

1983

Lester P. Burrell v. Joan Mary Burrell : Plaintiff's Brief On Appeal

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Lester R. Burrell; Attorney for Appellant

Recommended Citation

Brief of Appellant, *Burrell v. Burrell*, No. 19399 (1983).
https://digitalcommons.law.byu.edu/uofu_sc2/5171

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

THE SUPREME COURT OF THE
STATE OF UTAH

CASE NO. 83-104

PLAINTIFF'S BRIEF ON APPEAL

Appeal from the Third Judicial District Court, State of Utah,
County of Utah, Plaintiff Ray E. Banks and Judith M. Billings, Responding

October 3, 1983

LESTER E. BURSLED
PLAINTIFF/APPELLANT
24 West Street #3
Salt Lake City, Utah 84101

William M. Skern
County Salt Lake County Attorney
Attorney for Respondent,
State of Utah
1300 South
Salt Lake City, Utah 84111

Judith M. Billings,
Third District Court
Salt Lake City, Utah

William J. Hunt
Attorney for Defendant/Respondent
100 South State Street
Salt Lake City, Utah 84111

FILED

OCT 4 1983

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE
STATE OF UTAH

LESTER R. BURRELL,

Plaintiff/Appellant

vs.

JOAN MARY BURRELL
STATE OF UTAH

Defendant/Respondant

DOCKET NO. 19-399

PLAINTIFF'S BRIEF ON APPEAL

Appeal from the Third Judicial District Court, State of Utah,
Salt Lake City, Utah Jay E. Banks and Judith M. Billings, Presiding

October 3, 1983

LESTER R. BURRELL
PLAINTIFF/APPELLANT
24 "M" Street #3
Salt Lake City, Utah 84103

Randall L. Skeen
Deputy Salt Lake County Attorney
Attorney for Respondent,
State of Utah
231 E. 400 South
Salt Lake City, Utah 84111

Judith M. Billings,
Third District Court
Salt Lake City, Utah

Hollis J. Hunt
Attorney for Defendant/Respondent
411 South State Street
Salt Lake City, Utah 84111

TABLE OF CONTENTS

	Page
STATEMENT OF FACTS -----	4
STATEMENT OF POINTS -----	11
ARGUMENT -----	11
1. Order of court is ambiguous and void -----	11
2. Order is inconsistant with declaration of record-----	11
3. Court would not define unit of money to be used to satisfy judgment -----	12
4. Court failed to make findings of fact -----	13
5. Contempt order is void for lack of findings of fact--	13
6. Court lacked jurisdiction as order was on appeal ----	14
7. Appellant was unlawfully jailed without counsel ----	14
8. Findings of fact are without foundation -----	15
9. Claim of constitutional right converted to a crime--	17
10. Order unconstitutional; court has no remedy -----	19
11. Court lacked jurisdiction on Jay E Bank's order-----	21
CONCLUSION -----	21
RELIEF SOUGHT ON APPEAL -----	22

AUTHORITIES CITED

1. Utah State Constitution, Art. XIV -----	21
2. Utah State Constitution, Art. XIII -----	21
3. Utah State Constitution, Art. XXI -----	21
4. Utah State Constitution, Art. 1, Sec. 3. -----	21
5. United States Constitution, Art. 1 Sec. 10. -----	21, 22

ADDITIONAL AUTHORITIES AND CITES

PAGE NO.

1. GIDENN VS WAINWRIGHT, 372 US 335	-----	15
2. BURGETT VS TEXAS, 389 US 109, 1967	-----	15
3. MEMPHA VS RHAY, 389 US 128, 1967	-----	15
4. CHANDLER VS FREGAG, 348 US 3, 1954	-----	15
5. WYMAN VS UPHAUS, 360 U.S. 72 , 1959	-----	15,17
6. FISHER VS PACE 336, U.S. 155 at 167	-----	
7. POWERS VS TAYLOR , 14U.(2d) 118, 378 P. 2d 519	-----	12
8. PARISH VS MCCONKIE, 84 U.396,35P.2d 1001.	-----	13
9. GERBER, 83 U. 441, 29P.2d 932	-----	13
10. ARGERSINGER VS HAMMILL SHERIFF 407 US 25	-----	15,17
11. RULE 5.2, UTAH STATE JUDGES CRIMINAL HANDBOOK.	-----	18
12. MILLER VS U.S. 230 F 486 at 489	-----	17
13. THE MIRANDA DECISION: ERNESTO A. MIRANDA VS STATE OF ARIZONA, UNITED STATES SUPREME COURT, DECIDED JUNE 13, 1966. KEY: 73	-----	18
14. SHERAR VS CULLEN 481 F 2D 946,(1973)	-----	18
15. MCCARTHY VS ARNDSTEN (CF COUNSELMAN VS HITCHCOCK, 142 U.S. 547, 563,564,352 ED 110, 114 e INTERS, -- 18 COM., REP., 816, 12 SUP. CT. REP 195)		
16. UNITED STATES VS SULLIVAN 274 US 259.	-----	19
17. EMPAK VS U.S. 349 U.S. 190	-----	19
18. RILEY VS CARTER, 165 OKLA 262; 25 P 2D 666; 77 ALR 1018	-----	17
19. LEFKOWITZ VS TURLEY, 414 U.S. 70	-----	18

United States Statutes:

COINAGE ACT OF 1792 and 12 USC 405 (a)-1

PAGE No. 12

31 U.S.C. 314, 31 U.S.C. 425, 31 U.S.C. 742, 12 U.S.C. 411,
18 U.S.C. 334, 12 U.S.C. 152, 18 U.S.C. 471, 472, 473, 474;
18 U.S.C. 1341, 18 U.S.C. 1342, 18 U.S.C. 891, 892, 893, 894;
18 U.S.C. 652, and 18 U.S.C. 1961, 1962, 1963, 1964, 2383, 2385.
also 18 U.S.C. 241, 242, 371, 334, 471, 472, 473, 652, 656,
892, 893, 894, 1341, 1343, 1503, 1510, 1511, 1621, 1622, 1623,
1962.

Utah Code Annotated statutes:

76-4-101, 76-4-2, 76-6-301, 76-6-302, 76-6-404, 76-6-405,
76-6-406, 76-6-408, 76-6-409, 76-6-412, 76-6-505, 76-6-508,
76-6-511, 76-6-512, 76-6-513, 76-6-515, 76-6-517,
76-6-518, 76-6-519, 76-6-520, 76-8-103, 76-8-109,
76-8-201, 76-8-202, 76-8-203, 76-8-301, 76-8-303,
76-8-306, 76-8-307, 76-8-308, 76-8-402, 76-8-404,
76-8-405, 76-8-406, 76-8-407, 76-8-408, 76-8-410,
76-8-411, 76-8-416, 76-8-502, 76-8-503, 76-8-504, 76-8-509,
76-8-513, 76-8-901, 76-8-902, 76-8-903, 76-8-904,
76-10-1603
76-7-103
78-32-1

STATEMENT OF THE CASE FACTS

1. On April 1, 1982, Lester R. Burrell became the Plaintiff in a civil divorce action filed in the District Court of the Third Judicial District in and for the Salt Lake County against Defendant Joan Mary Burrell, his wife.

The Plaintiff, Lester R. Burrell, filed this action against his wife, Joan Mary Burrell, violated Utah criminal code 76-7-103 as amended on the 15th day of January 1982 with independent Glen S. Sewell at the residence of Mr. Sewell when the act was witnessed by the Plaintiff in this case, (1) His wife, Joan Mary Burrell, deceitfully purchased two cars purchased by the Plaintiff in her name with intent to defraud as she discussed so doing with Newell prior to the act and then conspired with Ellen Bloedell of South Stoney, West Valley City prosecutor, to have Lester Ray Burrell arrested for auto theft; (2) His wife, Joan Mary Burrell, hid property belonging to Lester R. Burrell and lied to him about the amount of proceeds received from the sale and delayed the sale only after Plaintiff's inquiry of the whereabouts of the property sold; (3) His wife, Joan Mary Burrell, neglected the welfare of the children in order to pursue her own immoral and selfish interests with Glen S. Sewell and others; (4) His wife, Joan Mary Burrell lied to the personnel of the Legal Aid Society in order to obtain their free assistance to have Lester R. Burrell removed from the residence so that Joan Mary Burrell could go on state welfare assistance which she could not do with Lester R. Burrell at home with the children; (5) His wife admitted to adultery, then denied it.

After Lester Ray Burrell filed for divorce, his wife, Joan Mary Burrell, filed a counter claim in which she (1) committed perjury falsely stating under oath that her husband, Lester R. Burrell had purchased a hand gun and had threatened to kill her with that hand gun when she knew that statement to be false, and yet made that false statement in order to obtain an order from the District Court restraining Lester Ray Burrell from residing at the residence, (2) then Joan Mary Burrell conspired with her

attorney to deprive Lester R. Burrell of the use of either and both of the family cars purchased by Lester R. Burrell, (3) refused to let the children leave with Mr. Burrell for a pre-arranged outing, (4) Joan Mary Burrell reported to police that Lester R. Burrell might kidnap two daughters, knowing there was no grounds for such an accusation using it as an excuse for not letting any children go with their father on this pre-arranged outing, scheduled for May 31, 1982, (5) Joan Mary Burrell called the police, accused Lester R. Burrell of entering the residence, then falsely accused him of stealing certain items, threatening her, blocking her exit from the house, then had him arrested for criminal trespass, and harrassment, resulting in impoundment of his car registered in her name, (6) Joan Mary Burrell refused to have Lester R. Burrell's car released to him, (7) Joan Mary Burrell demanded that Lester R. Burrell give it to her or have it refinanced and out of her name before she would even let him get his personal property out of the car, then attacked him for taking the family car which was not impounded, caused an incident by trying to control both cars, (8) withheld and used an insurance check for approximately \$826.00, that was issued to pay for repairs on one of the two automobiles purchased by funds of Mr. Burrell, for other miscellaneous spending' thus putting Mr. Burrell's mode of employment in jeopardy.

4. Joan Mary Burrell was totally attempting to deprive Lester R. Burrell of both cars, his residence, his children and many of his personal belongings when she knew he had no place to live and no money to obtain a place to stay because she had been selfish, self indulgent, unfaithful and continued spending 50% more than Lester R. Burrell was getting from his employment. Her conduct was a major factor in Lester R. Burrell losing his job because he could not concentrate on his work while Joan Mary Burrell was chasing after other men.

5. Joan Mary Burrell, having restrained her husband by means of perjury, filed for and apparently received illegal welfare payments in the form of extortionate extensions of credit, causing the state of Utah to get involved in the divorce case in order to collect illegal reimbursement through extortionate means for the illegal and fictitious payments purportedly made to Joan Mary Burrell.

6. The State of Utah, through Ted Cannon and Randall L. Skeen illegally licensed attorneys active as Salt Lake County attorney and as an assistant Salt Lake County attorney, filed a motion to join the defendant (Joan Mary Burrell) but the court, in error, ordered the state to be joined to the Plaintiff (Lester R. Burrell).

Then the state of Utah through, Ted Cannon and Randall L. Skeen began filing papers in the court as Plaintiff in the case and with Joan Mary Burrell as the co-Plaintiff and with Lester R. Burrell as the Defendant which substantially affected his rights and falsified the court records and led to the illegal order of Jay E. Banks, judge, in the Third District Court in and for Salt Lake County, State of Utah.

7. Plaintiff, Lester R. Burrell, knows that both the constitution of the United States and of the State of Utah prohibit the taking of private property without due process of law and without just compensation, yet he has been victimized by his wife Joan Mary Burrell, the State of Utah, Salt Lake County attorney Ted Cannon, Assistant Salt Lake County attorney Randall L. Skeen, individuals in the Department of Social Services including the Department of Recovery Services

8. Plaintiff, Lester R. Burrell, also knows that the State of Utah is absolutely prohibited from emitting bills of credit, passing any law impairing the obligation of contracts coining money or making any thing but gold and silver coin a tender in payment of debt.

9. Plaintiff, Lester R. Burrell, also knows that every citizen of the United States and of every state in the United States has the God given right, guaranteed and protected by God, the constitution of the United States and the Constitution of the State of Utah, to defend his life, Liberty and Property against the unlawful acts of judges, attorneys, and all other criminals to secure his rights granted by God and secured by Constitutional law.

10. Plaintiff, Lester R. Burrell, also knows that he cannot lawfully be compelled to tender to the state anything but gold and silver coin of regulated standard value, the value of which is measured by the weight of the pure metal (gold or silver) proportionate to the standard silver dollar.

11. Defendant State of Utah has asked for, and received from the Third District Court through Judge Jay E. Banks an illegal order for the payment of fraudulent federal reserve dollar notes and as demonstrated in person by Jay E. Banks issued wilfully by the Federal Reserve Banks in violation of at least 21 United States felony statutes including but not limited to 18 U.S.C. 241, 242, 371, 334, 471, 472, 473, 652, 656, 892, 893, 894, 1341, 1343, 1503, 1510, 1511, 1621, 1622, 1623, 1962, and also in violation

of the constitution of the United States, the Constitution of the State of Utah and the following state criminal statutes: 76-4-101, 76-4-201, 76-6-301, 76-6-302, (Larceny, larceny by trick, larceny by bailees, embezzlement, false pretense, extortion, blackmail,

receiving stolen property, 76-6-404, 76-6-405, 76-6-406, 76-6-408, 76-6-409, 76-6-412, 76-6-505, 76-6-508, 76-6-511, 76-6-512, 76-6-513, 76-6-515, 76-6-517, 76-6-518, 76-6-519, 76-6-520 (felony), 76-8-103, 76-8-109, 76-8-201, 76-8-202, 76-8-203, 76-8-301, 76-8-303, 76-8-306, 76-8-307, 76-8-308, 76-8-402, 76-8-404, 76-8-405, 76-8-406, 76-8-407, 76-8-408, 76-8-410, 76-8-411, 76-8-416, 76-8-502, 76-8-503, 76-8-504, 76-8-509, 76-8-513, 76-8-901, 76-8-902, 76-8-903, 76-8-904, 76-10-1603.

12. Said order by Judge Jay E. Banks ordered the "Defendant to pay" and for "the Defendant" to appear before the Court on December 11, 1982.

13. The Plaintiff in the case, Lester Ray Burrell followed the order to the letter as all court orders should be.

14. The Plaintiff was then unlawfully arrested on a false warrant and forced to go to court, under duress, before Judge Judith M. Billings on March 2, 1983.

15. The Plaintiff gave notice to Judith M. Billings that the warrant was false and that he was in her court under false pretenses and that the Plaintiff was in need of counsel before he could be properly represented in court or answer any charges that were brought against him in the court.

16. The Appellant/Plaintiff was then forced under duress to appear to alleged charges and to be sworn in under duress and the Court and Judith M. Billings tried to compel the Appellant/Plaintiff to be a witness against himself contrary to the Fifth Amendment protection of the Constitution of the United States and the Constitution of the State of Utah which right the Appellant/Plaintiff asserted then and still claims the same right.

17. The Appellant/Plaintiff's inability to obey an unlawful, confused, confusing, false "order," inconsistent with the express declarations of record, obtained by unlawful and false pretenses was then unlawfully and falsely misconstrued, by Judith M. Billings, as contempt of court.

18. The Appellant/Plaintiff's effort to understand the unlawful, confused, confusing, "order" made by Jay E. Banks on November 10, 1983, inconsistent with the express declarations of record, obtained by unlawful and false pretenses, and the Plaintiff's asking of questions for clarification in attempting to cooperate with the court and making an effort to fully understand and uphold the laws of the State of Utah, the United States and the United States Constitution, was unlawfully and falsely misconstrued as "wilfull refusal to cooperate with the Court" and was declared to be contempt of court by Judith M. Billings.

19. The Appellant/Plaintiff was subsequently unlawfully and falsely incarcerated in the Salt Lake County Jail for a period of 90 days.

20. The Appellant/Plaintiff then had a Petition for a writ of Habeas Corpus delivered to Judith M. Billings on March 21, 1983 after which time Judith M. Billings issued an alleged "Findings of Fact" which did not exist at the time of the writing of the Petition for Writ.

21. The alleged "Findings of Fact" made by Judith M. Billings on March 23, 1983 contains false and misleading statements to the point that it should be declared null and void.

STATEMENT OF POINTS AND ARGUMENTS

Appellant/Plaintiff argues as follows:

point #1. Order of the court was abiguous; thus void.

The alleged "order" of Jay E. Banks of November 10, 1982 was unlawfully obtained, confused, confusing, ambiguous and therefore void and unenforceable.

point #2. Order was inconsistant with express declarations of record thus any order based on any action taken on the first order would be in error and would be void.

The alleged "order" of Jay E. Banks of November 10, 1982 was unlawful, Appellant/Plaintiff was brought before the court on November 10, 1982 on an invalid "order to show cause" obtained by a motion unsupported by affidavit.

Furthermore, the alleged "judgement" issued and signed on November 10, 1982, by Jay E. Banks is inconsistant with the express declarations of record as follows:

The written "order" was for the "Defendant to appear" and the appellant, Lester Ray Burrell is the Plaintiff in the case.

The written alleged "order" signed on November 29, 1982, by Jay E. Banks, stated "Defendant is to pay to the state". This would mean Joan Mary Burrell "is to pay to the state". As appellant, Lester Ray Burrell is the plaintiff, he was not ordered to pay at all on the written alleged "order".

(3) The expression of record was that someone was "to pay her". Appellant/Plaintiff was unable to ascertain who should pay what to whom as the written alleged "order" stated "Defendant is to pay to the state".

(4) The written alleged "order" of Jay E. Banks stated that up to the amount of "\$582.00" should be paid to someone or some entity. The "S" symbol designates silver, which is the lawful money of the United States and is defined by U.S. laws that have not been repealed, that a unit dollar is to contain 371 & 4/16ths grains of fine silver .999 pure and have the par value amount of \$1.292929292 to be the value of one troy ounce of silver (.999 pure).
See: Coinage Act of 1792, 12 USC 405a-1 and Websters Dictionary, 1955 edition

Appellant/Plaintiff, therefore argues that the alleged "order" is inconsistant with the express declarations of record and therefore both the order of November 10, 1982 is void and the judgement of contempt of March 2, 1983 should be vacated for lack of foundation.
See: Powers vs Taylor, 14 U. (2d) 118, 378 P.2d. 519.

Point #3. Court refused to define unit of money to be used to satisfy alleged order (judgment) which left the order vague and court without remedy.

Furthermore, Appellant/Plaintiff argues that on the 10th day of November, 1982, in an effort to understand what Jay E. Banks was ordering, displayed, with witnesses present, a lawful U.S. dollar in the courtroom and asked if that was the unit to be used for the \$582.00; Jay E. Banks replied "No". Upon further inquiring by Appellant/Plaintiff, in order for him to get clarification of alleged "order" of Jay E. Banks, Mr. Banks would not define any

with lawful money to be used to satisfy the alleged "order". One cannot be able to pay an undefined amount in undefined units. Therefore the alleged "order" is void because of vagueness.

Point #4. Court failed to make findings of fact and had no evidence that Appellant/Plaintiff was in wilful disobedience of any order.

Appellant has never refused or failed to support his children or agreed to make any payments and furthermore the court failed to make findings of fact or produce any testimony of witnesses with respect to Appellant/Plaintiff's ability to comply with alleged "order". Therefore the order finding Appellant/Plaintiff in contempt, on March 2, 1982 is void. See Parish vs McConkie, 84 U.S. 35P.2d 1001.

Point #5. Contempt order is void for lack of findings of fact.

Appellant/Plaintiff argues that because there were no findings of fact that Appellant/Plaintiff had property, means or ability to comply with alleged "order" or that he has intentionally deprived himself of ability to comply. The order for commitment to jail is void and Appellant/Plaintiff is therefor entitled to have the order for contempt reversed and declared void. See Gerber, 83 U. 441. 29P.

Point #6. Court Lacked jurisdiction because order was on appeal on March 2, 1983.

Appellant/Plaintiff argues that the Third District Court lacked jurisdiction over the subject matter and/or Lester Ray Burrell on March 2, 1983 because the alleged "order" of Jay E. Banks was

appealed to the Utah State Supreme Court on November 17, 1982. Appellant/Plaintiff objected to the proceedings of the Third District Court, at the opening of the hearing, on March 2, 1983, because the order was on appeal to the Supreme Court, but the Appellant/Plaintiff's objection was overruled by Judith M. Billings.

Point #7. Appellant/Plaintiff was denied due process by being unlawfully jailed without counsel.

Appellant/Plaintiff gave notice that he was in need of counsel and requested counsel before the proceeding could continue. The court refused to allow Appellant/Plaintiff's right to due process, by denying him his right to have counsel. By denying him counsel the court voided, for all purposes, any conviction obtained. This has been held by the United States Supreme Court in many decisions:

to wit:

"A CONVICTION OBTAINED WHERE THE ACCUSED WAS DENIED COUNSEL IS TREATED AS VOID FOR ALL PURPOSES". Burgett vs Texas, 389 US 109, 1967.

"AN ACCUSED MUST BE ALLOWED TO EMPLOY COUNSEL OF HIS CHOICE AND HE MUST BE ALLOWED REASONABLE TIME TO DO SO." Chandler vs Fregag, 344 US 3, 1954.

"LACK TO COUNSEL OF CHOICE CAN BE CONCEIVABLY EVEN WORSE THAN NO COUNSEL AT ALL"

Burgett vs Texas, 389, US 109.

... CAN NOT BE JAILED WHEN WITHOUT COUNSEL. ARGERSINGER VS
DEPUTY SHERIFF, 407 US 25 also see Rule 5.2 of the Utah State
Criminal Bench Book.

IN CONTEMPT CASES, THERE IS OFTEN NO RELATION BETWEEN
THE SENTENCE AND THE COERCION NECESSARY TO COMPEL OBEDIENCE...
LEVEL. IN FACT, CIVIL CONTEMPTS ARE SOMETIMES CIVIL IN NAME
BUT ENTAILING WHAT ARE IN REALITY CRIMINAL PUNISHMENTS. (WYMAN
V. BORDERS, 360 U.S. 72, 1959.).

THE RIGHT TO COUNSEL AT A CRIMINAL TRIAL IS DEEMED SO FUNDAMENTAL
TO THE INTERESTS OF JUSTICE THAT DENIAL THEREOF AUTOMATICALLY
VITIATES ANY CONVICTION OBTAINED (THE AUTOMATIC REVERSAL RULE). THIS
APPLIES EVEN THOUGH THERE IS NO SHOWING OF ANY PREJUDICE OR
OPPRESSION IN THE PROCEEDINGS OR EVEN ANY NEED FOR HAVING
COUNSEL." (GIDENN VS WAINWRIGHT, 372 US 335)

"THE RIGHT TO COUNSEL EXISTS NOT ONLY AT THE TRIAL THEREOF,
BUT ALSO AT EVERY STAGE OF A CRIMINAL PROCEEDING WHERE SUB-
STANTIAL RIGHTS OF A CRIMINAL ACCUSED MAY BE EFFECTED."
(ROBERTS VS RHAY, 389 US 128, 1967)

THE ALLEGED FINDINGS OF FACT ARE WITHOUT FOUNDATION
AND REVERSED FOR LACK OF EVIDENCE.

"THE ALLEGED" FINDINGS OF FACT OF JUDITH M. BILLINGS DATED THE 23RD
MAY, 1983 ARE FALSE AND THE APPELLANT/PLAINTIFF MAINTAINS
THEY ARE FALSE AS FOLLOWS AND ON THE FOLLOWING GROUNDS:

POINTS #1 AND #2 ARE FALSE IN THAT THEY ARE WITHOUT FOUNDATION AS
POINTS UNDER POINTS #2 THROUGH #5, ABOVE, AMPLY PROVE.

Paragraph #3 states that a bench warrant was used. Appellant/-Plaintiff states that said bench warrant is without foundation and therefor unlawful as the Order upon which it was based is void, as amply proved in Points #2 through #5 above.

Paragraph #4 and #5 states that the Appellant/Plaintiff, Lester Ray Burrell "wilfully refused to cooperate with the court." Appellant-/Plaintiff argues and points out to the court that "wilfully refusing to cooperate with the court" does not constitute contempt under Utah Contempt Statues. See Section 78-32-1 of the Utah State Code.

Point #9. Appellant/Plaintiff's claiming of Constitutional right was converted to a crime, an unlawful abrogation of rights.

The Appellant/Plaintiff's attempt to get answers to clarify his understanding of the courts questions and to make sure he was in strict compliance with the laws of the State of Utah and the United States and his claiming his Fifth Amendment Constitutional right to not be a witness against himself, was falsely misconstrued by the court, to be contempt on the grounds of "non cooperation with the court?".

therefor Judith M. Billings' sentencing of Appellant/ Plaintiff, Lester Ray Burrell, to 30 days in jail and his resultant incarceration was therefor, a willful total disregard of the law, on the part of Judith M. Billings, Randall L. Skeen, and other officers of the court and Salt Lake County Sheriff's office. These acts were in direct violation of the Appellant/Plaintiff's Constitutional

...the laws of the State of Utah and the Oaths of office these officials took to uphold the Constitution of the United States, and ... Appellant/Plaintiff his due process.

Furthermore, the United States Supreme Court and other high courts of ... have held as follows:

"THE CLAIM AND EXERCISE OF A CONSTITUTIONAL RIGHT CANNOT BE DEFERRED TO A CRIME." MILLER VS U.S. 230 F 486 at 489

ECONOMIC NECESSITY CANNOT JUSTIFY A DISREGARD OF CARDINAL CONSTITUTIONAL GUARANTEE. Riley vs Carter, 165 OKLA 262; 25 P 2D 1017 ALR 1018.

MIRANDA DECISION: ERNESTO A. MIRANDA VS STATE OF ARIZONA, UNITED STATES SUPREME COURT, DECIDED JUNE 13, 1966.

KEY: 73 "WHERE RIGHTS SECURED BY THE CONSTITUTION ARE INVOLVED, THERE CAN BE NO RULE MAKING OF LEGISLATION WHICH WOULD ABROGATE THEM."

"THERE CAN BE NO SANCTION OF PENALTY OR SANCTION IMPOSED UPON ONE ... OF HIS EXERCISE OF CONSTITUTIONAL RIGHTS." SHERAR VS ... 491 F 2D 946,(1973)

"...THE PRIVILEGE AGAINST SELF_INCRIMINATION, THE ... IS TO SUFFER "NO PENALTY" (MALLORY , SUPRA AT 8) HE IS ... NO ECONOMIC SANCTIONS OR LOSS OF MEANS OF LIVELIHOOD. ... VS TURLEY, 414 U.S. 70)

"...CAN NOT BE JAILED WHEN WITHOUT COUNSEL. ARGERSINGER VS ... SHERIFF, 407 US 25 also see Rule 5.2 of the Utah State Judges Criminal Bench Book.

"THE GOVERNMENT INSISTS BROADLY THAT THE CONSTITUTIONAL PRIVILEGE AGAINST SELF INCRIMINATION DOES NOT APPLY IN ANY CIVIL PROCEEDING. THE CONTRARY MUST BE ACCEPTED AS SETTLED. THE PRIVILEGE IS NOT ORDINARILY DEPENDENT UPON THE NOTICE OF THE PROCEEDING IN WHICH THE TESTIMONY IS SOUGHT OR IS TO BE USED. IT APPLIES ALIKE TO CIVIL AND CRIMINAL PROCEEDINGS. WHENEVER THE ANSWER MIGHT TEND TO SUBJECT TO CRIMINAL RESPONSIBILITY HE WHO GIVES IT. THE PRIVILEGE PROTECTS A MERE WITNESS AS FULLY AS IT DOES ONE WHO IS ALSO A PARTY DEFENDANT. IT PROTECTS, LIKEWISE. THE OWNER OF GOODS WHICH MAY BE FORFEITED IN A PENAL PROCEEDING." MCCARTHY VS ARNDSTEN (CF COUNSELMAN VS HITCHOCK, 142 U.S. 547, 563,564,352 ED 110, 114 e INTERS, COM., REP., 816, 12 SUP. CT. REP 195)

"ONE NEED NOT BE A CRIMINAL TO CLAIM FIFTH AMENDMENT PRIVILEGE, IT APPLIES TO CIVIL SUITES AS WELL." UNITED STATES VS SULLIVAN 274 US 259.

IN THE CONTEMPT CASES, THERE IS OFTEN NO RELATION BETWEEN THE SENTENCE AND THE COERCION NECESSARY TO COMPEL OBEDIENCE... MOREEVER, IN FACT, CIVIL CONTEMPTS ARE SOMETIMES CIVIL IN NAME ONLY, ENTAILING WHAT ARE IN REALITY CRIMINAL PUNISMENTS. (WYMAN VS UPHAUS, 360 U.S. 72, 1959.).

"WHETHER SUCH ADMISSIONS BY THEMSELVES WOULD SUPPORT A CONVICTION UNDER A CRIMINAL STATUTE IS IMMATERIAL AND THAT THE PRIVILEGE ALSO EXTENDS TO ADMISSION THAT MAY ONLY TEND TO INCRIMINATE." EMPAK U.S. 349 U.S. 190

Point #10 - Alleged court order of Jay E. Banks is unconstitutional, therefor invalid and unenforcable as court has no remedy.

no state has any right, power or authority to make or declare anything but gold and silver coin a tender in payment of debts within its jurisdiction.

Art. I Sec. 10, U.S. Constitution

The power to declare what shall be a tender in payment of debt within state jurisdiction is a power reserved to the states with the constitutional limitation that the state has the reserved power to declare only gold and silver coin a tender in payment of debt.

Article one section 10 and amendments 9 and 10 of the U.S. Constitution

The state legislature of the State of Utah has not exercised its reserved power to declare or make gold and silver coin a tender in payment of debts.

Utah Code Annotated 1953 as amended -- see entire code - no such law.

The state of Utah therefore has no law making anything a tender in payment of debts, therefore no enforceable debt can exist between the state of Utah and a citizen or resident of this state.

Without the power to exist for the state legislature to make a law there must first be a constitutional grant of power to the state legislature.

The written order of the court for which Judge Banks is considered the defendant in the case to pay to the state of Utah a certain number of dollars but failed to define what was meant by the word "dollars" or by the symbol "\$" used in the order and failed to clarify what was meant by such symbol

The court records show that the state of Utah joined the Plaintiff Lester K. Burrell, against the Defendant Joan Mary Burrell.

The court record then shows that the Defendant (Joan Mary Burrell) was ordered to pay to the State of Utah \$582.00 per month or 1/2 of everything the Defendant received up to that amount and any property received by Defendant was to be sold at auction to the highest bidder, and Defendant was to appear in court on the 15th day of December 1982 and every month thereafter.

In other words the Court Order is totally false and is therefore, unenforceable.

Point #11 - Alleged court order of Jay E. Banks is unenforceable due to lack of jurisdiction.

The limits of Utah State jurisdiction, power and authority are established by the (1) constitution of the United States, (2) by the constitution of the State of Utah, (3) by the laws enacted by the Legislature of the state of Utah and (4) by the laws voted into existence by the qualified voters of the state of Utah.

The power to amend the Constitution of the United States ultimately lies with the people of the United States.

The power to amend the Constitution of the state of Utah ultimately lies with the people of the state of Utah.

power of state courts to make any thing but gold and silver coin a tender in payment of debts is prohibited by Article I, Section 10 of the Constitution of the United States, Article I, Section 10, Article XIV, Article XIII, Article XXI of the Constitution of the State of Utah.

There are no laws of the State of Utah making anything but gold and silver coin a tender in payment of debts and there is no law in the State of Utah specifically making gold and silver coin a tender in payment of debt.

CONCLUSION

The 1981 orders made by Jay E. Banks on November 10, 1982, and the 1983 Billings on March 2, 1983 are null and void and the orders and the alleged findings of fact of Judith M. Billings on March 23rd 1983 in regards to this case are false and without foundation and therefor should all be reversed and declared null and void by the above entitled court. That appropriate compensation should be made on the persons that violated the rights of the Plaintiff Lester Ray Burrell. Measures should be taken to protect the Appellant/Plaintiff or any other citizen of the State of Utah, shall not suffer any further from like acts of the State of Utah liable for the suffering caused to the Appellant/Plaintiff in this case.

The State of Utah and the Courts thereof are without authority to enforce any law for payment of debt, except, debts voluntarily contracted by consenting private parties for gold and silver coin. Therefore the order of Judge Jay E. Banks being vague and unconstitutional, is void.

Article I, Section 10. U.S. Constitution

RELIEF SOUGHT ON APPEAL

1. That orders of Jay E. Banks and Judith M. Billings be declared void.
2. That all private property and/or copies thereof taken from the plaintiff, in the form of finger prints, photographs etc. in the booking process, at the jail or any other place of record taking be returned to him and/or destroyed and that the contempt of court against him be cleared from any and all records.
3. That the Third District Court be ordered to refrain from violating any of the 45 criminal state statutes and the 21 U.S. felony statutes referred to in this case or any other criminal statutes.
4. That a restraining order be issued to immediately halt any and all prosecution and law suits against Appellant/Plaintiff in regard to child support for a period of at least one year, to enable Appellant/Plaintiff to concentrate on supporting his five minor children and to recover financially from his state of impecuniosity that has been caused by his continually having to be in court to answer and defend himself against false charges and criminal acts against him by Joan M. Burrell, and public officials who have conspired with her to deprive him of his property, liberty and pursuit of happiness. Mr. Burrell can not pay anything to anyone

...he is given a chance to concentrate on his work long enough to earn something to pay with. Mr. Burrell has spent an estimated one half of his time during the period of from June 1982 to October 1983 either being in court, jail or preparing for court because of the criminal acts that are being committed against him and unwarranted prosecution brought on by the Salt Lake County attorney's office over alleged "non-support". Even the ox has a flat as to the load he can bear.

4. That the Third District Court be ordered to refrain from attempting to make anything but gold and silver coin a tender in payment of any debts public or private.

5. That appropriate prosecution be brought against all public officials including all judicial officers (including attorneys and clerks) demanding or receiving anything but gold or silver coin into public offices in the state of Utah.

Dated this 4th day of October, 1983.


LESTER RAY BURRELL

CERTIFICATE OF DELIVERY

I Lester A. Swail do hereby certify that on the 6th day of October, 1983, I did deliver a true and accurate copy of attached Appellant's brief and docketing statement to the office of Randall L. Skeen, Deputy Attorney, Salt Lake County, attorney for Defendant/Appellant East 400 South, Salt Lake City, Utah, 84111 and Hollis J. Hunt, attorney for Defendant/Appellee, 31 South State Street, Salt Lake City, Utah, 84111

Lester A. Swail