

ORIGINAL



**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

THE STATE OF OKLAHOMA,



Appellant,

v.

KEARLINE DATARA ANDERSON,

Appellee.

) **NOT FOR PUBLICATION**

) **No. S-2019-570**

) **FILED**
) **IN COURT OF CRIMINAL APPEALS**
) **STATE OF OKLAHOMA**

SEP 24 2020

**SUMMARY OPINION JOHN D. HADDEN
CLERK**

KUEHN, VICE-PRESIDING JUDGE:

On August 21, 2018, Kearline Datará Anderson, Defendant, was charged with one count of Child Neglect in Rogers County Case No. CF-2018-546. The State alleged that Anderson failed “to protect her unborn child from the use/possession of controlled dangerous substance, to wit: Amphetamines, and or Opiates.” At the conclusion of the preliminary hearing held May 15, 2019, after the State rested, Anderson demurred to the evidence. On May 31, 2019, the District Court of Rogers County, the Honorable Lara M. Russell, Special Judge, after allowing the parties to brief the issue, sustained Anderson’s demurrer, finding that 21 O.S. § 843.5(C) was not applicable when the alleged victim of the neglect is an unborn child.

The State appealed the ruling to the district court and Judge Russell's ruling was affirmed by the District Court of Rogers County, the Honorable Stephen R. Pazzo, Jr., District Judge.

It is from this ruling that the State appeals, raising the sole proposition that the district court's order was erroneous in holding, that pursuant to 21 O.S. § 843.5, an unborn child is not considered a person for purposes of a child neglect charge. Pursuant to Rule 11.2(A)(4), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020), this appeal was automatically assigned to this Court's Accelerated Docket. The propositions and issues were presented to this Court in oral argument on August 20, 2020, pursuant to Rule 11.2(E).

Based on this Court's decision in *State v. Green*, 2020 OK CR 18, ___ P.3d ___, the district court's ruling granting Anderson's demurrer is **REVERSED**. We have determined that unborn children are included in the definition of "child" for purposes of prosecution for child neglect. 21 O.S. § 843.5(C). As noted in *Green*, "[I]nterpreting the child neglect statute to allow others to be prosecuted for bringing harm to an

unborn child while shielding from criminal liability those very same harmful acts when committed by the mother would frustrate the very purpose of the statute, which is to protect children who cannot protect themselves". *Green* at ¶ 14, ___ P.3d at ___.

This matter is **REMANDED** to the District Court of Rogers County for further proceedings consistent with this Court's decision in *State v. Green*.

DECISION

The order granting the defendant's demurrer to the child neglect charge filed in Rogers County District Court Case No. CF-2018-546 is **REVERSED**. The matter is **REMANDED** to the District Court of Rogers County for further proceedings consistent with this Court's decision in *State v. Green*, 2020 OK CR 18, ___ P.3d ____. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF ROGERS COUNTY
THE HONORABLE STEPHEN R. PAZZO,
DISTRICT JUDGE**

APPEARANCES AT TRIAL

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OPINION BY: KUEHN, V.P.J.:

LEWIS, P.J.: CONCUR
LUMPKIN, J.: CONCUR
HUDSON, J.: CONCUR
ROWLAND, J.: CONCUR

RA/F

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