THOMAS J. MILLER
ATTORNEY GENERAL

THOMAS H. MILLER
DEPUTY ATTORNEY GENERAL

Iowa Department of Justice

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tmiller@ag.state.ia.us

May 23, 2013

The Honorable Bob Goodlatte
House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515-6216

The Honorable Trent Franks
House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515-6216

Dear Congressmen:

I am responding to the letter dated May 7, 2013, which you sent to Iowa Attorney General Tom Miller.

Let me assure you that General Miller and this office were thoroughly disgusted with the facts revealed in the Kermit Gosnell case. Gosnell has rightly been called a "back-alley butcher," operating a "house of horrors." Prosecutors and jurors in Pennsylvania did their duty and Gosnell was convicted of three counts of first-degree murder for killing babies after botched abortions and involuntary manslaughter for the death of a woman who was seeking an abortion. He now awaits his punishment.

The thrust of your letter is to inquire whether Iowa's laws are strong enough to protect against these types of murders. The short answer is "yes." As discussed below, the Iowa legislature has enacted laws to outlaw these types of murders. Moreover, Iowa has an effective criminal justice system with skilled law enforcement officers, experienced prosecutors, and judges and jurors committed to doing justice.

Turning to your specific questions, let me first point out that Iowa has a county-based criminal justice system. County attorneys in Iowa's ninety-nine counties have original jurisdiction to prosecute criminal offenses. This Office only prosecutes crimes after a referral from a county attorney due to a conflict-of-interest or a lack of resources. Therefore, some of your inquiries concerning prosecutorial practices are more properly addressed to Iowa's county attorneys. With that said, we have done our best to collect the information you request.

- With respect to questions #1 and #2, Iowa has two statutory provisions to protect newborns delivered alive in the process of abortion:

  Iowa Code section 707.9 Murder of fetus aborted alive. A person who intentionally kills a viable fetus aborted alive shall be guilty of a class "B" felony.

  Iowa Code section 707.10 Duty to preserve the life of the fetus. A person who performs or induces a termination of a human pregnancy and who willfully fails to exercise that degree of professional skill, care, and diligence available to preserve the life and health of a viable fetus shall be guilty of a serious misdemeanor.

In Iowa, crime statistics and information are maintained by the Division of Criminal and Juvenile Justice Planning ("CJJP"). CJJP indicates that one case has been prosecuted under section 707.9 and one case prosecuted under section 707.10. Information about these cases, which we obtained from Iowa Courts On-Line and the relevant county clerk of court, is attached. (Attachments 1 and 2)

- With respect to question #3, the statute of limitations for murder under section 707.9 is the same as other homicide offenses.

- With respect to question #4, as mentioned, this Office does not prosecute criminal cases unless referred by a county attorney. No cases of this nature have been referred to this Office.

- With respect to question #5, Iowa has statutory provisions regarding feticide and partial birth abortions:

  Iowa Code section 707.7 Feticide
  1. Any person who intentionally terminates a human pregnancy, with the knowledge and voluntary consent of the pregnant person, after the end of the second trimester of the pregnancy where death of the fetus results commits feticide. Feticide is a class "C" felony.
  2. Any person who attempts to intentionally terminate a human pregnancy, with the knowledge and voluntary consent of the pregnant person, after the end of the second trimester of the pregnancy where death of the fetus does not result commits attempted feticide. Attempted feticide is a class "D" felony.
  3. Any person who terminates a human pregnancy, with the knowledge and voluntary consent of the pregnant person, who is not a person licensed to practice medicine and surgery or osteopathic medicine and surgery under the provisions of chapter 148, commits a class "C" felony.

4. This section shall not apply to the termination of a human pregnancy performed by a physician licensed in this state to practice medicine or surgery or osteopathic medicine or surgery when in the best clinical judgment of the physician the termination is performed to preserve the life or health of the pregnant person or of the fetus and every reasonable medical effort not inconsistent with preserving the life of the pregnant person is made to preserve the life of a viable fetus.

Iowa Code section 707.8A Partial-birth abortion prohibited — exceptions — penalties.

1. As used in this section, unless the context otherwise requires:
a. "Abortion" means abortion as defined in section 146.1.
b. "Fetus" means a human fetus.
c. "Partial-birth abortion" means an abortion in which a person partially vaginally delivers a living fetus before killing the fetus and completing the delivery.
d. "Vaginally delivers a living fetus before killing the fetus" means deliberately and intentionally delivering into the vagina a living fetus or a substantial portion of a living fetus for the purpose of performing a procedure the person knows will kill the fetus, and then killing the fetus.
2. A person shall not knowingly perform or attempt to perform a partial-birth abortion. This prohibition shall not apply to a partial-birth abortion that is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury.
3. This section shall not be construed to create a right to an abortion.
4.a. The mother on whom a partial-birth abortion is performed, the father of the fetus, or, if the mother is less than eighteen years of age or unmarried at the time of the partial-birth abortion, a maternal grandparent of the fetus may bring an action against a person violating subsection 2 to obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the partial-birth abortion.
b. In an action brought under this subsection, appropriate relief may include any of the following:
(1) Statutory damages which are equal to three times the cost of the partial-birth abortion.
(2) Compensatory damages for all injuries, psychological and physical, resulting from violation of subsection 2.
5. A person who violates subsection 2 is guilty of a class "C" felony.
6. A mother upon whom a partial-birth abortion is performed shall not be prosecuted for violation of subsection 2 or for conspiracy to violate subsection 2.
7.a. A licensed physician subject to the authority of the board of medicine who is accused of a violation of subsection 2 may seek a hearing before the board on whether the physician's conduct was necessary to save the life of the mother

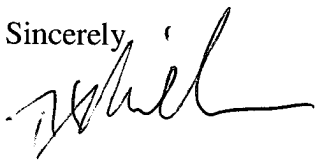
whose life was endangered by a physical disorder, physical illness, or physical injury.

b. The board's findings concerning the physician's conduct are admissible at the criminal trial of the physician. Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty days to permit the hearing before the board of medicine to take place.

Information provided by CJJP indicates that no criminal cases have been prosecuted under section 707.7 and no criminal cases have been prosecuted under 707.8A

Please let us know if you need additional information.

Sincerely,



THOMAS H. MILLER
Deputy Attorney General

THM:cw

Enclosures

Filings
Title: STATE VS BOWE, CAROLE LYNN
Case: 07821 FECR216870 (SCOTT)
Citation Number:

Event	Filed By	Filed	Create Date	Last Updated	Action Date
OTHER EVENT		10/16/2003	10/16/2003	10/16/2003	
Comments: CK 423536 1/19/01 CAROLE LYNN BOWE $15.60 SENT TO AGGREGATE					
OTHER EVENT		02/22/2000	02/28/2000	02/28/2000	
Comments: INSTITUTIONAL PLAN PAYMENT RE: 20%					
OTHER ORDER	ALPERS BOBBI	03/29/1999	04/01/1999	04/01/1999	
Comments: SUPPLEMENTAL ORDER FROM INSTITUTION;					
OTHER ORDER	NAHRA JOHN A	01/27/1999	01/29/1999	01/29/1999	
Comments: RESTITUTION PLAN OF PAYMENT AND ORDER; COURT COSTS, CORRECTIONAL FEES $20.00;					
OTHER EVENT		01/27/1999	02/01/1999	02/01/1999	
Comments: RECEIPT OF WARDEN FOR PRISONER					
PLAINTIFF'S WITNESS		01/19/1999	01/29/1999	01/29/1999	
Comments: $9.80 KIMBERLY DELOOSE #310790 $9.80 DON DELO0SE #310791					
~~PLAINTIFF'S WITNESS~~		~~01/19/1999~~	~~01/28/1999~~ *ENTERED IN ERROR*	~~01/28/1999~~	
~~*Comments:* $9.80 KIMBERLY DELOOSE #310790 $9.80 DON DELO0SE #310791~~					
RETURN OF SERVICE - OTHER		01/19/1999	01/27/1999	01/27/1999	
Comments: (1) $41.50; MITT TO PRISON					
OTHER EVENT		01/19/1999	01/26/1999	01/26/1999	
Comments: REQUEST FOR REIMBURSEMENT OF CORR FEES FOR 2 DAYS; $20.00 FROM 1/13/99 TO 1/15/99					
VICTIM NOTIFICATION FILED		01/14/1999	01/14/1999	01/14/1999	

Comments: (2)

ORDER OF DISPOSITION	HAVERCAMP JAMES R	01/13/1999	01/26/1999	01/26/1999

Comments: DEFT WITHDRAWS HER PREIOUS PLEA AND ENTERS PLEA OF GUILTY TO CTS VII & VIII OF INTENTIONALLY KILLING A VIABLE FETUS ABORTED ALIVE PURSUANT TO PLEA AGREEMENT, WHICH IS ACCEPTED AT THIS TIME; COURT ACCEPTS DEFT'S PLEAS; DEFT ADVISED RIGHT TO FILE A MOTION IN ARREST OF JUDGMENT AND WAIVES SAME; COURT IN RECEIPT OF PSI; CT VII DEFT SENT 25 YRS ADULT CORR; CT VII DEFT SENT 25 YRS ADULT CORR; CT VIII WILL COMMENCE AT THE EXPIRATION AND BE CONSECUTIVE TO THE SENTENCE IMPOSED CT VII; REASONS FOR THE SENTENCE WERE STATED ON THE RECORD BY THE COURT; APPEARANCE BOND EXONERATED; DEFT ADVISED RIGHT TO APPEAL; NO BOND, FORCIBLE FELONY; CONSENT TO WAIVE DELAY IN SENTENCING; MEMO OF PLEA AGREEMENT

OTHER ORDER	HAVERCAMP JAMES R	01/13/1999	01/26/1999	01/26/1999

Comments: TO DISMISS CTS I, II, III, IV, V AND VI ON AMENDED & SUBSTITUTED TRIAL INFO ONLY; DEFT'S BAIL IS EXONERATED; COSTS TAXED TO DEFT

MOTION		01/13/1999	01/26/1999	01/26/1999

Comments: TO DISMISS CTS I, II, III, IV, V & VI ON AMENDED & SUSBSTITUTED TRIAL INFO ONLY

PRE SENTENCE INVESTIGATION REPORT PSI		01/13/1999	01/26/1999	01/26/1999
AMENDED TRIAL INFORMATION		01/13/1999	01/26/1999	01/26/1999
OTHER ORDER	HAVERCAMP JAMES R	01/13/1999	01/26/1999	01/26/1999

Comments: TO AMEND TRIAL INFORMATION ADDING

CTS VII & VIII ONLY

OTHER EVENT		01/13/1999	01/26/1999	01/26/1999

Comments: APPLICATION FOR AMENDMENT OF

TRIAL INFORMATION

OTHER ORDER	DARBYSHIRE J HOBART	01/05/1999	01/05/1999	01/05/1999

Comments: STATES APPL FOR APPT OF PETER ISHIBASHI TO

SERVE AS SPECIAL ASST CO ATTY GRANTED;

APPL FOR DEFT FOR APPT OF IL ATTY DENIED

OTHER ORDER	DARBYSHIRE J HOBART	12/24/1998	12/28/1998	12/28/1998

Comments: PTC RESCH FOR 4/2/99; PER RULING

ON DEFN'S MOTION FOR EXTENSION OF

TIME AND APPLICATION TO RESCHD

PRETRIAL CONF.

OTHER ORDER	DARBYSHIRE J HOBART	12/24/1998	12/28/1998	12/28/1998

Comments: RULING ON MOTION FOR DISCOVERY

PURSUANT TO RULE 13(2)(A; COURT FINDS

THAT STATE SHOULD PRODUCE THE FOLLOWING

TO DEFN; COPIES OF ANY WRITTEN STATEMENTS;

ANY EXCULPATORY EVIDENCE; ANY REPORTS

PREPARED BY EXPERT WITNESSES; DEFN SHALL

BE ALLOWED TO EXAMINE ALL PYSCIAL EVIDENCE

HELD BY STATE; THE RECORD OF ANY FELONY

CONVICTION BY ANY WITNESS THE STATE INTENDS

TO CALL AT TRIAL

OTHER ORDER	DARBYSHIRE J HOBART	12/24/1998	12/28/1998	12/28/1998

Comments: RULING ON MOTION TO SUPPRESS AND IN LIMINE LIMINE; IS DENIED BY COURT

MOTION		12/22/1998	12/23/1998	12/23/1998

Comments: DEFT'S MOTION FOR DISCLOSURE OF SPECIFIC IMPEACHMENT AND EXCULPATORY IMFORMATION

OTHER EVENT		12/22/1998	12/23/1998	12/23/1998

Comments: RESISTANCE TO APPLICATION FOR APPOINTMENT OF COUT-OF-STATE ASSISTANT COUNTY ATTY

ORDER SETTING HEARING	NAHRA JOHN A	12/21/1998	12/22/1998	12/22/1998

Comments: 12/23/98 3:00; RESCHEDULED FOR APPLICATION FOR APPOINTMENT OF TEMPORARY ASSISTANT COUNTY ATTY

ORDER SETTING HEARING	NAHRA JOHN A	12/17/1998	12/18/1998	12/18/1998

Comments: 12/30/98 2:00; RE: PLANTIFF'S APPLICATION FOR APPOINTMENT OF TEMPORAY ASSISTANT COUNTY ATTY

OTHER EVENT		12/17/1998	12/18/1998	12/18/1998

Comments: APPLICATION FOR APPOINTMENT OF TEMPORAY ASSISTANT COUNTY ATTY

OTHER EVENT		12/16/1998	12/18/1998	12/18/1998

Comments: STATE'S RESPONSE TO DEFENDANT'S MOTION PURSUANT TO RULE 13.2(A) AND FOR FURTHER DISCOVERY; INTERVIEW TRANSCRIPT W/DEFT ATTACHED

OTHER EVENT		12/16/1998	12/18/1998	12/18/1998

Comments: STATE'S ANSWER TO DEFENDANT'S MOTION FOR DISCLOSURE OF EXPERTS

OTHER APPLICATION		12/09/1998	12/09/1998	12/09/1998

Comments: APP TO RESCHEDULE PRETRIAL

MOTION		12/09/1998	12/09/1998	12/09/1998
Comments: FOR DISCLOSURE OF EXPERTS				
MOTION		12/09/1998	12/09/1998	12/09/1998
Comments: TO SEVER				
MOTION		12/07/1998	12/08/1998	12/08/1998
Comments: TO SUPPRESS AND IN LIMINE				
ORDER SETTING HEARING	NAHRA JOHN A	12/03/1998	12/04/1998	12/04/1998
Comments: 12/16/98 2:00; RE: DEFT'S PENDING MOTIONS				
MOTION		12/03/1998	12/07/1998	12/07/1998
Comments: FOR EXTENSION OF TIME				
MOTION		12/03/1998	12/07/1998	12/07/1998
Comments: TO PRODUCE PURSUANT TO RULE 13.2(A) AND REQUEST FOR FURTHER DISCOVERY				
OTHER EVENT		12/03/1998	12/07/1998	12/07/1998
Comments: RULE 13.2(A)				
TRIAL INFORMATION	DAVIS WILLIAM E	12/03/1998	12/03/1998	12/03/1998
Comments: W/MIN OF TEST;				
ORDER FOR PRETRIAL CONFERENCE	DESILVA EDWARD B	12/03/1998	12/07/1998	12/07/1998
Comments: 1/29/99 1:00;DEFT ARRAIGNED;DEFT PLEADS NOT GUILTY;ENROLLED ORDER;DEFT WAIVES SPEEDY TRIAL;WAIVER OF SPEEDY TRIAL; WAIVER OF TRIAL WITHIN 90 DAYS				
OTHER ORDER	NAHRA JOHN A	11/02/1998	11/04/1998	11/04/1998
Comments: ON EXPANDED MEDIA COVERAGE				
NOTICE		11/02/1998	11/04/1998	11/04/1998
Comments: OF REQUESTS FOR EXPANDED MEDIA COVERAGE OF TRIAL OR PROCEEDING				
BOND POSTED		10/27/1998	10/27/1998	10/27/1998
Comments: CASH $50,000.00; JAMES E BOWE				
OTHER ORDER	MCKENRICK	10/27/1998	10/27/1998	10/27/1998

GARY D

Comments: ORDER FOR BOND REDUCTION; BOND REDUCED TO $500000.00; DEFT ALLOWED TO POST 10%; ARR SCHED 12/3/98 11:00; MENTAL HEALTH EXAM AND ANY ADDITIONAL MEDICAL TESTING APPROPRIATE TO THE CIRCUMSTANCES BOND REVIEW INVESTIGATION

OTHER APPLICATION		10/26/1998	10/26/1998	10/26/1998

Comments: FOR BOND BEARING **CORRECTION; BOND HEARING:10-27-98 1:30

OTHER EVENT		10/26/1998	10/26/1998	10/26/1998

Comments: ENTRY OF APPEARANCE FILED BY ATTY EDWARD N. WEHR

ORDER FOR ARRAIGNMENT	MCKENRICK GARY D	10/26/1998	10/26/1998	10/26/1998

Comments: 12/3/98 11:00; WAIVES PH; BOND $1,000,000 TOTAL; PRIVATELY RETAINED ATTY WEHR; DEFT ADVISED OF RIGHTS

WARRANT SERVED		10/26/1998	10/26/1998	10/26/1998
ARREST WARRANT	BOWE CAROLE LYNN	10/25/1998	10/25/1998	10/26/1998

Comments: BOND $1,000,000.00

CRIMINAL COMPLAINT		10/25/1998	10/25/1998	10/25/1998

Comments: WARRANT REQUEST

CN=cwhiteag,O=JUDICIAL

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IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

STATE OF IOWA,	)	
Plaintiff,	)	CRIMINAL CAUSE NO. FECR216870
Vs.	)	AMENDED AND SUBSTITUTED TRIAL INFORMATION
CAROLE LYNN BOWE,	)	
Defendant,	)	

FILED
JAN 13 1999
MARLENE K. NELSON
CLERK DISTRICT COURT
SCOTT COUNTY, IOWA

COMES NOW, William E. Davis, as Prosecuting Attorney of Scott County, Iowa, and in the name and by the authority of the State of Iowa, accuses CAROLE LYNN BOWE of the crimes of: COUNT I - MURDER IN THE FIRST DEGREE; COUNT II - WILLFUL INJURY; COUNT III - CHILD ENDANGERMENT; COUNT IV - MURDER IN THE FIRST DEGREE; COUNT V - WILLFUL INJURY; COUNT VI - CHILD ENDANGERMENT; COUNT VII - MURDER OF FETUS ABORTED ALIVE; AND COUNT VIII - MURDER OF FETUS ABORTED ALIVE, committed as follows:

COUNT I

The said CAROLE LYNN BOWE on or about April, 1997, in the County of Scott, and State of Iowa, did, willfully, deliberately and with premeditation, kill another person or did kill another person while participating in a forcible felony, to-wit: Willful Injury, or did kill a child while committing Child Endangerment, in violation of Iowa Code Sections 707.1, 707.2(1)(2)(5), 726.6(1)(2), 708.1, and 708.4.

COUNT II

The said CAROLE LYNN BOWE on or about April, 1997, in the County of Scott, and State of Iowa, did, an act which was not justified and which was intended to cause, and did cause, serious injury to another person, in violation of Section 708.4 of the Code of Iowa.

COUNT III

The said CAROLE LYNN BOWE on or about April, 1997, in the County of Scott, and State of Iowa, did, commit Child Endangerment resulting in serious injury to the child, in violation of Section 726.6 of the Code of Iowa.

COUNT IV

The said CAROLE LYNN BOWE on or about December, 1991, in the County of Scott, and State of Iowa, did, willfully, deliberately and with premeditation, kill another person or did kill another person while participating in a forcible felony, to-wit: Willful Injury, or did kill a child while committing Child Endangerment, in violation of Iowa Code Sections 707.1, 707.2(1)(2)(5), 726.6(1)(2), 708.1, AND 708.4.

COUNT V

The said CAROLE LYNN BOWE on or about December, 1991, in the County of Scott, and State of Iowa, did, an act which was not justified and which was intended to cause, and did cause, serious injury to another person, in violation of Section 708.4 of the Code of Iowa.

COUNT VI

The said CAROLE LYNN BOWE on or about December, 1991, in the County of Scott, and State of Iowa, did, commit Child Endangerment resulting in serious injury to the child, in violation of Section 726.6 of the Code of Iowa.

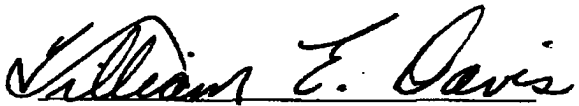
COUNT VII

The said CAROLE LYNN BOWE on or about April, 1997, in the County of Scott, and State of Iowa, did, intentionally kill a viable fetus aborted alive, in violation of Section 707.9 of the Code of Iowa.

COUNT VIII

The said CAROLE LYNN BOWE on or about December, 1991, in the County of Scott, and State of Iowa, did, intentionally kill a viable fetus aborted alive, in violation of Section 707.9 of the Code of Iowa.

A TRUE INFORMATION



WILLIAM E. DAVIS
Prosecuting Attorney

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

SUPPLEMENTAL AFFIDAVIT

98 OCT 25 AM 9:00

MA... CLERK SCOT

STATE OF IOWA
SCOTT COUNTY } **ss.**

I, the undersigned state that the following facts known by me or told to me by other reliable persons form the basis for my belief that the Defendant committed these crimes.

On April 21st, 1997 a deceased female infant, herinafter referred to as "Baby April Leclaire", was discovered in the back yard of 425 Mississippi Terrace, Leclaire, Iowa. An autopsy performed on Baby April Leclaire concluded that the baby was born alive and died as the result of denial of critical care (child neglect).
DNA testing concluded that Carole Lynn Bowe is the mother of Baby April Leclaire.
Carole Lynn Bowe was interviewed and admitted giving birth to Baby April Leclaire at home and burying her in the back yard of the residence at 431 Mississippi Terrace, Leclaire, Iowa.
On December 3rd 1991, a human placenta was discovered in the Leclaire, Iowa sewer lift station by a City of Leclaire Public Works employee.
On February 28, 1992, a deceased female infant, herinafter referred to as "Baby Leap Year", was discovered washed ashore in the Mississippi River in the vicinity of 4600 River Drive, Moline, Illinois. The placenta was missing from the child.
DNA testing concluded that the placenta found in Leclaire on December 3rd 1991, was a match to Baby Leap Year.
Further DNA testing concluded that Carole Lynn Bowe is the mother of Baby Leap Year.
An autopsy was performed on Baby Leap Year and it was found that Baby Leap Year was full term, healthy and born alive. The gross opinion stated: Fractured skull due to head trauma or throw injury to head.

WARRANT

ACA INTAKE SECY.

Lt. Steve Brockway

Det. Jack Rudsell

Signature

Subscribed and sworn to before me this 23 day of October, 1998.

Judge/Notary Public

JENNIFER G. WITHERSPOON
MY COMMISSION EXPIRES
6/18/99

COURT COPY

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

FILED
DEC 0 3 1998
MARLENE K. NELSON
CLERK/DISTRICT COURT
SCOTT COUNTY, IOWA

STATE OF IOWA,

Plaintiff,) ORDER

vs.

Case No. 07821 FECR216870

CAROLE LYNN BOWE)

Defendant.)

The Defendant appears in open court for arraignment and ~~the Court advises Defendant of his/her constitutional rights~~.

The Defendant appears:

(a.) represented by ~~his/her~~ attorney

(b.) and requests the Court appoint an attorney to represent Defendant in this case and the Court appoints:

APPEARANCES: T Walth for PLAINTIFF

EDWARD WEHR for DEFENDANT

The Defendant states he/~~she~~ has received a copy of the County Attorney's information; that he/~~she~~ is informed against in his/her true and correct name and that he/~~she~~ waives the reading of the information and minutes of testimony attached thereto.

(a.) Defendant waives time to plead and pleads that he/she is guilty/NOT guilty of the offense or offenses as charged in the trial information.

(b.) Defendant does/does NOT waive speedy trial.

EXPIRATION DATE: _____

IT IS FURTHER ORDERED:

1.) MOTIONS for BILL of PARTICULARS shall be filed in accordance with the requirements of RULE 10(5) of the I.R.CR.P., and if so filed shall be heard on the Order of the Court. The Clerk shall provide copies of said motion to the County Attorney and the District Court Administrator's Office.

2.) All PRE-TRIAL MOTIONS shall be filed in accordance with the requirements of RULE 10(4) of the I.R.CR.P., and if so filed shall be heard on the Order of the Court. The Clerk shall provide copies of said motion to the County Attorney and the District Court Administrator's Office.

3.) All DEPOSITIONS shall be completed in accordance with the requirements of RULE 12(6) of the I.R.CR.P. If the counsel is court appointed, DEPOSITIONS shall be at State expense, at a time to be arranged with the County Attorney and Co-Defendants attorneys, if any.

4.) PRE-TRIAL CONFERENCE is set for JANUARY 29 1999 at 1:00 o'clock P.M. The DEFENDANT shall be present at the PRE-TRIAL CONFERENCE. All PLEAS entered pursuant to RULE 9 (2) IRCR.P. shall be entered no later then the FRIDAY BEFORE TRIAL.

5.) This case will be heard on the merits at 9:00 A.M. on ~~FEBRUARY 8 1999~~ and 12 1999.

6.) The Clerk shall furnish copies of this order to the County Attorney, to the Defendant's Attorney, and to the Department of Correctional Services.

7.) BOND is fixed in the amount of $ Prior Set.

Dated this day 11/30/98 .

Judge, 7th Judicial District of Iowa

(enrold 980303)

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA Plaintiff vs. CAROLE LYNN BOWE Defendant	)	MOTION TO SEVER No. FECR216870

98 DEC -9 CLERK SCOTT

Comes now Defendant Carole Lynn Bowe, by her Attorneys, Wehr, Berger, Lane & Stevens, and pursuant to Iowa Rule of Criminal Procedure 6(1) hereby moves the Court to grant a separate Trial for Counts I, II, and III from the Trial on Counts IV, V, and VI; and in support thereof states:

Defendant was arraigned on a six Count Trial Information on December 3, 1998. Counts I, II and III relate to allegations of the death of a child on or about April, 1997; and Counts IV, V, and VI relate to allegations of a separate death of a child on or about December, 1991.

Iowa Rule of Criminal Procedure 6(1) provides in pertinent part:

> "Two or more public offenses which arose from the same transaction or occurrence or from two or more transactions or occurrences constituting parts of a common scheme or plan may be alleged and prosecuted as separate counts in a single Complaint, Information, or Indictment, unless, for good cause shown, the Trial Court in its discretion determines otherwise."

Case law in the State of Iowa is very clear that this Defendant should be granted separate trials. The Court of Appeals recently reviewed the case law in STATE v SMITH, 576 NW(2d) 634 (Iowa App. 1998)and summarized it as follows:

> "Multiple offenses arise out of the same transaction or occurrence "where the facts of each charge can be

> explained adequately only by drawing upon the facts of the other charge." STATE v BAIR, 362 NW(2d) 509, 512 (Iowa 1985). If either crime can be proven without reference to the other, this test is not met and severance is required. Id.
>
> A "common scheme or plan by its very definition presupposes that it involves a series of separate transactions or acts." STATE v LAM, 391 NW(2d) 249. The test applied in making this determination is "the requirement that all offenses charged must be products of a single or continuing motive." Id at 250 (citing STATE v GARRETTE, 699 SW(2d) 468, 493 (MO CA 1985))." 576 NW(2d) 636.

Clearly, these two alleged crimes did not arise from the same transaction or occurrence. The two crimes charged are remote in time from one another by five years and involve different alleged victims. Nor should they be considered as parts of a common scheme or plan. In defining the phrase "common scheme or plan" the Court of Appeals has stated,

> "A "common scheme or plan" requires more than the commission of two similar crimes by a single person. STATE v WRIGHT, 191 NW(2d) 638, 641 (Iowa 1971). The crimes must have a common link. Id. Many factors have been developed to help determine the existence of a "common scheme or plan," *including modus operandi, continuing motive, and temporal* and geographic proximity. STATE v LAM, 391 NW(2d) 245, 249-250 (Iowa 1986)." STATE v DELANEY, 526 NW(2d) 174 (Iowa App. 1994)

The DELANEY Standard is clearly not met as all the State can show is that two similar alleged crimes occurred. As noted before, the crimes have no temporal proximity and the State has no evidence showing the same motive or modus operandi are at work in both alleged instances. The only common link between the charges is that the same person stands accused. The Iowa Supreme Court in STATE v LAM, 391 NW(2d) 245 (Iowa 1986) also noted,

> "Rule 6(1) is similar to Federal Rule of Criminal Procedure 8(a). However, that rule is broader in that it allows the joinder of offenses "of the same or similar

character" in addition to the language found in the Missouri and Iowa Rules. 391 NW(2d) 250."

If these charges were pending in Federal Court, one can see how they could be joined as being "of the same or similar character." But the Iowa rule is not that broad. Until its language is changed, the State should be required to separately try alleged offenses such as these which are remote in time and fail to show a common victim, scheme or plan or continuing motive.

Even if the Stat can show a "common scheme or plan," there are also several reasons constituting good cause for separate trials in this case. As noted in SMITH,

> "...Rule 6(1) provides for discretionary severance upon a showing of good cause. In this circumstance, "a trial on multiple charges must strike the proper balance between the antipodal themes of ensuring [a] defendant a fair trial and preserving judicial efficiency." STATE v GEIER, 484 NW(2d) 167, 173 (Iowa 1992). The defendant has the burden to show "his interest in receiving a fair trial uninfluenced by the prejudicial effects which could result from a joint trial outweighed the State's interest in judicial economy." STATE v LAM, 391 NW(2d) at 251 (citing STATE v TRUDO, 253 NW(2d) 101, 104 (Iowa 1977) cert. denied, 434 US 903, 98 S.Ct. 299, 54 L.Ed(2d) 189 (1977)). This burden can be met by showing the jury is unable to compartmentalize the evidence offered to prove each consolidated charge. STATE v GEIER, 484 NW(2d) at 173.
>
> A Rule 6(1) determination is distinguished from an evidentiary ruling by its concern for which offenses may be properly joined for prosecution in a single trial and not crimes which are admissible as evidence to prove the offense charged. STATE v LAM, 391 NW(2d) at 250. Although the rules of evidence limiting admission of prior crimes are not implicated by this determination, considerations of unfair prejudice are common to both contexts. See Id.; STATE v PLASTER, 424 NW(2d) 226, 231-232 (Iowa 1988). Our severance rules are also distinguished from the rules of evidence by the consideration of judicial economy as opposed to evidentiary concerns for the probative value of a Defendant's criminal history. Id. SMITH, 576 NW(2d) at 636-637.

A significant danger of Defendant being substantially prejudiced by

a single trial exists due to the emotional nature of the alleged offenses and their emotional impact upon jurors. Also, as shown by the Minutes of Testimony, multiple expert witnesses will be called from various and distinct fields of scientific study for the separate charges rendering it very difficult for a jury to compartmentalize evidence between the Counts. The jury's work will also be made difficult by some of the expert witnesses trying to testify as to both of the alleged crimes while other experts are only testifying to one or the other which could lead to juror confusion about which testimony applies to which alleged crime.

EDWARD N. WEHR SC0005850
WEHR, BERGER, LANE & STEVENS
900 Kahl Building
Davenport, IA 52801
(319) 326-1000
FAX: (319) 326-4701

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was [illegible] on all parties to the above cause to each of the [illegible] of record herein at their respective addresses [illegible] on the pleadings, on Dec. 9, 1998

☒ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier
☐ Courthouse Box ☐ Other

Cynthia Bourdreau
WEHR, BERGER, LANE & STEVENS

County Attorney's Office

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

STATE OF IOWA,	)	
	)	
Plaintiff,	)	CRIMINAL CAUSE NO. FECR216870
	)	
Vs.	)	RESISTANCE TO MOTION
	)	TO SEVER
CAROLE LYNN BOWE,	)	
	)	
Defendant.	)	

COMES NOW the State of Iowa, by and through William E. Davis, Scott County Attorney, and in resistance to the Defendant's Motion to Sever, states:

1. The State acknowledges that the Defendant is charged in a six-count Trial Information.

2. The State further acknowledges that Counts I, II and III relate to allegations of a felonious death of a baby girl found in LeClaire, Iowa, during the month of April, 1997; and Counts IV, V and VI relate to allegations of the felonious death of a female child whose remains were found in the month of December, 1991.

3. The Defense, in its Motion, properly quotes Iowa Rule of Criminal Procedure 6(1) in pertinent part:

   "Two or more public offenses which occur from the same transaction or occurrence or from two or more transactions or occurrences constituting parts of a common scheme or plan may be alleged as separate counts in a single complaint, information, or indictment, unless for good cause shown, the trial court in its discretion determines otherwise . . ."

4. In State v. Wright, 191 N.W.2d 638, 641, the Iowa Supreme Court noted that a "common scheme or plan" requires some connection

between the crimes aside from the fact that they are similar and committed by the same person.

The State will offer evidence that the Defendant had a plan or scheme to remain free of the responsibility and obligations of a newborn child.

This is a single intent involved in both crimes.

5. The State will offer further evidence in this regard as to the Defendant's single overriding intent to remain free of the burden of unborn children. Severance, pursuant to Rule 6(1), and as clarified in State v. Smith, 576 N.W.2d 634, 636, the issues of joinder and severance are within the sound discretion of the trial court.

The State prays that Defendant's Motion for Severance be denied.

6. The Supreme Court, in State v. Smith, 576 N.W.2d 634, 36, advises that a Rule 6(1) determination is to be distinguished from an Evidentiary Rule (404B), evidentiary ruling by its concern for which offenses may be properly joined for prosecution in a single trial and not crimes which are admissible as evidence to prove the offense charged.

The Supreme Court in Smith further pointed out that severance rules are to be distinguished from the Rules of Evidence by the consideration of judicial economy as opposed to evidentiary concerns for the probative value of a defendant's criminal history.

7. Keeping in mind the Court's pronouncement in Smith, it must be pointed out that the State fully intends to offer evidence of the murder of both children to the trier of fact whether or not the Court deems it appropriate in its discretion to grant severance.

8. The State prays that the Motion to Sever be denied.

The issue of joinder and severance are within the sound discretion of the trial court.

WILLIAM E. DAVIS
Scott County Attorney
Scott County Courthouse
416 W. Fourth Street
Davenport, Iowa 52801
Telephone: 319/326-8600

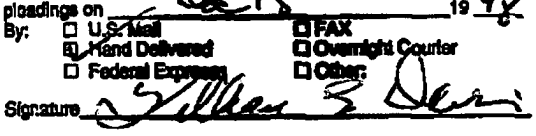
Copy to:

EDWARD N. WEHR
Wehr, Berger, Lane & Stevens
900 Kahl Building
326 W. 3rd Street
Davenport, Iowa 52801
Attorney for Defendant

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on 12-15 19 98

By: ☐ U.S. Mail ☐ FAX
☒ Hand Delivered ☐ Overnight Courier
☐ Federal Express ☐ Other:

Signature 

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

STATE OF IOWA,	)	
	)	
Plaintiff,	)	CRIMINAL CAUSE NO. FECR216870
	)	
Vs.	)	STATE'S MEMORANDUM OF
	)	AUTHORITY - SEVERANCE ISSUE
CAROLE LYNN BOWE,	)	
	)	
Defendant.	)	

I.

THE ESSENTIAL TEST FOR DETERMINING IF A COMMON SCHEME OR PLAN EXISTS IS WHETHER ALL OFFENSES CHARGED ARE PRODUCTS OF A SINGLE OR CONTINUING MOTIVE.

AUTHORITY

Iowa Rule of Criminal Procedure 6(1);
State v. Lam, 391 N.W.2d 245 (Iowa 1986).
State v. Houston, 439 N.W.2d 173 (Iowa 1989);
State v. Bair, 362 N.W.2d 509 (Iowa 1985);
State v. Thorton, 506 N.W.2d 777 (Iowa 1993).

DISCUSSION

The essential test for determining if a common scheme or plan exists is whether all offenses charged are products of a single or continuing motive. State v. Lam. The facts in the case at bar accuse the Defendant of slaying two newborn infants, one in 1997, and another in the latter part of the year 1991. The State also will show, for the purpose of this Motion, that the Defendant has no living children. The State will further show that the Defendant has had four legal abortions. The Defendant's single intent in having the abortions and in terminating the life of the child in 1991, and again in 1997, was to avoid the burdens of parenting and the associated responsibilities therewith.

II.

SEVERANCE AND JOINDER OF CHARGES FOR A SINGLE TRIAL IS WITHIN THE SOUND DISCRETION OF THE TRIAL COURT.

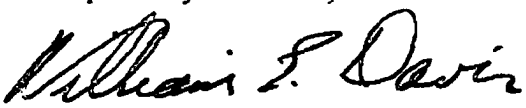
AUTHORITY

State v. Houston, 439 N.W.2d 173 (Iowa 1989);
State v. Bair, 362 N.W.2d 509 (Iowa 1985);
State v. Lam, 391 N.W.2d 245 (Iowa 1986);
State v. Thorton, 506 N.W.2d 777 (Iowa 1993);
State v. Evans, 248 N.W.2d (Iowa 1976);
State v. Reynolds, 250 N.W.2d (Iowa 1977);
State v. Combs, 316 N.W.2d 880 (Iowa 1982).

DISCUSSION

Severance, as requested by the defense, is within the sound discretion of the Trial Court and will not be set aside unless abuse of discretion can be shown.

Respectfully submitted,



William E. Davis
Scott County Attorney
Scott County Courthouse
416 W. Fourth Street
Davenport, Iowa 52801
Telephone: 319/326-8600

Copy to:
EDWARD N. WEHR
Wehr, Berger, Lane & Stevens
900 Kahl Building
326 W. 3rd Street
Davenport, Iowa 52801

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on _____ 19 ___

By: ☐ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier
☐ Federal Express ☐ Other:

Signature_____

COPY

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

STATE OF IOWA,	)	
	)	
Plaintiff,	)	CRIMINAL CAUSE NO. FECR216870
	)	
Vs.	)	APPLICATION FOR AMENDMENT
	)	OF TRIAL INFORMATION
CAROLE LYNN BOWE,	)	
	)	
Defendant.	)	

COMES NOW the State of Iowa, by and through William E. Davis, pursuant to Iowa Rule of Criminal Procedure 4.8(a), (b), and Rule 5.5, moves the Court to amend the Trial Information. Attached.hereto and made a part hereof is the proposed Amended and Substituted Trial Information, containing additional Counts VII and VIII, charging Murder of a Fetus Aborted Alive, in violation of Section 707.9 of the Code.

With this Application, the State respectfully urges the Court to approve the Trial Information, pursuant to Iowa Rule of Criminal Procedure 5.4.

Respectfully submitted,

William E. Davis

William E. Davis
Scott County Attorney
Scott County Courthouse
416 W. Fourth Street
Davenport, Iowa 52801
Telephone: 319/326-8600

Copy to:
Edward N. Wehr
Wehr, Berger, Lane & Stevens
900 Kahl Building
326 W. 3rd Street
Davenport, Iowa 52801

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on _____ 19____

By: ☐ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier
☐ Federal Express ☐ Other:

Signature_____

COPY

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

STATE OF IOWA,	)	
	)	
Plaintiff,	)	CRIMINAL CAUSE NO. FECR216870
	)	
Vs.	)	AMENDED AND SUBSTITUTED
	)	TRIAL INFORMATION
CAROLE LYNN BOWE,	)	
	)	
Defendant,	)	

COMES NOW, William E. Davis, as Prosecuting Attorney of Scott County, Iowa, and in the name and by the authority of the State of Iowa, accuses CAROLE LYNN BOWE of the crimes of: COUNT I - MURDER IN THE FIRST DEGREE; COUNT II - WILLFUL INJURY; COUNT III - CHILD ENDANGERMENT; COUNT IV - MURDER IN THE FIRST DEGREE; COUNT V - WILLFUL INJURY: COUNT VI - CHILD ENDANGERMENT; COUNT VII - MURDER OF FETUS ABORTED ALIVE; AND COUNT VIII - MURDER OF FETUS ABORTED ALIVE, committed as follows:

COUNT I

The said CAROLE LYNN BOWE on or about April, 1997, in the County of Scott, and State of Iowa, did, willfully, deliberately and with premeditation, kill another person or did kill another person while participating in a forcible felony, to-wit: Willful Injury, or did kill a child while committing Child Endangerment, in violation of Iowa Code Sections 707.1, 707.2(1)(2)(5), 726.6(1)(2), 708.1, and 708.4.

COUNT II

The said CAROLE LYNN BOWE on or about April, 1997, in the County of Scott, and State of Iowa, did, an act which was not justified and which was intended to cause, and did cause, serious injury to another person, in violation of Section 708.4 of the Code of Iowa.

COUNT III

The said CAROLE LYNN BOWE on or about April, 1997, in the County of Scott, and State of Iowa, did, commit Child Endangerment resulting in serious injury to the child, in violation of Section 726.6 of the Code of Iowa.

COUNT IV

The said CAROLE LYNN BOWE on or about December, 1991, in the County of Scott, and State of Iowa, did, willfully, deliberately and with premeditation, kill another person or did kill another person while participating in a forcible felony, to-wit: Willful Injury, or did kill a child while committing Child Endangerment, in violation of Iowa Code Sections 707.1, 707.2(1)(2)(5), 726.6(1)(2), 708.1, AND 708.4.

COUNT V

The said CAROLE LYNN BOWE on or about December, 1991, in the County of Scott, and State of Iowa, did, an act which was not justified and which was intended to cause, and did cause, serious injury to another person, in violation of Section 708.4 of the Code of Iowa.

COUNT VI

The said CAROLE LYNN BOWE on or about December, 1991, in the County of Scott, and State of Iowa, did, commit Child Endangerment resulting in serious injury to the child, in violation of Section 726.6 of the Code of Iowa.

COUNT VII

The said CAROLE LYNN BOWE on or about April, 1997, in the County of Scott, and State of Iowa, did, intentionally kill a viable fetus aborted alive, in violation of Section 707.9 of the Code of Iowa.

COUNT VIII

The said CAROLE LYNN BOWE on or about December, 1991, in the County of Scott, and State of Iowa, did, intentionally kill a viable fetus aborted alive, in violation of Section 707.9 of the Code of Iowa.

A TRUE INFORMATION

William E. Davis

WILLIAM E. DAVIS
Prosecuting Attorney

COPY

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

STATE OF IOWA,	FILED	Criminal Number FECR216870
Plaintiff	JAN 13 1999	
vs.		MEMORANDUM OF PLEA AGREEMENT
CAROLE LYNN BOWE,	MARLENE K. NELSON CLERK DISTRICT COURT SCOTT COUNTY, IOWA	I. R. Cr. P. 9
Defendant		

COMES NOW, the State of Iowa and Defendant in the above-captioned matter and, pursuant to Rule 9(2) of the Iowa Rules of Criminal Procedure, disclose the Plea Agreement, as set out hereafter:

1. All filed or pending charges involved in the Agreement:

Cause Number FECR216870: Count I - Murder in the First Degree; Count II - Willful Injury; Count III - Child Endangerment; Count IV - Murder in the First Degree; Count V - Willful Injury; Count VI - Child Endangerment; Count VII - Murder of Fetus Aborted Alive; and Count VIII - Murder of Fetus Aborted Alive.

2. All charging concessions part of the Agreement:

Defendant shall plead guilty to Counts VII and VIII of the Amended and Substituted Trial Information. The State shall, upon Sentencing of the Defendant, move to dismiss Counts I, II, III, IV, V and VI of the Amended and Substituted Trial Information.

3. All sentencing concessions part of the Agreement:

The State will recommend that the sentences be made consecutive. The Defendant shall have the right to request that the sentences be made concurrent.

4. Special Conditions of the Agreement:

Should the Defendant have a criminal history more extensive than that revealed in the pleadings, or should the Defendant fail to cooperate with Correctional Services in preparing the P.S.I., fail to appear where and as required, or be arrested for further offenses, the State may withdraw any recommendation previously made.

5. **Concurrence of the Court to this Agreement is a condition to the acceptance of the Plea.**

Dated this 13 day of January, 1999.

Carole L. Bowe
Defendant

William E. Davis
Prosecuting Attorney

I have advised the Defendant of all particulars set out above and of the consequences thereof.

Counsel for Defendant

O R D E R

NOW, on this 13 day of July, 1999, in open Court, the Defendant appearing in person and with counsel and the State of Iowa being represented, the Court having reviewed the Memorandum of Plea Agreement, FINDS:

( ) That the Court's concurrence is not a part or condition of the Plea Agreement and the Court therefore files the Agreement.

(X) That Concurrence of the Court is a part or condition of the Agreement and the Court therefore:

(X) accepts the plea and it will embody in the judgment and sentence the disposition provided for in the Plea Agreement or another disposition more favorable to the Defendant than that provided for in the Plea Agreement.

( ) rejects and refuses to be bound by the Plea Agreement and the Defendant and the parties are so informed and the Defendant is advised that if he/she persists in his/her guilty plea the disposition of this case may be less favorable to the Defendant than that contemplated in the Plea Agreement.

( ) defers its decision as to acceptance or rejection of the Plea Agreement until its receipt of a pre-sentence report. The Defendant is informed that if upon review of the pre-sentence report the Court decides to reject the Plea Agreement that the Defendant will be afforded the opportunity of withdrawing the Plea of guilty.

JUDGE
Seventh Judicial District of Iowa

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

THE STATE OF IOWA, Plaintiff vs. CAROLE LYNN BOWE, Defendant	FILED JAN 13 1999 MARLENE K. NELSON CLERK DISTRICT COURT SCOTT COUNTY, IOWA	Criminal No. FECR216870 ORDER TO DISMISS (TWO COUNTS OF MURDER IN THE FIRST DEGREE, TWO COUNTS OF WILLFUL INJURY, AND TWO COUNTS OF CHILD ENDANGERMENT ONLY- COUNTS I, II, III, IV, V AND VI ON AMENDED AND SUBSTITUTED TRIAL INFORMATION ONLY)

On this 13 day of January, 1999, for reasons stated in the foregoing motion and in the interest of justice, IT IS ORDERED that the motion is granted and the above-listed charges only are hereby dismissed.

The Defendant's bail, if any, is exonerated and the costs of this action are

_____ Taxed to the Defendant.

_____ Not to be Assessed.

JUDGE
Seventh Judicial District of
Iowa

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

THE STATE OF IOWA, Plaintiff vs. CAROLE LYNN BOWE, Defendant	FILED JAN 13 1999 MARLENE K. NELSON CLERK DISTRICT COURT SCOTT COUNTY, IOWA	Criminal No. FECR216870 MOTION TO DISMISS (TWO COUNTS OF MURDER IN THE FIRST DEGREE, TWO COUNTS OF WILLFUL INJURY, AND TWO COUNTS OF CHILD ENDANGERMENT ONLY- COUNTS I, II, III, IV, V AND VI ON AMENDED AND SUBSTITUTED TRIAL INFORMATION ONLY)

COMES NOW, the undersigned Prosecuting attorney and moves that the court dismiss the above-listed charges only for the following reasons:

Dismissal Code

WHEREFORE, the undersigned asks that the above-listed charges only be dismissed.

Dated this 13th day of Jan, 1999.

Prosecuting Attorney

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA	)	
	)	
Plaintiff	FILED)	CONSENT TO WAIVE DELAY
	)	IN SENTENCING
vs.	JAN 13 1999)	No. FECR216870
CAROLE LYNN BOWE	)	
	MARLENE K. NELSON CLERK DISTRICT COURT SCOTT COUNTY, IOWA)	
Defendant	)	

I, the undersigned, CAROLE LYNN BOWE, do hereby agree that the Minutes of Testimony are substantially correct and I admit that there is a factual basis for the charge against me.

I further give up my right to have sentencing and/or judgment entered at least 15 days after the entry of my guilty plea.

Dated the 24th day of December, 1998.

Carole L. Bowe
CAROLE LYNN BOWE

Witness

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

STATE OF IOWA, Plaintiff,	)	CRIMINAL NO. 07821 FECR216870
vs.	)	MITTIMUS TO INSTITUTION
CAROLE LYNN BOWE Defendant.	)	Before the Honorable JAMES R. HAVERCAMP Judge of the Seventh Judicial District

The State of Iowa, to the Sheriff of Scott County:

Whereas, at a Term of the District Court in and for Scott County, on JANUARY 13, 1999 , the Defendant, was sentenced for the crime(s) of

MURDER OF A FETUS ABORTED ALIVE 707.9
MURDER OF A FETUS ABORTED ALIVE 707.9

to be committed to the custody of the Director of Adult Corrections, State of Iowa, for the term(s) of not exceeding

(25) TWENTY FIVE YEARS CONFINEMENT;
(25) TWENTY FIVE YEARS CONFINEMENT; CONSECUTIVE

from the date of admittance, to pay a fine of $
and to pay the costs of this action. Other conditions of sentence

All as provided by sections 902.3, 902.9, 903.1 and 903.4 of the Iowa Criminal Code. Credit allowed for time served awaiting disposition of this case is 4 days, through this date and credit each additional day until received. The Iowa Medical and Classification Center at Oakdale, Iowa is designated as the reception center to which the Defendant is to be delivered by the Sheriff of Scott County, Iowa. Other designated Institution:

We therefore command that you take CAROLE LYNN BOWE Defendant and convey him/her to the above listed reception center to be confined in accordance with the sentence aforesaid; and we command the Warden of the above listed reception center to receive the said Defendant and confine him/her to said institution for the above listed term of sentence. Appeal bond is fixed at $NO BOND .

IN TESTIMONY WHEREOF, I MARLENE K NELSON , Clerk of the District Court, Scott County, have hereunto set my hand and affixed the seal of this Court, 01/14/99 .

JAIL CREDIT: Clerk MARLENE K NELSON

ARR 10/26/98 THRU BOND 10/27/98 Deputy _____

SENT 1/13/99 THRU MITT 1/14/99 (mitins 960522)

RECEIPT OF WARDEN FOR PRISONER

CASE NO. 07821 FECR216870

RECEIVED, on _____, 19____, in to my custody as Warden of the _____ of the State of Iowa, from the Sheriff of Scott County, Iowa, _____ Defendant, who was sentenced to be confined in the _____ of the State of Iowa, for the term(s) of _____ years.

Warden: _____

By: _____

* * * * * * * * * * * * * * * * * * * *

RETURN OF SHERIFF

CASE NO. 07821 FECR216870

To the Scott County District Court: I herewith return this warrant on this date _____, and certify I executed the same by delivering the said defendant to the Warden herein directed, as appears from this receipt.

Sheriff: _____

By: _____

FEES

Service: $_____

Expense: $_____

Expense: $_____

Expense: $_____

Total: $_____

Attachment 2
Iowa Code Section 707.10

JULIE C CARLIN
Clerk of Iowa District Court
Scott County
400 West Fourth Street
Davenport, IA 52801-1187
Phone 563.326.8647

TRIAL COURT SUPERVISORS:

Associate Court Criminal — Linda Bowman 563.326.8787
District Court Civil Law — Lynn DeSmet 563.326.8647

FAX TRANSMITTAL COVER

TO: Atty General Attn: Cathy White

FAX NUMBER: (515) 281-4209

FROM: SCOTT COUNTY CLERK OF COURT
FAX: 563.326.8280

FAX CONSIST OF 13 PAGES

OF ANY TRANSMISSION ERRORS SHOULD OCCUR OR THE TRANSMITTED DOCUMENTS ARE NOT COMPLETE OR ARE UNREADABLE, PLEASE CONTACT _____ AT THE SCOTT COUNTY CLERK OF COURT 563.326.8787

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA) CRIMINAL NO. SRCR182979
)
Plaintiff,)
vs.)

KENDRA L. FULTON, TRIAL INFORMATION
480 98 2517
Defendant

FILED
JUN 27 1995
MARLENE K. NELSON
CLERK DISTRICT COURT
SCOTT COUNTY, IOWA

COMES NOW WILLIAM E. DAVIS as County Attorney of Scott County, State of Iowa, and in the name and by the authority of the State of Iowa: accuses KENDRA L. FULTON of the crime of FAILURE TO PRESERVE THE LIFE OF A FETUS committed as follows:

The said KENDRA L. FULTON on or about the 11th day of APRIL A.D. 1995, in the County of Scott, and State of Iowa: did willfully fail to exercise a degree of professional skill, care, and diligence available to preserve the life and health of a viable fetus in violation of section 707.10 of the Code of Iowa.

A TRUE INFORMATION

William E. Davis

WILLIAM E. DAVIS 366 40 3564
Scott County Attorney

On this 7th day of June A.D., 1995, being satisfied from the showing made herein that the evidence, if unexplained would warrant a conviction by a trial jury, find that the cause should be prosecuted by Information and the same is approved.

The Defendant having been admitted to bail pursuant to Section 811.2 of the Iowa Criminal Code at a prior court hearing, those conditions as previously set shall remain until further modified by this Court.

JUDGE
Seventh Judicial District of Iowa

This Information, together with the Minutes of Evidence relating thereto, is duly filed in the District Court this 7th day of June A.D., 1995.

MARLENE K. NELSON
Clerk of District Court
of Scott County

by: Angela R. Williams Deputy

Endorsement of Witnesses:

NAME	ADDRESS
RAJ SEKHARAN, M.D.,	Davenport, Ia.
DETECTIVE WILLIAM THOMAS,	Davenport PD

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

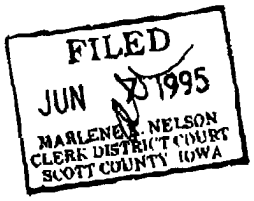
STATE OF IOWA,

Plaintiff,

vs

KENDRA L. FULTON,
480-98-2517

Defendant.



Criminal No. SRCR 182979

PLEA OF GUILTY
(Waiver of Rights)

I, **KENDRA L. FULTON**, state to the Court that I am charged with **FAILURE TO PRESERVE THE LIFE OF A FETUS** and that I now wish to plead guilty to that (those) charge(s). I also state I have discussed my guilty plea with my attorney; that I am satisfied with the services of my attorney and that I have been advised and understand that:

1. When I plead guilty, I give up my right to have a jury trial on this charge.
2. When I plead guilty, I give up my right to have the opportunity to ask questions of the State's witnesses, and I also give up the right to subpoena or call my own witnesses to testify.
3. Should I have a trial, I would be entitled to have my attorney with me throughout the entire trial, and if I cannot afford an attorney, the Court would appoint one for me.
4. If I had a trial on this charge, the State would be required to prove me guilty to a jury of 12 persons, unanimously, and beyond a reasonable doubt; however, by pleading guilty I am giving up that right.
5. If I had a trial, no one could force me to testify against myself; however, by pleading guilty, I give up that right.
6. If I had a trial, I would have the right to testify on my own behalf, and I now give up that right by pleading guilty.
7. By pleading guilty, I am admitting that there is a factual basis for the charge(s), and admitting that at the time and place charged in the Trial Information **I DID WILLFULLY FAIL TO EXERCISE THAT DEGREE OF PROFESSIONAL SKILL, CARE AND DILIGENCE AVAILABLE TO PRESERVE THE LIFE OF A FETUS.**.
8. On a plea of guilty to **FAILURE TO PRESERVE THE LIFE OF A FETUS** the Court can imprison me in the Scott County Jail not more than **1 year** and/or fine me **not less than $250.00 nor more than $1,500.00**.

On a plea of guilty to _____ the Court can imprison me in the Scott County Jail not more than _____ and/or fine me not more than $_____.

On a plea of guilty to _____ the Court can imprison me in the Scott County Jail not more than _____ and/or fine me not more than $_____.

9. I understand that as a condition of my probation as set forth in the Rule 9, I am to fulfill all terms as set forth by the Court Order including the payment of any fine, surcharge and/or

court costs.

10. Should I not fulfill the terms of my sentence and probation by the _____ of _____, _____ at _____, a hearing will be scheduled by this Court to determine if I am in willful violation of my probation which could result in my incarceration for that period that was previously suspended or for a finding of contempt.

11. If I claim there are any irregularities or errors in this guilty plea, I must file a Motion in Arrest of Judgment not later than 45 days after this plea of guilty or in any case, not later than five days before the day of sentencing. Failure to do so will preclude my right to assert any defects in this plea in any appeal to the Iowa Supreme Court.

I further state that no one has made any promises or inducements to make me plead guilty, nor has anyone threatened me to cause me to plead guilty. The decision to plead guilty is my own voluntary decision.

I understand a plea agreement in my case exists as evidenced by the attached Rule 9 Memorandum of Plea Agreement which I have signed. I also understand that any plea agreement is not binding on the Court.

I STATE TO THE COURT THAT I FULLY UNDERSTAND ALL MY FOREGOING RIGHTS; HEREBY GIVE UP THOSE RIGHTS; AND, THEREUPON, ENTER MY PLEA OF GUILTY TO **FAILURE TO PRESERVE THE LIFE OF A FETUS**.

Dated at Davenport, Iowa, this 7th day of June, 1995.

(Signature of Defendant)

(Address)

I, **MURRAY W. BELL**, a regular practicing attorney at law, as an officer of the Court, state that I represent the above-named defendant; that I have advised the defendant of all his/her legal rights and obligations, defenses and strategies with regard to the above-captioned case; and that the defendant has read and signed the above in my presence; and to his/her satisfaction, I have answered all questions regarding the plea of guilty. I further state that to the best of my knowledge and belief this plea is knowingly and voluntarily and intelligently made by the defendant, and that there is a factual basis for the charge.

Dated this 7th day of June, 1995.

(Signature of Attorney)

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

THE STATE OF IOWA,	Criminal No SRCR 182979
vs.	
KENDRA L. FULTON,	MEMORANDUM OF PLEA AGREEMENT
Defendant.	I. R. Cr. P. 9

FILED JUN 07 1995 MARLENE K NELSON CLERK DISTRICT COURT SCOTT COUNTY IOWA

COMES NOW, The State of Iowa and Defendant in the above captioned matter and, pursuant to Rule 9(2) of the Iowa Rules of Criminal Procedure, discloses the Plea Agreement, as set out hereafter:

1. **All filed or pending charges involved in the Agreement:**
Failure to preserve the life of a fetus

2. **All charging concessions part of the Agreement:**
none

3. **All sentencing recommendations part of the Agreement:**
State will recommend 120 days in jail, suspended, and a fine in the amount of $250.00 plus Defendant's payment of victim restitution, if any, all court costs and court-appointed attorney's fees. State further recommends that Defendant present herself to Vera French and complete whatever program they deem appropriate.

4. **Concurrence of the Court to this Agreement is/~~is not~~ a condition to the acceptance of the plea.**

Dated this 7th day of June, 1995.

The Defendant, by signing this plea agreement, represents to the Court the ability to pay the fine, court costs, court appointed attorney fees, if ordered, and victim restitution, if ordered, as outlined above, within four months; and if not, community service work is available for all financial obligations except victim restitution.

Defendant

I have advised the Defendant of all particulars set out above and of the consequences thereof.

Counsel for Defendant

Prosecuting Attorney

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA,

Plaintiff,

vs

KENDRA L. FULTON,
480-98-2517

Defendant.

Criminal No. SRCR 182979

JUDGMENT AND SENTENCE

FILED
JUN 07 1995
MARLENE K. NELSON
CLERK DISTRICT COURT
SCOTT COUNTY IOWA

On this 7th day of June, 1995, this matter comes on for sentencing. The State appears by W. DAVIS. (Assistant) County Attorney, and the defendant appears personally with or by Attorney MURRAY W. BELL. The defendant, having pled or been found guilty, knows of no legal cause why judgment should not now be entered and none appears upon the record.

IT IS THE JUDGMENT AND SENTENCE OF THIS COURT, from all the facts and circumstances of this case, that the defendant is convicted of the crime(s) of **FAILURE TO PRESERVE THE LIFE OF A FETUS** in violation of Section 707.10 of the Code of Iowa, and judgment is entered thereon and the defendant is sentenced as follows:

X Defendant shall pay a fine of $250, plus costs and surcharge.

X Defendant shall be incarcerated in the Scott County jail for a term of 120 days, with credit for time served.

X All [~~but~~] days of said sentence are suspended and the defendant is placed on unsupervised probation for a period of one year under the following terms and conditions, to report to the Court on the progress of such probation on the 4th day of October, 1995, at 9:30 o'clock a.m., AT WHICH TIME THE DEFENDANT SHALL APPEAR IN PERSON.

X Defendant shall obey all federal, state, and local laws, ordinances and regulations.

___ ~~Defendant shall pay restitution for court-appointed attorney fees in the amount approved for payment by the Court, said amount not to exceed $_____.~~

X Defendant shall pay the fine, surcharge and court costs.

___ Defendant shall perform _____ hours of unpaid Community Service in lieu of the aforementioned fine, costs, surcharge, and court-appointed attorney fees, if any.

___ Defendant shall make victim restitution in the amount of $_____ through the Clerk of Court for the benefit of _____.

___ Defendant, at defendant's expense, shall submit to a substance abuse

evaluation and pursue and cooperate with treatment, if it is indicated, until the maximum benefits of the treatment have been received, and shall provide the Court with evidence of said evaluation and treatment.

X Defendant shall seek counseling at New Frontiers

The reasons for this sentence are the defendant's prior criminal history, or lack thereof; age and circumstances; to maximize rehabilitation of the defendant and deter future misconduct. Other reasons: _____

Defendant is advised of the right to appeal this judgment and sentence, of the right to apply for payment of the appeal costs, and the necessity of complying with the requirements of statute for the filing of a Notice of Appeal within thirty days. Appeal Bond is fixed at $1000.

____ Count(s) _____ are hereby dismissed.

Dan Darrah

JUDGE, Seventh Judicial District of Iowa

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

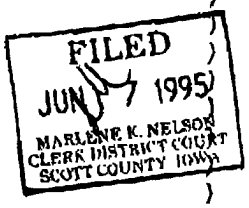
STATE OF IOWA,

Plaintiff,

vs.

KENDRA L. FULTON,

Defendant.



CRIMINAL NO. SRCR 182979

RULE 13(2)(a) DISCOVERY STATEMENT BY PLAINTIFF (Single Defendant)

COMES NOW, the Plaintiff, State of Iowa, by the Scott County Attorney's Office, and pursuant to the Iowa Rules of Criminal Procedure 13(2)(a), files and presents the following materials together with attachments as noted:

1. Relevant written statements or transcripts of recorded statements, statements of Defendant, including Grand Jury testimony, within the possession, custody or control of the government:

Do not exist.

2. The substance of any oral statement made by the Defendant which the government intends to offer in evidence at trial:

Is incorporated as part of the Minutes of Evidence filed with the information subsequent thereto.

3. The Defendant's criminal record as known to the government at this time:

Is attached hereto and made a part hereof.

William E. Davis
Scott County Attorney

District Court Calendar, Scott County, Iowa

SRCR 182919
No.

ATTORNEYS	PARTIES
	STATE OF IOWA VS. Kendra L. Sutton

CAUSE OF ACTION

Month	Day	Year	COURT MINUTES
October	4,	1995	Defendant appeared by Attorney Bell. This matter comes before the Court for conclusion of defendant's unsupervised probation. Defendant having successfully completed the terms of probation; probation is discharged.
PR			

JUDGE

No. 4061 P. 10

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA, Plaintiff, vs KENDRA FULTON, Defendant.	)	WRITTEN ARRAIGNMENT AND PLEA OF NOT GUILTY CRIM. NO. SRCR 182979

FILED
JUN 27 1995
MARLENE K. NELSON
CLERK DISTRICT COURT
SCOTT COUNTY, IOWA

COMES NOW the above-named defendant in the above-captioned criminal cause and under oath states:

1. I am represented by Attorney Murray W. Bell, whose address and telephone number are 246 W. Third Street, Davenport, IA; (319) 326-4095.

2. My current mailing and residence addresses and telephone number are: 1110 EAST 37th STREET APT. 301; (____) _____.

3. I am 28 years old, having been born on 01/09/67. I can read and understand the English language, and have completed the following level of education: 1½ yrs College

4. I have been advised by the above-named attorney and understand that I have a right to arraignment in open court, and I hereby voluntarily waive that right to arraignment in open court, choosing instead to sign this written arraignment and plea of not guilty. I understand that times for further proceedings which are computed from the date of arraignment will be computed from the date of filing this written arraignment and plea of not guilty; however, I expressly do not waive my rights pursuant to Rule 27 of the Iowa Rules of Criminal Procedure to require that the State file an indictment against me with the Clerk of Court within 45 days from the date of my arrest.

5. I have received, or anticipate receiving, a copy of the indictment or trial information which charges me with the crimes of Willfully failing to exercise that degree of professional skill, care and diligence available to preserve the life of a viable fetus in violation of Section 707.10 of the Code of Iowa.

6. With regard to the name by which I should be charged:

(XXX) a. The name shown on the original complaint against me is my true name. I have been advised and understand that I am now precluded from objecting to the receipt of the indictment/trial information which names me as the defendant as captioned above.

(____) b. The name shown on the original complaint is not my true name. My true name is _____. I request that an entry be made in the minutes showing my true name as indicated in this section and as indicated in the above caption. I have been advised and understand further proceedings will be had against me by that name, and I will be

precluded from objecting upon the ground I am improperly named.

7. I have been advised and understand that I may plead guilty, not guilty, or former conviction or acquittal.

8. For the purpose of this arraignment, I have had sufficient time to discuss this matter with the above-named attorney, and I waive any further time in which to enter a plea.

9. I plead **NOT GUILTY** to the charges of **Willfully failing to exercise that degree of professional skill, care and diligence available to preserve the life of a viable fetus.**

10. I have been advised and understand that I have a right under Rule 27(2)(b) of the Iowa Rules of Criminal Procedure to a trial within 90 days after indictment/filing of trial information and

(___) a. I demand a speedy trial pursuant to Rule 27(2)(b).
(XXX) b. I waive my right to a speedy trial pursuant to Rule 27(2)(b).

11. I request that a trial date be promptly set pursuant to Rule 8.1 of the Iowa Rules of Criminal Procedure. My attorney and I will be available for trial as scheduled.

Defendant.

STATE OF IOWA, SCOTT COUNTY, SS:

Subscribed, sworn to, and acknowledged before me by KENDRA FULTON this 7th day of June, 1995.

MURRAY W. BELL
MY COMMISSION EXPIRES
October 13, 1997

Notary Public

The undersigned certifies that a copy of the foregoing instrument was served upon the County Attorney's Office and Clerk of Court on the 7th day of June, 1995 by hand delivering to the offices of each.

MURRAY W. BELL

NEWPORT, BELL & OXLEY
Murray W. Bell, SC0009596
246 West Third Street
Davenport, IA 52801
(319) 326-4095
Attorney For Defendant

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA, Plaintiff, vs KENDRA L. FULTON, 480-98-2517 Defendant.	Criminal No. SRCR 182979 CONSENT TO WAIVE PRESENCE

FILED
JUN 07 1995
MARLENE K. NELSON
DISTRICT COURT
SCOTT COUNTY, IOWA

I consent and agree that my attorney can appear for me and enter a plea of guilty to the offense(s) of **FAILURE TO PRESERVE THE LIFE OF A FETUS** in violation of Section(s) 707.10 of the Code of Iowa. In doing so, I acknowledge that I have read the Minutes of Testimony attached to the Trial Information. I agree that the Minutes of Testimony are substantially correct and I admit that there is a factual basis for the charge(s) against me.

I further agree that the Court may impose sentence with- out my being present. I understand and give up my right to challenge and/or appeal from any irregularities or errors in the taking of my guilty plea by the filing of a Motion in Arrest of Judgment. I also give up my right to have sentencing and/or judgment entered at least fifteen days after the entry of my guilty plea.

Dated this 7th day of June, 1995.

x Kendra Fulton
Defendant

Mary W. Bell
Witness