



The City University of New York

CUNY SCHOOL OF LAW

THE SIA LEGAL TEAM

Movement Lawyers • RJ Values • Bold Vision

CRIMINALIZATION FOR USE OF DRUGS AND PREGNANCY

REGINA McKNIGHT Case study

Regina McKnight is a black woman and native of South Carolina who was convicted of homicide by child abuse and sentenced to 20 years in prison.

Regina McKnight lived in Horry County with her mother until 1998 when her mother was killed by a hit and run driver. Ms. McKnight was measured to have an IQ of 72 and had attended special education classes in high school. She also suffered from hyperthyroidism and syphilis. After her mother's death, without any parental support, Ms. McKnight became homeless and used cocaine to numb her pain.¹ She was also pregnant.

On May 15, 1999, Ms. McKnight, then age 22, went into labor and was transported to Conway Hospital. She gave birth to a stillborn baby girl for whom she had already picked the name "Mercedes." Grief-stricken, Ms. McKnight asked to hold the stillborn baby, requested photographs of the baby, memory certificates with the baby's footprints, and the bracelet that the baby had worn. It was later determined the cause of death was placenta and umbilical inflammation.²

Immediately after the delivery of her stillborn baby, the hospital tested Ms. McKnight for drug use. Although McKnight signed the Informed Consent for Drug Testing, it is doubtful she was aware that the information would be disclosed to prosecutors. Several months later, Ms. McKnight was arrested and charged under a homicide for child abuse statute making it a felony to "cause the death of a child under the age of eleven while committing child abuse or neglect if the death occurs under circumstances manifesting extreme indifference to human life."³ The prosecution was based on evidence of cocaine metabolites in the infant's system.⁴

Although the statute clearly requires that the act of abuse must be committed "under circumstances manifesting extreme indifference to human life," the prosecutor did not make any effort to establish that Ms. McKnight's use of any substance was associated with an intent to impact her pregnancy. At trial, the prosecutor told the jury if "you in fact find that cocaine killed the child you must return a guilty verdict," and narrowed its case to "(1) evidence that

¹ *McKnight v. South Carolina*, 378 S.C. 33, 44, 661 SE.2d 354 (2008); Barry Lester & Sue Veer, *A Measure of Justice for Regina McKnight* (2008), available at http://advocatesforpregnantwomen.org/articles/MeasureofJustice_ReginaMcKnight.pdf (last visited Sep 24, 2018).

² *McKnight*, 378 S.C. at 39.

³ *Id.* at 361.

⁴ *Id.* at 40-41.



The City University of New York

CUNY SCHOOL OF LAW

THE SIA LEGAL TEAM

Movement Lawyers • RJ Values • Bold Vision

Petitioner's urine had tested positive for cocaine and that cocaine metabolites had been found in a fetal blood sample; and (2) testimony by two pathologists that cocaine had contributed to fetal demise."⁵ The judge went on to clarify that criminal intent must be proved beyond a reasonable doubt but intent "may arise from negligence, recklessness, or indifference."⁶ The two pathologists assigned to her case attested that children exposed to similar amounts of cocaine were born healthy and cocaine was just one of three possible causes of the fetal demise, the other two being, chorioamnionitis and funisitis. Further, they acknowledged stillbirths have been strongly linked to hyperthyroidism and syphilis, McKnight's pre-existing conditions, as have lack of nutrition and tobacco use.⁷

Nonetheless, the jury returned a guilty verdict and Ms. McKnight was sentenced to twenty years of imprisonment. Eventually, Ms. McKnight's conviction was reversed on appeal because the South Carolina Supreme Court found that she was denied a fair trial as her attorney failed to make use of existing medical evidence that cocaine use did not cause her stillbirth.⁸ However, the reversal occurred only after Ms. McKnight spent 8 years in prison and numerous women's rights groups rallied support to liberate her.

Ms. McKnight is one example of thousands of women criminally prosecuted and incarcerated for drug use and pregnancy. She shares much of the same background of the majority of the women who have had criminal charges brought against them and were subsequently incarcerated. As discussed further in the report, the majority of women that are criminally prosecuted for drug use during pregnancy are women of color, many of whom are also living in poverty or otherwise marginalized. For example, others who have been charged under similar theories include Angela Shannette Kennedy⁹, Cornelia Whitner¹⁰ and Rennie Gibbs.¹¹

⁵ *Id.* at 44; see also Lynn M Paltrow, et al., *Petition for a Writ of Certiorari; Regina D. McKnight v. State of California*, 5, available at <http://www.advocatesforpregnantwomen.org/issues/mcknight.pdf> (last visited Sep 24, 2018).

⁶ *McKnight*, 378 S.C. at 44.

⁷ *Id.* at 44; see also Lynn M Paltrow, et al, *Petition for a Writ of Certiorari*, 5.

⁸ *McKnight*, 378 S.C. at 44; see also Lynn M Paltrow, et al, *Petition for a Writ of Certiorari*, 3-8.

⁹ Silja J. A. Talvi, *Women behind bars: the crisis of women in the U.S. prison system*, 158 (2007). (Angela Shannette Kennedy, a black woman, suffered a stillbirth in 1998 and was charged, 5 years after the fact, with homicide by child abuse for allegedly smoking cocaine during her pregnancy causing the stillbirth. Subsequently she plead guilty to three counts of criminal child endangerment which resulted in the sentencing of five years in prison.)

¹⁰ *Whitner v. State*, 328 SC 1, 6, 492 SE.2d 777, 779 (1997) (Cornelia Whitner, a black woman, gave birth to a healthy child but was charged and sentenced to 8 years in prison for child abuse after her child tested positive for cocaine. The court judicially expanded the meaning of "child" to include newborns testing positive for illegal drugs)

¹¹ Jessica Mason Pieklo, *Murder Charges Dismissed in Mississippi Stillbirth Case*, *Rewire.News* (2014), available at <https://rewire.news/article/2014/04/04/murder-charges-dismissed-mississippi-stillbirth-case/> (last visited Sep 24, 2018). (Rennie Gibbs, a black woman, at the age of 16 was facing life in prison for "depraved heart murder" when she delivered a stillbirth baby in 2006. The "grand jury concluded that Gibbs had unlawfully, willfully and feloniously caused the death of the baby by smoking crack cocaine during her pregnancy." The charge was dismissed when experts examined the autopsy report and found the umbilical cord wrapped around the babies neck was the likely cause of death").