

1961

State of Utah v. David Wayne Banford : Supplemental Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

~~FILED~~

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STATE OF UTAH

Respondent,

vs.

DAVID WAYNE BANFORD,

Defendant and
Appellant,

Clark, Supreme Court, Utah

Case No.

9395

SUPPLEMENTAL BRIEF OF APPELLANT

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If the Court please, Counsel desire to clarify their answers to two questions of the Court asked during oral argument.

First, Justice Henriod asked whether we would be satisfied with a new hearing at which the trial judge would have to admonish the appellant of the consequences of his plea before accepting a plea of guilty. We answered, "Yes, sir." However, there is another aspect to the question.

As Court-appointed counsel for the appellant, our interest is in receiving a new trial, and to that degree, our answer was correct. As members of the bar and officers of the Court, we would prefer that the Court rule that a trial judge abuses his discretion when he accepts a waiver of counsel and a plea of guilty in such a cavalier fashion as to invite further litigation, because the cost in time and money of that additional litigation is so expensive and because an occasional bewildered, scared, and innocent defendant is protected by a more complete recitation of his

rights and of the consequences of his waivers and plea. We are not waiving the constitutional and statutory grounds presented in the brief, but rather arguing that the statutory and constitutional questions should be reserved for a more appropriate case.

Second, Justice Wade asked us whether the Justice of the Peace at the bind-over hearing told the defendants of their right to counsel in a more complete fashion. We said that we did not know. The reason we do not know is that the Justice of the Peace signed a minute entry in which he stated only the legal conclusion that the defendants were fully informed. The record does not contain the facts on which that legal conclusion was based.

Finally, the State has pointed out that the appellant has never claimed he was not guilty. In answer, we can only point out that, because the case arises on appeal rather than petition for a writ of habeas corpus, the record cannot include statements of the defendant made before

or, after the reported hearings. Since, apparently, there is some relevancy to facts outside the record, perhaps we should here state that the defendant has claimed at other times that he is not guilty and that counsel has discovered some evidence which supports the legal conclusion that the defendant is an innocent boy.

Respectfully submitted,

Richard G. Daly
Richard S. Shepherd
Counsel for Appellant

Received _____ copies of the foregoing this
_____ day of November, 1961.

Assistant Attorney General
Counsel for Respondent