

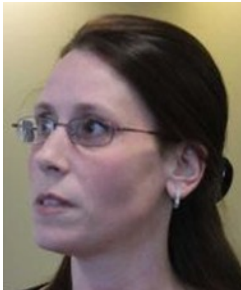
NY Appeals Court Acquits Jennifer Jorgensen Of Manslaughter In Death Of Her Daughter

On October 22, 2015 the [New York State Court of Appeals acquitted](#) Jennifer Jorgensen of manslaughter and ordered dismissal of her indictment. The appeals court ruled New York's manslaughter statute doesn't apply to the death of an infant born after an alleged "reckless" act by a pregnant mother.

Jorgensen was 29-years-old and 34-months pregnant when on May 30, 2008 the car she was driving crossed into the lane of oncoming traffic and collided with another vehicle in Ridge, New York. Ridge is on Long Island about 60 miles west of New York City.

At the time of the collision Jorgensen wasn't wearing a seat belt and she was speeding.

Jorgensen was taken to the hospital where she consented to an emergency cesarean section. Her infant daughter, Ashley Jorgensen-Kaiser, died five days later. An autopsy identified Ashley died due to injuries sustained in the accident — while she was still in her mother's womb.



Jennifer Jorgensen leaves the courthouse after a mistrial was declared on March 29, 2011 (Joseph D. Sullivan)

The two people in the other vehicle died from their injuries: Robert Kelley died at the scene, and Mary Kelly died about three weeks later.

A laboratory analysis of Jorgensen's blood detected a blood alcohol level of .06 — below the legal limit of .08 — and the presence of the anti-anxiety medication Clonazepam — which she had a prescription to use.

Thirteen months later, in July 2009, Jorgensen was indicted on three counts of first-degree manslaughter, one count of aggravated vehicular homicide, and one count of operating a motor vehicle while under the combined influence of alcohol or drugs. The [charges were based](#) on the Suffolk County District Attorney's theory that Jorgensen was acting recklessly when she

struck the Kelly's vehicle, because she was driving without a seat belt in excess of 50 miles per hour in a 30 mile-per-hour zone while under the influence of prescription drugs and/or alcohol. Jorgensen was released on bail.

Jorgensen's trial in March 2011 ended in a mistrial due the jury's inability to reach any unanimous verdicts after six days of deliberations.

Jorgensen was retried on all the charges. On March 19, 2012 the jury acquitted Jorgensen of all charges except for second-degree manslaughter in the death of her daughter. In June 2012 Jorgensen was sentenced to serve three to nine years in prison, however, she was allowed to remain free on bond pending the outcome of her appeal.

On January 22, 2014 the Appellate Division of the Supreme Court of New York [affirmed Jorgensen's conviction](#). She appealed that ruling.

On October 22, 2015 the New York State Court of Appeals reversed the Appellate Division's decision and Jorgensen's conviction. The appeals court held that New York's manslaughter statute doesn't apply to the death of an infant born after an alleged unintentional "reckless" act by the pregnant mother. In *The People v. Jennifer Jorgensen*, No. 179 (NYS Court of Appeal, 10-15-2015) [the court stated](#):

The sole issue that we reach on this appeal ... is whether a woman can be convicted of manslaughter for reckless conduct that she engaged in while pregnant that caused injury to the fetus *in utero* where the child was born alive but died as a result of that injury days later. We hold that it is evident from the statutory scheme that the legislature ... did not intend to hold pregnant women criminally responsible for conduct with respect to themselves and their unborn fetuses unless such conduct is done intentionally....

The People concede that, had defendant not consented to the cesarean section with the result that the child be born alive, she would not have been prosecuted for manslaughter in the second degree. ... it would create a perverse incentive for a pregnant woman to refuse a cesarean section out of fear that if her baby is born alive she would face criminal charges for her alleged reckless conduct, jeopardizing the health of the woman and the unborn fetus.

...



Jennifer Jorgensen hugs her fiancé Rich Kaiser on October 22, 2015 after her conviction was overturned (Randee Daddona)

The imposition of criminal liability upon pregnant women for acts committed against a fetus that is later born and subsequently dies as a result of injuries sustained while *in utero* should be clearly defined by the legislature, not the courts. It should also not be left to the whim of the prosecutor. Conceivably, one could find it "reckless" for a pregnant woman to disregard her obstetrician's specific orders concerning bed rest; take prescription and/or illicit drugs; shovel a walkway; engage in a contact sport; carry groceries; or disregard dietary restrictions. ... At present, such conduct, if it caused a stillbirth, would not result in criminal prosecution of the mother if the fetus died *in utero*. Any change in the law with regard to such matters would be within the province of the legislature.

Accordingly, the order of the Appellate Division should be reversed, and the remaining count of the indictment dismissed.

[Click here to read](#) the New York Court of Appeals ruling in *The People v. Jennifer Jorgensen*, No. 179 (NYS Court of Appeal, 10-15-2015)

Jorgensen, now 36, continues to live in Suffolk County.

Source: [The People v. Jennifer Jorgensen](#), No. 179 (NYS Court of Appeal, 10-22-2015) (Reversing Court of Appeals ruling, and reversing conviction on basis of insufficient evidence and ordering dismissal of charges.)

[New York's highest court tosses manslaughter conviction](#) against Jennifer Jorgensen of Sound Beach in 2008 crash, By Andrew Smith (Staff writer), Newsday, October 22, 2015

[People v. Jorgensen](#), 113 AD 3d 793, 978 N.Y.S.2d 361, 2014 NY Slip Op 379 (NY Appellate Div., 2nd Dept. 1-22-2014) (Affirming conviction)

[Ridge woman convicted of manslaughter 2nd degree](#); acquitted of four other charges, Press Release, County of Suffolk District Attorney's Office, March 19, 2012