

2002

State of Utah v. Tucker: Legal Brief

Utah Court of Appeals

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Paul Gotay; counsel for appellant.

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STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



MARK L. SHURTLEFF
ATTORNEY GENERAL

FILED
Utah Court of Appeals

JAN 23 2004

Paulette Stagg
Clerk of the Court

RAYMOND A. HINTZE
Chief Deputy

KIRK TORGENSEN
Chief Deputy

January 23, 2004

Ms. Paulette Stagg
Clerk of the Court
Utah Court of Appeals
450 South State Street, 5th Floor
PO BOX 140230
Salt Lake City, Utah 84111-0230

Re: *State v. Tucker*, 20020939-CA
Utah R. App. P. 24(i) Supplemental Authority Letter

Dear Ms. Stagg:

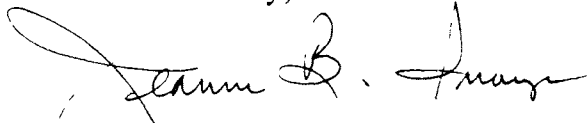
During oral argument today, the Court asked whether defendant had filed a motion in limine to limit the gun expert's testimony and whether defendant had requested a mistrial when the gun expert volunteered testimony that someone would have been burned. Pursuant to rule 24(i), Utah Rules of Appellate Procedure, the State refers the Court to the following information in the record.

1. A motion in limine was filed, but that motion requested the court to limit the medical examiner's testimony, not the gun expert's testimony. R. 175-176; 489:17-23. The motion was denied. R. 489:21-23.
2. Counsel and the court held an in-chambers discussion regarding the scope of the gun expert's testimony on the first day of trial. R. 489:24-26.
3. When the gun expert volunteered testimony that someone would have been burned, defendant moved to strike. R. 490:159.
4. At a subsequent in-chambers discussion, the court responded to defendant's motion to strike. R. 490:166-170. The court agreed to strike the volunteered testimony about burning and told the jury to disregard it.

R. 490:170. The court also gave an instruction cautioning the jury not to consider any stricken testimony. R. 282 (Jury Instruction 34). The State has not located in the record either a motion for a mistrial or a motion for a continuance based on the volunteered testimony.

I appreciate your prompt distribution of this letter to the Court.

Sincerely,



JEANNE B. INOUYE
Assistant Attorney General

cc: Paul Gotay, counsel for appellant