

1978

# State of Utah v. Kenneth P. Sharp : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)



Part of the [Law Commons](#)

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. Robert B. Hansen; Attorney for Respondent Brad Rich, Robert B. Hansen; Attorney for Appellant

---

## Recommended Citation

Brief of Appellant, *Utah v. Sharp*, No. 15918 (Utah Supreme Court, 1978).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/1318](https://digitalcommons.law.byu.edu/uofu_sc2/1318)

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](mailto:hunterlawlibrary@byu.edu).

IN THE SUPREME COURT OF THE STATE OF UTAH

---

STATE OF UTAH, :  
 :  
 Plaintiff-Respondent, :  
 :  
 -v- :  
 :  
 KENNETH P. SHARP, : Case No. 15918  
 :  
 Defendant-Appellant. :

---

BRIEF OF APPELLANT

Appeal from the judgment and conviction of **Aggravated Robbery and Aggravated Burglary in the District Court of the Third Judicial District, in and for Salt Lake County, State of Utah,** the Honorable Dean E. Conder, Judge presiding.

BRAD RICH  
Salt Lake Legal Defender Assn.  
333 South Second East  
Salt Lake City, Utah 84111  
Attorney for Appellant

ROBERT HANSEN  
Attorney General  
236 State Capitol Building  
Salt Lake City, Utah 84114  
Attorney for Respondent

**FILED**

NOV 1 1978

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

---

STATE OF UTAH,

Plaintiff-Respondent,

-v-

KENNETH P. SHARP,

Defendant-Appellant.

:  
:  
:  
:  
:  
:

Case No. 15918

---

BRIEF OF APPELLANT

Appeal from the judgment and conviction of Aggravated Robbery and Aggravated Burglary in the District Court of the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Dean E. Conder, Judge presiding.

---

BRAD RICH  
Salt Lake Legal Defender Assn.  
333 South Second East  
Salt Lake City, Utah 84111  
Attorney for Appellant

ROBERT HANSEN  
Attorney General  
236 State Capitol Building  
Salt Lake City, Utah 84114  
Attorney for Respondent

TABLE OF CONTENTS

	PAGE
STATEMENT OF THE NATURE OF THE CASE . . . . .	1
DISPOSITION IN THE LOWER COURT. . . . .	1
RELIEF SOUGHT ON APPEAL . . . . .	1
STATEMENT OF THE FACTS. . . . .	2
ARGUMENT	
<u>POINT I: THE EVIDENCE WAS INSUFFICIENT TO SUPPORT</u> <u>THE VERDICT</u> . . . . .	3
CONCLUSION. . . . .	5

CASES CITED

<u>State v. Mills</u> , 530 P.2d 1272 (1975). . . . .	3
<u>State v. Wilson</u> , 565 P.2d 66 (1977) . . . . .	3
<u>United States v. Wade</u> , 388 U.S. 218, 18 L.Ed. 2d 1149, 87 S.Ct. 1926 . . . . .	4

IN THE SUPREME COURT OF THE STATE OF UTAH

---

STATE OF UTAH, :  
 :  
 Plaintiff-Respondent, :  
 :  
 -v- :  
 :  
 KENNETH P. SHARP, : Case No. 15918  
 :  
 Defendant-Appellant. :

---

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant was convicted as charged of the offenses of Aggravated Robbery and Aggravated Burglary in the District Court of the Third Judicial District, in and for the County of Salt Lake, State of Utah, the Honorable Dean E. Conder, Judge presiding.

DISPOSITION IN THE LOWER COURT

Appellant was sentenced to prison for the term as provided by law, after a jury found him guilty of the offense of Aggravated Robbery and Aggravated Assault.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the judgment rendered, or in the alternative, a new trial.

## STATEMENT OF THE FACTS

Among other witnesses, Charles L. Allison testified that he was at his home the night of August 22, 1977, and the early morning hours of August 23, 1977 (R. 213). At the same address, Mr. Allison maintains a kennel, known as Allison Kennels (R. 211-213). Mr. Allison testified that on this particular night, he was awakened by a disturbance in his living room (R. 213). On reaching the living room, Mr. Allison found his wife and a man, who was holding a shotgun, in that room (R. 214). The man made Mr. Allison and his wife lie down on the floor (R. 214).

Mr. Allison further testified that another man (Wadell) came in at about this time wanting the keys to the Kennel because his dogs were out there (R. 217). When Mr. Allison told him the dogs were gone, Wadell and the man holding the shotgun tied up Mr. and Mrs. Allison (R. 218). One of the men asked Mr. Allison where the money was (R. 219). The men went through Mrs. Allison's purse and Mr. Allison's wallet (R. 220). Wadell left, and the man holding the shotgun went through the house pulling out drawers and turning them upside down (R. 221). Wadell returned, again asking about the dogs (R. 222). Then the two men left (R. 222).

When Mr. Allison worked himself loose, ten to fifteen minutes later he called the police (R. 223). Mr. Allison determined a gun, some of his wife's jewelry and the cash that was in his wallet and his wife's purse was missing (R. 223-224).

Mr. Allison was shown photographs by the police four days

later from which he identified the appellant as the man holding the shotgun (R. 225).

## ARGUMENT

### POINT I

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICT.

The authority of the reviewing court to review a case on sufficiency of the evidence is clear. The standard for review of the sufficiency of the evidence for a conviction is that:

It must appear that upon so viewing the evidence, reasonable minds must necessarily entertain a reasonable doubt that the defendant committed a crime. State v. Wilson, 565 P.2d 66 (1977) at 68.

In State v. Mills, 530 P.2d 1272 (1975), this court also discussed a challenge to the sufficiency of the evidence:

For a defendant to prevail upon a challenge to the sufficiency of the evidence to sustain his conviction, it must appear that viewing the evidence and all inferences that may reasonably be drawn therefrom, in the light most favorable to the verdict of the jury, reasonable minds could not believe him guilty beyond a reasonable doubt. 530 P.2d at 1272.

In this case, appellant contends that the evidence was not sufficient and that reasonable jurors could not have found guilt. Perhaps crucial to the insufficiency of the evidence the appellant contends, is the limited opportunity the victims had to look at the perpetrators of the crime from which they could later identify them.

Mr. Allison was awakened from sleep by a commotion in

his living room (T. 21). When he rushed into the living room he first saw the perpetrator of the crime from a distance of eight to ten feet away (T. 24). Mr. Allison was immediately told to lay down on the floor by the perpetrator of the crime (T. 24). Appellant contends this was not enough time for the victim, Mr. Allison, to fix the identity of the perpetrator of the crime in order to identify him later.

Mr. Allison's wife, Elsa, also testified that she saw the perpetrator of the crime (R. 36-38). Mrs. Allison was also ordered to lay down on the floor with her face to the floor (T. 39). Mrs. Allison testified there were no lights on outside the door through which the perpetrator of the crime came into the house (T. 48). The only light on in the house was a table lamp on a table in the living room (T. 48). Mrs. Allison testified she could not see the faces of the men who had come into her home while she was lying on the floor (T. 52). The only time she saw the man was when the man holding the shotgun entered through the front door of her living room (T. 36).

Appellant contends that the limited opportunity Mrs. Allison had to view the perpetrator of the crime was an insufficient amount of time from which Mrs. Allison could fix the identity of the perpetrator.

As discussed by Justice Brennan in United States v. Wade, 388 U.S. 218, 18 L.Ed. 2d 1149, 87 S.Ct. 1926, the difficulties of eyewitness identification are well known:



The vagaries of eyewitness identification are well-known; the annals of criminal law are rife with instances of mistaken identification. Mr. Justice Frankfurter once said: "What is the worth of identification testimony even when uncontradicted? The identification of strangers is proverbially untrustworthy. The hazards of such testimony are established by a formidable number of instances in the records of English and American trials. These instances are recent— not due to the brutalities of ancient criminal procedure." The Case of Sacco and Vanzetti 30 (1927).  
18 L.Ed.2d at 1158.

#### CONCLUSION

Appellant contends that given the limited opportunity of the victims to view the perpetrators of the crime, they could not have identified appellant or anyone else as the perpetrators of the crime and that reasonable jurors could not have found that appellant committed the crime of Aggravated Robbery and Aggravated Burglary.

Therefore, appellant asks that his conviction be reversed and judgment of acquittal be entered or, in the alternative, that he be granted a new trial.

Respectfully submitted,

BRAD RICH  
Attorney for Appellant