

Criminal Justice Issues and Prisoners' Rights

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COLUMBUS Today the ACLU of Ohio filed a brief as amicus curiae to the Supreme Court of Ohio in *State v. Foreman*, a case addressing whether a defendant can be convicted of felony cocaine possession based solely on the presence of metabolites in the body. After Kelly Foreman gave birth in a Seneca County hospital in March 2018, a toxicology screen revealed cocaine or cocaine metabolites in the umbilical cord as well as in the newborns urine and stool. She was arrested, charged with felony possession of cocaine, and convicted.

Critically, the prosecution did not establish that Ms. Foreman had actually possessed cocaine in Seneca County a necessary showing in order to prosecute her there but only that she was in Seneca County sometime after having used cocaine.

The ACLU of Ohio writes that under the Eighth Amendment and the Ohio Constitution, it is unconstitutional cruel and unusual punishment to prosecute a person merely for the status or condition of being a drug user. Prosecution must be for a specific act, not for a status or condition. In the prosecutions view, the ACLU of Ohio writes, someone in Ms. Foremans position would be subject to arrest at anytime, anywhere that they happened to be, until the metabolites cleared their system even if the person used the drug in a state or country where it was legal.

By convicting Ms. Foreman of drug possession without proof of any criminal act actually occurring in Seneca County, based only on her status of a person who previously used drugs, the prosecution runs afoul of the Eighth Amendment, noted **David Carey, Senior Staff Attorney for the ACLU of Ohio**. If the governments theory were to hold if drug possession is contorted to include mere presence of metabolites in the body then the presence of metabolites in a routine medical screening would carry enormous new significance, risking a chilling effect for individuals seeking necessary medical care.

The ACLU of Ohio urges the court to revise the decision of the Court of Appeals for the Third Appellate District of Ohio, Seneca County in the matter of *State v. Foreman*.

[A copy of the amicus brief is available.](#)

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