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IN THE JUSTICE COURT OF THE YREKA JUDICIAL DISTRICT  
COUNTY OF SISKIYOU, STATE OF CALIFORNIA  
HON. ROGER KOSEL, JUDGE

FILED  
MARY E. SMITH, CLERK OF THE COURT  
DEPUTY  
AUG - 4 1993  
WESTERN JUDICIAL DISTRICT  
SISKIYOU COUNTY

PEOPLE OF THE STATE OF )  
CALIFORNIA, )  
 )  
PLAINTIFFS, )  
 )  
LYNDA JONES, )  
 )  
DEFENDANT. )  
\_\_\_\_\_ )

NO 93-5

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, JULY 28, 1993

RONALD W. COLEMAN, CSR #1596  
OFFICIAL COURT REPORTER  
322 W. CENTER STREET  
YREKA, CA 96097

(916) 842-8335

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APPEARANCES

FOR THE PEOPLE:

CHRISTINE WINTE  
DEPUTY DISTRICT ATTORNEY  
COURTHOUSE  
YREKA, CA 96097

FOR THE DEFENDANT:

GLENN BROWN  
PUBLIC DEFENDER  
322 W. CENTER  
YREKA, CA 96097

1 WEDNESDAY, JULY 28, 1993

2 \* \* \*

3 THE COURT: ALL RIGHT. CALL THE MATTER OF  
4 PEOPLE VERSUS LYNDA JONES, DOCKET NUMBER 93-5.

5 MR. BROWN: SHE IS PRESENT, YOUR HONOR.

6 THE COURT: ALL RIGHT. THIS MATTER IS ON  
7 THIS MORNING FOR A RULING ON THE DEMURRER FILED BY THE  
8 DEFENSE.

9 ANYTHING FURTHER TO BE SUBMITTED ON THIS  
10 MATTER?

11 MS. WINTE: NO, YOUR HONOR.

12 MR. BROWN: NO.

13 THE COURT: THE COURT HAS RECEIVED, READ, AND  
14 CONSIDERED THE POINTS AND AUTHORITIES AND THE AMICI  
15 BRIEFS SUBMITTED BY THE OTHER PARTIES IN THE MATTER, AS  
16 WELL AS THE ARGUMENTS BY COUNSEL.

17 I HAVE TO CONCUR WITH JUDGE CHAPMAN IN THE  
18 DEREGI (PHONETIC) VERSUS JUSTICE COURT CASE DOWN IN SAN  
19 BENITO COUNTY THAT THIS IS A COMPLEX ISSUE AND IT HAS  
20 BEEN THOROUGHLY AND WELL BRIEFED. I DO NOT BELIEVE  
21 THAT THE PROSECUTION'S APPLICATION OF THE STATUTE IN  
22 THE CASE IS A STRAINED ONE, AND AT THE SAME TIME, I DO  
23 NOT PUT MUCH WEIGHT IN THE DEFENSE'S ARGUMENT THAT  
24 OVERRULING THE DEMURRER OPENS UP A PANDORA'S BOX OF  
25 CONDUCT BY A MOTHER THAT WILL BE SANCTIONED UNDER THE  
26 HOMICIDE STATUTES OF THIS STATE. SMOKING CIGARETTES,  
27 DRINKING ALCOHOLIC BEVERAGES, DISREGARDING MEDICAL  
28 ADVICE ARE ALL CONDUCT THAT ARE ALLOWED UNDER THE LAWS

1 OF THE STATE.

2 POSSESSION AND USE OF CONTROLLED SUBSTANCES,  
3 WHETHER OR NOT YOU ARE PREGNANT, IS NOT SOMETHING IS  
4 ALLOWED UNDER OUR STATUTES. BUT I DON'T THINK THE  
5 ISSUE IS SO EASILY RESOLVED IN THIS PARTICULAR CASE.

6 THE COURT, IN JOHNSON VERSUS STATE OF  
7 FLORIDA, WAS CORRECT, I THINK, WHEN THEY STATED THAT  
8 LEGISLATIVE INTENT IS THE POLESTAR BY WHICH COURTS MUST  
9 BE GUIDED, AND I AM IMPRESSED WITH THE COMPREHENSIVE  
10 EXAMINATION OF THE LEGISLATIVE HISTORY AND THE  
11 LEGISLATIVE INTENT THAT HAS BEEN SUPPLIED BY BOTH THE  
12 PARTIES IN THIS CASE.

13 I AM PARTICULARLY STRUCK IN THIS MATTER BY  
14 THE FACT THAT NO OTHER PROSECUTIONS FOR THIS ACT BY A  
15 MOTHER DURING PREGNANCY THAT IMPACTS UPON HER UNBORN OR  
16 NEWBORN CHILD HAVE BEEN LOCATED BY EITHER THE DEFENSE  
17 OR THE PROSECUTION.

18 AND AS AN ASIDE, I HAVE TO BE CURIOUS AS TO  
19 WHY A CASE SUCH AS THIS IS PROSECUTED IN OUR COUNTY  
20 WHEN METROPOLITAN AREAS, WHERE THEY HAVE WARDS FILLED  
21 WITH CRACK BABIES, DON'T SEEM TO SHOW THE SAME  
22 ATTENTION TO IT.

23 NONETHELESS, THE LEGISLATIVE INTENT THAT HAS  
24 BEEN PUT FORTH I THINK SHOWS FAIRLY CLEARLY WHAT THE  
25 LEGISLATIVE INTENT IS.

26 BACK IN 1980, WHEN ASSEMBLYMAN BIDDLE  
27 ATTEMPTED TO RESPOND TO THE KEELER CASE AND MODIFY  
28 SECTION 187 TO INCLUDE FETICIDE, THE LEGISLATURE

1 CLEARLY BECAME AWARE THAT THE CONDUCT THAT WAS BEING  
2 BROUGHT UNDER THE MODIFICATION OF 187 BY THAT AMENDMENT  
3 COULD PRODUCE PROSECUTION OF MOTHERS FOR ACTIONS DURING  
4 THEIR PREGNANCY, AND MOST SPECIFICALLY ADDRESSING THE  
5 ISSUE OF ABORTION. THEY EXEMPTED ABORTION FROM THE  
6 AMBIT OF SECTION 187 BY AMENDING TO ADD SECTION  
7 187(B)(1), (2), AND (3).

8 SUBSEQUENT TO THAT, THE LEGISLATURE HAS HAD  
9 THREE MORE OPPORTUNITIES TO ADDRESS THE ISSUE OF  
10 SUBSTANCE ABUSE DURING PREGNANCY AND WHETHER OR NOT  
11 THAT SHOULD BE SANCTIONED UNDER SECTION 187 OR BY SOME  
12 OTHER CRIMINAL PROSCRIPTION.

13 IN 1987, SENATE BILL 1070 WAS PUT FORWARD TO  
14 EXPAND THE DEFINITION OF CHILD ENDANGERMENT TO COVER  
15 SUBSTANCE ABUSE DURING PREGNANCY, AND THE LEGISLATURE  
16 REJECTED THAT PROPOSED STATUTE. THEN IN 1989, SENATOR  
17 SEYMOUR PUT FORWARD SENATE BILL 1465, WHICH ATTEMPTED  
18 TO EXPAND THE SUBSTANCE ABUSE DURING PREGNANCY  
19 PROHIBITION TO COVER IT BY MANSLAUGHTER. THAT, TOO,  
20 WAS REJECTED BY THE LEGISLATURE.

21 AND FINALLY, IN 1991, IN ASSEMBLY BILL 650, A --  
22 AN ATTEMPT BY THE LEGISLATURE TO PUT FORWARD A  
23 MISDEMEANOR STATUTE THAT WOULD MAKE SUBSTANCE ABUSE  
24 DURING PREGNANCY THAT HAD A SUBSEQUENT EFFECT ON AN  
25 AFTER-BORN CHILD A MISDEMEANOR, WAS AGAIN REJECTED BY  
26 THE LEGISLATURE.

27 THE LEGISLATURE IS THE POLICYMAKING BODY AND  
28 NOT THE COURTS. MY JOB IS TO INTERPRET THE LAW, NOT TO

1 MAKE IT.

2 WITH THE LEGISLATIVE HISTORY THAT HAS BEEN  
3 ESTABLISHED IN THIS PARTICULAR CASE AND THE RULE OF  
4 CONSTRUCTION THAT REQUIRES THE COURT TO CONSTRUE A  
5 STATUTE MOST FAVORABLY TO THE DEFENDANT, THE COURT  
6 FEELS THAT THE LEGISLATIVE HISTORY IS CLEAR AND THAT  
7 THE COURT IS REQUIRED AND OBLIGATED UNDER THAT  
8 LEGISLATIVE HISTORY AND THAT RULE OF CONSTRUCTION TO  
9 SUSTAIN THE DEMURRER IN THIS CASE. AND THE COURT  
10 SUSTAINS THE DEMURRER WITHOUT LEAVE TO AMEND.

11 THE CHARGE WILL BE ORDERED DISMISSED AND THE  
12 DEFENDANT DISCHARGED.

13 MR. BROWN: THANK YOU, YOUR HONOR.

14 MR. KNOLL: DOES THE COURT HAVE A WRITTEN  
15 RULING ON THAT, BASICALLY WHAT THE COURT JUST SAID --

16 THE COURT: THERE WILL BE A TRANSCRIPT  
17 PREPARED. I DID NOT WRITE IT DOWN OR HAVE IT TYPED UP.

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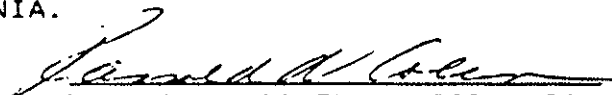
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1 STATE OF CALIFORNIA )  
 ) ) SS.  
2 COUNTY OF SISKIYOU )

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I, RONALD W. COLEMAN, OFFICIAL COURT REPORTER,  
DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS  
A TRUE, COMPLETE, AND CORRECT TRANSCRIPTION OF MY  
SHORTHAND NOTES TAKEN ON JULY 28, 1993, IN THE  
AFOREMENTIONED MATTER.

EXECUTED THIS 3RD DAY OF AUGUST, 1993,  
AT YREKA, CALIFORNIA.

  
RONALD W. COLEMAN, CSR #1596