

1. Case Name

Keeler v. Superior Court of Amador County

2. Case Citation

2 Cal.3d 619, 87 Cal.Rptr. 481, 470 P.2d 617.

3. Issue

Whether an unborn but viable fetus is a
“human being” within the meaning of the
California statute defining murder?

4. Rule of Law

A fetus can not be the subject of homicide unless it had been born alive or is “in the process of being born.”

5. Rationale

It will be presumed, of course, that in enacting a statute the Legislature was familiar with the relevant rules of the common law, and, when it couches its enactment in common law language, that its intent was to continue those rules in statutory form.

It appears that by the year 1850—the date with which we are concerned—an infant could not be the subject of homicide at common law *unless it had been born alive*.

Chavez added that a viable fetus “in the process of being born” is a human being within the meaning of the homicide statutes.

6. Holding

No.

7. Facts

Defendant, told his divorced wife when he saw she was pregnant that “I’m going to stomp it out of you.” He pushed her against the car, shoved his knee into her abdomen, and struck her in the face with several blows. She fainted, and when she regained consciousness defendant had departed.

Mrs. Keeler drove back to Stockton, and the police and medical assistance were summoned. She had suffered substantial facial injuries, as well as extensive bruising of the abdominal wall. A Caesarian section was performed and the fetus was examined. Its head was found to be severely fractured, and it was delivered stillborn.

8. Procedural Posture

Supreme Court: found for defendant.

1. Case Name

Errington and Others' Cases

2. Case Citation

2 Lewin C.C. 217, 168 Eng.Rep. 1133.

3. Issue

Whether the defendants can be convicted of a homicide crime if the defendants really did not intend to kill the deceased?

4. Rule of Law

Murder is when a man . . . unlawfully killeth . . . any reasonable creature . . . with malice forethought.

Malice may consist of the intent to kill, to cause great bodily harm, or to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.

5. Rationale

The conduct of the prisoners indicated an entire recklessness of consequences, hardly consistent with anything short of design.

6. Holding

Yes.

7. Facts

While the victim was drunk and asleep, the defendants covered and surrounded him with straw, and threw a shovel of hot cinders upon his belly; the consequence of which was, that the straw ignited, and he was burnt to death.

8. Procedural Posture

Trial Court: guilty of manslaughter.

Appellate Court: affirmed conviction.