

1992

## Lehi v. Carlson : Brief of Respondent

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)



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.

Wesley Raymond Carlson; pro se.

James \"Tucker\" Hansen; Attorney for Respondent.

---

### Recommended Citation

Brief of Respondent, *Lehi v. Carlson*, No. 920735 (Utah Court of Appeals, 1992).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/4731](https://digitalcommons.law.byu.edu/byu_ca1/4731)

This Brief of Respondent 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.

**BRIEF**

UTAH  
DOCUMENT

K F U

50

.A10

DOCKET NO. 920735

**IN THE UTAH COURT OF APPEALS**

---

LEHI CITY,

:

Plaintiff/Respondent

:

Priority No. 12

vs.

:

WESLEY R. CARLSON

:

Case No. 920735-CA

Defendant/Appellant

:

---

**BRIEF OF RESPONDENT**

APPEAL FROM A CONVICTION OF ASSAULT, A CLASS "B" MISDEMEANOR, IN VIOLATION OF UTAH CODE ANNOTATED SECTION 76-5-102, IN THE FOURTH CIRCUIT COURT, AMERICAN FORK DEPARTMENT, THE HONORABLE JOHN C. BACKLUND, JUDGE, PRESIDING.

JAMES "TUCKER" HANSEN  
Attorney for Respondent  
306 West Main Street  
American Fork, UT 84003

Wesley R. Carlson  
Pro se  
720 North 100 East  
Lehi, UT 84003

**FILED**  
Utah Court of App

FEB 18 1993

*Mary H. Homan*  
Mary H. Homan  
Clerk of the Court

IN THE UTAH COURT OF APPEALS

---

LEHI CITY,	:	
Plaintiff/Respondent	:	
vs.	:	
WESLEY R. CARLSON	:	
Defendant/Appellant	:	Case No. 920735-CA

---

BRIEF OF RESPONDENT

APPEAL FROM A CONVICTION OF ASSAULT, A CLASS "B"  
MISDEMEANOR, IN VIOLATION OF UTAH CODE ANNOTATED  
SECTION 76-5-102, IN THE FOURTH CIRCUIT COURT,  
AMERICAN FORK DEPARTMENT, THE HONORABLE JOHN C.  
BACKLUND, JUDGE, PRESIDING.

JAMES "TUCKER" HANSEN  
Attorney for Respondent  
306 West Main Street  
American Fork, UT 84003

Wesley R. Carlson  
Pro se  
720 North 100 East  
Lehi, UT 84003

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
JURISDICTION AND NATURE OF PROCEEDINGS .....	1
STATEMENT OF ISSUES .....	1
STATEMENT OF THE CASE .....	2
STATEMENT OF THE FACTS .....	3
SUMMARY OF ARGUMENT .....	4
ARGUMENT	
POINT I                      DEFENDANT WAS VOLUNTARILY ABSENT FROM THE LEHI JUSTICE COURT TRIAL. ....	4
POINT II                     DEFENDANT'S ABSENCE AT LEHI JUSTICE COURT TRIAL IS HARMLESS ERROR IN THAT DEFENDANT WAS PRESENT AT THE SUBSEQUENT TRIAL DE NOVO. .....	5
POINT III                    DEFENDANT DID NOT HAVE A CONSTITUTIONAL RIGHT TO APPOINTED COUNSEL .....	5
CONCLUSION .....	6

## TABLE OF AUTHORITIES

### CASES CITED

<u>Scott v. Illinois</u> , 440 U.S. 367, 99 S.Ct 1158, 59 L.Ed.2d 383 (1979) .....	5
<u>State v. Wagstaff</u> , 772 P.2d 987 (Utah App. 1989) .....	4

### STATUTES AND RULES

U.S. Constitution, Sixth and Fourteenth Amendments .....	5
Rule 61, Utah Rules of Civil Procedure .....	5
Utah Code Annotated, Section 76-5-102 .....	1,2

**IN THE UTAH COURT OF APPEALS**

---

LEHI CITY,	:	
Plaintiff/Respondent	:	
vs.	:	
WESLEY R. CARLSON	:	
Defendant/Appellant	:	Case No. 920735-CA

---

BRIEF OF RESPONDENT

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a conviction of Assault, a Class "B" Misdemeanor, pursuant to Utah Code Annotated Section 76-5-102. The Defendant was tried and convicted in his absence in the Lehi City Justice Court on June 23, 1992. The conviction was appealed and a subsequent trial de novo was held in the Fourth Circuit Court, American Fork Department. Trial was then held in the Circuit Court on October 20, 1992 and the Defendant was again convicted of Assault. The Defendant was sentenced immediately after the trial. The notice of appeal was filed November 4, 1992. This court has jurisdiction to hear the appeal under Utah Code Annotated Section 78-2a-3(f).

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

1. Whether a criminal Defendant's voluntary absence at trial, when a subsequent appeal and trial de novo to a circuit court are held and the Defendant was present for the second

trial, violates Defendant's right to appear personally at his trial.

2. Whether a criminal Defendant has a right to appointed counsel when no term of imprisonment is imposed as a result of the conviction.

#### STATEMENT OF THE CASE

Defendant, Wesley Raymond Carlson, was charged with Simple Assault, a Class "B" Misdemeanor, in violation of Utah Code Annotated Section 76-5-102. Defendant was tried and convicted in absentia in the Lehi Justice Court on June 23, 1992. (R. 6). The Defendant filed an appeal to the American Fork Circuit Court and the case was set for a Non-Jury trial for August 11, 1992. (R. 9). The trial date was cancelled and a pre-trial was set for September 1, 1992 when attorney Mark Stringer entered an appearance and plea on behalf of the Defendant. (R. 11 and 12). At the pre-trial conference, the case was then set for trial for October 20, 1992 at 1:00 p.m. (R. 14). On September 15, 1992 attorney Mark Stringer withdrew as counsel for the Defendant. (R. 15). On October 20, 1992, trial was held and the Defendant represented himself at the trial. (R. 16). The Defendant was tried, convicted and sentenced on October 20, 1992. (R. 33-35). The notice of appeal was filed on November 4, 1992.

### STATEMENT OF FACTS

The Defendant was charged with Assault, a Class "B" Misdemeanor, after the Defendant confronted his neighbor regarding his neighbor's abusive language. The assault occurred after the Defendant crossed over into his neighbor's front yard. The Defendant admitted at trial that the testimony of Vickie Nelson detailing the Assault was accurate. (R. 29-57).

At the trial in the Lehi Justice Court, Defendant failed to appear because he was working. (Appellants brief, pages 4-5). After the conviction in the Justice Court, the Defendant appealed the matter to the Fourth Circuit Court, American Fork Department. The Defendant obtained an attorney, Mark Stringer, to represent him. (R. 11). He initially paid Mr. Stringer \$500.00 and then, when Mr. Stringer requested additional funds to continue representation, the Defendant indicated that he was unable to afford the additional funds. (Appellant's brief at page 2). Attorney Mark Stringer subsequently filed a Notice of Withdrawal (R. 15).

The trial in the Circuit Court was held on October 20, 1992. Defendant was present and represented himself. (R. 57-29). The Defendant was fined \$200.00 together with a \$70.00 surcharge. There was no jail time imposed as a result of the conviction. (R. 19).



### SUMMARY OF ARGUMENT

The Defendant, by his voluntary absence from his trial in the Lehi Justice Court, waived his right to be present at his trial. However, his absence at the Lehi Justice Court trial is moot in light of the fact that the Defendant was present at the trial de novo held in the American Fork Circuit Court. Additionally, Defendant's constitutional right to an appointed counsel was not violated in that there is no such right where no term of imprisonment is imposed as a result of the conviction.

### ARGUMENT

#### POINT I

DEFENDANT WAS VOLUNTARILY ABSENT FROM THE LEHI JUSTICE COURT TRIAL.

Defendant admits in his brief, pages 4-5, that he was unable to attend the trial because he was at work. This Court has held that a Defendant must have a compelling reason to stay away from trial. State v. Wagstaff, 772 P.2d 987 (Utah App. 1989). If a Defendant's absence is deliberate without sound reason, the trial may start in his absence. Id. at 990.

The Defendant has not shown that there was a compelling reason for him to stay away from the trial. Under these facts, the trial court was justified in proceeding without the Defendant.

## POINT II

DEFENDANT'S ABSENCE AT LEHI JUSTICE COURT TRIAL  
IS HARMLESS ERROR IN THAT DEFENDANT WAS PRESENT  
AT THE SUBSEQUENT TRIAL DE NOVO.

It is undisputed that the Defendant was present at his subsequent trial in the Fourth Circuit Court, American Fork Department. The trial was a trial de novo and the Defendant was afforded a chance to cross examine all witnesses that appeared against him as well as to provide any witnesses in his defense. In light of the fact that the Defendant was able to fully defend himself in this subsequent trial, his absence at the original trial is harmless error and does not constitute sufficient basis for overturning his conviction. (See Rule 61, Utah Rules of Civil Procedure).

## POINT III

DEFENDANT DID NOT HAVE A CONSTITUTIONAL RIGHT TO  
APPOINTED COUNSEL

The Defendant claims that his sixth amendment rights were violated in that he was unable to afford an attorney and that one should have been appointed for him. (See Appellants brief pages 1 and 2). The United States Supreme Court, in Scott v. Illinois, 440 U.S. 367, 99 S.Ct 1158, 59 L.Ed.2d 383 (1979), held that the sixth and fourteenth amendments to the United States Constitution require only that no indigent criminal Defendant be sentenced to a term of imprisonment unless the state has afforded him the

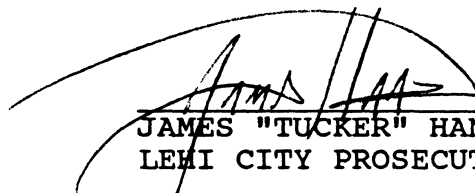
right to assistance of appointed counsel in his defense.

The Defendant was assessed a fine of \$270.00. There was no jail time imposed. The holding in Scott, supports Defendant's position that Defendant's constitutional rights were not violated. The Defendant is not entitled to have the conviction overturned because he did not have a constitutional right to appointed counsel under the circumstances.

CONCLUSION

Based upon the foregoing, respondent request that Defendant's conviction be affirmed.

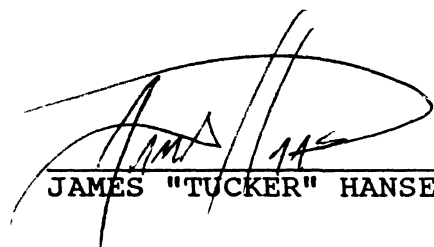
DATED this 18th day of February, 1993.

  
JAMES "TUCKER" HANSEN  
LEHI CITY PROSECUTOR

MAILING CERTIFICATE

I hereby certify that I mailed <sup>2</sup> a true and correct <sup>copies</sup> ~~copy~~ of the foregoing Brief ~~was mailed~~ postage prepaid by first-class mail, on this 18th day of February, 1993, to the following:

Wesley R. Carlson  
Defendant  
720 North 100 East  
Lehi, UT 84043

  
JAMES "TUCKER" HANSEN