

1980

# The State of Utah v. Charles Richard Collins : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

CHARLES RICHARD COLLINS,

Defendant-Appellant.

BRIEF OF RESPONSE

APPEAL FROM A JURY VERDICT  
THE OFFENSE OF AGGRAVATED  
THIRD JUDICIAL DISTRICT  
SALT LAKE COUNTY, STATE OF UTAH  
HONORABLE PETER F. HENRY

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## TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE-----	1
DISPOSITION IN THE LOWER COURT-----	1
RELIEF SOUGHT ON APPEAL-----	2
STATEMENT OF FACTS-----	2
ARGUMENT	
POINT I:    THE EVIDENCE WAS SUFFICIENT TO SUPPORT A CONVICTION FOR AGGRAVATED ASSAULT-----	4
CONCLUSION-----	12

## CASES CITED

Morris v. State, 515 P.2d 266 (Okla. 1973)-----	11
State v. Butler, 560 P.2d 1136 (Utah 1977)-----	7
State v. Fuger, 554 P.2d 1338 (Mont. 1976)-----	11
State v. Howell, 554 P.2d 1326 (Utah 1976)-----	6
State v. King, ____ P.2d ____ (filed December 17, 1979, No. 15876)-----	9,10
State v. Mills, 530 P.2d 1272 (Utah 1975)-----	5
State v. Parmenter, 444 P.2d 680 (Wash. 1968)-----	7
State v. Peterson, 453 P.2d 696 (Utah 1969)-----	7
State v. Romero, 554 P.2d 216 (Utah 1976)-----	5,7
State v. Schad, 470 P.2d 246 (Utah 1970)-----	5
State v. Sims, 560 P.2d 810 (Ariz. 1977)-----	11
State v. Wilson, 565 P.2d 66 (Utah 1977)-----	5

## STATUTES CITED

Utah Code Ann. § 76-1-601(9) (1953), as amended-----	5
Utah Code Ann. § 76-5-102 (1953), as amended-----	4
Utah Code Ann. § 76-5-103 (1953), as amended-----	1,4,6
Utah Code Ann. § 77-21-33 (1953), as amended-----	6

IN THE SUPREME COURT OF THE  
STATE OF UTAH

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

----- : -----  
BRIEF OF RESPONDENT  
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STATEMENT OF THE NATURE OF THE CASE

This is an appeal from the judgment of the  
Third Judicial District Court, in and for Salt Lake County,  
in which the defendant-appellant was convicted of aggravated  
assault pursuant to Section 76-5-103, Utah Code Annotated  
(1953), as amended.

DISPOSITION IN THE LOWER COURT

The defendant-appellant was tried in the Third  
Judicial District Court, Judge Peter F. Leary presiding,  
before a jury and was convicted of aggravated assault, a  
third degree felony.

## RELIEF SOUGHT ON APPEAL

Plaintiff-respondent submits that the verdict of the trial court should be affirmed. In the alternative, plaintiff-respondent submits the defendant-appellant should be convicted of simple assault, a Class B misdemeanor, as a lesser included offense.

## STATEMENT OF THE FACTS

On January 30, 1979 the victim, Duane D. Allison, met the defendant, Charles Richard Collins, and Charles Case at Manny's Bar in Salt Lake City. After consuming some alcohol, the three men proceeded to an apartment occupied by the defendant and began drinking from a whiskey bottle.

During the course of the evening an argument ensued between the victim and defendant over the location of a jacket which belonged to the victim. A fight between the three men erupted outside the apartment. Although the victim was unable to identify which suspect caused the injury to him, other evidence was introduced as to the identification of the suspect. The defendant, Charles Collins, was called to testify and admitted that he was involved in the altercation. The defendant claimed, however, that his conduct and actions were taken in self-defense.

The victim, Duane D. Allison, testified that he was struck on the side of the head by fist or an object similar to a fist (T.219). Mr. Allison said his attackers beat his head against a cement step (T.219), kicked him in the ribs, stomach and legs (T.221), and choked him until he almost lost consciousness (T.219,259). During the course of the beating Mr. Allison heard someone say: "Kill him, kill him, kill him" (T.220).

After the beating Mr. Allison discovered his left ear was cut and bleeding (T.220-221) and he was cut on his cheek or chin (T.221). The victim was struck in the eye (T.221) with a finger and experienced some difficulty with his vision after the incident. (T.222)

Dr. Michael D. Dowdall, an emergency room physician at St. Mark's Hospital, examined Mr. Allison after the altercations. Dr. Dowdall testified that the victim had a two inch laceration on the right side on his chin (T.283) which required several stitches. The physician said the cut on the victim's chin would probably cause a small amount of scarring (T.287).

The doctor also discovered lacerations on the forehead and ear of the victim (T.283). X-rays completed at St. Mark's Hospital also revealed that the victim suffered a broken nose which required examination and follow-up by

a plastic surgeon (T.283,285).

The doctor also testified that the victim suffered "conjunctival hemorrhage" in the eye, but the hemorrhaging was not a serious injury. The doctor testified, however, that the eye injury could cause loss of sight (T.285-286). The victim also suffered a corneal abrasion or scratch on the eye (T.285) which caused blurred vision and irritation for the victim.

Doctor Dowdall also testified that the choking which the victim experienced could cause death if severe enough (T.289,p.99).

Based on the evidence introduced at trial the jury returned a verdict of guilty against the defendant for aggravated assault.

#### ARGUMENT

##### POINT I

THE EVIDENCE WAS SUFFICIENT TO SUPPORT  
A CONVICTION FOR AGGRAVATED ASSAULT.

The statutes under consideration read as follows:

76-5-102. Assault.—(1) Assault is:  
(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.  
(2) Assault is a class B misdemeanor.

\* \* \*

76-5-103. Aggravated assault.—(1) A

person commits aggravated assault if he commits assault as defined in section 76-5-102 and:

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

(b) He uses a deadly weapon or such means or force likely to produce death or serious bodily injury. (Emphasis added.)

76-1-601(9). "Serious bodily injury" means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ or creates a substantial risk of death.

The defendant claims that the evidence presented to the jury was insufficient to support a finding of guilty. The standard of review for a challenge to the sufficiency of evidence was stated in State v. Mills, 530 P.2d 1272 (Utah 1975):

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.

Id. at 1272.

See also State v. Wilson, 565 P.2d 66 (Utah 1977), State v. Schad, 470 P.2d 246 (Utah 1970), State v. Romero, 554 P.2d 216 (Utah 1976).

A review of the evidence in this case does not provide a basis for concluding that reasonable minds must



necessarily have had a reasonable doubt of the defendant's guilt.

(a) INTENT

The defendant contends that the State failed to prove that the accused had the specific intent necessary to inflict serious bodily injury on the victim and therefore his conviction for aggravated assault should be reversed.

The Utah Supreme Court ruled in State v. Howell, 554 P.2d 1326 (Utah 1976) that an offense charged under subsection (a) of 76-5-103 Utah Code Annotated 1953, as amended, requires evidence of specific intent. However, the Court said that an offense charged under subsection (b) of the statute requires general intent showing only an awareness of what was done.

In this case the defendant was charged with violating Section 76-5-103 Utah Code Annotated 1953, as amended. The State did not elect as between subsection (a) or (b) but relied on alternate pleadings in the information (T.16). By statute the information itself may be worded in the disjunctive. See 77-21-33, Utah Code Annotated (1953), as amended. The jury was given instructions as to both subsections (T.85,89,90). Neither the record nor the verdict indicate which subsection the jury relied on to convict the defendant (T.95). The State was not required to

make an election upon which theory it would proceed so long as the theories specified in the information were not repugnant to each other. State v. Parmenter, 444 P.2d 680 (Wash. 1968); State v. Butler, 560 P.2d 1136 (Utah 1977). In this case, there was no evidence that either of the theories listed under Subsection (a) or Subsection (b) were repugnant to each other.

It has long been the established rule that the necessary intent may be inferred from the attendant facts and circumstances. State v. Romero, supra. In State v. Peterson, 453 P.2d 696 (Utah 1969), the rule was stated as follows:

With respect to the intent: it is true that the state was unable to prove directly what was in the defendant's mind relative to doing harm to the victim; and that he in fact denied having any such intent. However, his version does not establish the fact, nor does it necessarily raise sufficient doubt to vitiate the conviction. If it were so, it would lie within the power of the defendant to defeat practically any conviction which depended upon his state of mind. As against what he says, it is the jury's privilege to weigh and consider all of the other facts and circumstances shown in evidence in determining what they will believe. This includes not only what was said and what was done, but also the drawing of reasonable inference from the conduct. . .

This is in accord with the elementary rule that a person is presumed to intend the natural and probable consequences of his acts. (Citations omitted.)

Id. at 696.

The jury was well within its prerogative in concluding that the obvious, natural and probable consequences of the accused in repeatedly striking the victim's head against a cement step, kicking him in the ribs and chest, breaking his nose and choking him was sufficient to establish intent. This conduct by the defendant coupled with the statement: "Kill him, kill him, kill him," was sufficient to satisfy the intent requirement.

(b) LIKELY TO CAUSE SERIOUS BODILY INJURY

The defendant also contends that the conviction should be reversed because the evidence was insufficient to establish that the victim suffered serious bodily injury in the course of the altercation with the defendant. Respondent submits that the evidence in this case was sufficient to satisfy Subsection (b) which requires a showing that the defendant used "such means or force likely to produce serious bodily injury."

Dr. Michael D. Dowdall testified that the choking sustained by the victim could have resulted in his death (T.289). Also, the injury to the victim's eye could have caused a loss of sight (T.285-286) or the laceration on the chin of the victim could have caused some scarring (T.287). The victim testified that he was kicked (T.221)

and his head was beat against a cement step (T.219). Certainly all of the injuries suffered by the victim when considered together were sufficient to establish a force likely to produce death or serious bodily injury.

The defendant's statement in his brief that the State must prove the victim actually suffered serious bodily injury is not totally correct. The defendant may be convicted under Subsection (b) if the State proves that the injuries were produced by a means or force likely to produce death or serious bodily injury. The injuries sustained by the victim, Duane Allison, including choking, kicking, a laceration of the chin, bleeding on the left ear, a scratching of the cornea, and hemorrhaging in the eye, together with the broken nose sustained in the altercation were sufficient to satisfy the burden of proof placed on the State.

Several courts have held that the type of injuries sustained by the victim were sufficient to satisfy the requirements and definition of "serious bodily injury." In State v. King, \_\_\_ P.2d \_\_\_ (filed December 17, 1979, No. 15876), the Utah Supreme Court said:

It was within the province of the jury to consider the means and manner by which the victim's injuries were inflicted along with the attendant circumstances.

Id. at 3.

In King, there was evidence of superficial abrasions on the victim's throat and left shoulder and a laceration in her upper left chest. The doctor testified that the stab wound with scissors had punctured the victim's lung and had caused the laceration on the upper left chest. The doctor testified that the laceration was not severe enough to be a "life threatening situation" unless left untreated. The physician testified, however, that the choking which the victim encountered could have resulted in her death if it had been for a longer duration. Based on the testimony of the victim and the doctor, the Utah Supreme Court upheld the conviction of the defendant for aggravated assault. Although the injuries sustained by the victim did not cause permanent disfigurement, protracted loss or impairment of a bodily function or create a substantial risk of death, the Court said that such injuries were likely to cause serious bodily injury and therefore a conviction was warranted.

Several other courts have held that if the means or force is likely to produce serious bodily injury, then a conviction for aggravated assault may be justified. In State v. Sims, 560 P.2d 810 (Ariz. 1977), the court held that an aggravated assault conviction could be upheld where there was evidence that the victim had been hit on the head, had his hair pulled, and was knocked around a cell by the defendant. The court concluded that such conduct was sufficient to justify serious bodily injury. In State v. Fuger, 554 P.2d 1338 (Mont. 1976), the victim suffered a broken nose and a fractured palate when kicked in the face by the defendant. The Supreme Court of Montana affirmed the conviction and said there was sufficient evidence to establish serious bodily injury. In Morris v. State, 515 P.2d 266 (Okla. 1973), the court said that a victim who suffered a broken jaw, a puncture in the back of the head, and a "broken left side" was sufficient to establish great bodily injury.

Based on the testimony of Dr. Dowdall and the victim, Duane Allison, the injuries sustained were

likely to cause serious bodily injury.

#### CONCLUSION

The conviction of the defendant for aggravated assault should be affirmed because there was sufficient evidence to establish intent. Intent was based on the defendant's actions and conduct. In addition, there was sufficient evidence presented as to the nature of the injuries sustained in the altercation to satisfy the statutory requirements that a victim must suffer injuries likely to cause death or serious bodily injury. Based on the evidence and law, the conviction should be affirmed.

In the alternative, if the Court concludes that there was insufficient evidence to warrant a conviction for aggravated assault, respondent respectfully submits that a conviction for simply assault should be entered.

Respectfully submitted,

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