

1988

State of Utah v. Wade Wagstaff : Appellant's Reply Brief

Utah Court of Appeals

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DOCKET NO.

880432-CA

UTAH COURT OF APPEALS

STATE OF UTAH,)

Plaintiff,)

vs.)

CASE NO. 880432-CA

WADE WAGSTAFF,)

Defendant.)

APPELLANT'S REPLY BRIEF

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COURT OF APPEALS

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UTAH COURT OF APPEALS

STATE OF UTAH,)
)
 Plaintiff,)
)
 vs.) CASE NO. 880432-CA
)
 WADE WAGSTAFF,)
)
 Defendant.)

APPELLANT'S REPLY BRIEF

SUMMARY OF ARGUMENT

The statute permitting trial in the Defendant's absence, being in derogation of constitutional right, should not harshly be applied in circumstances where action by the State has contributed to the Defendant's absence, and the State has shown no prejudice to the State in granting Defendant's motion of new trial.

ARGUMENT

The State's position, that despite inpropriety on the part of the County Attorney in leaking information that the Defendant was going to act as a police informant and despite the resulting threats on his life, that the Defendant should have remained and subjected himself to this danger, is unfair. The State disregards the fact that when it appeared safe, the Defendant voluntarily turned himself in to the authorities in the State of Washington with regards to this case. The State also disregards that the State has not shown any prejudice to the State by the

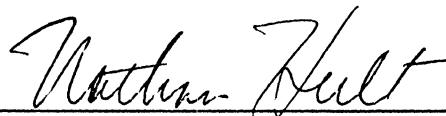
granting of a motion for a new trial.

The statute providing for the trial of the Defendant in the Defendant's absence is clearly in derogation of his constitutional rights to be present at his trial and should be narrowly construed. While the State contends that a leak of informant status and resulting threats on one's life do not constitute a basis for determination that Defendant's absence was involuntary, it is difficult to distinguish that situation from one where the Defendant's health was threatened as in Maupin v. State, 694 P2d 720 (Wyoming 1985). The fact that there was a disagreement between Defense Counsel and the County Attorney as to whether an agreement for the Defendant to act as an informant had in fact been reached or not is irrelevant. The leak of the information that the Defendant was to act as an informant and resulting threats on his life are the relevant and un rebutted facts of this case, and the Defendant should have the opportunity to enjoy his constitutional rights in a trial of this matter.

CONCLUSION

Based upon the Defendant's compelling reasons for absence from trial, his lack of actual notice of the trial, his voluntary surrender to authorities, and the lack of any showing of prejudice by the State, the Defendant should be granted a new trial.

DATED this 22nd day of December, 1988.

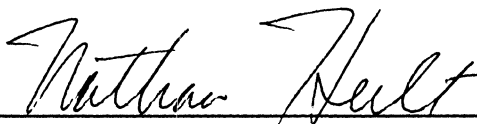


Nathan Hult

MAILING CERTIFICATE

I hereby give notice that I mailed a copy of the foregoing:
APPELLANT'S REPLY BRIEF to the below named individuals on
December 21, 1988.

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