

1972

# the State of Utah v. Ronald Streff: 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. Vernon B. Romney; Attorney General for the State of Utah  
Var E. Stark; Attorney for Appellant

---

## Recommended Citation

Brief of Appellant, *Utah v. Streff*, No. 12965 (Utah Supreme Court, 1972).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/3244](https://digitalcommons.law.byu.edu/uofu_sc2/3244)

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	)	
	)	
vs	)	CASE NO. 12965
	)	
RONALD STREFF,	)	
	)	
Defendant-	)	
Appellant	)	

\*\*\*\*

BRIEF OF APPELLANT

\*\*\*\*

Appeal from Jury verdict and Judgment of  
a GUILTY of Second Judicial District  
Court of Weber County, State of Utah  
Honorable Calvin Gould, Presiding

LA VAR E. STARK  
Attorney for Appellant  
2651 Washington Blvd.  
Suite #10  
Ogden, Utah 84401

VERNON B. ROMNEY  
Attorney General For  
The State of Utah  
State Capitol Building  
Salt Lake City, Utah

**FILED**

AUG 9 - 1972

IN THE SUPREME COURT

OF

THE STATE OF UTAH

\*\*\*\*

THE STATE OF UTAH,

Plaintiff-  
Respondent

vs

Case No. 12965

RONALD STREFF,

Defendant-  
Appellant

\*\*\*\*

BRIEF OF APPELLANT

\*\*\*\*

Appeal from Jury verdict and Judgment of  
a GUILTY of Second Judicial District  
Court of Weber County, State of Utah,  
Honorable Calvin Gould, Presiding

LA VAR E. STARK  
Attorney for Appellant  
2651 Washington Blvd.  
Suite #10  
Ogden, Utah 84401

VERNON B. ROMNEY  
Attorney General For  
The State of Utah  
State Capital Building  
Salt Lake City, Utah

TABLE OF CONTENTS

\*\*\*\*\*

	PAGE
NATURE OF CASE -----	2
DISPOSITION IN LOWER COURT-----	2
RELIEF SOUGHT ON APPEAL-----	2
STATEMENT OF FACTS-----	2
ARGUMENTS	
POINT 1 - THE COURT ERRED IN DENYING DEFENDANTS MOTION FOR DIRECTED VERDICT OF ACQUITTAL-----	3
POINT 2 - THE EVIDENCE WAS INSUFFICIENT FOR CONVIC- TION -----	5
POINT 3 - THE COURT ERRED IN INSTRUCTING THE JURY ON AIDING AND ABETTING----	5
CONCLUSION-----	6

TABLE OF AUTHORITIES

\*\*\*\*\*

CASE CITATIONS:

State vs Bridwell, 48 U 97, 158 P 710  
State vs Pacheco, 495 P2d 808

UTAH STATUTES:

76-51-1 Utah Code Annotated 1953, As  
Amended  
76-1-44 Utah Code Annotated 1953, As  
Amended

## NATURE OF THE CASE

The defendant was charged by information together with Jackie Dale Howard and David Jones of the crime of robbery in that "said defendants robbed Evelyn Baker". (R.P.22)

## DISPOSITION IN THE LOWER COURT

The defendants Howard and Jones having therefore entered pleas of guilty to burglary in the second degree (R.P. 110), the defendant Streff was tried before a jury in the Second Judicial District Court in and for Weber County, State of Utah, before the Honorable Calvin Gould, presiding. He was found guilty and sentenced to serve in the Utah State Prison not less than five years, which may be for life (R.P. 95).

## RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the conviction and dismissal of the charge, or other relief as to the Court seems appropriate.

## STATEMENT OF FACTS

On December 16, 1971, David Jones and Jackie Howard robbed Evelyn Baker. The

defendant Streff was not with them at that time, did not participate in the planning of the robbery, nor did he aid and abet its commission. After the crime, Jones and Howard picked up Streff in a car they were using. (R.P.P. 156-160; 162-167 and 168 and 169) Streff was with them when they were apprehended on the day of the robbery, but some time thereafter.

### ARGUMENTS

#### POINT I

THE COURT ERRED IN DENYING  
DEFENDANTS MOTION FOR  
DIRECTED VERDICT OF ACQUITTAL

\*\*\*\*

At the conclusion of the prosecution's case, defendant moved the Court for an Order directing a verdict of acquittal (R.P. 152). This was denied. Defendant claims there was no evidence connecting him to the robbery in any manner whatsoever. All of the states witnesses failed to identify Streff as being at the scene (R.P.P. 116, 117, 119-123), nor was there any evidence that he planned, participated or in any way aided or abetted in its commission.

Robbery is defined as "the felonious taking of personal property in the possession of another from his person, or immediate presence, against his will, accomplished by means of force or fear." (76-51-1 Utah Code Annotated, 1953, As Amended)

The prosecution lacking evidence to establish the offense as to the defendant, Streff, based its case on Streff's participation with the defendants Howard and Jones as an aider and abettor.

76-1-44, Utah Code Annotated, 1953, As Amended, defines principals as: "All persons concerned in the commission of a crime, either felony or misdemeanor, whether they directly commit the act constituting the offense or aid and abet in its commission or not being present, have advised and encouraged its commission ... are principals in any crime so committed."

However, there was a lack of evidence as to aiding and abetting or advising or encouraging its commission.

The burden is on the prosecution to connect the defendant with this offense. Under the standards set forth in State vs Bridwell, 48 Utah 97, 158 Pacific 710, the prosecution failed.

POINT 2

THE EVIDENCE WAS  
INSUFFICIENT FOR CONVICTION

\*\*\*\*

The argument under Point 1 applies to this point. In addition thereto, it is noted that the additional evidence introduced by the defendant was the testimony of Jones and Howard and the defendant himself, which exculpated him from the crime. (R.PP. 154 to 166 and 168 and 169).

POINT 3

THE COURT ERRED IN  
INSTRUCTING THE JURY  
ON AIDING AND ABETTING

\*\*\*\*

At the conclusion of the evidence, the Court instructed the jury. Instruction 11 was to the effect:

"All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission, are regarded by the law as principals in the crime thus committed and are equally guilty thereof."

Defendant contends that since there was no evidence of aiding and abetting, this



instruction was in error and prejudicial to  
the. (State vs Pacheco, 495 Pacific 2d 808)

#### CONCLUSION

The defendant respectfully submits there was a failure of proof on the part of the prosecution. There was no evidence of participation, advising, encouraging or aiding or abetting. The only evidence connecting the defendant with the participants prior to the offense was exculpatory in nature. The prosecution places the defendant with the participants some time after the offense. Defendant believes that this is not sufficient for conviction on the contrary the evidence points to and establishes non-participation by the defendant.

Respectfully submitted this 8th day of  
August, 1972.

LA VAR E. STARK  
Attorney for Appellant-  
Defendant  
2651 Washington Blvd.  
Suite #10  
Ogden, Utah 84401