

1980

# The State of Utah v. Charles Richard Collins : 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. Lynn R. Brown; Attorneys for Defendant-Appellant ROBERT B. HANSEN; Attorney for Plaintiff-Respondent

---

## Recommended Citation

Brief of Appellant, *Utah v. Collins*, No. 16585 (Utah Supreme Court, 1980).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/1846](https://digitalcommons.law.byu.edu/uofu_sc2/1846)

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

---

THE STATE OF UTAH,	:	
	:	
Plaintiff-Respondent	:	
	:	
v.	:	
	:	
CHARLES RICHARD COLLINS,	:	Case No. 16585
	:	
Defendant-Appellant	:	

---

BRIEF OF APPELLANT

Appeal from a jury verdict of guilty of the offense of Aggravated Assault in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Peter F. Leary, Judge, presiding.

LYNN R. BROWN  
Salt Lake Legal Defender Assoc.  
333 South Second East  
Salt Lake City, Utah 84111  
Attorney for Defendant-Appellant

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

FILED

APR - 2 1980

---

Clk's, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

---

THE STATE OF UTAH,	:	
	:	
Plaintiff-Respondent	:	
	:	
v.	:	
	:	
CHARLES RICHARD COLLINS,	:	Case No. 16585
	:	
Defendant-Appellant	:	

---

BRIEF OF APPELLANT

Appeal from a jury verdict of guilty of the offense of Aggravated Assault in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Peter F. Leary, Judge, presiding.

LYNN R. BROWN  
Salt Lake Legal Defender Assoc.  
333 South Second East  
Salt Lake City, Utah 84111  
Attorney for Defendant-Appellant

ROBERT HANSEN  
Attorney General  
236 State Capitol Building  
Salt Lake City, Utah  
Attorney for Plaintiff-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 FACTS . . . . .	2
ARGUMENT	

POINT I: EVIDENCE PRESENTED TO THE JURY WAS  
INSUFFICIENT TO SUPPORT A VERDICT THAT  
DEFENDANT WAS GUILTY OF AGGRAVATED ASSAULT. . . .4

CONCLUSION . . . . .	8
----------------------	---

### CASES CITED

Minnex v. State, 282 P.2d 506 (Oklahoma Circuit 1961).	7
Moyer v. People, 165 Colorado, 583, 440 P.2d 783 (1968) . . . . .	6
People v. Fuentes, 74 C.A. 2d 737, 169 P.2d 391 (1946) . . . . .	7
State in Interest of Besendorfer, 568 P.2d 742 (1977).	5,6,7
State v. McKeehan, 91 Idaho 808, 430 P.2d 886, (1967).	8
State v. Perry, 315, 426 P.2d 415 (Arizona App. 1967).	8
State v. Sorenson, 44 Haw. 601, 359 P.2d 289 (1961) .	7

### STATUTES CITED

Utah Code Ann. §76-5-102 . . . . .	4,5
Utah Code Ann. §76-1-601(19) . . . . .	5

IN THE SUPREME COURT OF THE STATE OF UTAH

---

THE STATE OF UTAH,	:	
	:	
Plaintiff-Respondent	:	
	:	
v.	:	
	:	
CHARLES RICHARD COLLINS,	:	Case No. 16585
	:	
Defendant-Appellant	:	

---

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, CHARLES RICHARD COLLINS, appeals from a jury verdict of guilty of the offense of Aggravated Assault rendered in the Third Judicial District Court, in and for Salt Lake County, State of Utah.

DISPOSITION IN THE LOWER COURT

The matter was tried by jury in front of the Honorable Peter F. Leary and appellant was found guilty of Aggravated Assault on June 12, 1979.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of his conviction of Aggravated Assault and the dismissal of those charges against him.

## STATEMENT OF FACTS

At 12:00 a.m. the morning of January 30, 1979, Duane Dowell Allison, then a 43 year old resident of Salt Lake City, Utah, left the Salt Lake City Detoxification Center at his own instigation after only three days of voluntary treatment for alcoholism. (R.3) Instead of proceeding to the trailer home which he shared with his wife at 2800 South State Street in Salt Lake City, Mr. Allison, walked to Manny's Bar located across the street from the Detoxification Center and began drinking. (R.4) Allison encountered the defendant, Charles Collins and co-defendant Charles Case in the bar. They engaged in conversation. Case and Collins agreed to provide transportation for Allison to the area of 2800 South State Street. (R.12) The three men and Mrs. Charles Case walked from the bar to the motel where the Cases and Collins rented an apartment in order to get Mr. Cases' car. As the defroster on Cases' car would not work and the windows could not be de-iced, the three men went into the Case/Collins apartment where the parties began drinking from a whiskey bottle. (R.23)

According to Allison's testimony, Case tried on Allison's leather jacket with Allison's permission and left the apartment wearing the jacket. (R.24) Allison and Collins then also went out of the apartment. Allison searched the inside of the car but could not locate the jacket. (R.26) An argument over the location of the jacket ensued and a physical altercation

began outside the apartment door. Allison was unable to identify the party or parties involved in the fight. (R.28) He testified he suffered blows from someone's fists, kicks, and that someone had choked him. (R.28) Mr. Allison was able to flee from the area and call for police assistance. (R.29) Allison was taken by police officers to St. Mark's Hospital where he was registered but not admitted, at 2:20 a.m. Dr. Michael D. Dowdell, an emergency physician trained in the treatment and detection of trauma, (R.90) treated Allison by suturing a chin laceration approximately 2 inches in length. (R.92) Although Allison did evidence abrasions to his ear, a hemorrhage of the left eye, a nasal fracture and bruising of his ribs, he received no specific medical treatment for these injuries. (R.93) No concussion or skull injuries were found, (R.93) and no trauma or bruising of the throat or neck was observed. (R.102) Allison was released from St. Mark's Hospital several hours after registration. Dr. Dowdell determined Allison's injuries were not life threatening or severe enough to warrant admission to the hospital for treatment or further observation. (R. 101,102)

Subsequent to Allison's report of the incident to the Salt Lake City Police, three officers in the accompaniment of a Deputy Salt Lake County Attorney effected a no-knock entry of the Case/Collins apartment where the three occupants were sleeping. A search of the apartment, the area outside the apartment and the Cases' car resulted in location of

Allison's jacket in the trunk of the Case car, Allison's belt

buckle found in the parking lot, and Allison's watch found in the possession of defendant, Collins.

Defendant Case and defendant Collins were tried jointly. After argument and upon motion of defendant Collins' counsel, the jury was admonished to consider no evidence regarding the taking or location of Allison's jacket as to the defendant Collins.

At the conclusion of the State's case a mistrial was granted as to defendant Case but denied as to defendant Collins even though motions were heard from counsel for Collins that a mistrial as to one co-defendant would prejudice the remaining defendant and that a mistrial should be granted also as to defendant Collins.

Defendant Collins was subsequently convicted of Aggravated Assault.

#### ARGUMENT

##### POINT I

EVIDENCE PRESENTED TO THE JURY WAS INSUFFICIENT TO SUPPORT A VERDICT THAT DEFENDANT WAS GUILTY OF AGGRAVATED ASSAULT.

Utah Code Ann. §76-5-102 defines the crime of assault as:

- "(a) An attempt, with unlawful force or violence, to do bodily injury to another; or
- (b) A threat, accompanied by a show of immediate force or violence, to do bodily injury to another.
- (c) Assault is a Class B Misdemeanor."



On the other hand, a person commits an Aggravated Assault, a third degree felony, when he commits an assault as defined in Utah Code Ann. §76-5-102 and (emphasis added):

"(a) He intentionally causes serious bodily injury to another; or (Emphasis added)

(b) He uses a deadly weapon or such means or force likely to produce death or serious bodily injury  
... " Utah Code Ann. §76-5-102

The statute is clear in its recitation that either serious bodily injury must actually have been "caused" or that a deadly weapon or such means or force likely to produce death or such serious bodily injury must have been used by the accused. As there was no evidence presented by the State that a weapon was used against Mr. Allison, the only valid question remaining is whether Allison actually suffered serious bodily injury.

The Utah Supreme Court in State in Interest of Besendorfer, 568 P.2d 742 (1977) interpreted Utah's Aggravated Assault Statute in conjunction with Utah Code Ann. §76-1-601(19) which defines "bodily injury" and "serious bodily injury." The court found that there was no evidence that the injuries received by the victim in a fight where no weapon was used created a substantial risk of death, no evidence that the victim sustained serious permanent disfiguration, and no evidence that he had suffered a serious protracted loss or impairment of the function of any bodily member or organ as required under the "serious bodily injury" definition. Utah Code Ann. §76-1-601(19). As a result,

the defendant's conviction of Aggravated Assault was overturned and the case remanded to the trial court with the admonition that:

"the State must prove that an accused intentionally caused serious bodily injury; viz, that he had specific intent to inflict serious bodily injury on the victim and such injuries were, in fact, caused by the assault." P. 744

The State is thus required to prove beyond a reasonable doubt a specific intent to commit serious bodily harm coupled with proof that such injuries actually were the result of such an intent. The ruling as cited in Moyer v. People, 165 Colorado 583, 440 P.2d 783 (1968) defines the word "specific" as applied to intent to do great bodily harm as "an adjective distinguishing intent to do great bodily harm from all other intentions in defendant's mind at the time of the commission of the crime" (p.785). The Colorado Court ruling also required the state to prove that such an intention must have been in actual existence in the mind of the defendant at the time of the commission of the assault.

The state in defendant Collins' trial not only failed to supply any evidence of specific intent on the part of defendant Collins to commit an assault designed to inflict serious bodily injury, but it also failed to provide any evidence other than that of a circumstantial nature to show that the altercation was not a mutual combat situation.

In the Besendorfer case, supra, as in this one, the victim was involved in an altercation at night in a parking lot

and received injuries necessitating only minimal medical attention for the capping of a tooth and examination of bruises. Defendant argues that the State in the Besendorfer case came substantially closer to meeting the burden needed to sustain a conviction for aggravated assault than it did in the case at bar. The victim in the Besendorfer case required medical treatment of a cosmetic nature in order to keep from having a permanent disfigurement. As stated in State v. Sorenson, 44 Haw. 601, 359 P.2d 289 (1961):

"Disfigurement as used in a statutory provision means to impair or injure the beauty, symmetry or appearance of a person. . . to render it unsightly, misshapen or imperfect, or to deform in some manner."

The victim herein required no medical treatment beyond the suturing of a chin laceration and has suffered no disfigurement.

The Supreme Courts of numerous other states have also ruled that a conviction for Aggravated Assault cannot be sustained where injuries failed to conform to the intent of the definitions of the state's respective statutory serious bodily injury definitions. In each of the following instances, convictions for Aggravated Assault were overturned because the injury was deemed less serious than what the statute intended. Defendants were guilty of assault, not aggravated assault, where the victim suffered split lips which required suturing by a plastic surgeon, Minnix v. State, 282 P.2d 506 (Oklahoma Circuit 1961), unconsciousness as a result of a blow to the jaw coupled with a one and one-half inch laceration, People v. Fuentes, 74 C.A. 2d 737, 169 P.2d 391 (1946).

On the other hand, cases which have analyzed injuries and found them to be so serious as to necessitate upholding an aggravated assault conviction include State v. McKeehan, 91 Idaho 808, 430 P.2d 886, (1967), where the victim was admitted to the hospital in a semi-conscious state with eye injuries so serious in nature that the victim's future vision was endangered without continued hospitalization and treatment, and State v. Perry, 315, 426 P.2d 415, (Arizona App. 1967), where the victim's injuries included a broken rib.

Based upon the testimony of Dr. Dowdell, a qualified physician with an expertise in the diagnosis and treatment of trauma, the altercation in which Mr. Allison was involved resulted in no risk of death, no permanent injury, no permanent or even temporary loss of a bodily function, no disfigurement of any type and no need for other than minimal, routine medical treatment requiring no hospital admission, further medical observation or follow-up.

#### CONCLUSION

A conviction for aggravated assault cannot stand where there has been no showing of a specific intent on the part of the defendant to cause serious bodily injury and where the evidence

presented at trial as to injuries sustained in an altercation bear absolutely no relationship to the statutory requirement that a victim must actually have caused serious bodily injury as defined statutorily and through case law.

Respectfully submitted this \_\_\_\_ day of March, 1980.

LYNN R. BROWN  
Attorney for Defendant-Appellant