



AlaFile E-Notice

68-CC-2019-000719.00

Judge: DAVID CARPENTER

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT CRIMINAL COURT OF JEFFERSON COUNTY,
ALABAMA

STATE OF ALABAMA V. JONES MARSHAE DORICIA
68-CC-2019-000719.00

The following matter was FILED on 7/1/2019 10:20:57 AM

D001 JONES MARSHAE DORICIA

MOTION TO DISMISS

[Filer: WHITE JOHN MARK]

Notice Date: 7/1/2019 10:20:57 AM

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205-497-8510



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

STATE OF ALABAMA,)	
)	
v.)	Case No. CC19-719
)	
MARSHAE DORICIA JONES)	
Defendant.)	

MOTION TO DISMISS

Defendant Marshae Doricia Jones (“Ms. Jones”) hereby requests this Court enter an order dismissing the indictment (“Indictment”) on the grounds that the Indictment is based on a novel legal theory not available or supported under Alabama law and completely unreasonable and unjust.¹ In support thereof, Ms. Jones states as follows:

INTRODUCTION

Using a flawed and twisted rationale, the State of Alabama has charged a new theory of criminal liability that does not lawfully exist. The State charges Ms. Jones with intending to cause the death of her unborn child by allegedly “initiating a fight.” The State’s theory ignores the law and ignores reason. The State’s theory improperly expands on the concept of intent under established manslaughter law in order to create a new crime of transferred intent manslaughter when the Indictment does even not allege that Ms. Jones had the initial intent to kill Ms. Jemison.

Ms. Jones, a young mother with no criminal history, was shot in the stomach while five months pregnant by someone whose actions were the direct cause of the loss of Ms. Jones’ baby, yet that person was not charged by the State. While everyday Ms. Jones relives the most tragic

¹ This motion is limited to the absence of legal basis for the Indictment issued against Ms. Jones and consequently does not address any legal argument regarding the fact that Ebony Jemison (“Ms. Jemison”), the person with whom Ms. Jones allegedly “initiated a fight” and who shot Ms. Jones, according to the Indictment, was not charged with any offense by the grand jury. Although not identified in the Indictment, the other person which whom Ms. Jones allegedly initiated a fight has been identified in the public media as Ebony Jemison. Carol Robinson, *Alabama woman loses unborn child after being shot, gets arrested; shooter goes free*, AL.COM June 26, 2019, located at <https://www.al.com/news/birmingham/2019/06/woman-indicted-in-shooting-death-of-her-unborn-child-charges-against-shooter-dismissed.html>.

event in her life, the loss of her baby, Marlaysia Jones, she is now being forced by the State to fight an unprecedented attack that threatens to leave her six-year-old daughter without her mother. The prosecution of Ms. Jones is unjust and the Indictment is due to be dismissed.

ARGUMENT

I. General Rules of Statutory Construction of Criminal Statutes.

The general rules of statutory construction of criminal statutes mandate that the Indictment be dismissed. The principles of the construction of criminal statutes as recognized by the Alabama Supreme Court are as follows:

- Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.
- It is well established that criminal statutes should not be extended by construction.
- A basic rule of review in criminal cases is that criminal statutes are to be strictly construed in favor of those persons sought to be subjected to their operation, i.e., defendants.
- Penal statutes are to reach no further in meaning than their words.
- No person is to be made subject to penal statutes by implication and all doubts concerning their interpretation are to predominate in favor of the accused.
- The rule of lenity requires that ambiguous criminal statutes be construed in favor of the accused.

Ex parte Bertram, 884 So. 2d 889, 891–92 (Ala. 2003) (quotation marks and citations to authority omitted).

II. The Indictment charges that Ms. Jones intended to kill her unborn child.

Ms. Jones was indicted by a grand jury in the Bessemer Division of Jefferson County on May 1, 2019. The one count Indictment charged Ms. Jones with “manslaughter” as follows:

The Grand Jury of said county charge that, before the finding of this indictment, MARSHAE DORICIA JONES, whose name is to the Grand Jury otherwise unknown, did on or about December 4, 2018 intentionally cause the death of another person, to-wit: UNBORN BABY JONES, by INITIATING A FIGHT KNOWING SHE WAS FIVE MONTHS PREGNANT, said death being cause in a sudden heat of passion caused by provocation recognized by law, and before a reasonable time for the passion to cool and for reason to reassert itself, in violation of Section 13A-6-3(a)(2) of the Code of Alabama.

The Indictment charges that Ms. Jones *intentionally* caused the death of her unborn child because she initiated a “fight” with another person “knowing she was five months pregnant.”

Under Alabama law, “[a] person acts intentionally with respect to a result or to conduct described by a statute defining an offense, when his purpose is to cause that result or to engage in that conduct.” Ala. Code § 13A-2-2. Consequently, under the State’s tortured theory of the case as set forth in the Indictment, Ms. Jones was charged with manslaughter because she intentionally caused the death of her unborn child by initiating a fight with Ms. Jemison in the heat of passion knowing that Ms. Jemison would shoot her in her stomach with a firearm and kill Ms. Jones’ unborn child. This is an irrational theory which defies even the most basic logic and analysis.

III. Alabama law does not permit the prosecution of a woman for manslaughter relating to the death of her unborn child.

The charge of manslaughter is a type of criminal homicide codified in the Alabama Code at Title 13A, Chapter 6, Article 1. Under the facts alleged and statute cited in the Indictment, the Indictment against Ms. Jones is due to be dismissed because Alabama law does not permit the prosecution of a woman under Article 1 as it relates to her unborn child.

Specifically, Ala. Code § 13A-6-1(d)(2) states: **“Nothing in Article 1 or Article 2 shall permit the prosecution of ... any woman with respect to her unborn child.”** The words of the Code section are plain, unequivocal, and unambiguous. Therefore, under the law, those words are to be given their natural, plain, ordinary, and commonly understood meaning. Further, the

language of Alabama Code § 13A-6-1(d)(2) is not ambiguous and thus there is no room for judicial construction or expansion by the State.

The State of Alabama is not legally allowed to prosecute Ms. Jones with respect to her unborn child. As such, the prosecution of Ms. Jones for the charge of manslaughter is expressly not permitted under Alabama law. Because there is no legal or factual basis that permits a criminal prosecution against Ms. Jones for the acts alleged in the Indictment, the Indictment against Ms. Jones is due to be dismissed.

IV. Even if Alabama law permitted the prosecution of Ms. Jones in this context, the Indictment is still deficient.

The Indictment expands the criminal statutes by illegally creating a new crime of “felony manslaughter” or “transferred intent manslaughter.” The Indictment charges that Ms. Jones intended to kill her unborn child because she initiated a fight with another person. There is no allegation that Ms. Jones intended to kill the person with whom she allegedly “initiat[ed] a fight.” The Indictment expressly charges that the criminal intent is against the unborn child, not the alleged but unnamed combatant involved in the fight. The State thus appears to be asserting a newly created criminal offense of “transferred intent manslaughter” which does not exist under Alabama law. “[U]nder the common-law doctrine of transferred intent, . . . a defendant, who intends to kill one person but instead kills a bystander, is deemed the author of whatever kind of homicide would have been committed had he killed the intended victim.” *Carter v. State*, 843 So. 2d 812, 814 (Ala. 2002) (quotation marks and citation to authority omitted). Here, however, there is no “intent” to be “transfer[red]” because the Indictment does not allege that Ms. Jones had the intent to kill Ms. Jemison. Therefore, under the very allegations of the Indictment, this is NOT a case of transferred intent because the Indictment specifically alleges that Ms. Jones intentionally killed her unborn child.

Even if the expansion of transferred intent was applicable, the State would still have to follow established standards for finding transferred intent. For example, Alabama’s felony-murder rule includes the doctrine of transferred intent (Ala. Code § 13A-6-2(a)(1)) and an unintentional death resulting from the commission of certain designated felonies (Ala. Code §13A-6-2(a)(3)). Under the crime of felony murder, it must be recognized that “[t]he primary judicial qualification of the [felony-murder] rule has taken the form of a requirement of proximate or ‘natural and probable’ causation.” Ala. Code § 13A-6-2 *Commentary*. Ms. Jones never engaged in any act that was “highly likely to cause death to another person,” and that is not alleged in the Indictment. Instead, the Indictment alleges that Ms. Jones intended to kill her unborn child. This is that rare and tragic instance involving the death of an unintended victim² under circumstances where it was unlikely that another person would be killed, and the accused could not reasonably contemplate such a result.

Ms. Jones never engaged in “a dangerous crime that by its very nature is highly susceptible of causing death and which, in fact, did cause death.” *Id.* Ms. Jones did not fire the gun; Ms. Jemison did. Ms. Jones did not even have a gun. The unfortunate death of Ms. Jones’ unborn child was not the natural and probable result of Ms. Jones initiating a fight, assuming that is what happened in this instance; it was the natural and probable consequence of Ms. Jemison shooting the pregnant Ms. Jones in the abdomen.

In *Carter*, the Alabama Supreme Court explained that a conviction for provocation manslaughter does not imply a less culpable state of mind by the perpetrator than a conviction for intentional murder.

Section 13A-6-3(a)(2), Ala. Code (1975), provides that a person commits provocation manslaughter if he

² That is not what the Indictment alleges. The Indictment alleges the intentional death of an intended victim.

‘causes the death of another person under circumstances *that would constitute murder under Section 13A–6–2 [intentional murder]; except, that he causes the death due to a sudden heat of passion caused by provocation recognized by law, and before a reasonable time for the passion to cool and for reason to assert itself.*’

(Emphasis added.) Thus, when the jury finds a person guilty of provocation manslaughter, the person is deemed guilty of intentional murder (‘under circumstances that would constitute murder under § 13A–6–2’), but the conviction is reduced to manslaughter because a legally recognized mitigating circumstance (provocation) has been found to exist. [footnote omitted]

The Commentary to § 13A–6–3(a)(2) explains that ‘the law, recognizing the frailties of man and his loss of reason and control in certain provocative situations *overlooks or forgives* the ‘malice’ and mitigates the homicide from murder to a lesser grade.’ (Emphasis added.) The ‘malice,’ or intent, is not negated, but merely forgiven because of the circumstances. As the Court of Criminal Appeals has itself observed in the past: ‘Heat-of-passion provocation implies that [the defendant’s] actions were intentional but that, because of the circumstances, they were excused by law.’ *McGriff v. State*, [Ms. CR–97–0179, September 29, 2000] — So.2d —, — (Ala. Crim. App. 2000). In fact, as the Wisconsin Supreme Court has succinctly stated: ‘[M]any such homicides [i.e., those resulting from heat-of-passion provocation] do involve an actual intent to take the life of another. This very intent is typically the result of the heat of passion.’ *State v. Lee*, 108 Wis.2d 1, 9, 321 N.W.2d 108, 112 (1982). In sum, provocation does not negate intent. [footnote omitted]

Carter v. State, 843 So. 2d at 815 (emphasis in original). The Alabama Supreme Court in *Carter* expressly stated that the doctrine of transferred intent is not favored:

It is worth noting that the Commentary to § 13A–6–2 strongly discourages any use of the doctrine of transferred intent:

Under the Criminal Code, there is no need for the anachronistic rule of ‘transferred intent’

The concept may serve a useful purpose in the tort field but has no proper place in criminal law. [Transferred intent] is obviously only a fiction, or a legal conclusion, to accomplish the desired result of liability.... [I]n the field of crime this concept has the vice of being a misleading half-truth, often given as an improper reason for a correct result

Where the actor intentionally or knowingly does an act that is highly likely to cause death to another person, and as a natural and direct result another person is killed, though not the person subjectively

intended to be killed ..., the actor is guilty of murder ... because he intended 'to cause the death of another person'

Carter v. State, 843 So. 2d at 815–16. The State's effort to charge a newly created crime is therefore all the more unfounded and ill-considered given the Supreme Court's view that the transferred intent doctrine is disfavored. Under the basic principles of criminal law and the stated view of the Alabama Supreme Court, the transferred intent doctrine cannot be expanded or construed to include situations not inherently embraced within the doctrine's original meaning - such as the situation in the case of Ms. Jones.

Under the allegations of the Indictment, Ms. Jones' heat-of-passion-provocation was directed at the person (Ms. Jemison) with whom Ms. Jones allegedly initiated a fight. It defies logic and reason to believe that Ms. Jones legal provocation was caused by her unborn child. The legal provocation was caused by Ms. Jemison's actions toward Ms. Jones or originated in negative feelings between Ms. Jones and Ms. Jemison. The bottom line is that the doctrine of transferred intent is not applicable to a charge of manslaughter and has never been recognized as such by Alabama statutory or case law. Furthermore, it defies reason and logic to believe that Ms. Jones should have known that Ms. Jemison would use deadly physical force against her and thereby cause the death of her unborn child.

CONCLUSION

For the above-stated reasons, this unreasonable, irrational, and unfounded Indictment is fatally deficient and is due to be dismissed. Ms. Jones respectfully requests that this Court dismiss the Indictment with prejudice and without delay. Should this Court not dismiss the Indictment in short order, Ms. Jones respectfully reserves the opportunity to file additional or supplemental motions to dismiss after she has received the State's responses to her forthcoming motion for a more definite statement and other motions which will be filed at the appropriate time.

Respectfully submitted this the 1st day of July, 2019,

/s/ J. Mark White

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of July, 2019, I filed the foregoing document using the AlaFile system which will send electronic notification of such filing to all counsel of record.

/s/ Hope S. Marshall

Of Counsel