

Supreme Court agrees new trial needed in dead baby case

THE CANADIAN PRESS



OTTAWA - The Supreme Court of Canada has ruled that a woman accused of hiding her dead baby in a plastic bag must once again stand trial.

In a unanimous 7-0 decision Friday, the Supreme Court upheld an appeal court decision to order a new trial for Ivana Levkovic.

Levkovic said she was alone in her Mississauga, Ont., apartment in the spring of 2006 when she fell and delivered a baby girl, which was later determined to have been at or near full term.

She placed the child's body in a plastic bag and put it out on her balcony, where a building superintendent later discovered it.

Levkovic was charged under a section of the Criminal Code that makes it a crime to dispose of the body of a dead child to conceal the fact it had been born.

The law applies to babies that die "before, during or after birth."

But her lawyers argued the law was too vague and did not make a clear enough distinction between a miscarriage or a stillbirth, nor did it specify when a fetus becomes a human being.

The trial judge agreed the law was too vague and Levkovic was acquitted. The Ontario Court of Appeal set aside that ruling and ordered a new trial, a decision upheld by the Supreme Court.

In an interview with AdvocateDaily.com, Toronto criminal lawyer [Jacob Stilman](#) says in previous cases, the Supreme Court has stayed away from the abortion debate by drafting a decision that avoids a re-definition of the fetus or clearly stating the law to avoid such a broadened definition.

"This latest decision appears to be in keeping with this tradition," he says.

Friday's ruling covers "a very narrow situation," Stilman says, noting it does not imbue the fetus with the full status of a person.

"This decision considers the issue of a still born versus a miscarriage," Stilman tells AdvocateDaily.com. "Obviously a full-term fetus which, if born alive, would be viable, can be distinguished from an earlier-term miscarriage. This section is designed to deal with the disposal of a child which is or could have been born alive.

"In the case of a child born at full term, whether alive or not, the Supreme Court is simply indicating that the law was not vague, and that a birth at that stage of a pregnancy may be caught by these provisions."

The criminal mischief, which this section is designed to address, is to prevent the unsavoury prospect of people disposing of human-like remains in an undignified or unsanitary manner, says Stilman.

"By re-articulating the law to underscore this principle, the Supreme Court has pronounced that the section is not vague, and that a fully developed, but non-living birth must be treated differently than a fetus which has been miscarried or otherwise aborted at an

earlier stage,” he says.

Writing for the court, Justice Morris Fish said the law is not overly vague and “makes clear that it is focused on the event of birth.”

“In its application to a child that died before birth, it only captures the disposal of the remains of children that were likely to be born alive,” Fish wrote in the decision.

“A conviction will only lie where the Crown proves that the child, to the knowledge of the accused, was likely to have been born alive.”

The Supreme Court steered well clear of the abortion debate, saying the concealment law applies only to stillbirths and not to miscarriages or abortions.

-With files from AdvocateDaily.com

© 2013 The Canadian Press