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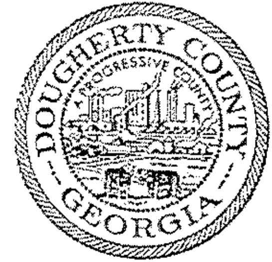

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Wednesday, June 10, 2015

PRESS RELEASE

Immediate Release

Dougherty County District Attorney's Office announces preliminary decision on Kenlissia Jones' "abortion pill" case

ALBANY, Georgia - On today's date, the Dougherty County District Attorney's Office announced that Kenlissia Jones had been released from custody on her own recognizance for the misdemeanor charge of Possession of a Dangerous Drug. Ms. Jones had been charged by the Albany Police Department for the offense of malice murder. However, this morning, I dismissed that malice murder warrant after thorough legal research by myself and my staff led to the conclusion that Georgia law presently does not permit prosecution of Ms. Jones for any alleged acts relating to the end of her pregnancy.

"A prosecuting attorney['s] ...obligation is to govern impartially and ... to do justice. As a servant of the law, a prosecutor should prosecute with earnestness and vigor. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Collier v. State, 266 Ga. App. 345, 352 (2004) (Ga. Ct. App. 2004) (internal citations ommitted).

Although third parties could be criminally prosecuted for their actions relating to an illegal abortion, as the law currently stands in Georgia, criminal prosecution of a pregnant woman for her own actions against her unborn child does not seem permitted. The Georgia Legislature has not carved out an exception to the pregnant woman's common law immunity from such prosecutions. Applicable criminal law and statutes provide explicit immunity from prosecution for a pregnant woman for any unlawful termination of her pregnancy. See Hillman v. State, 232 Ga. App. 741, 503 S.E.2d 610 (Ga. Ct. App. 1998) ("[T]he legislative history [of the criminal abortion statute, O.C.G.A. § 16-12-140] indicates that, despite numerous opportunities, the General Assembly has refused to criminalize a pregnant woman's acts in securing an illegal abortion."); O.C.G.A. § 16-5-80(f)(3) ("Nothing in [the feticide statute] shall be

construed to permit the prosecution of . . . [a]ny woman with respect to her unborn child."); O.C.G.A. § 16-5-80(a) (defining "unborn child" as "any member of the species homo sapiens at any stage of development who is carried in the womb.").

Having researched the matter, an overwhelming majority of jurisdictions confronted with the prosecution of a pregnant woman for her own prenatal conduct that ultimately causes harm or death to the subsequently born child does not permit such prosecutions. See State v. Aiwohi, 109 Haw. 115, 119 (Haw. 2005) ("Jurisdictions overwhelmingly refuse to permit a mother's prosecution for prenatal conduct that causes harm to her newborn child, because the mother's conduct is not committed at a time when the child is born and is alive."); State v. Deborah J.Z., 228 Wis. 2d 468, 596 N.W.2d 490, 496 (Wis. Ct. App. 1999) (holding that defendant mother's fetus was not a human being for the purposes of the attempted first degree intentional homicide and first degree reckless injury statutes); State v. Ashley, 678 So. 2d 339, 701 So. 2d 338, 342 (Fla. 1997) (stating that to allow the manslaughter prosecution of a mother for prenatal conduct "would require that this Court extend the 'born alive' doctrine in a manner that has been rejected by every other court to consider it"); State v. Dunn, 82 Wn. App. 122, 916 P.2d 952, 956 (Wash. Ct. App. 1996) (dismissing the second degree criminal mistreatment of a child charge, holding that a fetus was not a child within the meaning of the criminal mistreatment statute); Reinesto v. Superior Court, 182 Ariz. 190, 894 P.2d 733, 738 (Ariz. Ct. App. 1995) (holding that defendant mother could not be prosecuted under the child abuse statute for prenatal conduct that resulted in harm to the subsequently born child); Collins v. State, 890 S.W.2d 893, 898 (Ct. App. Texas 1994) (holding that the defendant mother did not have notice that her voluntary, prenatal ingestion of cocaine could subject her to prosecution under the Texas injury to child statute); People v. Morabito, 151 Misc. 2d 259, 580 N.Y.S.2d 843, 847 (N.Y. Crim. Ct. 1992) (holding that the defendant mother could not be charged with endangering the welfare of a child based upon prenatal acts endangering an unborn child); State v. Gray, 62 Ohio St. 3d 514, 584 N.E.2d 710, 713 (Ohio 1992) (holding that a parent may not be prosecuted for child endangerment for prenatal substance abuse); Carol Jean Sovinski, The Criminalization of Maternal Substance Abuse: A Quick Fix to a Complex Problem, 25 Pepp. L. Rev. 107, 126-127 (1997) (summarizing Mother Charged After Her Baby Dies of Cocaine, N.Y. Times, May 10, 1989, at A18 (reporting that the county grand jury refused to indict defendant mother for involuntary manslaughter on the ground that the legislature did not intend for the manslaughter statute to impose criminal liability on women for prenatal conduct that caused the death of her subsequently born, two-day-old daughter); Staci Visser, Prosecuting Women for Participating in Illegal Abortions: Undermining Gender Equality and the Effectiveness of State Police Power, 13 J. L. Fam Stud. 171 (2011).

This Office, as with any case presented by law enforcement for prosecution, will continue to review the matter thoroughly and consider any sound, legal charges.

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