

1992

Lehi City v. Wesley R. Carlson : Brief of Appellant

Utah Court of Appeals

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Wesley Raymond Carlson; pro se.

Unknown.

Recommended Citation

Brief of Appellant, *Lehi v. Carlson*, No. 920735 (Utah Court of Appeals, 1992).

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UTAH COURT
BRIEF

UTAH
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RAYMOND CARLSON
TH 1000 EAST
TAH 84043
NE (801) 768-8795

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IN THE UTAH COURT OF APPEALS
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AINTIFF/APPELLEE

Case No. 920735-0A

RAYMOND CARLSON
DEFENDANT/APPELLANT

Priority No. 5

BRIEF OF APPELLANT

Appeal from Judgment of Conviction
entered in the Fourth Circuit Court,
the Honorable John Backlund
presiding,
sentencing date October 20, 1992
Notice of Appeal filed December 8, 1992

WESLEY RAYMOND CARLSON, Pro se
for appellant
720 North 1000 East
Lehi, Utah 84043
Tel (801) 768-8795

FILED

JAN 19 1993

WESLEY RAYMOND CARLSON
720 NORTH 1000 EAST
LEHI, UTAH 84043
TELEPHONE (801) 768-8795

IN THE UTAH COURT OF APPEALS

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LEHI CITY
PLAINTIFF/APPELLEE

VS.

WESLEY RAYMOND CARLSON
DEFENDANT/APPELLANT

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(Case No. 920735-0A
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720 North 1000 East
Lehi, Utah 84043
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	116, 118,	
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STATEMENT OF JURISDICTION

Jurisdiction of this matter is appropriate in this Court pursuant to Rules 3 and 4 of the Utah Court of Appeals, Rule 26 of the Utah Rules of Criminal Procedure and the Utah Constitution.

ISSUES PRESENTED

I. When a trial is held for a defendant that person has a right to attend his trial so that he/she may defend for themselves. Rules 17 (a) states that in all cases the defendant shall have the right to appear and defend in person and by counsel. The defendant shall be personally present at the trial with the following exceptions:

(1) IN prosecutions of misdemeanors and infractions, defendant may consent in writing to trial in his absence.

(2) In prosecutions for offenses not punishable by death, the defendant's voluntary absence from the trial after notice to the defendant of the ----- time for trial shall not prevent the case from being tried and a verdict or judgement entered therein shall have the same effect as if defendant had been present; and etc.

Carlson was not VOLUNTARILY absent from trial in the Lehi Justice Court. and no written permission was given to have the trial in Carlson's absence.

2. When a trial is held for a defendant that person has a right to be represented by Counsel. 88 SUPREME COURT REPORTER 389 U.S. 109 BURGETT vs. STATE of TEXAS The convictions did not show that defendant was represented by counsel or that he waived counsel, the records raised a presumption that defendant was denied his right to counsel in violation of SIXTH AMENDMENT,

and have been deemed VOID in the

subsequent prosecution in Texas. Also 389 U.S.112 the tenth line down shows "that the judgement on its face showed that petitioner was not represented by counsel in violation of the FOURTEENTH AMENDMENT.

After paying Attorney Mark Stringer \$500.00 to represent Carlson by counsel ,Mr.Stringer ask Carlson for an additional \$2100.00 more, which I could not afford, and Mr. Stringer declined in writing to represent Carlson futher. In which case I was not able to proceed on my own, because of the lack of understanding of Court Procedure , and did not understand what I was being tried for. And the American Fork Fourth Circuit Court never even ask Carlson if he wanted to be represented by Counsel or ask if I understood what Carlson was being tried for orunderstood how to proceed .

DETERMINATIVE AUTHORITIES

UTAH CONSTITUTION

"The political power is founded in the people, all free governments are founded on their authority for their equal protection and benefit....."

Article I, Section 2

" No person shall be deprived of life, liberty or property, without due process of law."

Article I, Section 7

" All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay;....."

Article I, Section II

" In all criminal prosecutions the accused have the right to be confronted by the witnesses against him,....to have a speedy public trial by an impartial jury...."

Article I Section I2

CONSTITUTION of the UNITED STATES

"....In all cases ... in which the state shall be a party, the Supreme Court shall have original jurisdiction...

The trial of all crimes, except in cases of impeachment, shall be by jury....."

Article III, Section 2

".... This Constitution and the laws of the United States which shall be made in pursuance thereof;... shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding....."

STATEMENT OF CASE

This is an appeal as of right from a criminal matter which was origionly tried in the Lehi justice court in my absense not by my choice, wherewith I trijed to have the case postponed to a later date, without sucess. Then bound over to the American Fork Fourth Circuit Court - State of Utah, Utah County. On October 20, 1992, Wherein Appellant was convicted of Charges - 76-5-I02 Simple Aslt., and was appealed to the Utah Court of Appeals on December 8, 1992. The following facts are revelant to the case:

FACTS

- I. On April 4, 1992 Appellant, (hereinafter "Carlson") was involved in an Assult upon myself by Steffane Nelsen then by Steven Nelsen then last Brad who was not cited for the assult upon me for some unknown reason upon the head of the citing officer Paul Kirkpatrick.
2. Carlson originally filed the complaint as the Plaintiff

not the Defendant as Carlson has suffered much property damage which restitution has never been compinsated for as of this time. and verbal abuse constantly for many years.
3. Carlson originally was tried and found guilty in my absense in Lehi Justice Court. where with my Employer was unwilling to

release me at the appointed Court time, wherewith I had no choice in the matter of absence, in the Lehi Justice Court.

ARGUMENT

4. The Lehi Police Department Statement from Sarah Densmore testifying as to what she saw does not reflect the facts as they were as she was a friend of Steffane and Steven and would not testify of anything that would jeopardize them. Her testimony should be considered partial and incompetent, as she did not mentioned that Steffane first jumped Carlson from behind and held me while Steven kicked Carlson in the stomach then hit Carlson in the head after which Brad also hit Carlson in the head, which after releasing myself from Steffane's hold on me, I did fall to the ground.

SUMMARY OF ARGUMENT

The information filed against Carlson and not having any witness of my own make it difficult to defend myself if not impossible. because of the lack of sufficient evidence not being of sufficient credibility beyond a reasonable doubt that Carlson did not assault anyone; but was only trying to protect his rights from verbal abuse by Steven Nelsen and to protect his property from further damage and loss that has not been made restitution for as of this time. nor has the American Fork Hospital and the department of Radiology been paid for damages resulting from the injuries to me by Steven Nelsen and Brad.

The due process of law and my Constitutional rights have thus far been denied to me. I have not assaulted anyone.

Dated this: 19 day of January 1993

Respectfully Submitted

Wesley Raymond Carlson

WESLEY RAYMOND CARLSON

CERTIFICATE OF SERVICE.

I WESLEY RAYMOND CARLSON HEREBY certify that I mailed a true and
correct copy of the BRIEF OF APPELLANT to Court Griffiths ^{P.O. Box 126} ^{American Fork,}
the attorney for the STATE of UTAH at the following address. ^{Utah 84003}

Salt Lake City, Utah

Wesley Raymond Carlson

LEHI POLICE DEPARTMENT

STATEMENT

See "Incomplete Evidence"
 Bidear
 vs. Wainwright
 Page 797

DATE April 4, 02 TIME OF INCIDENT 8:00 pm.

NAME Sarah Dinsmore AGE 15 SEX F

ADDRESS 1035 W. Main St

PHONE NUMBER: HOME 709-8287 WORK _____ OTHER _____

TYPE OF INCIDENT Fight

LOCATION OF INCIDENT 740N. 1000E. Lehi Ut.

PLEASE DESCRIBE WHAT YOU SAW, HEARD, OR KNOW OF THIS INCIDENT:

I saw Raymond Carlson, run into the
McKays yard and fight with Steven McIsaac
Stephanie then "tried" to ask Raymond to
go home and he grabbed her by the
arm and twisted her arm - the Steven
interfered and threw a punch at Raymond
then I went inside the back of the house
and Stephanie ran inside the house and
asked her father to call the police then they
both ran outside and I called the police
office

SIGNATURE Sarah Dinsmore

LEHI POLICE DEPARTMENT STATEMENT OF SARAH DENSMORE AGE 15 SEX F

DATED APRIL 4, 1992 TIME OF INCIDENT 8:00 PM.

NAME SARAH DENSMORE

ADDRESS 1035 WEST MAIN ST. LEHI, UTAH 84043

TELEPHONE 768-8287

TYPE OF INCIDENT FIGHT

LOCATION OF INCIDENT 740 NORTH 1000 EAST LEHI, UTAH 84043

PLEASE DESCRIBE WHAT YOU SAW, HEARD, OR KNOW OF THIS INCIDENT:

I SAW RAYMOND CARLSON RUN INTO THE NELSON'S YARD AND FIGHT WITH STEVEN NELSON STEPHANIE THEN TRIED TO ASK RAYMOND TO GO HOME AND HE GRABBED HER BY THE ARM AND TWISTED HER ARM - THE STEVEN INTERACTED AND THREW A PUNCH AT RAYMOND THEN I WENT INSIDE THE BACK OF THE HOUSE AND STEPHANIE RAN INSIDE THE HOUSE AND ASK HER FATHER TO CALL THE POLICE THEN THEY BOTH RAN OUTSIDE AND I CALLED THE POLICE OFFICE.

SARAH DENSMORE

STATEMENT OF FACTS OF A PERSONAL NATURE

I WESLEY RAYMOND CARLSON WOULD LIKE TO HAVE HAD AN ATTORNEY TO REPRESENT ME BY COUNSEL; BUT DUE TO THE FACT THAT I AM NOT EMPLOYED AND I CAN NOT AFFORD THOSE LUXERIES, I HAVE ATTEMPTED TO DO THE BEST THAT I COULD UNDER THE CIRCUMSTANCES AND I HAVE SPOKEN THE TRUTH IN EVERY INSTANCE. I WOULD APPRECIATE YOUR KINDEST CONSIDERATION IN THESE MATTERS.

P.S. I WILL THINK TWICE
IN THESE MATTERS AND MAKE SURE
THIS WILL NOT HAPPEN AGAIN.

TRUTHFULLY:

WESLEY RAYMOND CARLSON

Wesley Raymond Carlson

DATED THIS JANUARY 19, 1993

TESTIMONY OF WESLEY RAYMOND CARLSON

Of the incident that took place on April 4, 1992 between Steven Nelsen Steffanie Nelsen and Brad.

As I was confronting Steven Nelsen, Steffanie Nelsen jumped me from behind my back, through her arms around me just above my elbows, and restricting my arm movements to the lower portion only. While Steven Nelsen kicked me in the stomach and hit me in the head with his fist. Also Brad, Steven's friend, who also was present hit me in the head with his fist, after which I was able to free myself from the hold that Steffanie Nelsen had on me with the lower portion of my right arm by twisting her arm off from around my body with my right hand. I fell to the ground. when I regained my breath and was able to rise to my feet, I returned home and called the Police from the telephone in my garage.

TRUTHFULLY;

Wesley Raymond Carlson

WESLEY RAYMOND CARLSON