

1997

## Utah v. Umana : Supplemental Submission

Utah Court of Appeals

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Jan Graham; Attorney General; Attorney for Appellee.

Kent E. Snider; Weber County Public Defender Association.

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**FILED**  
Utah Court of Appeals  
APR 17 1998

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April 17, 1998

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**UTAH COURT OF APPEALS  
BRIEF**

UTAH  
DOCUMENT  
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RE: State v. Umana, Case No. 970403-CA  
Correction to Argument

A10  
DOCKET NO. 970403-CA

Dear Ms. D'Alesandro:

In his rebuttal remarks at oral argument in the above case this morning, defendant's appellate counsel quoted a statement from the record (R. 268), then argued that counsel for the State had made a different representation to this Court that was wholly without record support. In fact, I had quoted directly from the record a subsequent modification of the statement defendant relied upon (R. 270). A further modification appears in the record at page 516. Enclosed is a copy of the entire exchange at issue so this Court may review the remarks in context. The arguments related to Point I of the parties' briefs.

This supplemental authority is submitted pursuant to rule 24(h), Utah Rules of Appellate Procedure.

Sincerely,

Kris C. Leonard  
Assistant Attorney General

enc.

cc: Kent E. Snider, attorney for petitioner

1 wait outside the courtroom.

2 THE COURT: Any objection to those exceptions?

3 MR. LAKER: No, your Honor.

4 THE COURT: Those exceptions will be allowed. We  
5 will see you back here at 1:15. Court is in recess.

6 (Noon recess taken.)

7 THE COURT: Let the record show that we are in  
8 chambers. Counsel are here with me. Mr. Laker has a Motion  
9 to Restrict some photographs.

10 MR. LAKER: That's correct, your Honor. I make a  
11 Motion to Prohibit the State from introducing photographic  
12 evidence on the grounds that on the 10th day of August I made  
13 a specific request of counsel to provide me with copies of any  
14 photographs they intended to use at trial. And I don't know  
15 whether it is an oversight or for whatever reason I never  
16 received any photographs, and did not--did not--since I hadn't  
17 received any, did not anticipate any would be used at trial.

18 THE COURT: Okay. And your position is that if they  
19 use them now, you are prejudiced?

20 MR. LAKER: That's correct.

21 THE COURT: In what sense?

22 MR. LAKER: Well, I am certainly prejudiced in the  
23 sense that I think one of the reasons they will be using that  
24 is to identify the Defendant, since he is not present. And  
25 that is one of the elements of the defense, the identity of

1 the Defendant. And at this point I can't tell exactly what  
2 those photographs are, because I haven't seen them. All I  
3 have seen is a bunch of photographs out there.

4 THE COURT: Okay. The State' response?

5 MR. PARMLEY: Specifically as to our using  
6 photographic evidence now to identify the suspect, we didn't  
7 know until a week ago that the suspect wasn't going to be  
8 here. But also in this case the discovery requests have been  
9 going round and round for months and months and months. And  
10 as I recall it wasn't the last time we were in Court to set  
11 this matter for trial, but the time before, I gave Mr. Laker  
12 all of the DNA. I got copies of all the lumigraphs. I have  
13 tried to be cooperative in every respect. I think we actually  
14 made a record you have everything at this point. And I do  
15 recall him asking if we had pictures, and I said yes, I do.  
16 And they have always been available for his inspection. And,  
17 no, I didn't make copies on my own to give to him. But then  
18 he never really said I want those pictures, when can I have  
19 copies of them, either. And I don't think there is anything  
20 in the pictures that is not talked about in the police reports  
21 themselves, so I don't think the pictures would constitute  
22 undue surprise. And it is noted in the reports that CSI was  
23 on the scene and took photographs.

24 MR. LAKER: That's why I specifically requested--

25 THE COURT: Is there a reason why someone from your

1 office--have you had an open file policy with the County  
2 Attorney's office?

3 MR. LAKER: We have. And that's the reason we don't  
4 come in and file the Motion to Compel or anything like that.

5 THE COURT: But with photographs, they would have to  
6 go to the expense of copying them without knowing what you  
7 actually wanted, as opposed to being able to view it so you  
8 are not surprised. Is there a reason why you didn't go over  
9 and look?

10 MR. LAKER: All I asked for was copies of anything  
11 he intended to use at trial. We were specifically talking  
12 about, you know, pictures of burrs and that type of thing.

13 MR. PARMLEY: And every time Mr. Laker has been up  
14 to my office, and I have had something new, I said come back,  
15 let me give you this right now. I have given him piles of  
16 things. And the pictures have been available. And I didn't  
17 have copies made for him, but they have been there for his  
18 inspection. If he had said I need a copy of this one or this  
19 one or this one, let me look at them and see what you have, we  
20 could have accommodated him. But frankly, we don't routinely  
21 make copies of all the pictures that were taken and then send  
22 those to the defense. We leave it up to them to take the  
23 initiative to get copies of the pictures made.

24 THE COURT: Well, with the record we have made, it  
25 will be my decision to allow the photographs to be used. And

1 if there is something specific with the photographs that you  
2 want to renew the objection later to make a record of the  
3 specific surprise that it created, as opposed to the general  
4 one how you were not able to prepare because you didn't know  
5 something was depicted, I want you to raise that later.

6 Let's go out, and I will give the preliminary  
7 Instructions and allow you to make opening statements.

8 (Recessed to courtroom.)

9 THE COURT: Let our record show that we are back in  
10 session with counsel present and all the members of the Jury  
11 are present. I am going to read to you some preliminary  
12 Instructions, members of the Jury, before we take opening  
13 statements.

14 (Preliminary Instructions read by the Court.)

15 THE COURT: The State want to make an opening  
16 statement?

17 MR. PARMLEY: Yes, your Honor.

18 THE COURT: Go ahead.

19 MR. PARMLEY: Thank you.

20 Good afternoon, Ladies and Gentlemen. Officer Ron  
21 Stauffer was a police officer with the Ogden Police Department  
22 for sometime, and he was on duty on the graveyard shift  
23 November 4th, 1995, to November 5th, 1995. Officer Stauffer  
24 has since left the Ogden Police Department and is at the Las  
25 Vegas Metro Police Academy. He has come back to testify in