

F I L E D
APR - 3 2014

STATE OF MISSISSIPPI

VS.

CAUSE NO. 2007-0031-CR1

Michelle M. Salazar
Circuit Clerk

RENNIE GIBBS

ORDER

This matter is before the Court on the Defendant's Motion to Dismiss the Indictment. The Court after careful consideration and thorough review finds that the Mississippi Supreme Court's opinion in *Buckhalter v. State*, 119 So. 3d 1015 (Miss.2013),¹ requires that this indictment be dismissed without prejudice.

Law

The Mississippi Supreme Court in *Buckhalter* was presented with a similar case to the one *sub judice*. The circuit judge dismissed an indictment against the defendant charging her with manslaughter for the death of her unborn child.² *Id.* at 1017. The State of Mississippi appealed the circuit court's dismissal to the Supreme Court. The Mississippi Supreme Court upheld the circuit court's dismissal of the manslaughter indictment and held that "she could have been prosecuted under Section 97-3-3(1) which states:

Any person *wilfully* and knowingly causing, by means of any instrument, medicine, *drug* or other means whatsoever, any woman pregnant with child to abort or miscarry ... shall be guilty of a felony unless the same were done by a duly licensed, practicing physician ...

¹ The opinion was authored by Presiding Justice Dickenson and was joined by all other remaining Justices. Justice King wrote a concurring opinion that was joined by Justices Kitchens and Chandler.

² In the *Buckhalter* case the mother of the stillborn allegedly took some type of illegal drug during the pendency of her pregnancy. *Buckhalter*, at 1017.

Id. at 1018. Moreover, the Court further held that under the facts of the case before the Court that the defendant could also be indicted for murder under Section 97-3-19(1)(d), which provides:

The killing of a human being without the authority of law by any means or in any manner shall be murder ... (d) when done with deliberate design to effect the death of an unborn child.

Id.

In the case *sub judice*, the Gibbs has been indicted under Mississippi Code Annotated Section 97-3-19(1)(b) which provides:

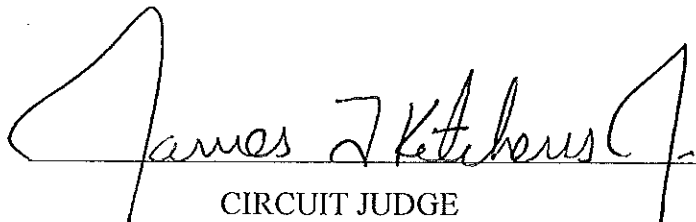
[w]hen done in the commission of an act eminently dangerous to others and evincing a depraved heart, regardless of human life, although without any premeditated design to effect the death of any particular individual;

Gibbs was indicted prior to *Buckhalter* and the law was unclear in Mississippi as to the appropriate charge, if any, to be levied when a pregnant women allegedly consumed illegal drugs and allegedly caused the death of her unborn child.³ Based upon the Mississippi Supreme Court's holding in *Buckhalter, supra*, this question has now been answered as set forth at 115 So. 3d at 1018. Accordingly, pursuant to the Mississippi Supreme Court's ruling this case for depraved heart murder is dismissed without prejudice.

SO ORDERED, THIS THE 2ND DAY OF APRIL, 2014.

FILED
APR - 3 2014

Michela M. Salazar
Circuit Clerk


CIRCUIT JUDGE

³ In fact, this Court allowed the defendant to seek an interlocutory appeal of this Court's earlier denial of her motion to dismiss the indictment. The Mississippi Supreme Court granted certiorari in her case and kept the case for a period of time and then dismissed its grant of certiorari as improvidently granted. Thereafter, the Mississippi Supreme Court decided *Buckhalter*.