

People v. Tucker, No. 147092 (Cal. Santa Barbara-Goteta Mun. Ct. June 1973).

On June 4, 1973, Claudia Tucker, a twenty-four-year-old white mother of two, was approximately eight months pregnant when she took a twenty-two caliber rifle and shot herself in the abdomen. According to press reports, Ms. Tucker's husband threatened to leave her if she had another child. She took desperate measures to hide the pregnancy from her husband including telling him that she had a uterine cyst. Personal correspondence from Ms. Tucker further explains that her case "involved horrendous spousal abuse."^[1]^[LU2] By the time she discovered her pregnancy it was too late to obtain a legal abortion. After shooting herself, Ms. Tucker called an ambulance, and doctors removed the fetus.

Hours later, in the parking lot of the hospital, Ms. Tucker was approached by police officers who told her she was under arrest for murder under the relatively new California fetal homicide statute. When asked why they charged Ms. Tucker with murder rather than illegal abortion, District Attorney David Minier responded, "If we didn't [prosecute her for murder], it would give a green light to this sort of thing."^[2] Assistant District Attorney Zal Canter, another prosecutor involved, further explained prosecutors believed that the homicide law was unclear at the time. The California legislature had recently revised the murder statute to read "murder is the unlawful killing of a human being, or a fetus" and also to specifically exempt from the murder definition "act[s] solicited, aided, abetted, or consented to by the mother of the fetus[.]"^[3] Prosecutors believed the exemption did not apply to a woman's own acts, but rather to acts performed by a third person to which she had consented. In other words, prosecutors argued that the exemption was only for abortion. Prosecutors wanted to "clear up" [the uncertainty] by charging Ms. Tucker with murder.^[4]

Eventually, Judge Arnold Gowans dismissed the murder charge because PC 187(b) (3) did not permit. The district attorney unsuccessfully appealed the dismissal and then charged Ms. Tucker with illegal abortion. Ms. Tucker pleaded guilty to performing an illegal abortion. She was sentenced to three years of probation.

See Demurrer, Points and Authorities, People v. Tucker, No. 147092 (Cal. Santa Barbara-Goteta Mun. Ct. June 1973); Becca Wilson, *.22 Cal Abortion Brings Prolonged Ordeal*, Santa Barbara News & Rev., May 3, 1974; Letter from Claudia Frances (Tucker) to C. Rauch Wise, attorney-at-law (Jan. 30, 2003) (on file with National Advocates for Pregnant Women).

^[1] Letter from Claudia Frances (Tucker) to C. Rauch Wise, Attorney-at-law (Jan. 30, 2003) (on file with National Advocates for Pregnant Women and referenced with permission of counsel on behalf of Ms. Tucker).

^[2] Becca Wilson, *.22 Cal Abortion Brings Prolonged Ordeal*, Santa Barbara News & Rev., May 3, 1974.

^[3] Cal. Penal Code § 187 (1970). In 1970, § 187 was amended in response to the California Supreme Court's decision, *Keeler v. Superior Court*, 470 P.2d 617 (Cal. 1970). In *Keeler*, a man brutally attacked a pregnant woman causing the woman to suffer a stillbirth. The California Supreme Court held that the state's homicide law did not reach fetuses and could not be used to prosecute the man. Intending to include such an attack that results in a pregnancy loss within the definition of homicide, the California legislature amended § 187 to include "a fetus" but also added exemptions relating to abortion and acts of the pregnant woman.

^[4] Becca Wilson, *.22 Cal Abortion Brings Prolonged Ordeal*, Santa Barbara News & Rev., May 3, 1974.