

1989

# State of Utah v. Edward Thomas Sutton : Reply Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Frances M. Palacios; Elizabeth Holbrook; Salt Lake Legal Defender Association; Attorneys for Appellant.

R. Paul Van Dam; Attorney General; Attorney for Respondent.

---

## Recommended Citation

Reply Brief, *Utah v. Sutton*, No. 890155 (Utah Court of Appeals, 1989).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/1682](https://digitalcommons.law.byu.edu/byu_ca1/1682)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

BRIEF

UTAH  
KFU  
50  
.A10

DOCKET NO. 890155

IN THE UTAH COURT OF APPEALS

---

STATE OF UTAH,	:	
	:	
Plaintiff/Respondent,	:	
	:	
v.	:	
	:	
EDWARD THOMAS SUTTON,	:	Case No. 890155-CA
	:	Priority No. 2
Defendant/Appellant.	:	

---

REPLY BRIEF OF APPELLANT

Appeal from a judgment and conviction for theft, a third degree felony, in violation of Utah Code Ann. section 76-6-404, and for vehicle burglary, a class A misdemeanor, in violation of Utah Code Ann section 76-6-204, in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable David S. Young, Judge, presiding.

FRANCES M. PALACIOS  
ELIZABETH HOLBROOK  
SALT LAKE LEGAL DEFENDER ASSOC.  
424 East 500 South, Suite 300  
Salt Lake City, Utah, 84111

Attorneys for Appellant

R. PAUL VAN DAM  
ATTORNEY GENERAL  
236 State Capitol Building  
Salt Lake City, Utah, 84114

Attorney for Respondent

FILED  
SEP 21 1989  
COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

---

STATE OF UTAH,	:	
	:	
Plaintiff/Respondent,	:	
	:	
v.	:	
	:	
EDWARD THOMAS SUTTON,	:	Case No. 890155-CA
	:	Priority No. 2
Defendant/Appellant.	:	

---

REPLY BRIEF OF APPELLANT

Appeal from a judgment and conviction for theft, a third degree felony, in violation of Utah Code Ann. section 76-6-404, and for vehicle burglary, a class A misdemeanor, in violation of Utah Code Ann section 76-6-204, in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable David S. Young, Judge, presiding.

FRANCES M. PALACIOS  
ELIZABETH HOLBROOK  
SALT LAKE LEGAL DEFENDER ASSOC.  
424 East 500 South, Suite 300  
Salt Lake City, Utah, 84111

Attorneys for Appellant

R. PAUL VAN DAM  
ATTORNEY GENERAL  
236 State Capitol Building  
Salt Lake City, Utah, 84114

Attorney for Respondent

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	i
INTRODUCTION.....	1
ARGUMENT	
I. THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN APPELLANT'S CONVICTIONS. ....	1
CONCLUSION.....	3

TABLE OF AUTHORITIES

	<u>Page</u>
<u>State v. Brooks</u> , 631 P.2d 878 (Utah 1981).....	3
<u>State v. Isaacson</u> , 704 P.2d 555 (Utah 1985).....	3

IN THE UTAH COURT OF APPEALS

---

STATE OF UTAH,	:	
	:	
Plaintiff/Respondent,	:	
	:	
v.	:	
	:	
EDWARD THOMAS SUTTON,	:	Case No. 890155-CA
	:	Priority No. 2
Defendant/Appellant.	:	

---

INTRODUCTION

Appellant relies on his opening brief, and refers this Court to that brief for the statements of jurisdiction, issues, the case, the facts, and summary of the argument. Appellant responds to the State's answer to the opening brief as follows:

I.  
THERE IS INSUFFICIENT EVIDENCE  
TO SUPPORT APPELLANT'S CONVICTIONS.

The State correctly notes that in evaluating the sufficiency of the evidence in this case, this Court must view the evidence in the light most favorable to the jury's verdict, and must not substitute the Court's judgment for the jury's choice of whether to believe the facts presented by the State or by Appellant. Respondent's brief, 5-6.

Appellant maintains that under this standard of review and relying solely on the facts as presented and argued by the State, there was insufficient evidence to support his conviction. Accounts of the State's witnesses concerning Appellant's appearance and conduct on the night of his arrest follow, and do

not support a reasonable inference that Appellant had the requisite intent to deprive Ricky Martin of his toolbox.

According to Charlene Martin, Appellant knocked on the window to her home and beckoned her to come outside (T. 5).

Ricky Martin described Appellant and his actions as follows:

The figure immediately just stood up and stepped forward. He came, oh, I'd say, no more than 10 feet from me and stopped there. I asked him, you know, are you hungry are you cold, along those lines. He appeared to be a vagrant or something along those lines. I thought if I could get him some food he'd go away and disappear.

(T. 60).

He slammed the door of my truck shut. Just reached out a slammed it shut at which time I thought it was most peculiar.

(T. 61).

Well, his speech had been slurred and things just really didn't seem right so at that time I went directly inside the house and told my wife to call the police.

(T. 62).

Police officer Dennis Prisbrey indicated that Appellant was sitting in a field of weeds near Mr. Martin's toolbox when the police arrived, and that Appellant was given instructions (which he apparently followed) and was handcuffed (T. 87-89).

Officer Daniel Timothy Giles testified that he saw Officer Prisbrey arresting Appellant and removing plastic bags similar to those in Mr. Martin's toolbox from Appellant's pockets (T. 97).

The prosecutor, Mr. Verhoef, explained Appellant's interactions with the Martins and police as follows:

Ms. Palacios asked you to bet on some facts. She asked you to bet on all those actions, in her argument, we speak of innocence. They also may be speaking of something much more obvious and that was the fact that Mr. Sutton was so stoned he couldn't move or didn't desire to move, was foolish enough to stay right in the middle of the evidence of his crime.

(T. 133).

These facts do not logically lead to the conclusion that Appellant had the intent to deprive Mr. Martin of his toolbox, particularly after these facts are compared with those operant in the cases cited by the State in support of the proposition that "a purpose to deprive may be inferred from the actions of the defendant or from the surrounding circumstances." Respondent's brief at 6, citing State v. Isaacson, 704 P.2d 555 (Utah 1985);<sup>1</sup> and State v. Brooks, 631 P.2d 878 (Utah 1981).<sup>2</sup>

#### CONCLUSION

While it is not the function of this Court to ignore "strong circumstantial evidence that plainly supports [a] conviction", Respondent's brief, 4-5, it is the function of this

---

1 Intent to commit aggravated burglary was proved: defendant was seen picking the lock to a storeroom door and entering a window to an apartment with a knife in his hand, and admitted that he intended to take a blanket if he found one.

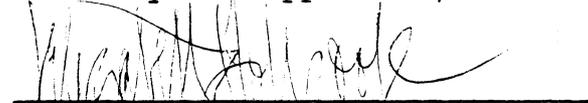
2 Intent to commit burglary in a dwelling was proved: at 11:00 p.m. defendant was seen removing screen from window and entering and exiting apartment; defendant left immediately when he realized he'd been discovered, the power panel to lights in apartment had been tampered with to cut the lights; ring box in apartment had been moved.

Court to insure that no person is punished for a crime which the State has failed to prove he committed. Accordingly, this Court reverse Appellant's conviction and bar his retrial.

Respectfully submitted this 22 day of September, 1989.



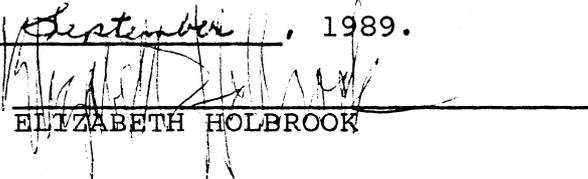
FRANCES M. PALACIOS  
Attorney for Appellant/Defendant



ELIZABETH HOLBROOK  
Attorney for Appellant/Defendant

CERTIFICATE OF DELIVERY

I, Elizabeth Holbrook, hereby certify that 8 copies of the foregoing will be delivered to the Utah Court of Appeals and that four copies of the foregoing will be delivered to the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah, 84114, this 22 day of September, 1989.



ELIZABETH HOLBROOK

DELIVERED by \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 1989.