NOT MAKING A REASONABLE INQUIRY AS TO WHETHER DEFENDANT-APPELLANT DESIRED APPOINTED COUNSEL.

After the Court received Defendant-Appellant's Affidavit of Impecuniosity, the Court should have contacted Defendant-Appellant or made some other reasonable inquiry to determine what Defendant-Appellant desired. Defendant-Appellant did not have the benefit of legal advise and may not of known how one obtains appointed counsel in these matters. Clearly the issue was raised again at trial, where the Court made a finding that counsel was not denied Defendant-Appellant, although there is no record to support

the Judge's conclusion (T.P. 22 L 14-22). The trial court erred in not making reasonable inquiry once the affidavit was filed. The Defendant-Appellant was charged with a Class A Misdemeanor which carried with it a possibility of up to one (1) year in the county jail. Defendant-Appellant was entitled to appointed counsel, met the criteria to have one appointed and the Court failed to appoint one or to make some reasonable inquiry.

CONCLUSIONS

Defendant-Appellant was denied appointed counsel, and is entitled to a reversal of his conviction. Pursuant to UCCP 77-32 et.al., Defendant-Appellant was entitled to appointed counsel and the court failed to appoint counsel or make reasonable inquiry to whether Defendant-Appellant desired counsel or waived the same. Since there is no record of Defendant-Appellant waiving his right to counsel, Defendant-Appellant's conviction should be reversed.

Respectfully submitted this _____ day of June, 1989.

SCOTT W. HOLT, Attorney for
Defendant-Appellant

CERTIFICATE OF MAILING

I, SCOTT W. HOLT, hereby certify that I have mailed four (4) true and accurate copies of the foregoing Brief of Defendant-Appellant to the attorney for Plaintiff-Respondent, R. PAUL VAN DAM, Utah Attorney General, 236 State Capitol, Salt Lake City, Utah 84114 and one (1) copy to CARVEL HARWARD, at the Davis County Attorney's Office, P.O. Box 618, Farmington, Utah 84025 this ____ day of June, 1989.

Scott W. Holt