

Equal Justice Initiative

Criminal Justice Issues and Prisoners' Rights

<https://eji.org/news/eji-wins-new-trial-marsha-colbey/>

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09.08.09

On September 4, 2009, the Alabama Supreme Court reversed the conviction and sentence imposed on Marsha Colby, who was convicted of capital murder after giving birth to what doctors believe was a stillborn baby.

Ms. Colby, a 43-year-old mother of six who could not afford prenatal care during her high-risk pregnancy, unexpectedly delivered a stillborn baby while at home alone. Her efforts to revive the child were unsuccessful, and she buried him in a marked grave near her home.

When a state forensic pathologist with a history of preparing faulty and unreliable reports concluded that the baby had been born alive, the State charged Ms. Colby with capital murder and announced its intention to seek the death penalty against her. At trial, reliable scientific evidence supported Ms. Colby's statement to police that her son was stillborn but the State obtained a capital murder conviction by presenting prejudicial evidence of Ms. Colby's drug addiction and poverty in an effort to portray her as a bad mother who should be imprisoned regardless of her guilt.

The State abandoned its effort to obtain a death sentence against Ms. Colby only after the jury had been death-qualified and returned a guilty verdict.

EJI appealed Marsha Colby's case after a Baldwin County circuit judge sentenced her to life imprisonment without possibility of parole for the capital murder of her newborn son.

In a brief to the Alabama Court of Criminal Appeals, EJI argued that Ms. Colby is innocent and that the trial court violated her constitutional rights when it refused to exclude from jury service a number of people who demonstrated bias in favor of the prosecution. The appeals court agreed that the trial court erred in failing to exclude those jurors for cause. Because Ms. Colby used her peremptory strikes to remove those jurors, the court nonetheless refused to grant Ms. Colby relief, finding that the errors were harmless.

EJI appealed the decision to the Alabama Supreme Court. In an unanimous decision, the court reversed Ms. Colby's conviction, holding that her right to a fair trial by an impartial jury was violated by the trial court's multiple errors during jury selection.

The Supreme Court reasoned that Ms. Colby had to use too many of her peremptory strikes to remove jurors who should have been excluded for cause. Indeed, because Ms. Colby did not have enough strikes to remedy the trial court's mistakes, the seated jury included jurors who knew witnesses for the State, jurors who expressed strong support for the death penalty, and jurors who felt it was defense counsel's job to prove the defendant's innocence.

The court did not address Ms. Colby's innocence claim because it vacated her conviction based on the jury selection claim.

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