

F081341

IN THE

COURT OF APPEAL

STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

CHELSEA BECKER
Petitioner

vs.

SUPERIOR COURT OF KINGS COUNTY
Respondent

Following order denying demurrer/nonstatutory motion to
dismiss
(Case No. 19CM-5304)

**RESPONDENT'S REPLY TO WRIT OF
PROHIBITION**

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INTRODUCTION

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE FIFTH DISTRICT COURT OF APPEAL:

This Reply challenges Petitioner's argument that Penal Code 187(a) exempts Respondent from charging a woman for the death of her fetus. In California, only first or second degree murder applies to feticide given that the manslaughter statute does not specify fetal killings. Adding the phrase 'or a fetus' to the manslaughter and wrongful death statutes would provide alternatives, in certain circumstances such as the instant case, for holding women accountable for their deadly conduct. Absent this legislative reform, Penal Code section 187(a) provides the legal authority for charging Petitioner with the murder of her stillborn child, Zachariah.

The following discussion balances a woman's right to ingest toxic levels of illegal drugs versus the rights of a full-term viable fetus to live, and it supports Respondent's ability to hold Petitioner accountable for the death of her child both legally and factually.

Additionally, Respondent has been disadvantaged in our ability to reply to this Writ of Prohibition, hereinafter, "Writ", due to Petitioner's failure to serve Respondent with the instant Writ until August 7, 2020, even though Petitioner filed the Writ with the Court on July 2, 2020.

SUMMARY OF FACTS

Petitioner¹ conveniently omits the salient facts, which collectively led Respondent to ultimately charge Petitioner for the death of her fetus/child. Petitioner, confines its entire factual background of what led to her fetus/child's death to two paragraphs that are not supported by the truth. (Writ, ¶¶ 7, 8.)

Petitioner is a 26-year-old person² who has given birth to four children. Each of her pregnancies were accompanied by consistent and admitted illicit drug use during the entire gestation period. (Exh. A.) Petitioner's first three children were born while Petitioner and the children had levels of methamphetamine in their blood. (Exh. A, pp. 7, 9, 10, 16, 17, 18, 19, 20, 24.) In 2015, Petitioner admitted using methamphetamine two days before the birth of her baby boy. (Exh. A, p. 24.)

In 2016, following the birth of her baby boy, Samuel Cruz, Petitioner told a Social Worker that she was aware that prenatal substance abuse can negatively impact a child, such as causing brain damage. (Exh. A, p.20.) Petitioner and the baby, Seth Cruz, both tested positive for methamphetamine. (Exh. A, p. 19.)

Social Services and medical staff intervened to provide counseling and assistance to Petitioner, and then removed Petitioner's first three

¹ Petitioner is alternately referred to as Defendant and Respondent is alternately referred to as Plaintiff, depending on the context.

² Petitioner was 25-years-old when she gave birth to Zachariah.

children from her custody. (Exh. A.) Petitioner's first three children have been in the care of other families since their births.

On September 10, 2019, Petitioner gave birth to a stillborn child whom she had named Zachariah Joseph Campos at Hanford Adventist Medical Center. Delivery Nurse, Ernestina Obeso, confirmed Petitioner delivered the stillborn baby at 36 weeks gestational, which, at that age, could have resulted in a viable living human being outside of the womb. (Exh. A, pp. 5-6.) During the labor process, a family member notified medical staff that Defendant used methamphetamine and possibly heroin during the pregnancy. (Exh. A, p. 6.) Petitioner initially refused to provide blood or urine samples despite multiple requests, but ultimately did provide a urine sample. (Exh. A, p. 6.) Medical staff contacted Kings County Deputy Coroner, Wayne Brabant, given the suspicious circumstances of methamphetamine use surrounding the stillborn birth.

The Coroner's report attached hereto as Exhibit B, revealed Zachariah Joseph Campos' cause of death was "Acute Methamphetamine Toxicity." It also revealed a level of .02 grams % blood ethyl alcohol. Dr. Zhang, who performed the autopsy, noted that Zachariah weighed 5.12 pounds, was 19" long and "[w]as a 36 week [full term] gestational fetus who died in his mother's womb on 09/19/2019." Blood work conducted on the Defendant "showed positive for methamphetamine." (Exhibit B.) Specifically, a toxicology report confirmed Zachariah had nearly six times

the toxic levels for an adult male of methamphetamine in his blood. (Exh. B.) Dr. Zhang told Hanford Police Officers that Zachariah's methamphetamine levels were very high and toxic. (Exh. A, p. 13.) He further stated that toxic ranges are measured for an adult; and while he did not believe any published studies measured blood methamphetamine ranges for a fetus, toxicity levels for a fetus would be much lower than for an adult. (Exh. A, p. 13-14.)

Petitioner's mother told Hanford Police that Petitioner admitted to using methamphetamine during this pregnancy as she had during her three previous pregnancies. (Exh. A, pp. 6-7.) She also heard from a friend that her daughter used heroin weeks before the stillborn birth. (Exh. A, p. 7.) Petitioner's mother further disclosed that two of Petitioner's other children tested positive for methamphetamine at birth and were adopted out of Petitioner's care as newborns. (Exh. A, p. 7.) Petitioner herself admitted to Hanford Police Detective, Jared Cotta, that she used methamphetamine during her pregnancy with Zachariah, but also claimed she had stopped because of the pregnancy, which imparts her awareness of the dangers of methamphetamine use during pregnancy. Ultimately, Petitioner gave conflicting stories to Detective Cotta about when she supposedly stopped using methamphetamine. (Exh. A, p. 9.) There is no evidence that Petitioner took any actions whatsoever to abort Zachariah (her fetus), nor is

there any evidence or allegations that Petitioner intended to abort Zachariah.

Petitioner's mother told the Hanford Police Officer, "I didn't even see a tear fall from her eye, not one." (Exh. A, p. 7.)

ARGUMENT

I. PETITIONER PROVIDES NO AUTHORITY THAT PROHIBITS CHARGING A FEMALE WITH MURDER BASED ON HER INHERENTLY DANGEROUS ACTS OR OMISSIONS TOWARDS HER FETUS WHILE PREGNANT.

Petitioner conveniently omits the plain meaning of the language set forth in Penal Code section 187(b)(3) and provides no legal authority from the California Supreme Court or the Fifth District Court of Appeal that prohibits Respondent from filing murder charges against a female who used toxic amounts of methamphetamine during her pregnancy resulting in the death of her full-term viable fetus/child who had toxic amounts of methamphetamine in his blood.

The only statute available to Respondent to charge Petitioner for the death of her child is Penal Code section 187. Manslaughter and child abuse charges are not legally cognizable under these facts.

Penal Code section 187 reads as follows:

(a) Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

(b) This section shall not apply to any person who commits an act that results in the death of a fetus if any of the following apply:

(1) The act complied with the Therapeutic Abortion Act, Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code.

(2) The act was committed by a holder of a physician's and surgeon's certificate, as defined in the Business and Professions Code, in a case where, to a medical certainty, the result of childbirth would be death of the mother of the fetus or where her death from childbirth, although not medically certain, would be substantially certain or more likely than not.

(3) The act was solicited, aided, abetted, or consented to by the mother of the fetus.

(c) Subdivision (b) shall not be construed to prohibit the prosecution of any person under any other provision of law.

Cal. Penal Code § 187.

Notably, Petitioner has not provided any authority that Penal Code section 187(b)(3) does not apply. Petitioner conveniently omits the fact that she failed to provide any California statute(s) or case law that supports her proposition that a female who carries a child full term while using toxic amounts of methamphetamine is immune from criminal prosecution for the murder of her stillborn child. Instead, as support for her position, Petitioner provides no appellate authority and instead cites obscure superior court

cases. (See *People v. Jaurigue* No. 18988, slip. Op. (Cal. Sup. Ct. August 21, 1992) <https://tinyurl.com/rsnyrl>.)

The Court should deny this Petition and absent a resolution, this matter should proceed to trial before a jury of Petitioner's peers within the community.

II. PENAL CODE SECTION 187(a) PROVIDES RESPONDENT WITH THE STATUTORY AUTHORITY TO CHARGE PETITIONER WITH MURDER FOR HER ACTIONS OR OMISSIONS DURING PREGNANCY.

The California Legislature, the California Supreme Court, and the United States Supreme Court have each conferred statutory and Constitutional rights to a fetus by virtue of their respective enactments and rulings. California jurisprudence has experienced an evolution in how courts and the Legislature have treated the death of a fetus.

In *Keeler v. Superior Court* (1970) 2 Cal.3d 619, the court held the unlawful killing of a human being did not apply to the murder of a fetus. In *Keeler*, a pregnant woman's abuser caused the death of their fetus. The male defendant's conviction was overturned because the statute did not include the word "fetus." The California Legislature, in response and intending only to exempt conduct amounting to a therapeutic abortion, amended Penal Code section 187(a) to include the unlawful killing of a fetus with the exception of a fetal death resulting from a lawful abortion pursuant to Penal Code section 187(b). (Stats.1970, ch. 1311, § 1, p. 2440.)

In *People v. Dennis* (1994) 17 Cal.4th 468, 511, the court ruled the defendant was not entitled to a jury instruction on manslaughter as a lesser included offense of murder, since there is no crime of manslaughter of a fetus. The California Supreme court opined in *People v. Davis* (1994) 7 Cal. 4th 797, 803, 809-810, that the Legislature treated the fetus with the same protections as human life except where a mother's privacy interests are at stake as they are when a woman seeks to have an abortion. The court further ruled, "[V]iability is not an element of fetal homicide under section 187, subdivision (a)," but the state must demonstrate "that the fetus has progressed beyond the embryonic stage of seven to eight weeks." (*Id.* at pp. 814-815.); *People v. Valdez* (2005) 126 Cal.App.4th 575, 579 [the court held that terminally ill fetuses, like terminally ill born persons, do not provide a defense or leniency to a murder charge. The court reasoned that murder is applied when victims are terminally ill because murder is, at its simplest definition, the shortening of a life, and that this must be applied to fetuses since they are part of Penal Code section 187]. At no time during the Court's consideration of the above cases did the Court conclude the word "fetus" was merely a word to protect a pregnant woman, rather it is clear and only logical that the word "fetus" in the statute imparts rights to and consideration of a fetus and no one else.

Consequently, Penal Code section 187(a) applies given that the Petitioner gave birth to a full-term viable fetus, Zachariah, in his thirty-sixth week.

Penal Code section 187(b)(3) states murder does not apply to “any person who commits an act that results in the death of a fetus” if “[t]he act was solicited, aided, abetted, or consented to by the mother of the fetus.”

Petitioner devotes considerable argument towards attacking Respondent’s thorough dissection of Penal Code section 187(b)(3)’s inclusion of the words, *aid*, *abet*, *solicit* and *consent*. Petitioner’s tortured contention that one can *aid*, *abet*, *solicit* or *consent* to oneself butchers the context, the plain language definition, and the common sense usage of these four words in the history of the English language.

“If there is no ambiguity in a statute, we must presume the drafters mean what they wrote and the plain meaning of the words prevail. [*People v. Harris* (2006) 145 Cal.App.4th 1456, 1463] “ ‘ “Where the statute is clear, courts will not ‘interpret away clear language in favor of an ambiguity that does not exist.’ ” ’ ” (*People v. Raybon* (2019) 36 Cal.App.5th 111, 121 [Petition for review granted], citing *People v. Harris*, *supra*, 145 Cal.App.4th at p. 1463 and *People v. Coronado* (1995) 12 Cal.4th 145, 151, 48.) “When a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning.” (See *Perrin v. United States* (1979) 444 U.S. 37, 42 [words not defined in statute

should be given ordinary or common meaning]. Accord, post, at 242 [“In the search for statutory meaning, we give nontechnical words and phrases their ordinary meaning.”] (*Smith v. U.S.* (1993) 508 U.S. 223, 228-229.)

In the U.S. Supreme Court decision, *Smith v. United States, supra*, the Court considered whether a defendant who offered to barter a gun for drugs had "used" the gun in the course of the drug purchase under a statutory penalty-enhancement provision. Writing for the majority, Justice O'Connor, used common sense and based her construction of "use" on definitions from two dictionaries. Justice O'Connor concluded that her reading of the statute was the most "reasonable" ordinary meaning because it fit the definition in her chosen dictionaries. This U.S. Supreme Court decision provides guidance for giving the statutory meaning to the words, *solicited, aided, abetted* or *consented* as used in Penal Code section 187(b)(3).

As noted above, Penal Code section 187(b)(3) reads as follows:

“The act was solicited, aided, abetted, or consented to by the mother of the fetus.” The statute’s plain language connotes a female who solicits, aids or abets a *third person* to facilitate the death of her fetus. Petitioner, however, contorts Penal Code section 187(b)(3) by incorrectly interpreting that the pregnant female can solicit, aid, abet or consent to *herself* in facilitating the death of her fetus.

The operative words in Penal Code section (b)(3) are *solicited*, *aided*, *abetted* or *consented to*, which have always been words to grant approval or assistance to another person and NOT oneself. These words are modified by the phrase “by the mother of the fetus.” Webster's defines “solicit” as “1a: to make petition to: ENTREAT b. to approach with a request or plea 2: to urge (as one's cause) strongly 3a: to entice or lure especially into evil b: to proposition (someone) especially as or in the character of a prostitute 4: to try to obtain by usually urgent requests or pleas solicited donations.” (Webster's 10th Collegiate Dict. (1993) p. 1118, col. 2.) Each of the contextual definitions of “solicit” contemplates two or more people involved — the solicitant and recipient(s) of the solicitation. It strains credulity to adopt Petitioner's argument that the “mother of the fetus” solicited *herself*. Given that Penal Code section (b) (3) is disjunctive we must examine the definition of “aided.”

Webster's defines “aid” as “2 a: the act of helping b: help given: ASSISTANCE : *specif*: tangible means of assistance (as money or supplies) 3 a: an assisting person or group — compare AIDE b: something by which assistance is given: an assisting device.” (Webster's 10th Collegiate Dict. (1993) p. 24, col. 2.) The contexts set forth in Webster's definition do not contemplate a person “aiding” oneself without someone else providing assistance — tangible or otherwise. Nor can Petitioner find support in Webster's definition of “abet.”

Webster's defines "abet" as "1: to actively second and encourage (as an activity or plan): FORWARD : 2: to assist or support in the achievement of a purpose <*abetted* the thief in his getaway>." (Webster's 10th Collegiate Dict. (1993) p. 2, col. 2.) Again, Webster's does not define *abetting* oneself in any context. Finally, Petitioner can find no support in Webster's definition of "consent."

Webster's defines "consent" as "1: compliance in or approval of what is done or proposed by another: ACQUIESCENCE <he shall have power, by and with the advice and ~ of the Senate to make treaties — *U.S. Constitution*> 2: agreement as to action or opinion." (Webster's 10th Collegiate Dict. (1993) p. 246, col. 1.)

Consenting to oneself is illogical and contorts the meaning of the word "consent" as applied in Penal Code section 187(b)(3) and in the entire history of the English language.

Petitioner contorts the ordinary or common meaning of the operative words in Penal Code section (b)(3) *solicited, aided, abetted* or *consented to* as defined by Webster's. Petitioner cannot rely on any context employed by Webster's as support for her argument that she *solicited, aided, abetted* or *consented to* herself. Additionally, Petitioner and any other amicus curia cannot cite any legal authority to support their contorted and illogical definition of these words.

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III. PENAL CODE SECTION 187(A) APPLIES TO A FEMALE WHOSE CHILD DIES AS A RESULT OF HER DRUG USE DURING PREGNANCY.

Petitioner's arguments render Penal Code sections 187(a) and 187(b)(3) inapposite for all purposes. Under Petitioner's tortured interpretation, Penal Code section 187(a) can never apply, under any circumstance, to a pregnant female because the Petitioner believes a pregnant female can solicit, aid, abet or consent to *herself* and can do whatever she wants to her fetus even if her conduct does not comport with an exclusion listed in Penal Code section 187(b)(3). Applying Petitioner's arguments, there is no need for Penal Code section 187(b)(3) in its entirety. Petitioner's irrational logic completely undermines and eviscerates the Legislature's inclusion of Penal Code section 187(b)(3). Petitioner's arguments render Penal Code section 187(b)(3) superfluous.

Penal Code section 187(b)(3) does not carve out an exception for a pregnant woman who stabs herself in the stomach and kills her viable fetus or, in this case, chooses to carry the child full term, and chooses to use toxic quantities of methamphetamine throughout her pregnancy and shortly before birth. According to Petitioner, she may kill her fetus without *any* of the exceptions set forth in (b)(3).

Petitioner's contorted viewpoint of Penal Code section 187(b)(3) would result in the illogical exception to fetal murder for a pregnant woman who drives a vehicle while intoxicated and causes a collision resulting in

the death of her fetus or that of a pregnant passenger. It would also exempt a pregnant person who stabs herself in the stomach and kills her full-term viable fetus, or, as in the instant matter, chooses to carry Zachariah full-term and chooses to use toxic quantities of illegal methamphetamine throughout her pregnancy and shortly before birth.

According to Petitioner, she may kill her fetus without *any* of the exceptions set forth in (b)(3) and contrary to California's abortion statute.

Petitioner never sought, intended, or desired to abort her child, which is precisely why she named the child, Zachariah. Consequently, she and she alone caused Zachariah Joseph Campos' death by ingesting toxic quantities of methamphetamine during her pregnancy with notice and knowledge of the deleterious consequences to her newborn child, in light of two of her prior children that were born with methamphetamine in their systems.

IV. THE TRIAL COURT CORRECTLY INTERPRETED THAT PENAL CODE SUBSECTIONS (B)(1), (B)(2) AND (B)(3) ARE INTENDED TO BE READ IN CONNECTION WITH EACH OTHER AND ARE LIMITED TO A WOMAN SEEKING AN ABORTION.

Petitioner argues subsections (b)(1), (b)(2) and (b)(3) *do not* limit a woman's behavior to obtaining an abortion. In its ruling on Petitioner's Demurrer and Motion to Dismiss, the court interpreted subsection (b)(1) as protecting a woman from obtaining a lawful abortion under the Therapeutic Abortion Act. As for subsection (b)(2) the court concluded this subsection

protects the doctors who perform the procedure if they have certification as a doctor or surgeon. With respect to subsection (b)(3), the court opined:

“And (b)(3) appears to me to be there to protect the medical personnel who assist the doctor during the course of that procedure who themselves are not doctors, and do not hold surgeon certificates such as nurses and the such.

So reading it it appears to me that the exception under the B section of Penal Code Section 187 is designed to protect the therapeutic abortion that is sought, which is a constitutional right under *Roe v. Wade* and *Planned Parenthood versus Kacee* [*sic*]. Nowhere in the statute does it say that the statute does not apply to the mother of a fetus. Which if that was the intent of the legislature, they could have easily done so.” (Exh. C, pp. 19. 20-21.)

Interpreting the court’s analysis otherwise renders Penal Code subsections (b)(2) and (b)(3) superfluous because the protected parties, i.e., physicians, surgeons and support personnel in subsections (b)(2) and (b)(3) would be covered by subsection (b)(1).

In her attempt to square her actions with subsection (b)(3), Petitioner poses the exceedingly strained argument that a woman can consent to herself, aid herself, abet herself or solicit herself to do whatever she wants to her fetus without any consequences. Fortunately, the court found her argument runs counter to the plain language of the statute and the context of how the three subsections compliment each other.

The court also found significant the fact that language completely prohibiting the prosecution of any woman with respect to her unborn child “is completely absent from the California statute.” (Exh. C, p. 21.)

Examining the statute's plain language led the court to conclude: "[I] don't read it [the statute] that it excludes the mother in all circumstances. It looks to me like it excludes the mother if she sought and retained a therapeutic abortion." (Exh. C, p. 21.)

Respondent concurs with the trial court's analysis and urges this Court to deny the Petition and allow the matter to be presented to a jury of Petitioner's peers within the community.

V. PETITIONER'S RIGHT TO PRIVACY IS NOT ABSOLUTE AND CALIFORNIA HAS A LEGITIMATE INTEREST IN PROTECTING THE POTENTIAL LIFE OF A FETUS.

The United States Supreme Court recognized a woman's right of personal privacy is not unqualified when it ruled, "The privacy right involved, therefore, cannot be said to be absolute. In fact, it is not clear to us that the claim asserted by some amici that one has an unlimited right to do with one's body as one pleases bears a close relationship to the right of privacy previously articulated in the Court's decisions. The Court has refused to recognize an unlimited right of this kind in the past. *Jacobson v. Massachusetts*, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (1905) (vaccination); *Buck v. Bell*, 274 U.S. 200, 47 S.Ct. 584, 71 L.Ed. 1000 (1927) (sterilization). We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation."

(*Roe v. Wade* (1973) 410 U.S. 113, 153–54, 93 S. Ct. 705, 727, 35 L. Ed. 2d 147 (1973), holding modified by *Planned Parenthood of Se. Pennsylvania v. Casey* (1992) 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674.)

In *People v. Davis, supra*, 7 Cal. 4th at p. 807, the California Supreme Court recognized that “when the state's interest in protecting the life of a developing fetus is not counterbalanced against a mother's privacy right to an abortion, or other equivalent interest, the state's interest should prevail.” Petitioner’s argument that she has constitutional protections from carrying her child full term while she ingested toxic amounts of methamphetamine after having had three prior pregnancies where she used methamphetamine during the gestational period runs afoul of the state’s interest in protecting her fetus. The court should not cloak Petitioner with a veil of constitutional protection that has no application under these facts. Petitioner never chose to have a lawful abortion but made the self-centered and reckless decision to ingest toxic and lethal amounts of methamphetamine among other harmful substances during her pregnancy as evidenced by her child dying from acute methamphetamine toxicity with full knowledge and notice of its potential consequences. Federal and California State law confers rights to a fetus and this Court should not allow Petitioner to trample those rights.

VI. OTHER JURISDICTIONS THAT PROSECUTE PREGNANT WOMEN WHO KILL THEIR FETUSES RECOGNIZE THE NEED FOR CONSEQUENCES FOR USING DRUGS DURING ONE’S PREGNANCY.

Petitioner raises the same arguments as those in *Whitner v. South Carolina* (1977) 492 S.E.2d 777, 786, where the court upheld the conviction of a pregnant drug user. The court recognized that, “It strains belief for Whitner to argue that using crack cocaine during pregnancy is encompassed within the constitutionally recognized right of privacy. Use of crack cocaine is illegal, period. No one here argues that laws criminalizing the use of crack cocaine are themselves unconstitutional. If the State wishes to impose additional criminal penalties on pregnant women who engage in this already illegal conduct because of the effect the conduct has on the viable fetus, it may do so. We do not see how the fact of pregnancy elevates the use of crack cocaine to the lofty status of a fundamental right.”

Similarly, in *State v. McKnight* (2003) 576 S.E.2d 173; 352 S.C. 635, a South Carolina jury convicted Regina McKnight of homicide by child abuse for the stillborn birth of her child by using crack cocaine during her pregnancy and the South Carolina Supreme Court upheld the mother’s homicide conviction. The Supreme Court of South Carolina held: The: (1) issue of whether cocaine caused the stillbirth of defendant's child was for the jury; (2) issue of whether defendant had requisite criminal intent was for the jury; (3) defendant was on notice that her conduct in ingesting

cocaine while pregnant was proscribed, and thus, prosecution did not violate due process; (4) prosecution did not violate defendant's right to privacy; (5) sentence of 20 years in prison was not cruel and unusual punishment; and (6) urine sample taken from defendant in hospital did not violate her Fourth Amendment rights. (*Id.*) The United States Supreme Court declined to review the South Carolina Supreme Court's decision. (Certiorari Denied Oct. 6, 2003).

VII. PROSECUTING PETITIONER FOR THE MURDER OF HER FETUS DOES NOT DENY PETITIONER ANY OF HER SUBSTANTIAL RIGHTS.

Petitioner argues her nonstatutory motion to dismiss should be granted on the grounds that: (a) she did not receive fair notice the conduct was a crime; (b) prosecuting her for fetal murder infringes on her privacy right; and (c) prosecution would constitute ex post facto punishment. That is not the case.

A. PENAL CODE SECTION 187 GIVES PETITIONER FAIR NOTICE THAT INGESTING METHAMPHETAMINE DURING PREGNANCY IS PROSCRIBED.

The Due Process Clause prohibits the government from taking one's life, liberty or property under a criminal law so vague that it fails to give an ordinary person fair notice of the conduct that law punishes, "invite[ing] arbitrary enforcement." (*Johnson v. United States* (2015) 135 S. Ct. 2551, 2553.) Clearly, Petitioner had fair notice that she endangered the life and

health of her child as evidenced by the fact that she had prior children born with methamphetamine in their systems and her full-term fetus, Zachariah, died as a result of Acute Methamphetamine Toxicity. Petitioner used methamphetamine throughout her pregnancy and 24 hours prior to giving birth. (Exh. A, pp. 6-7, 9.) The murder statute expressly includes a fetus with the only exceptions relating to *medical abortions*. Thus, Petitioner cannot claim she lacked fair notice that her conduct constituted fetal murder.

B. PROSECUTION DOES NOT BURDEN PETITIONER’S RIGHT TO PRIVACY.

The United States Constitution protects women from certain measures that penalize them for choosing to carry their pregnancies to term. (*Cleveland Bd. Of Educ. v. LaFleur* (1974) 414 U.S. 632, 639-640 [striking down a mandatory maternity leave policy].) However, Petitioner misapprehends the fundamentally different nature of her own interests and those of the government as compared to cases such as *LaFleur, supra*. The United States Supreme Court has repeatedly held that states have a compelling interest in the life of a fetus. (See e.g. *Roe v. Wade* (1973) 410 U.S. 113, 150, 163-164.) [State regulation protective of fetal life after viability thus has both logical and biological justifications]; *Planned Parenthood v. Casey* (1992) 505 U.S. 833, 846 [“It must be stated at the outset and with clarity that *Roe*'s essential holding, the holding we reaffirm,

has three parts. First is a recognition of the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State. Before viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure. Second is a confirmation of the State's power to restrict abortions after fetal viability, if the law contains exceptions for pregnancies, which endanger the woman's life or health. And third is the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child. These principles do not contradict one another; and we adhere to each.”]

Prosecuting the Petitioner under Penal Code section 187 would not at all implicate her right to carry her child to term. The burden placed on a pregnant drug user potentially facing a fetal murder charge is *not* the burden to get an abortion; but rather, it is a burden to stop using illegal drugs after she has *already* exercised her constitutional decision not to have an abortion. Once the Petitioner made the choice to have the baby, Zachariah, she must accept the consequences of that choice, which includes duties and obligations to that child. There is simply no reason to treat a child in utero any different than a child ex utero where the mother decided not to abort the fetus and such time allowed for an abortion has passed.

(Fetal Rights and the Prosecution of Women for Using Drugs During Pregnancy, 48 Drake L. Rev. 741, 762-763.)

No evidence exists that prosecuting the Petitioner under Penal Code section 187 would impose a burden at all. Methamphetamine use is illegal. The law simply seeks to impose additional criminal penalties on pregnant women who engage in this *already illegal conduct* because of the effect the conduct has on the viable fetus. No evidence exists that it had a chilling effect on her illegal conduct since the Petitioner enjoyed the exact same freedom to use methamphetamine during her pregnancy as she enjoyed before her pregnancy. As such, prosecution for fetal murder does not restrict Petitioner's freedom in any way that was not already restricted (i.e. illegal drug use), and imposing an additional penalty when a pregnant woman with a viable fetus engages in the already proscribed behavior does not burden a woman's privacy rights. Rather, the additional penalty simply recognizes that a third party (the viable fetus) is harmed by the behavior.

**C. PROSECUTION DOES NOT VIOLATE
PETITIONER'S EQUAL PROTECTION
GUARANTEES.**

When considered rationally, Petitioner's quest to ingest controlled substances during her pregnancy with full knowledge of the deleterious consequences of her actions does not violate the Equal Protection Clause³

³ U.S. Const., 14th Amend.; Cal. Const., art. 1, § 7.

because a male drug user who intentionally facilitates a pregnant female's ingestion of controlled substances which ultimately leads to a stillborn death is subject to Penal Code section 187(a). California law punishes those who assault a fetus by virtue of assaulting pregnant women. Petitioner's interpretation of this statute would allow a domestic violence victim to essentially grant immunity to a domestic violence abuser by simply claiming she "consented" to or was responsible for the abuser's actions. In this case, Petitioner, with full knowledge, assaulted her unborn child when she ingested lethal amounts of methamphetamine against the will of Zachariah, her fetus.

Penal Code § 187 (a) defines murder as the unlawful killing of a human being *or a fetus* with malice aforethought. The law applies to cases in which a perpetrator causes the death of a fetus as long as the fetus is developed past the embryonic stage of seven to eight weeks, and is treated and tried the same as murder. Differentiating a third-party assailant from Petitioner's actions does not survive scrutiny— legally or otherwise.

Petitioner's argument that women are completely immune from the consequences of harming or causing the death of their fetus strains credulity when others who harm or cause the death of their fetus are not equally protected under the constitution — state or federal.

Each case turns on its facts, and in this case, numerous people, including the courts, gave Petitioner ample notice of the consequences of


continuing to ingest controlled substances during her pregnancy. Zachariah died from Acute Methamphetamine Toxicity because of Petitioner's actions.

CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court should deny this Writ and absent a resolution, this matter should proceed to trial before a jury of Petitioner's peers within the community.

DATED: August 18, 2020

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Louis D. Torch", is written over a horizontal line.

Louis D. Torch
Assistant District Attorney

VERIFICATION

I, Louis D. Torch, am the Assistant District Attorney with the County of Kings and assigned to the above titled matter. I am duly authorized to practice law in all courts of the State of California. I am familiar with the pleadings, motions, and records of the proceedings in this case. All of the facts alleged in the above document are true based upon my reading of the official court records and transcripts.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and recollection.

Dated August 18, 2020 at Hanford, CA

A handwritten signature in blue ink, appearing to read "Louis D. Torch", is written over a horizontal line.

Louis D. Torch
Assistant District Attorney

CERTIFICATE OF RULE 8.204(c)(1) COMPLIANCE


Case: Chelsea Becker v. Superior Court of Kings County

Fifth Appellate District Case No.: F081341

Kings County Superior Court Case No.: 19CM-5304

I certify pursuant to California Rule of Court 8.204(c)(1), that I used
Microsoft Word's word counting feature and Respondent's Reply Brief
contains 6,075 words.

Dated: August 18, 2020



Louis D. Torch
Assistant District Attorney

CERTIFICATION OF SERVICE

0310124901 / F081341

PROOF OF SERVICE - - 1013 C.C.P.
STATE OF CALIFORNIA, COUNTY OF KINGS

I am employed in the County of Kings; I am over the age of eighteen years and not a party to the within above-entitled action; my business address is: Office of the District Attorney, Kings County Government Center, 1400 W. Lacey Blvd., Hanford, California 93230; I am readily familiar with the County of Kings' practice for collection and processing of correspondence for mailing with the United States Postal Service.

On 8/18/2020 I served the within RESPONDENT'S REPLY TO WRIT OF PROHIBITION on the defense attorney in said action by following the ordinary business practices of the County of Kings District Attorney's Office as follows:

JACQUELINE GOODMAN
ATTORNEY AT LAW
712 N. Harbor Blvd.
Fullerton, CA92832

DANIEL N. ARSHACK
ARSHACK, HAJEK & LEHRMAN, PLLC
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SAMANTHA LEE
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Pregnant Woman
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New York, New York, 10018

XAVIER BECERRA
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Fresno, CA 93707

MARY MAYBELLE SYLLA
101 Broadway
Oakland, CA 94607

OREGON DEPARTMENT OF JUSTICE
ATTENTION: Ellen Rosenblum
1162 Court Street
Salem, OR 97301-4096

☒ (BY MAIL) I am "readily familiar" with the County of Kings' practice of collection and processing correspondence for mailing with the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 18, 2020 at Hanford, California.

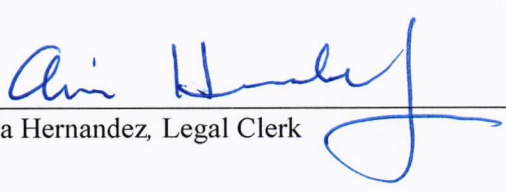

Aria Hernandez, Legal Clerk

EXHIBIT A



HANFORD POLICE DEPARTMENT

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425 NORTH IRWIN STREET HANFORD, CA 93230 559-585-2540
FELONY REPORT

Case
H1904793

OFFENSES

Offenses 187(A) PC	Description Murder:second Degree	Fel/Misd Felony	Date Occurred 01/01/19-09/10/19	Time Occurred 0000 - 0302	Incident # 1909100244
			Date Reported 09/10/2019	Time Reported 1554	
Related Cases					
			Date Printed 10/31/2019	Time Printed 11:33:01	Printed By 14537
			Latitude 36.323790	Longitude -119.666440	
Location Adventist Medical Center, 115 Mall Dr, Hanford, CA 93230			Beat 3	Area 46	Disposition Warrant Request
			Dispo Date 09/26/2019		
Location Type Hospital	Location of Entry	Method of Entry	Point of Entry		Alarm System
			Means of Attack (Robbery)		

Victim Becker, Baby Boy	Drivers License	Cell Phone	Email			
Residence Address	Notified of Victim Rights No	Residence Phone	DOB 09/10/2019	Age	Sex M	Race
Business Name and Address		Business Phone	Height	Wt	Hair	Eyes
Assistance Rendered/Victim Disposition Taken To Coroner		Transporting Agency	Means of Attack (Assaults)			
Description of Injuries Fatal		Other Information				

Mentioned - Other Campos, Silas	Drivers License	Cell Phone	Email			
Residence Address Hanford		Residence Phone	DOB 06/03/2018	Age	Sex	Race
Business Name and Address		Business Phone	Height	Wt	Hair	Eyes

Suspect Becker, Chelsea Cheyenne	Action Taken	Charges 187(A) PC				
Residence Address 11155 Hume Ave, Hanford, CA 93230	Residence Phone 559-469-1461	DOB 04/01/1994	Age 24	Sex F	Race W	
Business Name and Address	Business Phone	Height 5`5"	Wt 135	Hair RED	Eyes HAZ	
Identifying Features Speech: Clear Build: Slender Complexion: Clear Facial Hair: None		Cell Phone	Drivers License F1718813 CA		Arrest Number	
Aliases						

VEHICLES

Status	Vehicle Make and Model	License/State	VIN

OFFICERS

Prepared By 1472 - Cotta, Jarred	Date 09/10/2019	Assisted By	Approved By 1404 - Freiner, Gregory	Date 10/30/2019
Routed To Cotta, Jarred Cotta, Jarred	Date 10/30/2019 10/31/2019	Routed To	Date	Notes

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**HANFORD POLICE DEPARTMENT**

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425 NORTH IRWIN STREET HANFORD, CA 93230 559-585-2540Case
H1904793**FELONY REPORT**

	Mentioned - Other Campos, Steve Sabala	Drivers License D6082251 CA	Cell Phone 559-296-6445	Email			
	Residence Address 2233 Kern St #, Fresno, CA 93721		Residence Phone	DOB 11/18/1984	Age 34	Sex M	Race H
	Business Name and Address		Business Phone	Height 6'	Wt 190	Hair BLK	Eyes BRO
	Mentioned - Other Cruz, Samuel	Drivers License	Cell Phone	Email			
	Residence Address Hanford		Residence Phone	DOB 10/16/2016	Age 2	Sex	Race
	Business Name and Address		Business Phone	Height	Wt	Hair	Eyes
	Mentioned - Other Hernandez, Jennifer Elaine	Drivers License U6098310 CA	Cell Phone	Email			
	Residence Address 11155 Hume Ave, Hanford, CA 93230		Residence Phone	DOB 02/04/1962	Age 56	Sex F	Race W
	Business Name and Address		Business Phone	Height 5'3"	Wt 125	Hair RED	Eyes GRN
	Mentioned - Other Obeso, Ernestina	Drivers License	Cell Phone	Email			
	Residence Address 115 Mall Dr, Hanford, CA 93230		Residence Phone 559-537-1800	DOB	Age	Sex F	Race
	Business Name and Address		Business Phone	Height	Wt	Hair	Eyes
	Mentioned - Other Sanchez, Seth	Drivers License	Cell Phone	Email			
	Residence Address Hanford, CA 93230		Residence Phone	DOB 10/18/2015	Age 3	Sex	Race
	Business Name and Address		Business Phone	Height	Wt	Hair	Eyes
	Parent/Guardian Cruz, Henry John	Drivers License A4621606 CA	Cell Phone 559 836-8714	Email			
	Residence Address 209 W Second St, Hanford, CA 93230		Residence Phone 831-726-6177	DOB 06/24/1967	Age 51	Sex M	Race H
	Business Name and Address		Business Phone	Height 5'11"	Wt 220	Hair BLK	Eyes BRO
	Parent/Guardian Sanchez, Adam James	Drivers License D2303577 CA	Cell Phone	Email			
	Residence Address 11155 Hume Ave, Hanford, CA 93230		Residence Phone	DOB 04/26/1983	Age 35	Sex M	Race H
	Business Name and Address		Business Phone	Height 5'7"	Wt 180	Hair BLK	Eyes BRO
	Parent/Guardian Villagran, John Raymond Jr	Drivers License D1653496 CA	Cell Phone	Email			
	Residence Address 11551 Fern Ln, Hanford, CA 93230		Residence Phone 559-707-5302	DOB 04/13/1981	Age 37	Sex M	Race H
	Business Name and Address		Business Phone	Height 5'9"	Wt 130	Hair BRO	Eyes BRO

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FELONY REPORT

Law Enforcement Officer Barnett, Jenna	Drivers License	Cell Phone	Email			
Residence Address 1424 Forum Dr, Hanford, CA 93230		Residence Phone 559-852-2850	DOB 09/16/1993	Age 25	Sex F	Race
Business Name and Address		Business Phone	Height	Wt	Hair	Eyes

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NARRATIVE - 911 Call/Original Interviews/Silas Detention

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DETAILS:

On 9-10-19, the City of Hanford Communications center received a 911 call in regards to a female in labor who was 7 1/2 months pregnant at 852 E. Grangeville #28 in Hanford at approximately 0030 hours. The Hanford Fire Department responded to the location as well as American Ambulance who is the only emergency ambulance provider for the City of Hanford. I received a recording of the 911 call on 10-30-19 from Hanford Dispatcher Toni Barnes and the recording has been uploaded to the Hanford PD evidence.com database. It should be noted the original call taker for the above described 911 call was Hanford Dispatcher Deborah Stevens.

Later in the day on 9-10-19, I was working for the City of Hanford as a Police Detective. I was informed by Sergeant Justin Vallin of Hanford PD of a stillborn baby which was born at the Hanford Adventist Medical Center. Sergeant Vallin said he had been contacted by Kings County Deputy Coroner Wayne Brabant in regards to suspicious circumstances surrounding the stillborn birth.

I contacted Kings County Deputy Coroner Brabant by phone. Deputy Coroner Brabant said a female by the name of Chelsea Becker had given birth to a stillborn baby at the Hanford Adventist Medical Center. Deputy Brabant said his office was notified that the mother of the stillborn baby had possibly been using methamphetamine during the pregnancy. Deputy Coroner Brabant advised me that an autopsy would be performed on the stillborn baby to which it was. I contacted the Kings County Coroner's Office on 9-30-19 in order to receive a copy of the Coroner's report to which they stated it had not been completed yet pending results from pathology, toxicology and the Doctor who completed the autopsy.

On 9-10-19, I contacted the Hanford Adventist Medical Center by phone and spoke with Registered Nurse Ernestina Obeso. Ernestina stated she was involved with the care of Chelsea Becker and the stillborn child. Ernestina said Chelsea arrived at the Hanford Adventist Medical Center Emergency Room by ambulance at approximately 0054 hours on 9-10-19. At approximately 0105 hours, Chelsea was transferred to the birthing center at the hospital.

At approximately 0201 hours, tests were completed upon Chelsea which found no fetal heart tones but

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☐ BODY CAMERA RECORDED

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Approved By:
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Date:
10/30/2019



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she was in active labor. At approximately 0302, Chelsea delivered the baby vaginally which was found to be a stillborn and declared deceased at approximately 0302 hours. According to Registered Nurse Ernestina, Chelsea Becker acted strange during her medical process. Chelsea refused to give blood or urine samples multiple times when requested. Nurse Ernestina said an unnamed family member at the hospital with Chelsea disclosed that Chelsea had used methamphetamine 24 hours prior to giving birth. A urine sample test was eventually taken from Chelsea by the hospital and she was found to have methamphetamine in her system. Nurse Ernestina spoke of how Chelsea walked away from the hospital and left against medical advice later in the afternoon on 9-10-19 around 1400 hours. Nurse Ernestina said the stillborn baby was delivered by Chelsea at 36 weeks gestational. The Nurse stated the time frame of 36 weeks of pregnancy could have resulted in a viable living human being.

I contacted Kings County CPS and learned that Chelsea Becker had previous children detained by CPS for drug use and safety concerns. Kings County CPS informed me according to their records, Chelsea Becker had one child by the name of Silas Campos still in her custody.

I knew Chelsea from previous law enforcement encounters and knew her mother to be Jennifer Hernandez. I knew Jennifer Hernandez to live at the residence of 11155 Hume Avenue in Hanford. I, along with a CPS Social Worker named Vanessa Stewart, went to the residence on Hume Avenue. Upon contacting Jennifer at the residence, it was learned that Silas was staying with Jennifer. While speaking to Jennifer, she mentioned that Chelsea had been staying recently at the Sierra Vista Trailer Park in Hanford in space 28 and had left Silas in her care. Jennifer talked about how Chelsea had been abusive by assaulting her in the past. Jennifer said she evicted Chelsea out of her home. Jennifer talked about how Chelsea had given her a hand written note saying she could have custody of Silas Campos and how the baby's father also gave her permission.

Jennifer further stated she said she got a call from Chelsea in the early morning hours of 9-10-19 to which Chelsea said her water broke. Jennifer said she went to the trailer park where Chelsea was staying and saw Chelsea had lost a lot of blood and could barely move. Jennifer said an ambulance transferred Chelsea to the hospital. Jennifer said she assumed Chelsea had used methamphetamine during this

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pregnancy as she had in the 3 previous pregnancies she had. Jennifer said she had also heard from a friend that Chelsea had been using heroin in the previous few weeks before the stillborn birth. Jennifer said it had been about two months since Chelsea had stayed at the Hume address.

Jennifer talked about how Chelsea admitted to her while she was in labor that she had used methamphetamine just a few days prior and even the day of being in labor. Jennifer said she heard Chelsea tell medical staff at the hospital that she had not used any drugs recently. Jennifer said she didn't think the stillborn birth bothered Chelsea based on the way she was acting such as not being emotional when receiving news of the stillborn baby at the hospital or when she was told they could not find fetal heart tones. When asked about her daughter, Chelsea, at the hospital, Jennifer said, "I didn't even see a tear fall from her eye, not one." Jennifer said if it was her, she would've flipped out when she found out information at the hospital like Chelsea did.

CPS Social Worker Stewart and I quickly reviewed the document which Chelsea had written down for Jennifer to stay with Silas. While on scene, I observed the living room area of where Silas had a play crib. I observed people in the home to be feeding Silas what appeared to be powdered donuts and an Icee/Slurpie drink. I observed the living room area to be dirty and the front yard had cigarette butts on the ground and other hazards in the front yard. Based on my observations and the ability of Chelsea to go and pick up Silas at any time from Jennifer, I authorized CPS to detain the child to which they did. Jennifer spoke about how she planned on going the next day to get official paperwork in regards to custody of Silas.

Jennifer talked about how two of Chelsea's other children tested positive for methamphetamine at birth and were adopted out of Chelsea's custody as newborns. Jennifer said one of Chelsea's children which were adopted as a newborn had a medical condition which she believed was caused by drug use. Jennifer described the medical condition as a tremor the child did every once in a while. Jennifer talked about how she has let Chelsea stay at her residence off and on in the recent past but Chelsea had been violent with her so she didn't allow her to stay at the home anymore. Jennifer said Silas was born at Kaweah Delta Hospital in Visalia and was, "good". Jennifer was asked if Chelsea had any mental health history

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and she said she thought she had schizophrenia from drugs but wasn't sure. Jennifer talked about how Chelsea used to leave Silas at the home and would not come back for a few days without telling her.

Chelsea was contacted by Jennifer over the phone while I was at Jennifer's home. I spoke to Chelsea over the phone and asked her to come to her mom's home to speak to me and CPS. Chelsea asked multiple times why I needed to talk to her and seemed very defensive over the phone. At one time, Chelsea said we could just talk over the phone and I did not need to talk to her in person. Chelsea eventually came to the residence, after numerous calls from her mother, and spoke to CPS Social Worker Stewart and I.

Chelsea arrived at her mother's home about 45 minutes-1 hour after she was initially requested to come to the residence. Chelsea had an IV line in her arm still that she had most likely received at the hospital. Upon arrival, Chelsea immediately began to question me as to why Silas was going to be detained by CPS. I advised her it was due to her drug use, the conditions of the home as well as her mom not having legal custody of the child as she thought the note would do. Chelsea argued with me for a while and then eventually calmed down and put Silas into the CPS vehicle.

After dealing with the CPS detention of Silas, CPS Worker Stewart and I then began questioning Chelsea. While talking to her, we were standing on the sidewalk outside of her mother's home. Chelsea was not handcuffed at this time nor detained. Chelsea was asked about what happened earlier in the day at the hospital to which she became defensive and said she went in an ambulance because she was bleeding. Chelsea said upon arriving at the hospital, they couldn't find a heartbeat. Chelsea then said, "I feel like I should have an attorney right here", but did not specifically ask for an attorney. Chelsea then continued to speak and expressed her concerns as to the reasons Silas was detained.

Chelsea talked about how she really didn't want to talk on the side of the road. It was offered to Chelsea to go and talk at the Police Department or the CPS building. In front of the CPS worker and I, Chelsea asked her mother what she should do. Her mother said for Chelsea to go and talk to us then get into a program. I told Chelsea what she needed to do was get clean. Getting clean is a term used in reference to

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getting sober. Chelsea responded by saying, "it starts one day at a time man". Chelsea then said, "I haven't used yet", which I interpreted her meaning she hadn't used since she had been out of the hospital since giving birth to the stillborn baby.

I asked Chelsea why she was using when she was pregnant to which she didn't answer the question. I told Chelsea I just needed the truth. Chelsea then told me she stopped using and the drugs should have been out of her system. Chelsea admitted to using methamphetamine while being pregnant and stopped, "when she realized she couldn't have an abortion in California legally". Chelsea said this was around a month ago. I asked Chelsea again why the meth was still in her system and she said the people she hangs around do use drugs. Chelsea said she didn't, "pick up a pipe and hit it". I recognized this statement, based on my training and experience, to be describing the common way people ingest methamphetamine by smoking it through a pipe. Chelsea said she didn't, "do a line or slam", which I recognized as terms meaning to snort or inject drugs.

The CPS Worker asked Chelsea once again the last time she used and she said it was sometime in August. Chelsea then changed her story and said she had used on September 7th, just three days prior to giving birth to the still born. Chelsea admitted to smoking methamphetamine on the 7th of September.

Chelsea was asked why she left the hospital to which she said she wanted to smoke a cigarette and she didn't have any. Chelsea said her friend picked her up from the hospital and gave her a cigarette. Chelsea said she planned on going back to the hospital but didn't have a ride back. Chelsea was asked if she was feeling okay to which she said she was. She spoke about how she had eaten some food since leaving the hospital and had cried a lot. Chelsea was asked what she thought needed to happen to which she said it wasn't hard to stop using, it was hard because she doesn't always have a place to go. Chelsea spoke about how she has slept some nights in the stairwell of the Western States Inn hotel. Chelsea was asked if she had tried Hannah's House before to which she said she hasn't gone there. I know Hannah's House to be a residential treatment program in Hanford for women.

Chelsea was asked when she found out when she was pregnant and she said it was when she had to get

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stitches after being hit in the head. Chelsea said she got the stitches and found out she was pregnant at Kaweah Delta Hospital in Visalia. Chelsea did not want to disclose details surrounding the incident but said it happened in July. Chelsea said she lost a lot of blood during this incident. Chelsea said she was around 4-5 months pregnant when she found out she was pregnant and stayed in the hospital for about a day.

The conversation continued with Chelsea, the CPS Worker and I. Chelsea spoke about how she didn't leave the hospital because she wanted a cigarette but because she was overwhelmed and alone. I asked Chelsea why she kept using meth after finding out she was pregnant to which she said she didn't consistently but did a few times. Chelsea said she used meth in the past when she needed to stay somewhere for the night. I asked Chelsea what she thought her doing meth could do to her baby to which she said, "I don't want to do it no more" and she didn't know. I told Chelsea I understood why she had to use meth in order for her stay places to which she responded by saying, "I don't have to".

When asked why she smoked meth three days prior, Chelsea said she had smoked after she left her mom's house on Hume. Chelsea said she asked her mom if she could stay with her and she told her no. Chelsea said she then started walking away from the home and saw someone she used to get high with so she smoked meth. Chelsea said she was upset and her feet were swollen and, "she just wanted to sit down". Chelsea said her mom let her see the baby but she just couldn't stay at the house. Chelsea was asked about her domestic violence history to which she said she has shoved her mom's shoulder before. Chelsea was asked if she's ever seen anyone for mental health to which she said she had in Oregon. Chelsea said she was evaluated during this situation and let go from the hospital. Chelsea said she had left Minnesota from her family and was on her way to the west coast when she went through Oregon.

Chelsea spoke about how she felt Silas needed to be with his grandma. Chelsea spoke about how she made the decision to leave Silas with her mom as she knew she couldn't take care of him. Chelsea talked about how she wanted to do a program but needed to do it at her own pace not at CPS's pace.

The interviews were completed and CPS Worker Stewart and I left the scene.

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RECOMMENDATION:

Please forward this report to the Kings County DA's Office upon completion of all reports.

END OF REPORT

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SUPPLEMENT 1 - Autopsy

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On 09/11/2019 at approximately 0930 hours, I attended the autopsy of Baby Boy Becker. Dr. Jue-Rong Zhang performed the postmortem examination. I took photos as the examination was being performed. As Dr. Zhang was evaluating Becker's organs, he noticed dark purple spots or markings on his lungs. Dr. Zhang said the markings were unusual and he did not know what they were or what could have caused them to appear. Dr. Zhang took samples of Becker's lungs in an effort to further evaluate the markings.

Cause of death is pending further testing on Becker's blood and organs. All photos were downloaded and booked into evidence.com

RECOMMENDATIONS: Attach to main report.

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Prepared By:
1483 ORTEGA, ALSIE
☐ BODY CAMERA RECORDED

Date:
10/08/2019

Approved By:
1414 VALLIN, JUSTIN

Date:
10/10/2019



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SUPPLEMENT 2 - Summary of Coroner Report

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FACTS:

Zachariah Joseph Campos', Chelsea Becker's stillborn child, death was classified as a homicide and the cause of death was intrauterine fetal demise due to acute methamphetamine toxicity.

DETAILS:

On 10-23-19, I received a copy of the Final Autopsy Report from the Kings County Sheriff's Office for Zachariah Joseph Campos, Chelsea Becker's stillborn baby. I received this report from Kings County Coroner's Office Investigative Assistant Barbara Blackburn by email. The manner of death listed was Homicide. The immediate cause of death listed was Intrauterine Fetal Demise due to Acute Methamphetamine Toxicity. The report was completed by Deputy Coroner Wayne Brabant and also included the report from Jue-Rong Zhang, M.D., Ph. D. who was present during the autopsy.

The toxicology results showed the blood samples taken during the stillborn autopsy had high levels of methamphetamine. The blood sample showed a methamphetamine level of 1.18mg/L and the blood methamphetamine range listed in the report says a potentially toxic level ranges from (0.2 - 5 mg/L). The effective level for the within the blood methamphetamine range was listed as (0.01 - 0.05 mg/L).

The Blood Ethyl Alcohol level from the sample showed 0.02 grams%. The amphetamine level located within the blood sample taken from the stillborn during the autopsy showed a level of 0.11mg/L. The blood amphetamine ranges showed a potentially toxic level of (0.2 mg/L) and an effective level of (0.02 - 0.15 mg/L).

On 10-29-19 at approximately 1330 hours, I contacted the Microcorre Diagnostic Laboratory and spoke with Dr. Zhang over the phone. Dr. Zhang was asked if there was a blood ethyl alcohol range which I could reference the effective levels or the potentially toxic levels to which he said there was not to his knowledge. Dr. Zhang was asked about the blood methamphetamine level to which he said the level located in the stillborn's blood was very high and toxic. Dr. Zhang said the blood methamphetamine range listed in the toxicology report is for an adult. Dr. Zhang said he did not believe there is a published

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SUPPLEMENT 2 - Summary of Coroner Report

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blood methamphetamine range for a fetus but based on his medical experience he believed the potentially toxic level for a fetus would be much lower than an adult.

I asked Dr. Zhang to explain any abnormalities he observed during the autopsy or upon further examination. Dr. Zhang said he observed petechiae in the lungs of the fetus. Dr. Zhang explained petechiae as small bleeding dots. Dr. Zhang said upon further examination such as under the microscope, the petechiae were found to be from severe congestion in the lungs. Dr. Zhang said based upon his findings and consulting with another medical professional, he did not find the lungs to be abnormal. Dr. Zhang concluded the interview by saying the organ and tissues within the stillborn fetus had no identifiable abnormalities and he caused the death to intrauterine Fetal demise due to acute methamphetamine toxicity (minutes).

RECOMMENDATION:

Please forward this report to the Kings County DA's Office and reference the attached Kings County Coroner's Report.

END OF REPORT

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SUPPLEMENT 3 - CPS Records Review

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H1904793

FACTS:

I reviewed Kings County CPS Records and have noted certain findings in the below listed areas specifying which document the items were in.

DETAILS:

On 10-10-19, Detective Ortega and I met with Thomas Lin who is an attorney with the Kings County Counsel at his office. I had previously spoken to Thomas over the phone and requested a meeting where I could review Kings County CPS records for Chelsea Becker and her children. Detective Ortega and I reviewed the files as well as identified files in which we wanted to be provided a copy of. On 10-23-19, I received a copy of these files by email from Thomas Lin through a secured file transfer service provided through the county.

Please reference the below listed document titles and summary of information I found within the documents. It should be noted that Kings County DDA Melissa D'Morias intends to file an 827 petition to allow the documents into court based on their relevancy to the current case. The titles shown below are formatted in the way they were sent to me by Thomas Lin of County Counsel.

Sanchez JD_Redacted:

The hearing date listed on this document was 11/10/2015 and the hearing type was a Jurisdiction/Disposition/300. The document was titled as *Jurisdiction/Disposition Report* and was in the matter of Seth James Sanchez (DOB 10/18/2015). The report was created by Kings County Social Worker Lauren Vu.

The document stated CPS received an immediate referral which alleged Chelsea Becker gave birth on 10-18-15 to a child and Chelsea Becker tested positive for methamphetamine and amphetamines. Kings County Social Worker Beronica Sukhu responded to the Central Valley General Hospital in Hanford and met with a Registered Nurse who the report listed as RN Nelia. Social Worker Sukhu was told by the

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SUPPLEMENT 3 - CPS Records Review

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nurse that Chelsea had admitted to using methamphetamine 3 days prior to giving birth. The Nurse stated the Doctor had prohibited the mother, Chelsea Becker, from breastfeeding the newborn child.

The Nurse further told Social Worker Sukhu the child did not have good muscle tone and there were concerns regarding symptoms of withdrawal from drugs. The Nurse said Becker received poor prenatal care as she only had three prenatal medical visits during the last three months of her pregnancy. The Nurse further told Social Worker Sukhu she overheard Chelsea talking about how she wanted to give up the child to a neighbor who had just had a miscarriage. The Nurse further disclosed how Chelsea told her she was homeless with her boyfriend and they used drugs.

Chelsea admitted to Social Worker Sukhu she used meth on 10-15-19 and said she used a couple of times during a week. Chelsea talked about how she first started using methamphetamine in April of 2014 and stopped a few days before she learned she was pregnant on 7-7-15. Chelsea said she stopped using meth. when she moved into her mother's home when she found out she was pregnant and was there for about a month. In early August, she moved out of her mother's home which caused her to be homeless and to use drugs again. When asked by Social Worker Sukhu, Chelsea denied knowing the risks her drug use posed to her child. Social Worker Sukhu stated in her report she explained the risks to Becker, including current risks and a variety of negative effects her drug use could have on her child in the future.

On 10-31-19, I conducted follow up by phone with Social Worker Sukhu in regards to the risks and negative effects explained to Chelsea Becker surrounding her drug use. I referenced the CPS report in question and directed her attention towards the above listed sentence which talked about her explain risks to Chelsea. Social Worker Sukhu stated she could not remember specifics as to this situation besides what she had written but provided me with a statement as to what she has been trained and does commonly in this type of situation and conversation.

Social Worker Sukhu stated when dealing with investigations of drug exposed infants, she commonly gives the mother of the child education on drug use. She commonly tells the mother there may be short

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or long term effects on a drug exposed infant which may include education, developmental, behavioral or medical issues. I asked Social Worker Sukhu if this common education she provides includes drug use by the mother when she is pregnant. Social Worker Sukhu stated her education commonly includes telling the mother drug use while pregnant can cause the above listed issues to occur upon the child.

On 10-19-15, Kings County Social Worker Allyson Torres went to the Central Valley General Hospital and received drug test results regarding the newborn child, Seth Sanchez. The report noted Registered Nurse Kendra giving the social worker drug test results which showed the newborn tested positive for methamphetamine. RN Kendra talked to Social Worker Torres about how the newborn was having feeding complications and was not feeding well. She further reported the newborn to be having tonal issues of his upper body as the child's reflex appeared to be delayed which she said was indicative of prenatal drug use. Dr. Sindhu believed the newborn may still be under the influence and withdrawals can occur for days.

During the CPS process regarding Seth Sanchez, Chelsea was referred to AA/NA classes and other drug treatment programs such as Hannah's Home in Hanford. Attached to the report were the mother and newborns drug results from the hospital and referrals for Chelsea to the substance abuse programs/services. The report further noted an arrest of Chelsea's for possession of a controlled substance and under the influence of a controlled substance on 10-22-15, just a few days after giving birth.

Sanchez FR6_Redacted:

The hearing date listed on this document was 05/10/2016 and the hearing type was a 366.21(e) 6 month Review/300. The document was titled as *Status Review Report* and was in the matter of Seth James Sanchez (DOB 10/18/2015). The report was created by Kings County Social Worker Daniela Fuentes. The report recommended CPS services be terminated to the parents of Seth Sanchez, Chelsea Becker (mother) and Adam Sanchez (presumed father), and for the court to determine a permanent plan for the child. The report referenced the initial removal of Seth Sanchez occurred on 10-19-15.

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The report referenced how Kings County Social Worker Kendra Nolen-Davis referred Chelsea to a parenting class named *Celebrating Families* at Champions Recovery in Hanford on 11-3-15. On 11-4-15, Chelsea had been referred by Kings View to attend a substance abuse program at Champions. On 3-23-16, Social Worker Fuentes received a progress report from Champions Recovery which noted Chelsea had begun the enrollment process for a substance abuse program but was not fully enrolled. On 4-19-16, Social Worker Daniela Fuentes received confirmation Chelsea was attending the parenting program.

On 4-20-16, Social Worker Fuentes spoke with Champions employee Buffi Martin who was a counselor at the facility. Buffi told the Social Worker Chelsea had missed four appointments during the enrollment period and was now dropped from the substance abuse program enrollment process. Chelsea told Social Worker Fuentes she missed the appointments as she could not find transportation and that taking a bus was not convenient for her even though CPS had provided her bus passes. Chelsea further stated her mother had medical issues so she had to take care of her.

The report noted Chelsea took drug tests on 2-8-16 and 4-11-16. Both of these drug tests showed positive results for methamphetamine. The report noted Chelsea was required by CPS to attend 46 Narcotics Anonymous and Alcoholics Anonymous (NA/AA) meetings to which she provided CPS with proof she only attended 24 sessions.

The report further reported a statement made by Chelsea to Social Worker Fuentes. Chelsea spoke about how she was living at her mother's home in order to focus on herself and the services she needed to complete. Chelsea said her mother's home had been a barrier to complying with her case plan as she had to take on the responsibility of ensuring that her mother's needs are met and has to put her own needs aside. I found this statement interesting as during my contact with Chelsea in 2019, she talked about how she needed to move back home with her family as it would keep her sober and more able to live a healthy life. Attachments to this CPS report showed Chelsea's drug test results from CPS, Champions recovery enrollment update forms and NA/AA attendance sheets.

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Sanchez 26 Report_Redacted:

The hearing date listed on this document was 09-06-2016 and the hearing type was a 366.26 Selection & Implementation/300. The document was titled as *366.26 WIC Report* and was in the matter of Seth James Sanchez (DOB 10/18/2015). The report was created by Kings County Social Service Practitioner Karina R. Lopez.

The report summarized how Seth was a drug exposed infant and some of the processes CPS had taken in attempting the reunification process with his parents, Chelsea Becker and Adam Sanchez. The report recommended the court to pick a permanent plan of adoption and to terminate parental rights to Becker and Sanchez. I later learned from Kings County Social Worker Eli Wiseman that Seth was adopted out of his parents custody.

Cruz Juris Dispo_Redacted:

The hearing date listed on this document was 11/16/16 and the hearing type was a Jurisdiction/Disposition/300. The document was titled as *Jurisdiction/Disposition Report* and was in the matter of Samuel Cruz (DOB 10/16/2016). The report was created by Kings County Social Worker Emery Serrano. The report recommended the child be declared a Dependant of the court and family reunification services are not offered to the mother, Chelsea Becker. The alleged father in this report pertaining to Samuel Cruz was Henry Cruz.

On 10-18-16, Kings County CPS received a referral alleging Chelsea Becker tested positive for methamphetamine and amphetamines as well as her baby. The mother admitted to medical staff that she had used in June of 2016 and did not receive prenatal care. Social Service Worker Daniela Fuentes went to Adventist Health Birthing center and received copies of mother's and baby boy's toxicology screens from RN Dina Garcia which showed positive results for drugs.

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Becker said she found out she was pregnant in May of 2016 and scheduled appointments for prenatal care but never followed through but did take vitamins. Becker said her most recent methamphetamine use was in March of 2016, then switched and said it was June of 2016. She said she used for a whole week in March and a whole week in June. Becker was asked by Social Worker Fuentes if she was aware of the impact prenatal substance abuse could have on a child. Chelsea said she was aware that prenatal substance abuse can have a negative impact on a child, such as brain damage.

Becker was asked by Social Worker Fuentes if she did any substance abuse programs and to which she replied she was enrolled in a substance abuse program at Champions but didn't finish the program. She also thought about going to Hannah's house but didn't go because at that time she was planning to have an abortion and couldn't stay there. Becker expressed concern as to why the meth was in her son's system as she had not used in months. She believed she had a medical issue with her body retaining drugs but couldn't provide documentation showing a medical issue.

Becker cited several reasons to Kings County Social Service Practitioner Tiffany Thorpe on 10-18-16 at the hospital as to her relapse. She said her father passed away, her mother and stepfather filed for separation her brother being arrested and an illness. Chelsea said she started missing "Celebrating Families" classes because, "everything was too much". Becker told SSP Thorpe she used at least 3 times in one week in June of 2016 due to being upset about her grandmother being sick.

Becker disclosed she started using meth on her 20th birthday and weekly after that to Social Service Intern Jaclyn Garcia. She tried cocaine at 19 and smoked marijuana. She abused prescription pills at the age of 16 and did so on a daily basis for 6 months. Chelsea denied current drug use at the time of the report. Becker said she recognized her drug use impacted her child and children in that they were, "not living the life they are supposed to". She said it was not fair to her children that they did not have her in

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their lives.

Becker was asked by Kings County Social Service Intern Jaclyn Garcia as to what she would say if she was given the opportunity to address the court to which she stated, "I would like to respectfully request that the Courts reconsider the Agency's recommendation not to offer reunification services. I am sober and plan to begin enrollment processes for drug treatment, as I have now learned of the recommendation to proceed with permanency placement for my son, Samuel John Cruz. Please allow me to utilize reunification services to conquer my addiction to drugs to become the parent my child deserves. In my prior case, my experience with the Agency involved much less communicability between myself and social workers and treatment facilitators. I believe that with the team assigned to my current case, I will have the support and resources to complete drug treatment and maintain sobriety. I am confident in myself that I am dedicated to preserving my role of parenthood that I chose to accept while living an unsuitable lifestyle. I do not wish to lose yet another child to the harmful and destructive pattern of choices of addiction to drugs".

Silas Campos_Redacted:

The document was titled as *Delivered Service Log (All contacts, Services and Visits)* and was in the matter of Silas Campos (DOB 6-3-18). The document was in chronological order and documented all Kings County CPS visits, services and contacts regarding Silas as of the date I reviewed the documents.

An Investigative Narrative was listed in this document and was written by Kings County Social Worker Elissa Galo. On 6-3-18, the agency received a referral in regards to the mother and newborn child testing positive for amphetamines while at the Kaweah Delta Hospital in Visalia. On 6-3-18, at approximately 1410 hours, Kings County Social Worker Bowden met with the mother, Chelsea Becker at the Kaweah Delta Hospital. Chelsea disclosed upon being released from jail on 4-20-18, she was sentenced to house

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SUPPLEMENT 3 - CPS Records Review

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arrest and began receiving prenatal care in Hanford at *Healthy Beginnings*.

Social Worker Bowden asked Chelsea if she been prescribed any medication besides prenatal medicine during her pregnancy to which she said she was not prescribed any medication. Chelsea told the social worker she had made a personal choice to stop using drugs as she wanted to keep and raise her baby. Social Worker Bowden asked Chelsea if she was aware of the effects drugs have on her children to which Chelsea said she didn't want to answer that question as it sounded incriminating.

On 6-5-18, Kings County Social Worker Sabrina Roche went to the Kaweah Delta Hospital and spoke with Chelsea Becker. The hospital Social Worker, Amanda Silva, informed Social Worker Roche that Chelsea and he baby tested positive for amphetamines. Chelsea told Social Worker Roche she last used meth in March of 2018. Chelsea said she did not know why she was positive for amphetamines but that her grandmother had given her a water pill the week prior in which she actually did not know what was in it. Chelsea said the presumed father of the child is Steve Campos.

Chelsea told Social Worker Roche she found out she was pregnant in November of 2017. Prior to that, she had last used meth in August of 2017. According to Chelsea, her only relapse of meth happened in March of 2018. Chelsea said she took only one hit of the drugs and realized she cannot use methamphetamine anymore because she was pregnant. Chelsea told Roche she was not back in a pattern of use. Chelsea said she was triggered to use drug in March as she was around people who were using.

The report noted on 6-13-18, Chelsea Becker did a drug test in Visalia. On 6-19-18, the drug test results were received by CPS for Chelsea and she had a positive level of methamphetamine in her system.

RECOMMENDATION:

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SUPPLEMENT 3 - CPS Records Review

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Please forward this report to the Kings County DA's Office for review.

END OF REPORT

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SUPPLEMENT 4 - Chelsea's history

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On October 29, 2019 as a part of the investigations unit I helped the lead investigator on this particular case. I was tasked with finding out Chelsea's previous criminal history pertaining to drug use.

I checked our local database (RIMS) and saw Chelsea has been arrested in Hanford for HS 11550 (a); under the influence of a controlled substance, PC 647 (f); disorderly conduct under the influence of drugs, and warrants. Chelsea is also mentioned in a few other reports. The following are a few of the reports she was mentioned in:

In 2015 Officer Todd was called to 1025 N Douty St (CVG hospital) by a CPS social worker because Chelsea and her baby tested positive for methamphetamine (case #15-6351). Officer Todd spoke to Chelsea who stated she used meth two days prior to her son's birth. Officer Todd confirmed the baby had meth in its system and signed the detention form.

In 2017 investigator Sizemore received an anonymous tip there might be people selling drugs out of 11155 Hume Ave, where Chelsea and her mom are known to live (case #17-0238).

Later in 2017 Chelsea was living at a residence where two people were arrested for having a controlled substance for sale, along with possession of a controlled substance. It should be noted people at the residence stated she moved out a "few days" prior to officers completing a probation compliance check (case #17-1113).

I had dispatch run a records check or "rap sheet" on Chelsea Becker and obtained the following information. Chelsea has been arrested for HS 11550 (a); under the influence of a controlled substance a total of five times. She has been arrested for HS 11377 (a); possessing a controlled substance and also PC 647 (f); disorderly conduct under the influence of drugs once respectively. The under the influence arrests were on the following dates; 01/12/15, 02/06/15, 10/22/15, 01/12/18 and 03/06/18. The possession charge was on the same day, 10/22/15, as the above listed under the influence charge. The disorderly conduct charge was on 02/10/15.

While I was looking at the records check I noticed some of the dispositions from the above stated arrests had deferred judgment listed. One disposition stated she was given 40 days in jail and 60 months' probation (12/12/17). She was also given 143 in jail and her probation was terminated (03/07/18).

To better understand her dispositions, I called PRCS Investigator Perryman who is assigned to the Community Corrections Program at the Kings County Probation Department. Investigator Perryman put me in contact with PRCS Deputy PO J. Barnett. Barnett informed me when Chelsea was assigned to probation due to her offense she was only assigned to a probation aid who no longer works for Probation. Starting in March of 2016 and ending March of 2018 she was given a deferred entry of judgment. Meaning she did not get any jail time they tried to rehabilitate Chelsea.

In that time frame Chelsea was on Prop 36, 3 separate times and did not comply with her terms. Under prop 36 she was referred to go to Kings View Mental Health, Hannah's house and Champions. Chelsea was also referred again to Kings View for both drug and mental health evaluations to which she did not complete. I was informed Probation had a hard time being in contact with Chelsea and she would mostly only check in after she had court. In January of 2018 Chelsea had two failed or "dirty" urine

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SUPPLEMENT 4 - Chelsea's history

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examinations. I was informed due to all the above stated information Chelsea was given 143 days in jail on March 7th, 2018. After she completed this sentence she was released from probation.

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SUPPLEMENT 5 - Recommendation/Opinion

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RECOMMENDATION/OPINION

Based on interviews of all the involved parties, written statements and review of documents, I believe Chelsea Becker is guilty of the crime of California Penal Code 187(a), murder, upon Baby Boy Becker (Zachariah Joseph Campos) who was a fetus at the time of death.

I believe Chelsea Becker committed the act of using methamphetamine while pregnant, had the state of mind called malice aforethought and killed the fetus without lawful justification. I believe the act of using methamphetamine caused the death of the fetus based upon the Coroner Report labeling the cause of death as Intrauterine Fetal Demise due to Acute Methamphetamine Toxicity.

I believe Chelsea Becker acted with implied malice as she intentionally used methamphetamine while pregnant. I believe Chelsea Becker knew the natural and probable consequence of using methamphetamine was dangerous to human life and fetal life. I believe she knew this at the time she smoked methamphetamine while pregnant.

I believe Chelsea Becker deliberately acted with conscious disregard for fetal life when she smoked methamphetamine while pregnant which was the cause of death to the fetus she was bearing.

I believe, based on statements, the fetus could have been a viable human being at the pregnancy stage of 36 weeks when the stillborn birth occurred.

RECOMMENDATION:

Please forward this report and case to the Kings County DA's Office as I request the charge of murder, PC 187(a), be filed upon Chelsea Becker.

END OF REPORT

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10/31/2019

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EXHIBIT B



Kings County Sheriff-Coroner

Office of the Coroner
1470 North Drive, Hanford California 93230

Zachariah Joseph Campos

Coroner Case Number: 2019-00265

CLASSIFICATION	MANNER OF DEATH: Homicide		SUB MANNER OF DEATH: Overdose - Illicits		DEPUTY CORONER: Wayne Brabant	
	TYPE OF MEDICAL EXAMINATION: Autopsy				DATE OF DEATH: 09/10/2019	TIME OF DEATH: 0302
DECEDENT PERSONAL DATA	AGE:	SEX: Male	DATE OF BIRTH: 09/10/2019	PLACE OF BIRTH: Hanford, California, USA		HEIGHT: 19" WEIGHT: 5.12
	RACE: White	MARITAL STATUS: Never Married	HAIR: Brown	EYES: Dark	SSN:	
	SCARS, MARKS, TATTOOS: None					
PLACE OF DEATH	PLACE: Adventist Medical Center			COUNTY: Kings		
	ADDRESS: 115 Mall Drive		CITY: Hanford		STATE: California	
CAUSE OF DEATH	IMMEDIATE CAUSE: Intrauterine Fetal Demise DUE TO: Acute Methamphetamine Toxicity DUE TO: DUE TO:					
SIGNIFICANT CONDITIONS	None					
INJURY INFORMATION	PLACE OF INJURY: Unknown		INJURY AT WORK: No	DATE OF INJURY: Unknown	TIME OF INJURY: Unknown	ESTIMATED:
	ADDRESS OF INJURY: Unknown		CITY: Hanford		STATE: California	
	INJURY DESCRIPTION: Mother ingested methamphetamine while pregnant.					
IDENTIFICATION	IDENTIFICATION METHOD: Hospital Identification		IDENTIFIED BY: Deputy Putnam			
NOTIFIED	NAME: Becker, Chelsea		RELATIONSHIP: Mother			
	NOTIFIED BY: Dr. Singleton	HOW NOTIFIED: In Person		DATE: 09/10/2019	TIME: 0302	
REPORTED BY	DEATH REPORTED BY: AMC staff to Deputy Putnam		AGENCY: Adventist Medical Center		DATE: 09/10/2019	Time: 0426
ADDITIONAL INFORMATION	FUNERAL HOME: People's Funeral Chapel					

Wayne Brabant, Deputy Coroner



Kings County Sheriff-Coroner

Office of the Coroner
1470 North Drive, Hanford California 93230

Decedent: **Campos, Zachariah Joseph**

Coroner Case Number: **2019-00265**

Narrative

Recording Deputy: **Wayne Brabant**

Entered Date: **10/17/2019**

Narrative:

Zachariah Campos was a 36 week gestational fetus who died in his mother's womb on 09/10/2019. The mother, Chelsea Becker is a 25 year old female who was admitted to the Adventist Medical Center Birthing Center-Hanford for vaginal bleeding. An ultrasound was done on Chelsea and it was determined the fetus showed no signs of life. At 0302 hours, Chelsea gave birth to Zachariah. During the normal course of treatment blood work was done on Chelsea. It should be noted Chelsea's blood work showed positive for methamphetamine. Hanford Police investigated the fetal demise and learned of the methamphetamine use during there investigation. For further information refer to the Hanford Police Department's report(s).


Deputy B.Putnam responded as per his coroner duties. JK Mortuary Service also responded and transported Zachariah to the Kings County Coroner's Office for further investigation.

On 09/10/2019 at about 0930 hours, Forensic Pathologist Dr. Jue-Rhong Zhang performed an autopsy on Zachariah and toxicology samples were taken. On 10/01/2019 our office received the final autopsy report including the toxicology results. Based on the autopsy, toxicology and investigation I signed the fetal demise certificate listing the cause and manner of death.

Supplemental Entered By:

Supplemental Entered Date:

Supplemental Text:


Wayne Brabant Deputy Coroner

GARY A. WALTER, M.D., DIRECTOR
BURR HARTMAN, D.O., Ph.D.
JUE-RONG ZHANG, M.D., Ph.D.
CONSULTANTS IN PATHOLOGY
Web Site: www.microcorre.com

MICROCORRE DIAGNOSTIC LABORATORY
Diagnostic Correlation for the Practicing Physician
email: lab@microcorre.com

559.686.4000
FAX – 559.686.9432
890 CHERRY ST., TULARE, CA 93274

Decedent:

BECKER, Baby Boy

Age: 0
Sex: Male

Accession #:

A19-000260

Prosector:

Jue-Rong Zhang, M.D., Ph.D.

Autopsy Location:

Kings County Morgue

Responsible Party:

Kings County Coroner

Expired Date: 09/10/2019

Expired Time: 3:02AM

Autopsy Date: 09/11/2019

Autopsy Time: 9:30AM

Reported Date: 10/01/2019

FINAL AUTOPSY REPORT

CAUSE OF DEATH:

INTRAUTERINE FETAL DEMISE (MINUTES)
ACUTE METHAMPHETAMINE TOXICITY (MINUTES)

JZ /ima 09/11/2019



Jue-Rong Zhang, M.D., Ph.D.

TOXICOLOGY:

Specimen: Chest Blood and Vitreous Humor Samples

Complete Drug Screen: Ethyl Alcohol and Methamphetamine detected.
No other common acidic, neutral or basic drugs detected.

Blood Ethyl Alcohol = 0.02 grams% **Vitreous Ethyl Alcohol = Negative**

d-Methamphetamine = 1.18 mg/L
d-Amphetamine = 0.11 mg/L

Blood Methamphetamine Ranges
Effective Level: (0.01 – 0.05 mg/L)
Potentially Toxic: (0.2 - 5 mg/L)

Blood Amphetamine Ranges
Effective Level: (0.02 – 0.15 mg/L)
Potentially Toxic: (0.2 mg/L)

GROSS FINDINGS:**INTRODUCTION:**

I performed an autopsy on a body identified as Baby Boy Becker, age 0 (intrauterine demise, 36 weeks), **Kings County Coroner's case (19.0265)** done at the Kings County Morgue in Hanford, California on September 11, 2019. The autopsy began at 0930 hours. Witnesses include Chief Deputy Coroner Shawn McRae and Detective Wayne Brabant of the Kings County Sheriff Coroner's Office. During the course of the autopsy, blood and vitreous humor were obtained for toxicologic examination. From the anatomic findings and pertinent history, I ascribe the death to intrauterine fetal demise (minutes) due to, or as a consequence of acute methamphetamine toxicity (minutes).

NOTES AND PROCEDURES:

1. The body is described in the standard anatomical position. Reference is to this position only.
2. Where necessary, injuries are numbered for reference. This is arbitrary and does not correspond to any order in which they may have been incurred. All the injuries are antemortem, unless otherwise specified.
3. The term "anatomic" is used as a specification to indicate correspondence with the description as set forth in the textbooks of Gross Anatomy. It denotes freedom from significant, visible, or morbid alteration.

RECENT MEDICAL ARTIFACTS NOTED AT AUTOPSY:

None.

IDENTIFYING MARKS:

None.

EXTERNAL EXAMINATION:

The body is that of a well-developed, well-nourished, Caucasian fetus appearing consistent with recorded age of 36 weeks gestation. The body is examined in the unembalmed state. There is moderate rigor mortis and livor mortis. The hair is brown and normal in amount and distribution for age. The eyes are unremarkable. The oral cavity is unremarkable. The nose, ears and neck are without gross abnormalities. The thorax is symmetrical and of normal anteroposterior diameter. The abdomen is flat and without gross abnormalities. The external genitalia are those of a normal male fetus. The extremities appear normal in development and structure.

EXTERNAL EVIDENCE OF TRAUMA:

There is no external evidence of trauma.

INCISIONS:

The body is opened with the usual Y-shaped incision. The skeletal muscle is red, homogeneous and of normal bulk. The peritoneal cavity is without adhesions and the organs are normally situated. The peritoneal surfaces are smooth and glistening. The domes of the diaphragm arch normally. The pleural cavities are without significant fluid or adhesions and the pleural surfaces are smooth and glistening. The mediastinum appears normal without displacement. The pericardial sac is intact and without significant fluid or adhesions.

HEART:

The heart weighs 20 grams and is of normal shape and position. The epicardial surface is smooth and glistening and contains moderate fat. Upon sectioning, the myocardium is firm, tan-brown and homogeneous throughout. The endocardium is smooth and glistening without mural thrombi or thickening. The cardiac chambers are all of normal size and the ventricular walls of normal thickness. The papillary muscles appear normal and the chordae tendineae are thin and delicate. The valves appear normally formed and are soft and delicate. The coronary ostia are patent and the coronary arteries are normal in number and distribution. No calcific atherosclerosis noted within the coronary artery system. The pulmonary trunk and main pulmonary arteries are free of emboli or atherosclerotic plaques. The aorta is free of significant atherosclerotic change.

LUNGS:

The right lung weighs 33 grams and the left lung weighs 23 grams. The lungs appear fully expanded. Their pleural surfaces are smooth and glistening with petechiae. The lungs are composed of the usual lobes and fissures. Upon sectioning, the lung parenchyma exhibits petechiae.

LIVER:

The liver weighs 170 grams. The capsule is intact, smooth and glistening. The cut surface reveals a firm tan-brown parenchyma with a normal lobular architecture without appreciable fibrosis, nodularity or other gross lesions. The gallbladder is normal in location and shape and contains moderate bile. The wall is thin and pliable. No stones or other gross lesions are present.

KIDNEYS:

The right kidney weighs 16 grams and the left kidney weighs 12 grams. The capsules appear normal stripping with ease. Upon sectioning, the cortices are tan-brown with a distinct corticomedullary junction. No gross lesions are seen.

SPLEEN:

The spleen weighs 13 grams. The capsule is intact, smooth and glistening. The cut surface reveals a soft dark red parenchyma with normally sized Malpighian corpuscles and no gross lesions.

THYMUS:

The thymus weighs 9 grams. Upon cross sectioning, no gross abnormalities are identified.

JZ/ima 09/11/2019

MICROSCOPIC EXAMINATION:

HEART: No histological abnormalities identified.

LUNGS: Scattered severe congestion identified.

LIVER: Normal histology with congestion.

KIDNEYS: Normal histology with congestion.

SPLEEN: Normal histology with congestion.

THYMUS: No histological abnormalities identified.

Patient Name: BECKER, Baby Boy

Accession #:

A19-000260.



Case Name:

Becker,

Baby Boy

TOXICOLOGY NUMBER:

CVT-19-9030

Specimen Description:

20 ml chest blood (1 bottle) & 0.10 ml vitreous humor each labeled "Becker, Baby Boy; KCCO; 19-0265; Kings; drawn by W Brabant; 09/11/2019; (bld) 0954 hrs; (vit) 1005 hrs"

Delivered by RNC

Date 13-Sep-19

Received by Bill Posey

Date 13-Sep-19

Request: Complete Drug Screen

Agency Case # 19-0265

Requesting Agency

Kings County Coroner's Office
Attn: Acct's Payable
1470 North Drive
Hanford CA 93230

Report To

Kings County Coroner's Office
Attn: Records
1470 North Drive
Hanford CA 93230

RESULTS

Specimen: Chest Blood and Vitreous Humor Samples

Complete Drug Screen: Ethyl Alcohol and Methamphetamine detected.
No other common acidic, neutral or basic drugs detected.

Blood Ethyl Alcohol = 0.02 grams%

Vitreous Ethyl Alcohol = Negative

d-Methamphetamine = 1.18 mg/L

d-Amphetamine = 0.11 mg/L

Blood Methamphetamine Ranges

Effective Level: (0.01 - 0.05 mg/L)

Potentially Toxic: (0.2 - 5 mg/L)

Blood Amphetamine Ranges

Effective Level: (0.02 - 0.15 mg/L)

Potentially Toxic: (0.2 mg/L)

B. L. Posey

September 19, 2019

B.L. POSEY
S.N. KIMBLE
Directors

1580 Tollhouse Road
Clovis, California 93611
Phone (559) 323-9940
Fax (559) 323-7502

20

KCCO# 19-0265

DATE: 9-11-19 TIME: _____

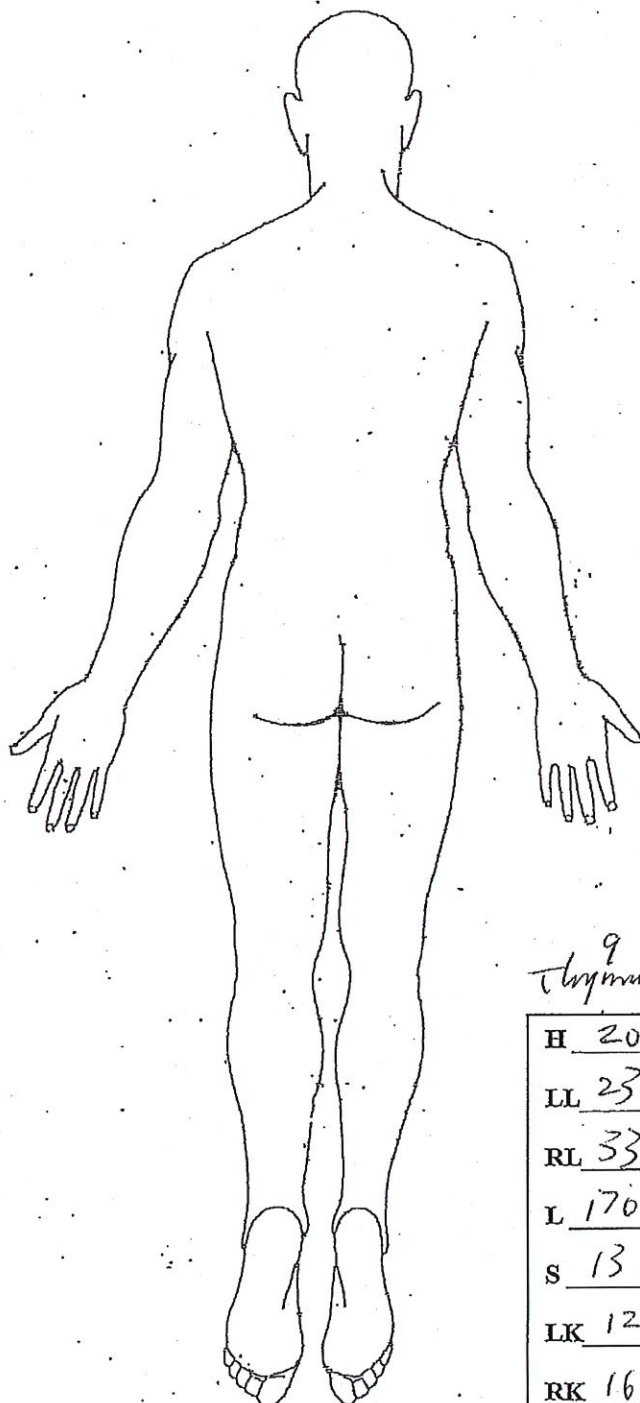
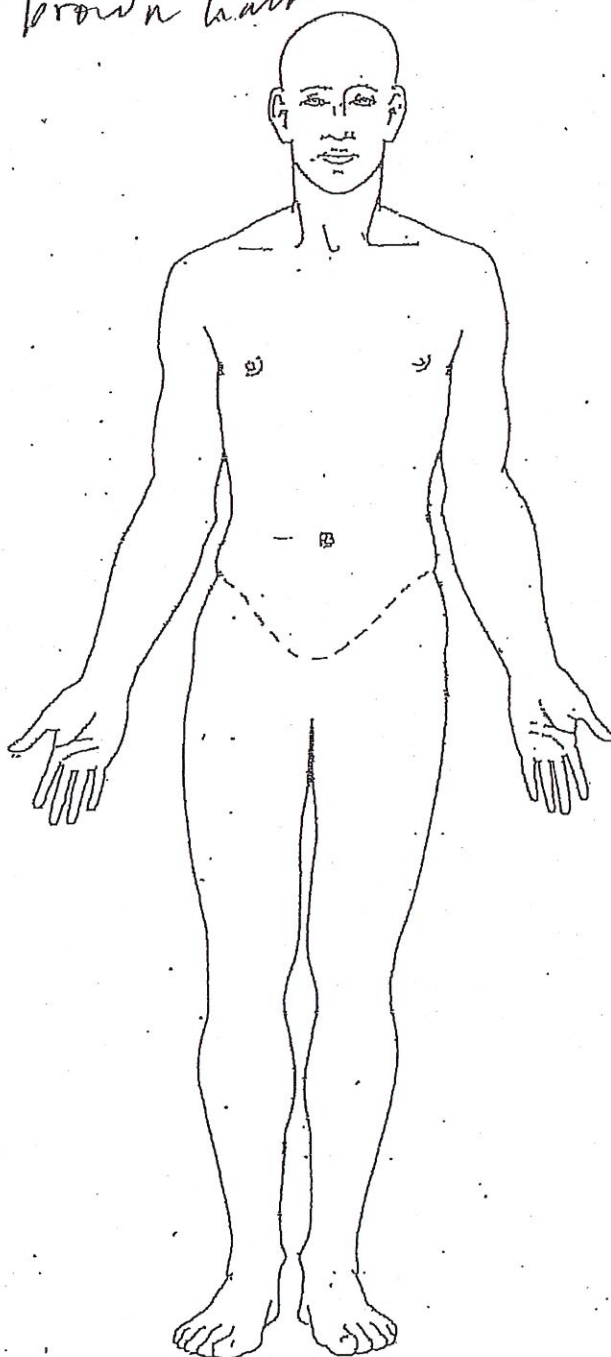
DEPARTMENT OF KINGS COUNTY CORONER

Name: Baby Boy Becker Age: 0

DOD: 9-10-19 TOD: 0302

Case Agent: Brabant

white
brown hair



9
thymus

H 20
LL 23
RL 33
L 170
S 13
LK 12
RK 16
B _____

Signature

M.D.

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA
COUNTY OF KINGS, KINGS COUNTY JUDICIAL DISTRICT
HONORABLE ROBERT S. BURNS, Judge
DEPARTMENT 6

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
Plaintiff,) No. 19CM-5304
vs.) **AMENDED**
CHELSEA BECKER,)
Defendant.)
-----)

Hanford, California

June 4, 2020.

REPORTER'S TRANSCRIPT

of

DEMURRER

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TO ANY PARTY OR PERSON.**

TIA ZWETSLOOT
C.S.R. #13263

1 ---oOo---

2 BE IT REMEMBERED, that the above-entitled
3 matter came on regularly for demurrer in the Superior
4 Court of California, County of Kings, Kings County
5 Judicial District, Department 6, before the HONORABLE
6 ROBERT S. BURNS, Judge, on June 4, 2020.

7 The People of the State of California were
8 represented by MELISSA D'MORIAS, Esq., Deputy District
9 Attorney for the County of Kings, State of California.

10 The Defendant, CHELSEA BECKER, was
11 personally present in court and was represented by her
12 counsel, JACQUELINE GOODMAN, Esq., ROGER NUTTALL,
13 Esq., DAN ARSHACK, Esq., Attorney at Law.

14 ---oOo---

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1 WHEREUPON, the following proceedings were
2 had and testimony given, to wit:

3 ---oOo---

4 THE COURT: Ms. Goodman is present with her
5 counsel -- Ms. Becker is present with her counsel
6 Ms. Goodman and Mr. Arshack. It is here for demurrer
7 as to the pleadings.

8 Is everybody ready to proceed?

9 MS. GOODMAN: Yes, your Honor.

10 MS. D'MORIAS: Yes, your Honor.

11 THE COURT: I guess my starting place is,
12 Ms. D'Morias, you will need to address why I shouldn't
13 strike your pleadings for exceeding the ten-page limit
14 under 526(g) of the local rule. I looked at the
15 minute order and I didn't see where the Court gave
16 leave to amend. But I thought I remember in the back
17 of my head we had that conversation, but I may be
18 misremembering that.

19 MS. D'MORIAS: My reply, your Honor, that
20 was submitted, or my opposition?

21 THE COURT: It was 19 pages or 20 pages. I
22 read the first ten and I stopped.

23 MS. D'MORIAS: No, your Honor, the points
24 and authorities in support of opposition to demurrer
25 and motion to dismiss, I have ten pages that I filed.

26 THE COURT: And you attached another nine or
27 ten pages to it. If you read local 526(g) it includes
28 the attachments to it.

1 MS. D'MORIAS: I am not aware of any
2 attachments that I submitted.

3 THE COURT: I had attached to it autopsy
4 reports and the such.

5 MS. D'MORIAS: I am not asking the Court to
6 consider those.

7 THE COURT: Just the first ten pages?

8 MS. D'MORIAS: Just the first ten pages of
9 my argument. I was unaware.

10 THE COURT: That is what I reviewed was the
11 first ten pages.

12 With that then, Mr. Arshack, did you want to
13 be heard as to your demurrer? I had read both sides
14 moving papers to the response and the reply.

15 MR. ARSHACK: I do, Judge. Thank you for
16 the opportunity, and I will to the best of my ability
17 not repeat everything that is in our moving papers.

18 THE COURT: Okay.

19 MR. ARSHACK: I appreciate the fact that you
20 have spent the time with them.

21 Judge, we're here to address the
22 applicability of Penal Code Section 187 to a case in
23 which the central fact is Ms. Becker having delivered
24 a stillborn fetus. In the absence of that fact I
25 think we could all agree there would be no case.

26 In California there has never been a crime
27 associated with delivering a stillborn fetus. And
28 although the prosecution suggests that the still birth

1 was caused by the act of Ms. Becker's voluntarily,
2 volitional, and consensual ingestion of a controlled
3 substance. Penal Code 187(b)(3) by its own plain
4 terms precludes the prosecution of a woman for the
5 consensual acts in which she may engage while
6 pregnant. And as I will discuss if there is any
7 reason to wonder if 187(b)(3) applies to this case,
8 the legislative history makes it completely clear that
9 in fact it is precluded.

10 But, Judge, before we go into that I wanted
11 to just start by acknowledging what I know to be the
12 heartfelt desire of the Kings County prosecutor to
13 protect fetuses and pregnant women. In communications
14 he has had with a number of members of the public, he
15 has established that fact. What we know though is
16 that based on the research and publications of every
17 major medical organization in the state and nationally
18 is that prosecuting a woman for the result of their
19 pregnancy or for their acts while pregnant does
20 nothing to protect women or their fetuses. In fact,
21 it achieves just the opposite, it endangers them.

22 Judge, I know you say you read the papers,
23 and I appreciate that, and I am -- I would like to
24 underscore that you take the time to read the material
25 attached at footnote two of our moving papers. There
26 is no research from any professional organization that
27 addresses drug use by pregnant women that suggests
28 that prosecuting women for their behavior while

1 pregnant protects fetuses. The threat of prosecution
2 though drives women away from the help and support
3 they need, and in some cases compels women to
4 terminate their pregnancies out of fear of
5 prosecution. Many prosecutors across this state and
6 across the country have realized the truth of this
7 fact, and embraced alternatives to prosecution that
8 can support women by addressing substance abuse
9 without chasing them into the shadows.

10 So let's look at Penal Code 187, and how and
11 why it was amended in 1970. The Court is familiar
12 with the Keeler case that involved a violent attack by
13 a man against a pregnant woman. He punched and kicked
14 her in her stomach, and killed the fetus. He was
15 prosecuted, and the case against him was dismissed
16 because the Court found that the homicide statute
17 didn't protect fetuses from being murdered. And so
18 the statute was amended to include fetuses by then
19 republican speaker of the assembly Craig Biddle who to
20 proposed and passed Penal Code 187 and revised Penal
21 Code 187 that included Penal Code 187(b)(3). And
22 Penal Code 187(b)(3) as we know besides a simple
23 reading of the plain language of the statute, that it
24 was intended to preclude prosecution of women for
25 their behavior while pregnant that resulted in the
26 death of their fetus. We know this for certain, and I
27 will get to in a moment why we know this for certain.

28 In 1992 the Jarique case that was available

1 in our papers and by a link in our papers involving
2 cases identical to this is a woman who used
3 methamphetamine while pregnant. Submitted to the
4 Court an affidavit, the Biddle affidavit, which you
5 also have, Judge, which explained that the amendment
6 was intended to make punishable as murder quote, "A
7 third party's willful assault on a pregnant woman
8 resulting in the death of her fetus." Judge, Craig
9 Biddle put in his affidavit that that was the sole
10 intent of Assembly Bill 816, which was the amendment
11 of Penal Code 187. And he explained that it was never
12 intended to make punishable as murder conduct by a
13 pregnant woman that resulted in the death of her
14 fetus.

15 The Jarique court acknowledging the intent,
16 and understanding the intent of Penal Code Section
17 187(b)(3), and it's clear preclusion of women from
18 prosecution from murder of a fetus for acts in which
19 they engage during their pregnancy dismissed the case.
20 And, Judge, despite the fact that the legislature drew
21 a bright line precluding exactly this kind of
22 prosecution on several occasions over the years
23 prosecutors, and here we are, have nonetheless made
24 efforts to prosecute women for the outcomes of their
25 pregnancy. After Jarique, the Jones case also noted
26 in our papers with facts identical to the Jarique case
27 was likewise dismissed for the same reason.

28 In another case the Court stated that a

1 homicide of a fetus is punishable as murder unless the
2 act was solicited, aided, abetted, or consented to by
3 the mother of the fetus. Thus said that Court, a
4 third party can commit this crime, but a birth mother
5 who necessarily would consent to her own volitional
6 actions cannot.

7 We asked in our papers that the Court take
8 judicial notice of People v. Olsen. And although of
9 course unpublished decisions we understand have no
10 precedential value. We noted because the prosecution
11 suggested that there are no appellate cases that
12 address this issue, and of course Olsen was an
13 appellate case. Every single case cited by the
14 prosecution on this issue relates to cases in which
15 third parties have murdered the fetus of a pregnant
16 woman. No cases in California have ever prosecuted a
17 woman for the death of her own stillborn infant.
18 There is a universe of difference between prosecuting
19 people who have abused women and killed their fetuses,
20 and prosecuting a pregnant woman due to her pregnancy
21 outcome. Moreover as I will elaborate in a moment.
22 The California legislature has declared the problem of
23 substance abuse disorder as an addictive problem, not
24 a chosen course.

25 No court in California has ever permitted
26 the prosecution of a woman under PC 187 who sustained
27 their pregnancy loss regardless of her acts while
28 pregnant. Some courts in other states have been

1 presented with that. There is the Jorgensen case
2 actually in New York involving a woman who was charged
3 with a homicide of her fetus because she broke the law
4 by driving without a seatbelt on and had gotten in an
5 accident, and her fetus died.

6 Likewise in Maryland there was a case of a
7 woman, the Killmon case in Maryland that involved a
8 woman who went skiing while pregnant, had an accident
9 and her fetus died. Both of those cases were
10 dismissed. And, you know, we can come up with any
11 number of other situations in which a prosecutor in
12 California or elsewhere might be inclined to try to
13 protect a fetus by prosecuting a woman after having
14 sustained a still birth. It could be someone who -- a
15 pregnant woman who illegally skateboarded on the
16 street while pregnant. A woman who gambled illegally
17 while pregnant and suffered a still birth. There is a
18 number of scenarios that a person might come up with.
19 But the fact is, the only scenario that the prosecutor
20 has suggested would be one where a woman tried to stab
21 herself in her abdomen in order to kill her fetus, is
22 a horrible fact pattern put forward by them. But in
23 fact just such a tragic case has occurred in
24 California, it is People v. Tucker, those are noted in
25 our paper as well. And there again under those
26 terrible circumstances even then the Court said, look,
27 we understand this is a tragic circumstance. In
28 People v. Tucker the boyfriend of the pregnant woman

1 said he was going to leave her unless she got rid of
2 the baby, and she shot herself in the abdomen killing
3 the baby, and was prosecuted for murder. But the
4 Court there for the same reason as we're asking you
5 here dismissed the case, because PC 187(b)(3)
6 precludes it.

7 So what the prosecution is asking you to do
8 is precisely the opposite of what the legislature
9 intended. And precisely what the Court in the Davis
10 case cited by the prosecution admonished the lower
11 courts not to do. California courts cannot
12 independently expand the reach of criminal laws in
13 California, legislatures do that. And that is because
14 as you well know, Judge, California is a code state as
15 opposed to South Carolina, the state held by the
16 prosecution in their opposition has a shining example
17 of judicial activism which is a common law state. In
18 South Carolina the judiciary is free to, and often
19 does expand laws and interprets them as they see fit.

20 Since the late 1980's over and over the
21 California legislature has considered and rejected
22 exactly the kind of expansion in the law wished for by
23 the prosecutors in this case. And they have
24 uniformly, as you no doubt are aware, rejected those
25 offers to expand criminal liability for women who use
26 drugs while pregnant.

27 Subsequent to the 1970 amendment of PC 187,
28 the legislature has addressed the issue of substance

1 abuse during pregnancy, and whether or not that should
2 be sanctioned under Section 187, or by some other
3 criminal prescription. In 1987 Senate Bill 1074 would
4 put forward to expand the definition of child
5 endangerment to cover substance abuse during
6 pregnancy, and the legislature rejected that.

7 Then in 1989 Senator Seymour put forth
8 Senate Bill 1465, which attempted to expand the
9 substance abuse during pregnancy prohibition to
10 include manslaughter. That too was rejected by the
11 legislature.

12 And finally in 1991 in Assembly Bill 650, an
13 attempt was made by the legislature to just put
14 forward a misdemeanor statute that would make
15 substance abuse during pregnancy a crime, a
16 misdemeanor. That was also rejected by the
17 legislature.

18 So what we know from that is that the
19 legislature clearly knows how to address the issues
20 raised by the prosecution in this case, and they have
21 clearly and consistently elected not to do it. And,
22 it is not for any court to do so now. Permitting this
23 sort of unconstitutional enlargement to the statute
24 sought by the prosecution would render it void for
25 vagueness and violative of Ms. Becker's due process
26 rights since no court in California has ever committed
27 the expansion in this law. The very legislature who
28 promulgated the amendment explained the intention

1 behind PC 187(b)(3) was for it to preclude the
2 prosecution of people in Ms. Becker's position, and
3 apply it only to third persons who attack pregnant
4 women. There has never been any reason for Ms. Becker
5 to have known, or could have known that her conduct
6 would subject her to prosecution under the murder
7 statute PC 187. Any expansion of the statute, what
8 this Court might be inclined to order, would be an
9 unconditional ex post facto law as applied to her.

10 Judge, I want to end by acknowledging that
11 the legislature in 2004 specifically said about how to
12 effectively treat alcohol/drug effected mothers and
13 infants. And there is a segment in the Health and
14 Safety Code chapter two, it is Section 11757.51. It
15 is fairly long, and you will be happy to know I am not
16 going to read the whole thing. But what it does,
17 Judge, is address the legislature's intention in how
18 to protect drug addicted mothers and their fetuses,
19 and it goes through a process of saying this is a big
20 problem. And then it says the -- part C, "The
21 appropriate response to this crisis of alcohol and
22 drug affected infants and mothers is prevention to
23 expanded resources for recovery from alcohol and other
24 drug dependency." They say the only sure effective
25 means of protecting the health of these infants is to
26 provide the services needed by mothers to address a
27 problem that is addicted and not chosen. It bears
28 repeating. They found that this problem is an

1 addicted problem, and not a chosen problem.

2 So I am happy to answer any questions the
3 Court might find. I think our papers are -- I hope
4 our papers are persuasive and clear. But with that I
5 thank you for the time of expressing my thoughts to
6 you.

7 THE COURT: I want to be sure I am clear,
8 when you're referring to the Tucker case, you're
9 referring to the Santa Barbara Superior Court case,
10 not an appellate case, correct?

11 MR. ARSHACK: That is correct, it was
12 dismissed and never appealed.

13 THE COURT: No need to appeal, because the
14 action of the superior court judge in that case --

15 MR. ARSHACK: I think I have to -- yeah,
16 that is correct, that one was never appealed. The
17 Olsen case was appealed, and the appeal was dismissed.

18 THE COURT: All right, thank you.

19 Ms. D'Morias, did you want to be heard?
20 You're on mute, Ms. D'Morias.

21 MS. D'MORIAS: Yes, I will reply.

22 THE COURT: I did consider not telling you.

23 MS. D'MORIAS: I know. I don't miss you,
24 your Honor.

25 THE COURT: Nobody does.

26 MS. D'MORIAS: In regards to 187(b)(3) --
27 the People's position in regards to whether it is a
28 barred prosecute a mother for the death of her fetus,

1 I note the language states that a mother may -- a
2 mother may not be held accountable if she aids and
3 abets, solicits or consents to the act. And the
4 position of the exception in the statute itself (b)(3)
5 where it falls under the exception of (b)(2) regarding
6 a physician who informs an abortion under the abortion
7 act, my understanding is in the plain reading of that
8 is a mother who attempts to commit an abortion herself
9 cannot be held liable. The fact that this was an act
10 at the same time as (b)(2), plainly reads that the
11 purpose of the statute was to prevent a mother from
12 being prosecuted from seeking an abortion. It does
13 not simply state that a mother cannot be prosecuted
14 ever. If that were the case the People would argue
15 that B would clearly state a mother cannot be
16 prosecuted, leave it at that. But the language -- the
17 additional language of aided and abetted, solicited or
18 consented to carves out the exception in its plain
19 meaning.

20 I will move on to the fact that no case has
21 ever been prosecuted in the State of California, or an
22 appellate case hasn't been heard on either doesn't
23 necessarily bar prosecution. It means that this is an
24 issue to be addressed by the Court, and at this point
25 we need to look at the law and try the case, and see
26 what law can be developed. Criminal prosecution to
27 address the issue of drug addiction is something that
28 this Court is very familiar with, as well as all over

1 the State of California. If criminal prosecution was
2 barred or not effective in treating addiction, then we
3 wouldn't have drug laws in the first place. A person
4 who is addicted to alcohol commits a DUI and kills
5 someone is still held criminally liable. A mother who
6 has been -- who has given birth to three children
7 positive for methamphetamine and heroin, and continues
8 to use causing the death of her child who was a full
9 term child, and the cause of that death is high levels
10 of methamphetamine, should be held just as liable.

11 We're not dealing with a case where
12 Ms. Becker was not aware of the circumstances of her
13 methamphetamine use. We're dealing with a case in
14 which she was notified, she was counseled, she was put
15 through drug programs. She was given every attempt
16 that this State could offer to prevent this problem,
17 and continued to use drugs. There is a public policy
18 concern to prevent children or fetuses from -- for
19 someone to protect the fetus, for the state to protect
20 the fetus, as well as preventing children from being
21 removed from the parents, which is what we dealt with
22 here, which Ms. Becker has shown she is no longer in
23 the custody of due to her drug use.

24 The public policy concern is to protect
25 children, and to protect fetuses, and we have
26 attempted to do that by giving Ms. Becker the
27 opportunity to treat her drug addiction issues. The
28 plain language of the statute does not prohibit a

1 mother from ever being prosecuted under 187. The
2 plain language of the statute is to protect a mother
3 who seeks a lawful abortion, and to protect and to
4 perform those, and that is our position.

5 THE COURT: Thank you, Ms. D'Morias.

6 MR. ARSHACK: Can I reply, Judge?

7 THE COURT: Thank you, Ms. D'Morias.

8 Mr. Arshack, since you're the moving parties
9 I give you the last word. Did you want to respond
10 anything?

11 MR. ARSHACK: Very briefly, Judge. The
12 prosecutor makes a creative effort at statutory
13 construction that is not supported by any law or
14 accepted method of evaluating statutes. The fact is
15 187(b)(3) identifies three methods by which a person
16 can be precluded from prosecution for behavior that
17 results in the death of a fetus. There is no
18 connection between 187(b)(2) and 187(b)(3). It
19 doesn't say and, it doesn't say or, they are just
20 three independent methods.

21 There is no language in 187(b)(3) that says
22 that the act must be related to obtaining an abortion.
23 It merely states as Craig Biddle said it was meant to
24 state, that the women's volitional behavior while
25 pregnant is not subject to prosecution.

26 THE COURT: If they are not related then --
27 hold on. If they're not related, then (b)(2) isn't
28 necessary, correct?

1 MR. ARSHACK: Can you say that again?

2 THE COURT: If (b)(1)(b)(2) and (b)(3) are
3 not related, there is no need for (b)(2). (B)(1) says
4 if it is an abortion pursuant to the Therapeutic
5 Abortion Act, it cannot be prosecuted. If that is the
6 case, you don't need a (b)(2) protecting physicians
7 and surgeons who have certificates from participating
8 in an abortion, because they can't be prosecuted under
9 (b)(1). If it was done pursuant to the act, it would
10 seem to me that that appears that they are read
11 together, not that they're read separately, otherwise
12 (b)(2) would be superfluous. And you're not to read
13 statutes to make language superfluous, correct?

14 MR. ARSHACK: I understand what you are
15 saying, Judge, and I am sorry for cutting you off,
16 because I can't see your mouth moving.

17 THE COURT: It is a little difficult with
18 the video.

19 MR. ARSHACK: There is any number of
20 circumstances in which a medical professional, not a
21 subject to the prescription of what is outlined in
22 187(b)(1) could act independently to assist a woman in
23 obtaining an abortion that is -- who would be
24 precluded from prosecution by virtue of (b)(2). And
25 there is nothing in (b)(2) or (b)(1) that suggests
26 that a women's behavior as defined in (b)(3) is
27 limited only to her behavior relevant to an abortion.
28 And that is what every court that has addressed this

1 issue in California has concluded.

2 THE COURT: All right.

3 MR. ARSHACK: And I might also add that the
4 -- as I have said, the legislature in looking at
5 potential amendments to legislation that would result
6 in the prosecutor's ability to prosecute for exactly
7 the conduct that they want this case to -- they want
8 Ms. Becker to be prosecuted for. The legislature has
9 over and over said, no, we don't support that sort of
10 law.

11 That is all I need to say on that, Judge. I
12 think it is clear on face, and we ask that you dismiss
13 this.

14 THE COURT: Grant the demurrer?

15 MR. ARSHACK: The demurrer, yes.

16 THE COURT: Thank you, sir.

17 All right, I note to the extent some of the
18 arguments talked about, whether or not prosecution
19 promotes the safety of the mother of the fetus, or
20 whether there are better methods providing resources
21 and other things, that really isn't the subject of a
22 demurrer, that is a policy decision for the
23 legislature to make, not for the Court. The Court's
24 job is to simply review the law as it is written, and
25 to the best it can interpret how that law is to be
26 applied. And it is really the legislature's job to
27 decide whether or not it is more effective or more
28 rational approach to provide treatment as opposed to

1 punishment, regardless of what I think might be the
2 most appropriate method or rational way to deal with
3 the issue. So that is really not before the Court.

4 In terms of Mr. Biddle, his declaration in
5 my mind tells me what he is thinking, but he is not
6 the only vote that passed the law. And I don't know
7 that it truly speaks for the entire legislature body.
8 So while it is evidence of some thought process, it
9 probably certainly was probably part of the debate.
10 It is not the ending point of that particular
11 analysis.

12 I don't see that either side has cited a
13 single California appellate case or citable authority
14 that specifically deals with whether or not Penal Code
15 Section 187 applies to the mother of a fetus. I
16 believe the defense cited People versus Moten, which
17 is a Fifth District Court of Appeals case, 229
18 Cal.App.3d, 1318, but that case really is not very
19 enlightening. That dealt with a baby that was born
20 healthy and died eight weeks later. The death was due
21 to malnutrition and dehydration, and it was
22 uncontroverted at the trial that the defendant's
23 prenatal drug use did not contribute to the child's
24 death. And that court simply held that it was error
25 to allow evidence of prenatal drug use during the
26 trial as it was irrelevant to the cause of death. And
27 therefore its prejudicial effect far outweighed its
28 probative value, and I don't disagree with that at

1 all. When I look at the plain language of Penal Code
2 Section 187, it does not appear to me to exclude its
3 application to the mother of fetus. It appears to me
4 that (b)(1), (b)(2) and (b)(3) are intended to be read
5 in connection with each other.

6 A makes it murder for the unlawful killing
7 of a human being or a fetus.

8 (B)(1) states that the murder of a fetus
9 does not apply to a procedure under the Therapeutic
10 Abortion Act, which would seem to me to be designed to
11 protect the mother for obtaining a lawful abortion.

12 (B)(2) says that it does not apply to a
13 doctor or a surgeon performing those acts if they have
14 a certification as a doctor or surgeon. That appears
15 to be placed there to protect the doctors who are
16 performing the procedure.

17 And (b)(3) appears to me to be there to
18 protect the medical personnel who assist the doctor
19 during the course of that procedure who themselves are
20 not doctors, and do not hold surgeon certificates such
21 as nurses and the such.

22 So reading it it appears to me that the
23 exception under the B section of Penal Code Section
24 187 is designed to protect the therapeutic abortion
25 that is sought, which is a constitutional right under
26 Roe versus Wade and Planned Parenthood versus Kacee.
27 Nowhere in the statute does it say that the statute
28 does not apply to the mother of a fetus. Which if

1 that was the intent of the legislature, they could
2 have easily done so.

3 And in fact, one of the citations that the
4 defense gave when I looked it up it referenced a
5 Georgia statute. And I looked at the Georgia statute,
6 and it specifically says nothing in the code section
7 shall be construed to permit the prosecution of any
8 woman with respect to her unborn child. That is a
9 very clear and correct indication that they did not
10 apply their statute to apply to the mother at all.
11 And that type of language is completely absent from
12 the California statute. The argument that applying
13 the statute to the mother would violate *expo facto*
14 laws relies on the assertion that the Penal Code
15 Section plain language states that a woman cannot be
16 prosecuted based upon her own actions. And as I
17 stated I don't read the statute that way. I think it
18 limits it much more significantly than that.

19 The argument that the application of the
20 statute constitutes a due process violation because it
21 does not provide notice to the defendant, again,
22 relies on the characterization that the statute's
23 plain language excludes a mother from its application,
24 and I don't read it that it excludes the mother in all
25 circumstances. It looks to me like it excludes the
26 mother if she sought and retained a therapeutic
27 abortion.

28 The argument that that application of the

1 statute violates the defendant's right to privacy is
2 also incorrect. Both Roe versus Wade and Planned
3 Parenthood versus Kacee specifically says that that
4 right to privacy is not unbridled, and that they both
5 specifically hold that the State has a legitimate and
6 important interest in potential life. Allows the
7 State to impose regulations to protect that life once
8 the fetus has become viable. Including the
9 prosecution of abortions necessary, except when those
10 statutes allow for the necessary abortions to preserve
11 the mother's life or health.

12 In short as stated in those decisions, the
13 mother's right to privacy is not absolute, and the
14 state has a legitimate interest in protecting the
15 potential life of a fetus.

16 There are citations by the defense in the
17 pleadings, again, the indications that do not appear
18 to me to have a bearing on the application of
19 California murder statute. The reference to Renthro
20 versus Superior Court, which is an Arizona case. And
21 Common Law versus Welch, which is a Kentucky case
22 involve facts that are significantly different from
23 those presented here. Those involve cases where a
24 mother of a child was prosecuted for child abuse when
25 their child was born positive for a controlled
26 substance, and went through withdrawals because of
27 that exposure. Both those cases are consistent with
28 California law and Roe versus Wade, where they say

1 that a fetus is not a person, so it was outside the
2 scope of the statute. And that any conduct by the
3 mother had to have occurred while the child was a
4 fetus, and therefore was also outside the statute.

5 Cite to State versus Luster, which was a
6 Georgia appellate court case, which simply indicates
7 that a child being born positive for cocaine does not
8 support a charge for distributing cocaine to that
9 child, a rather absurd novel approach by the
10 prosecutor in that case. And, again, because the
11 statute involves delivering or furnishing to another
12 person, and the fetus is not a person.

13 The reason 187 was amended after the Keeler
14 decision, was because California law recognizes a
15 fetus is not a person, and they created a new crime of
16 the fetus side to go along with homicide. It appears
17 to me by its plain language that California Penal Code
18 Section 187 does apply to a fetus, and does not appear
19 to me that the equal protection arguments apply. That
20 argument is that it creates a crime that can only
21 apply to women is wrong. The crime is a homicide of a
22 fetus, not drug use by pregnancy of a mother. Drug
23 use is simply one way to commit that homicide, but is
24 not the only way, and therefore the statute would
25 apply to more than just the mother. So at this time
26 the Court is going to deny the demurrer.

27 With that, counsel, how did you want to
28 proceed? Do you want to enter a not guilty plea,

1 enter a denial, reserve all motions at this time? I
2 think I allowed you to withdraw the not guilty plea so
3 we could pursue the demurrer.

4 What would you like to do at this time,
5 Ms. Goodman?

6 MS. GOODMAN: Yes, your Honor, at the outset
7 of the argument, but should the Court have allowed us
8 to withdraw the not guilty plea, we would like to
9 enter that at this time. Deny the special
10 allegations, enter a not guilty plea, and set the
11 matter for preliminary examination.

12 THE COURT: We'll note the not guilty plea.
13 And how about -- what is your time estimate on the
14 prelim?

15 MS. D'MORIAS: I would say for the People to
16 present our evidence it would be one full afternoon,
17 your Honor.

18 THE COURT: Ms. Goodman?

19 MS. GOODMAN: I would imagine the total
20 preliminary hearing would have a time estimate of a
21 day. Probably a five-hour estimate I think based on
22 my conversations with Ms. D'Morias to date.

23 THE COURT: I think under the current rules
24 it is 30 days. I am not sure I have five hours for
25 you in 30 days. I have --

26 MS. GOODMAN: Is it possible, your Honor,
27 for counsel and I to confer in terms of that day? We
28 probably should have done that before getting on the

1 phone.

2 THE COURT: Here is my suggestion, and I
3 haven't done the math, but I think you're still within
4 the 30 days, because I think it would have -- since we
5 withdrew the guilty plea, essentially did the
6 arraignment, it is 30 days from today's date. I have
7 one prelim on the 29th at 1:30, and right now I don't
8 have any on the afternoon of the 30th yet. If
9 everyone is willing to waive the one session rule, I
10 could set it for the 29th. And then if we don't
11 finish it on that day, I will block out the 30th and
12 we would have the rest of the afternoon on the 30th,
13 which actually I think would be within the 30 days.
14 But with a waiver of the one session rule we can get
15 it done.

16 MS. GOODMAN: I am wondering, Mr. Arshack --
17 we have counsel coming in from New York, and given the
18 quarantine it may be counsel prefers to go out
19 farther, and I would like to know whether that is --

20 THE COURT: Do you guys want to put it over
21 for a very short period for you to confirm to see when
22 you would like to do it, and come back and set dates
23 that work for everyone's schedule?

24 MR. ARSHACK: I support that idea. And my
25 question that I was going to ask you, Judge, is if we
26 waive the 30-day rule, can we push it over into July?

27 THE COURT: Sure. So the normal rule is a
28 prelim within ten days, no later than 60 days. With

1 the emergency it is now 30 and 60. If she wants to
2 enter a time waiver, give up the 30 and 60, we can
3 pick whatever dates you guys want.

4 Does that make sense?

5 MR. ARSHACK: Oh, yeah, thank you.

6 THE COURT: Ms. Goodman?

7 MS. GOODMAN: Yes. I wonder if -- I am
8 sorry to throw a wrench in it, I got distracted. What
9 if we set a pretrial for the setting date, and we
10 might want to set a pretrial a little bit sooner. And
11 Ms. D'Morias, Mr. Arshack, and Mr. Nuttall and I can
12 talk about the actual logistics of the preliminary
13 hearing so we could set a date that is realistic.

14 THE COURT: That is what we were just
15 discussing. It would require a time waiver from
16 Ms. Becker, and then we would set it for a setting
17 date fairly quickly so you guys can work out logistics
18 of doing an actual prelim.

19 MS. GOODMAN: That is my request, and I
20 believe Ms. Becker is in agreement.

21 Is that correct?

22 THE DEFENDANT: Yes.

23 THE COURT: Ms. D'Morias?

24 MS. D'MORIAS: I was going to advise counsel
25 that the investigating officer in this matter is
26 unavailable the first week of July, but we can work
27 around that when we discuss --

28 THE COURT: You can work that out in your

1 logistics conversation.

2 So, Ms. Becker, the law is a little bit
3 influx in terms of the time of when prelim is. Right
4 now it says you have a right to a prelim within ten
5 days of your arraignment. Because of the emergency
6 rules with the Covid virus they say within 30 days.
7 Do you want to enter a time waiver. Come back here on
8 a date we pick with your attorneys so they could talk?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: We'll note the time waiver.
11 When did you want to come back for your pretrial,
12 prelim setting?

13 MR. ARSHACK: I am flexible, whatever works.

14 THE COURT: I am assuming you're appearing
15 by video on that date, but probably need to be present
16 for the prelim, Mr. Arshack, is that correct?

17 MR. ARSHACK: I will appear by video for the
18 pretrial setting date.

19 MS. GOODMAN: My suggestion would be June
20 10th or the 15th.

21 MS. D'MORIAS: Either are fine with me.

22 THE COURT: Let's do the 15th.

23 Mr. Nuttall, it is June 15th.

24 MR. NUTTALL: Yes, that will be --

25 THE COURT: That will work. So, Ms.
26 Goodman, set it for June 15th at 8:15 in this
27 Department.

28 Do you have anything else, Ms. Goodman?

1 MS. GOODMAN: No, not at this time, thank
2 you, your Honor.

3 THE COURT: Mr. Nuttall, do you have
4 anything else?

5 MR. ARSHACK: I have one other thing.

6 THE COURT: Mr. Nuttall, do you have
7 anything else? I am going to take that as a no.

8 Mr. Arshack?

9 MR. ARSHACK: I did have one other thing. I
10 heard from our client yesterday that she has received
11 some papers, some legal papers served on her by the
12 prosecutor, and she had some questions about them.
13 And since I have not seen them, I wrote to the
14 prosecutor and asked if she would mind sending them to
15 me so we could advise our client concerning them.

16 MS. D'MORIAS: Mr. Arshack, I am in the
17 process of -- they are coming via USPS mail, and I
18 e-mailed them to you. They are the 827 petitions, I
19 discussed them with Ms. Goodman previously. I am
20 required to personally serve Ms. Becker, that is why
21 she received a copy of that, and I e-mailed a copy to
22 all counsel.

23 MR. ARSHACK: Just FYI, our intention is
24 until we see them and can confer with her, we won't
25 respond to them.

26 MS. D'MORIAS: And they won't be filed until
27 ten days from now, because there has to be that
28 ten-day period, they are the copies I sent.

1 THE COURT: The 827 petition is the
2 California mechanism to look into juvenile filings.

3 MR. ARSHACK: Got it, Yep.

4 THE COURT: All right, anything further from
5 either side?

6 MS. D'MORIAS: No, your Honor.

7 THE COURT: That will be the order.

8 Ms. Becker, good luck to you. Stay safe and
9 healthy, and see you back here on I think we said the
10 15th.

11 (Matter concluded.)

12 ---oOo---

I, TIA A. ZWETSLOOT, a Certified Shorthand Reporter, DO HEREBY CERTIFY:

That the foregoing and annexed pages constitute a full, true, and correct transcript of the proceedings had and testimony given in the hearing of the matter entitled as upon the first page hereof.

Dated: June 7, 2020

/S/ TIA ZWETSLOOT

Official Court Reporter Pro Tempore #13263