

LAW REVIEW

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IS STRANGLING OF GIRLFRIEND AND HER FETUS A DOUBLE MURDER?

Last month the Sacramento-based Court of Appeal decided a case involving the killing of a mother and her fetus. Interesting topic.

Strangling

On July 23, 2006, defendant Timon Joel Pool strangled his girlfriend, Lillian Best, to death. And so starts the Court of Appeal's matter-of-fact Opinion.

The forensic pathologist discovered that Best was in the early stages of pregnancy, about 12 weeks. However, Best was obese and her pregnancy was "not something obvious externally."

Pool claimed not to have known Best was pregnant until he was told while in the holding cell in court, at which point he was "absolutely devastated" he had killed his unborn child. Like that would have made a difference.

Multiple-Murder Charge

Pool was charged with willfully, unlawfully, and with malice aforethought murdering Lillian Best and her fetus with a multiple-murder special-circumstances allegation. The prosecutor stressed to the jury that Pool could be found guilty of murder of the fetus on an implied malice basis even if he did not know his girlfriend was pregnant. Pool was found guilty of first-degree murder of Best and

second degree murder of the unborn fetus, with a special finding of special circumstances for a multiple-murder. Life sentence Pool.

I Didn't Know

Pool appealed his conviction arguing he could not be found guilty of murder of the fetus because he did not even know Best was pregnant; i.e., he had no malice, implied or otherwise, concerning the fetus.

Is a Fetus a Child?

I selected this case for the *Law Review* thinking it would have an interesting if not controversial discussion of when a fetus becomes a person, a fascinating topic but something better left for friends not to debate. *People v. Pool* did not have any such discussion because the penal code uses the word "fetus". Murder of a fetus is a crime regardless of the gestational age of the fetus.

People v. Taylor

The Court of Appeal followed murder-of-a fetus law set out by the California Supreme Court in *People v. Taylor*. In that remarkably similar case, the defendant shot his former girlfriend, who unknown to him, was pregnant.

The Supreme Court found the defendant guilty of both murders, ruling that "when a defendant commits an act, the natural consequences of which are dangerous to human life, with a conscious disregard for life in general, he acts with implied malice towards those he ends up killing. There is no requirement that the defendant specifically know of the existence of each victim."

In other words, it does not matter that Pool did not know of his girlfriend's pregnancy.

Shot v. Strangling

I love Pool's argument that *People v. Taylor* involved the *shooting* of a girlfriend, while his case involved the strangling of his girlfriend, and therefore was completely different. That's some aggressive lawyering.

But on closer look, Pool's argument was clever. Unlike shooting someone, which is potentially lethal to anyone who gets in the way, the act of strangling a person is not inherently dangerous to anyone other than the person being strangled. Strangling indicates only a conscious disregard for that life, not a conscious disregard for life in general as the Supreme Court wrote.

After having a hearty laugh reading Pool's brief, the Court of Appeal found Pool guilty of murder of the fetus. All that is required for implied malice is conscious disregard for life in general.

Of course this is a good case - sentenced to state prison for life without the possibility of parole.

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