Hawaii Supreme Court Overturns Conviction in Prenatal Substance Abuse Case

By L. Renée Lowe, J.D., LL.M. Candidate

The Hawaii Supreme Court’s ruling in State of Hawaii v. Aiwohi is consistent with other courts’ refusal to uphold convictions in prenatal substance abuse cases. In a recent opinion, the Hawaii Supreme Court overturned the manslaughter conviction of a mother charged with causing the death of her infant son by ingesting drugs while she was pregnant. Tayshea Aiwohi (“Aiwohi”) gave birth to Treyson Aiwohi on July 15, 2001. Tragically, Treyson died two days later from toxic effects of methamphetamine. After admitting to smoking crystal methamphetamine the days preceding Treyson’s birth and the morning of his delivery, Aiwohi was indicted and charged with recklessly causing the death of her newborn son in violation of Hawaii Revised Statute § 707-702(1)(a).

At issue in this case was the interpretation of the Hawaii statute which states that “[a] person commits the offense of manslaughter if . . . [h]e recklessly causes the death of another person.” The majority’s statutory interpretation of this criminal statute is in keeping with the trend of the majority of courts that have considered statutory interpretation questions in the criminal context and found that the legislature did not intend to include fetuses within the protected class. The Hawaii Supreme Court concluded that the manslaughter prosecution of Aiwohi for prenatal conduct that caused the death of her son subsequently born alive was not consistent with the plain meaning of the Hawaii Penal Code, which requires that the defendant’s conduct occur at a time when the victim is within the class contemplated by the legislature. In its analysis, the Court looked at the required elements of an offense under the Model Penal Code, but focused on the element of “attendant circumstances” – i.e., “of another person” – in reaching its conclusion. The Court held that Aiwohi did not possess the requisite state of mind because she “could not have disregarded a substantial and unjustifiable risk that the requisite circumstance existed, because the requisite circumstance did not exist at the time she engaged in the prosecution claims was culpable conduct.” In other words, because at the time Aiwohi smoked the crystal methamphetamine, Treyson was a fetus, and thus not a person within the meaning of the statute, Aiwohi could not be held to have

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2 Id.
3 Id. at 1210.
4 Aiwohi had a well-documented history of substance abuse and was tested for substance abuse throughout the pregnancy; however, she was not tested in the weeks prior to Treyson’s delivery and was allowed to breastfeed him several times during her stay in the hospital. Id. at 1211.
5 Id. at 1212.
7 Aiwohi, 123 P.3d at 1223.
8 Id.
9 Id.
disregarded a substantial and unjustifiable risk. The fact that Treyson was born alive and later died as a result of such conduct did not change the conclusion.  

The prosecution in the foregoing case failed on the basis of statutory interpretation and legislative intent. Therefore, the Court did not reach the constitutional objections to the prosecution of Aiwohi.  

The attempt of states to address the problem of drug abuse by pregnant women as a criminal matter has not been successful. Many states seem to acknowledge the legitimacy of state interests in protecting fetal life. However, only one state, South Carolina, has been successful in upholding the conviction of a woman charged with harming her fetus by ingesting drugs.  

In attempting to prosecute women who ingest drugs during pregnancy, states have turned a vexing public health problem into a criminal matter. In doing so, many states have infringed upon the basis rights of women’s privacy and liberty. Should women who use drugs during pregnancy be stopped from doing so even at the expense of their own liberty? Of course not. While some proponents of criminal intervention may believe that once a woman decides to carry a child to term, she has no right to inflict harm on that child’s life, it is only in prenatal substance abuse cases that these proponents have sought criminalization of the conduct causing fetal harm. However, there are legal acts by pregnant women that additionally may pose serious risks to a developing fetus – for example, drinking alcohol and smoking cigarettes. Does this suggest that the focus on criminal aspects of prenatal drug use may be motivated, at least in part, by factors other than concern for fetal development? Regardless of which side of the issue you are on, a question remains as to whether any solution will totally avoid any infringement on a woman’s rights. It will require once again a careful balancing test in deciding which interests predominate: that of the woman who is engaging in the harmful conduct or that of the unborn child who cannot protect himself or herself.  

March 2006

10 Id.
11 Id. at 1224-25.
12 Whitner v. State, 492 S.E.2d 777 (S.C. 1997). In Whitner, the mother was charged with and pled guilty to criminal child neglect for ingesting cocaine during her pregnancy, causing her baby to be born with cocaine in its system. Id. at 778-79. The South Carolina Supreme Court reasoned that the policy of the state to concentrate on the prevention of children’s problems coupled with a reading of the word “person” in the South Carolina statute at issue “evidenced a clear legislative intent to include viable fetuses within the definition of ‘person.’ ” Id. at 781. See also State v. McKnight, in which a woman’s conviction was upheld after her prosecution for the death of her child born stillborn due to her ingestion of cocaine while she was pregnant. State v. McKnight, 576 S.E.2d 168 (S.C. 2003).
13 See Ferguson v. City of Charleston, 532 U.S. 67 (2001), in which 10 women who received obstetrical care at a public hospital were arrested after testing positive for cocaine when the hospital released positive results of drug tests to the police. Id. at 73. The women sued the hospital, among others, for releasing the test results to the police in violation of the Fourth Amendment. Id. The U.S. Supreme Court held that absent patients’ consent, the urine tests were “searches” within the meaning of the Fourth Amendment and the tests and reporting of positive results to the police constituted an unreasonable search. Id. at 84-5. The case was reversed and remanded for a decision on the consent issue. Id. at 76.