

2005

## State of Utah v. Daniel L. Carter : Reply Brief

Utah Court of Appeals

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### Recommended Citation

Reply Brief, *Utah v. Carter*, No. 20051149 (Utah Court of Appeals, 2005).  
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IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH, :  
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 Plaintiff/Appellee, :  
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 v. :  
 :  
 DANIEL L. CARTER, : Case No. 20051149-CA  
 :  
 Defendant/Appellant. : Defendant is not incarcerated

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**REPLY BRIEF OF APPELLANT**

Appeal from judgments of conviction of Tax Evasion, a second degree felony, in violation of Utah Code Ann. § 76-8-1101 (1)(d) (Supp. 2003), and Tax Evasion, a third degree felony, in violation of Utah Code Ann. § 76-8-1101 (1)(c) (Supp. 2003), in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Leslie A. Lewis, presiding.

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**FILED**  
**UTAH APPELLATE COURT**  
SEP 16 2005

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**INTRODUCTION**

Defendant/Appellant Daniel L. Carter (Carter) is appealing from a judgment of conviction for Tax Evasion—Intent to Evade (tax evasion) and Tax Evasion—Filing a False or Fraudulent Return or Statement (filing a false tax return). On appeal, Carter maintains that the trial court abused its discretion by refusing to give proposed jury instruction 50, which explained the relevant law in relation to his defense.<sup>1</sup> As designated in the opening brief, Carter raises additional arguments in his *pro se* capacity.

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<sup>1</sup> As set forth in the opening Brief of Appellant, the trial court appointed Salt Lake Legal Defender Association (“LDA”) to serve as standby counsel for Carter, while he represented himself in the criminal proceedings. *See* Aplt. Br. at 2 n.2. LDA continues to represent Carter in that capacity. *See State v. Bakalov*, 1999 UT 45, ¶¶15,16, 979 P.2d 799 (an accused may defend him- or herself in criminal proceedings, including on appeal); *see also Myers v. Johnson*, 76 F.3d 1330, 1333-34 (5th Cir. 1996) (recognizing a state criminal defendant’s constitutional right to present *pro se* briefs and motions on appeal); *State v. Rudolph*, 970 P.2d 1221 (Utah 1998). To that end, as in the opening brief, LDA has presented only those portions of the brief identified as arguments of “Standby Counsel.” Carter has included his responses in this brief as arguments of the “*Pro-Se* Defendant.”

### ARGUMENTS IN REPLY PRESENTED BY STANDBY COUNSEL<sup>2</sup>

Pursuant to rule 24 of the Utah Rules of Appellate Procedure, Carter “may file a brief in reply to the brief of the appellee,” but this brief “shall be limited to answering any new matter set forth in the opposing brief.” Utah R. App. P. 24(c). Standby counsel has reviewed the briefs submitted in this case and determined the facts and legal arguments pertaining to the issue presented by standby counsel are adequately presented in Carter’s opening brief and the State’s response brief. See Aplt. Br. at 2-17; Aple. Br. at 2-14. Accordingly, standby counsel submits the issue presented by standby counsel in the above-entitled case to this Court for a decision.

### ARGUMENTS IN REPLY PRESENTED BY *PRO SE* DEFENDANT<sup>3</sup>

Dear Utah Court of Appeals,

I am not an attorney, and I have never claimed to be an attorney. If my arguments in my appeal were in any way, not adequately briefed, I hope that the appeals court would keep that in consideration. Further, being locked up in Beaver county jail, at the time of putting my brief together, I had no proper access to the equipment and materials that I would have needed, even if I were an attorney, to give all of the technical quotations, citations, and references for my arguments. I believe that the court does have in my arguments, sufficient information, to see that there were abuses of my rights, and there was prejudice on the part of the court that tried my case, toward me.

---

<sup>2</sup> See supra note 1, herein.

<sup>3</sup> See supra note 1, herein. A signed copy of Carter’s written arguments in reply is attached hereto at Addendum A. His arguments were copied into the text of this brief in order to comply with the rules and for ease of the Court. See Utah R. App. P. 24(f).

The prosecution asserts in their response to my arguments, that I did make federal taxable income. Federal taxable income is not something in state jurisdiction to determine first of all, and secondly the claim that federal taxable income includes wages, is false. Income is not defined in the internal revenue code, and the Supreme court has defined income for federal income tax purposes to mean a corporate profit:

“Whatever difficulty there may be about a precise and scientific definition of “income” it imports, as used here . . . the idea of gain or increase arising from corporate activities,” **Doyle v. Mitchell**, 247 U.S. 179. **Stratton’s Independence v. Howbert** 231 U.S. 399 (1913) *“As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court has decided in the Pollock Case that the income tax of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to population, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation, . . .”*

“Certainly the term “income” has no other meaning in the 1913 Act than in that of 1909 (see; **Stratton’s Independence v. Howbert**, 231 U.S. 406, Pages 409-413), and . . . we assume that there is no difference in its meaning as used in the two acts.” **Southern Pacific Co. v John Z. Lowe Jr.**, 247 U.S. 330, 335; **Bowers v. Kerbaugh-Empire Company**, 271 U.S. 170 (1926 page 174; **Goodrich v. Edwards**, 255 U.S. 527; **United States v. Supplee-Biddle Hardware Co.** 265 U.S. 189; **United States v. Phellis**, 257 U.S. 156; **Miles v. Safe Deposit & T. Co.** 259 U.S. 247; **Irwin v. Gavit**, 268 U.S. 161;

**Edwards v. Cuba R. Co.**, 268 U.S. 628; **Burnett v. Harmel**, 287 U.S. 103, 108, (1932);  
**Lucas v. Earl**, 281 U.S. 111.

Code section 61 of the internal revenue code defines Gross income and says:  
“Except as otherwise provided in this subtitle, gross income means all income from  
whatever source derived, including (but not limited to) the following items: . . .”  
(Highlights added) if I made wages, which were a part of a corporate profit, I could have  
federal taxable income, or gross income, but I am not a corporation, I have never been a  
corporation, and I do not own, nor have I ever owned a corporation.

The claims made that I have suffered no harm, ignore the fact that I spent 3 days  
short of 9 months separated from my family, and have been abused in many ways, by the  
Utah “justice” system. I am appealing the decision of the court, because even though an  
ill informed jury found me guilty of breaking the law, I believe that the judge, the  
prosecuting attorney, and I know for sure myself, that I have not in truth broken the laws  
that I was accused of breaking. I hope this court of appeals is truly seeking justice, and if  
it is, it must consider my arguments.

Thank you very much for your time.

Sincerely,

/s/

Daniel L. Carter

**CONCLUSION**

For the reasons enumerated above and in Carter's opening brief, Carter respectfully requests that this Court reverse and remand for a new trial.

SUBMITTED this 18 day of September, 2006.

  
\_\_\_\_\_

LORI J. SEPP

Standby Counsel for Defendant/Appellant.

CERTIFICATE OF DELIVERY

I, LORI J. SEPPI, hereby certify that I have caused to be hand-delivered the original and seven copies of the foregoing to the Utah Court of Appeals, 450 South State, 5<sup>th</sup> Floor, P.O. Box 140230, Salt Lake City, Utah 84114-0230, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6<sup>th</sup> Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 18 day of September, 2006.

  
LORI J. SEPPI

DELIVERED to the Utah Court of Appeals and the Utah Attorney General's Office as indicated above this \_\_\_\_\_ day of September, 2006.

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# **ADDENDUM A**

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Thank you very much for your time.

Sincerely,

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