

1980

# The State of Utah v. Danny Alvarez : Brief of Appellant

Utah Supreme Court

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Lynn R. Brown; Attorney for Defendant-Appellant;

Robert Hansen; Attorney for Plaintiff-Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

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THE STATE OF UTAH, :  
 :  
 Plaintiff-Respondent :  
 :  
 v. :  
 :  
 DANNY ALVAREZ, : Case No. 16336  
 :  
 Defendant-Appellant :

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BRIEF OF APPELLANT

Appellant appeals from a verdict of guilty in the  
Third Judicial District Court in and for Salt Lake County,  
State of Utah, the Honorable David B. Dee, Judge, presiding.

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FILED

OCT 27 1980

THE ATTORNEY GENERAL



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October 28, 1980

FILED

Honorable J. Allan Crockett  
Chief Justice  
Utah Supreme Court  
State Capitol  
Salt Lake City, Utah 84114

Clerk, Supreme Court, Utah

Re: State of Utah v. Danny  
Alvarez, Case No. 16336.

Dear Chief Justice Crockett:

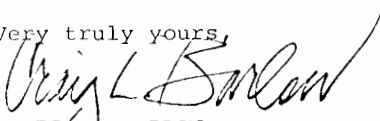
The appellant's attorney in the above entitled case, in harmony with Anders v. California, 386 U.S. 738, 87 S.Ct. 1296, 18 L.Ed.2d 493 (1967), stated that it is his opinion that the issues raised on appeal are not sound and has requested that he be allowed to withdraw.

This office feels that it would be futile to respond to a brief of this nature when likely the only assistance we could lend the Court would be to repeat the statements of the appellant's attorney and perhaps give some light as to the broad area of law surrounding the issue raised in the case.

We feel that this would lend no beneficial impact to the Court, but we are willing to respond to any particular issues or do additional research at the Court's direction if requested.

We would appreciate it if you would accept this letter as a formal response in lieu of filing a brief and either proceed to dismiss the appeal on its merits or in harmony with Anders v. California. If the Court is desirous of having additional input from our office in any particular, we would be happy to comply upon direction.

Very truly yours,

  
CRAIG L. BARLOW  
Assistant Attorney General

CLB/la

IN THE SUPREME COURT OF THE STATE OF UTAH

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THE STATE OF UTAH,	:	
	:	
Plaintiff-Respondent	:	
	:	
v.	:	
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DANNY ALVAREZ,	:	Case No. 16336
	:	
Defendant-Appellant	:	

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BRIEF OF APPELLANT

Appellant appeals from a verdict of guilty in the  
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THE STATE OF UTAH,	:	
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Plaintiff-Respondent	:	
	:	
v.	:	
	:	
DANNY ALVAREZ,	:	Case No. 16336
	:	
Defendant-Appellants	:	

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant, DANNY ALVAREZ, appeals from the conviction of Aggravated Robbery in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable David B. Dee, Judge, presiding.

DISPOSITION IN THE LOWER COURT

The appellant, DANNY ALVAREZ, was found guilty in the court of the Honorable David B. Dee by a jury verdict of the crime of Aggravated Robbery and was therefore sentenced to be committed to the Utah State Prison for an indeterminate term as prescribed by law.

## RELIEF SOUGHT ON APPEAL

The appellant seeks a reversal of his conviction and a new trial. Counsel on appeal requests permission to withdraw from the appeal and submits this brief in compliance with Anders v. California, 386 U.S. 738 87 S. Ct. 1396 18 L.Ed. 2d 93 (1967).

## STATEMENT OF THE FACTS

On the 21st day of September, 1978 a Dee's Hamburger Business was robbed at about 11:00 p.m. at 1122 South State Street, Salt Lake City, Utah. The State's evidence presented showed that two individuals entered Dee's and with a gun threatened employees and caused them to remove money from the cash registers located within Dee's. Several of the employees identified the defendant as one of the two participants in the robbery. The police arrived just as the participants of the robbery were fleeing from the scene in an automobile. This resulted in a high speed chase from approximately 11th South and State Street to 45th South and State Street. At the time the suspects' automobile was stopped, the police apprehended: Alfonzo Alvarez, Paul Gardunio, Tom Gurule, Cindy Vigil, and Danny Alvarez. When the defendant, Danny Alvarex, was placed under arrest a .22 caliber gun was removed from his person and also a quantity of money and personal checks.

The defendant, Danny Alvarez, testified in this matter that on the day in question he had used a substantial amount of drugs and alcohol during the course of the day and corroborated his use of drugs and alcohol through the testimony of Tom Gurule and Paul Gardunio.

## ARGUMENT

### POINT I

THE APPELLANT IS ENTITLED TO A JUDGMENT OF ACQUITTAL BECAUSE THE VERDICT WAS NOT SUPPORTED BY THE EVIDENCE AND AT THE TIME THE DEFENDANT WAS NOT RESPONSIBLE BECAUSE HE WAS UNDER THE INFLUENCE OF DRUGS AND ALCOHOL.

This court on several occasions has ruled that it is the province of the jury to weigh the testimony and determine the facts. It is the court's obligation to overturn a jury's verdict only when it is absolutely clear that the State's evidence is so inherently improbable as to be unworthy of belief so that upon objective analysis it appears that reasonable minds could not believe beyond a reasonable doubt that the defendant was guilty. State v. Mills, 122 Ut. 307, 249 P.2d 211 (1952). State v. Williams, 111 Ut. 379, 180 P.2d 551 (1947).

Clearly each case must turn upon its own facts and circumstances as to whether or not a judgment of acquittal is warranted because the verdict was not supported by the evidence. Appellant contends that in the case before the court the verdict was not supported by the evidence and therefore he should be entitled to a judgment of acquittal.

## CONCLUSION

Counsel for the appellant respectfully requests permission to withdraw believing the appeal to be without meritorious grounds.

RESPECTFULLY submitted this \_\_\_\_ day of  
October, 1980.

LYNN R. BROWN  
Attorney for Defendant-Appellant