

VALENA BEETY

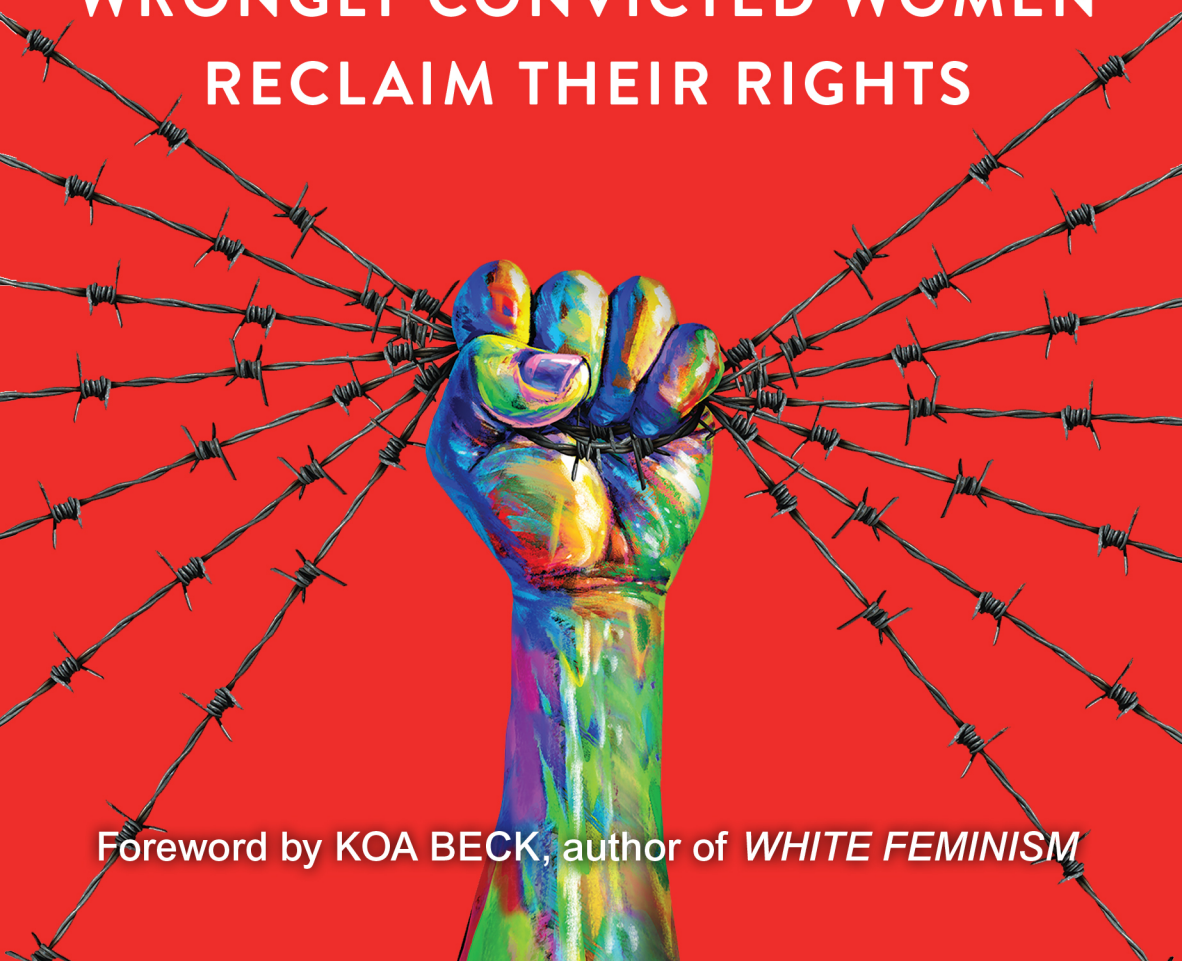
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# MANIFESTING JUSTICE

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WRONGLY CONVICTED WOMEN  
RECLAIM THEIR RIGHTS



Foreword by KOA BECK, author of *WHITE FEMINISM*

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## **CHAPTER 17**

# Wrongly Convicted Women: Criminalizing Sex and Pregnancy

Innocence projects represent a shockingly low number of women. There is a softball explanation for this gender-disparate reality: more men are incarcerated than women. Thus, the odds are that more men are wrongfully convicted than women. In addition, many DNA exonerates are men wrongfully convicted of sexual assault. They were freed because someone finally tested the rape kit and the sperm: not a match.

But this chapter is for women who are wrongly convicted or whose convictions are manifestly unjust. This chapter is for women who aren't seen as victims, who aren't seen as innocent. I speak here of women routinely arrested, with charges affecting thousands of them.

This chapter is a familiar story of controlling women's bodies through incarceration. Prosecutors and police may vigilantly patrol, arrest, and charge girls and women for crimes involving how they use their own bodies. Girls and women may be legally innocent and yet morally condemned for these crimes, such as sex work and drug use, particularly if they are pregnant. Women are, frequently en masse, wrongly convicted of prostitution, and child endangerment due to legal or illegal drug use during pregnancy.

In this chapter, I'll address prostitution charges against youth and trafficked individuals, child abuse charges for drug use by a pregnant person—regardless of whether they know they are pregnant—and prosecutorial discretion to bring these charges. May innocence advo-

cates also fight for the freedom of these women, and prosecutors educate their offices on legal innocence and the fallout from these prosecutions.

### **MASS MISDEMEANOR WRONGFUL CONVICTIONS**

Recently, innocence work has drawn attention to widespread faulty drug convictions. Not every misdemeanor drug case can be challenged, but police and prosecutor patterns of behavior and mass wrongful convictions can. These cases include faulty police roadside drug tests, where a cashew is misidentified as a crack-rock, or the police testimony of smelling burnt marijuana—while planting drug evidence in the car. Innocent defendants, usually men, took pleas in these misdemeanor or nonviolent felony cases because the stakes were relatively, seemingly, low.

Innocence organizations represent these men in mass misdemeanor cases, zeroing in on police or prosecutor or crime lab malfeasance. This is valuable work. However, innocence organizations do not represent trafficked women who are convicted of prostitution, pregnant women who are taking prescription medication and convicted of child endangerment, and girls and queer youth who cannot legally consent to sex but are arrested and convicted for sex work. These are also mass misdemeanor—or felony—wrongful convictions.

### **LEGAL INNOCENCE AND SEX WORK**

Ninety-one percent of trafficking survivors have been arrested for a sex offense, and 42 percent of them were minors when they were arrested. Children cannot be guilty of prostitution if they are below the age of consent as a matter of law. They cannot legally say yes to sex. But instead of acknowledging their legal innocence, many prosecutors charge, convict, and label children as prostitutes and deviant sexual criminals.

Girls are not seen and treated as girls. They are labeled as knowing adults, with courts objectifying girls by their body parts and apparent physical maturity. Additionally, prostitution is not a race-neutral charge. Black girls are more likely to be trafficking victims, and more likely to be arrested for prostitution, than white girls. They have a

higher likelihood of being punished and incarcerated through the juvenile criminal legal system.

Police, prosecutors, and judges misperceive Black girls as less “innocent” and more adult than white girls, even of the same age. Their adultification means that Black girls are labeled in the courtroom as willing participants in sex trades, rather than as victims.

Black girls have been hypersexualized since the time of slavery. Today, they are more likely to be caught up in the sex trade, either by a “boyfriend” or as a means of survival. Traffickers interviewed by the Urban Institute shared that they “believe[d] trafficking Black women would land them less jail time than trafficking white women if caught.”

Due to these factors, Amnesty International has called for sex work decriminalization as a racial justice issue. Decriminalization would allow sex workers to go to police if they feared or suffered violence. It would allow more women to leave the trade without the stigma of a criminal conviction.

“Feminine” is historically and continually reinforced as white, straight, and middle-class. Actors in the legal system target and punish women and gender non-conforming people who do not fall into those categories. Police arrest people they perceive as visibly and easily associated with sexual “deviance,” be that influenced by race, class, or sexual orientation. They disproportionately profile trans and queer women as sex workers, leading to criminal prosecutions.

Innocence organizations do not challenge these patterns of charging by prosecutors. Yet they are wrongful convictions, and they are charging patterns that can be changed.

The Trafficking Victims Protection Act (TVPA), and many state anti-trafficking laws, define sex trafficking as “a commercial sex act induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.” Police, however, frequently maximize their prostitution arrest numbers, instead of assisting or protecting sex workers and trafficked individuals. Police still arrest the trafficked individual: for prostitution, possessing a weapon or drugs, or truancy if they are a minor.

As white saviors, police and prosecutors may even treat an arrest as a charitable “rescue.” This ignores how sex workers’ criminal convictions make it even more difficult for them to attain stability to leave the sex trade. Criminal records block employment opportunities, access to affordable and safe housing and public benefits, and even funds or admission to higher education.

In some states, prosecutors cannot criminally charge and prosecute youth for prostitution because of Safe Harbor laws. These laws provide immunity for minors from prostitution prosecutions when they cannot legally consent to sex in any other context. Safe Harbor laws also support sex workers and trafficked people to leave dangerous circumstances.

Thirty-five states have enacted laws that permit the courts to vacate the prostitution-related convictions of underage teenagers. Those teenagers, of course, were nonetheless arrested and prosecuted in the first instance and never represented by innocence organizations. The fact that underage people may be engaging in independent survival sex work shouldn’t complicate their innocence under the law.

#### **MYTHS AND REALITIES OF DRUG USE DURING PREGNANCY**

During the 1980s crack-cocaine epidemic, news outlets hysterically pushed out stories on “crack babies.” The narrative posited that a new generation of children would suffer birth defects and lifelong health problems because their mothers had used cocaine. Crack babies became a symbol for “bad” moms, and a reason to criminalize and punish individuals who used drugs while pregnant. Dubious charities like C.R.A.C.K.—Children Requiring A Caring Kommunity—provided “free” and even compensated sterilization to women of color with a history of illegal drug use.

Time gave us the ability to witness those so-called crack babies grow up. Years later science proved one thing: those children became healthy adults. In fact, the use of crack cocaine during pregnancy is no more harmful for the baby than smoking cigarettes—which is decidedly legal. The alleged problem of “crack babies” was based on junk science.

In our drug overdose crisis, prosecutors are restoring laws from the crack-cocaine epidemic, charging women for using opioids while pregnant. In twenty-three states, prosecutors can bring child abuse charges

for parental drug use beginning at the time of conception—long before the mother may know she is pregnant.

### **CRIMINALIZING DRUG USE TO “HELP” PREGNANT MOTHERS**

In 2014, Tennessee legislators created the crime of fetal assault. Sullivan County District Attorney Barry Staubus testified in favor of creating the new crime. Sullivan County was in the throes of a severe opioid overdose epidemic and prosecutor Staubus reasoned that the new crime would “help” women with drug use disorder.

Staubus testified, “I think when we see this statute . . . we are going to be able to bring lots and lots of women into a program we’re creating specifically for drug addicted mothers.” One legislator described the criminal prosecutions as “offering mothers the help they so desperately need but cannot obtain on their own.” Another legislator supported the bill reasoning “drugs tend to take your right mind away . . . [with the] discipline . . . [of the] court system . . . [the mothers can] go back to being the nurturing caring parents that they would want to be.”

The statute only stayed on the books for two years but during that time prosecutors brought fetal assault charges almost exclusively against low-income women. Prosecutors relied heavily on information from health care providers who told police about drug use. Once charged, these women experienced jail, bail, fines, and probation with the threat of more punishment. Pregnant women faced the same challenges and punishment that most people face when they are prosecuted, including enormous pressure to plead guilty.

They also faced losing custody of their children.

Despite the justification of “helping” women, the only “care” poor women received from the state were criminal charges, prosecutions, and convictions.

### **INTERPRETING LAWS TO CONTROL THE BEHAVIOR OF PREGNANT WOMEN**

What range of habits, conditions, actions, or inactions, will our government criminalize if done by a pregnant person? Once prosecutors criminalize the behavior of pregnant women due to the possible impact on a fetus, such line drawing becomes blurry.

In 2011, Mississippians voted down a proposed personhood amendment to the state constitution. Since then, other states have proposed similar amendments. The personhood amendment would codify that life begins at conception. Assumably, the law could criminalize a pregnant person's behavior starting at conception as well. What would be illegal behavior for a pregnant person?

In 2011, 14 percent of women in Mississippi reported smoking cigarettes in the third trimester of pregnancy, which is a known risk factor for a fetus. Smoking and proximity to secondhand smoke is unhealthy for a fetus. Drinking alcohol is a known contributor to fetal alcohol syndrome. Indeed, eating fish and drinking unpasteurized milk can also be problematic. And personhood laws could move beyond reckless endangerment to criminalize failure to act—failing to have adequate prenatal medical care, for example, or failing to submit to bedrest.

As the Maryland Supreme Court stated in a similar case, “criminal liability would depend almost entirely on how aggressive, inventive, and persuasive any particular prosecutor might be.” The Court was considering whether a pregnant woman who ingested cocaine could be convicted of creating a substantial risk of harm to another person.

In Alabama, legislators passed a “chemical endangerment” law to criminalize meth labs and punish the exposure of a “child” to an “environment in which controlled substances are produced or distributed.” Prosecutors used this law to criminally charge pregnant women who tested positive for drug use. Prosecutors equated the womb with a meth lab. Alabama courts agreed.

This meth lab child endangerment law was never intended to apply to pregnant people who wanted to carry their babies to term while struggling with drug use. Those pregnant defendants are legally innocent.

Alabama has prosecuted hundreds of women for drug use during pregnancy, a mass pattern of behavior that can be challenged by innocence organizations. Many state courts have ruled that the state cannot criminally punish a pregnant person for continuing their pregnancy despite an underlying health problem, such as substance use disorder.

These laws are not really about harm to the fetus. They are about



negatively labeling the mother. If a pregnant woman had a prescription for the exact same drug, the law usually created an exception. Having a prescription for the same substance has been the difference between guilt and innocence—and incarceration. The legal line applies regardless of the health of the child at birth.

There is always the exception, however, at the discretion of the prosecutor. Alabama prosecutors brought charges against Kim Blalock, a married stay-at-home mother of six, whose newborn tested positive for opioids because Kim took prescription hydrocodone for her degenerative disc disease. She had taken the prescription for four years. The local prosecutor charged her with prescription fraud, for allegedly not informing her orthopedist that she was pregnant.

#### **PROSECUTING STILLBIRTHS**

While I lived in Mississippi, state prosecutors charged a Black teenager from Columbus, Mississippi, Rennie Gibbs, with depraved heart murder. Ms. Gibbs suffered a stillbirth and tested positive for controlled substances. Prosecutors alleged that her drug use recklessly put the fetus in danger and caused the stillbirth.

Sixteen at the time of her stillbirth, Rennie Gibbs faced a mandatory life sentence if convicted. The language of the statute that she was charged under, however, was limited to “injury to a pregnant woman resulting in miscarriage or stillbirth” *by another person*. That law did not apply to pregnant people themselves and, therefore, they were legally innocent of such charges. They may also be factually innocent: almost a quarter of all pregnancies naturally end in miscarriage or stillbirth with no one at fault.

Power lies in the interpretation of these statutes by prosecutors, and who they choose to target and punish.

#### **FALLOUT FROM CRIMINALIZING PREGNANT WOMEN**

With the resurgence of “motherblame,” the fallout is real. Pregnant people with Substance Use Disorder are again discouraged from seeking prenatal care for fear they’ll be criminally charged for drug use and sent to prison. They will be separated from their children, its own punishment for the parent and the children. Hospitals now regularly

drug-test women in labor, with or without their consent. A positive test means prosecutors can criminally charge the mother with neglect or child abuse—or even delivery of drugs to a minor.

These drug tests also trigger mandatory reporting laws to Child Protective Services, and the mother can lose custody of her newborn, or her other children for whom she is the primary caretaker.

Yet while courts will mandate ongoing drug testing of mothers, they do not mandate drug testing of fathers in the home.

Neither the incarceration of pregnant people nor the separation of parents from newborns has a positive or healthy impact on either the parent or the child. The American Medical Association and the American Academy of Pediatrics oppose these prosecutions because they undermine the health of pregnant people and of their newborns. According to the American Academy of Pediatrics, “punitive measures taken toward pregnant women, such as criminal prosecution and incarceration, have no proven benefits for infant health.”

For too long, women and girls have been wrongly convicted by creative prosecutors who ignore legal innocence. If elected prosecutors educate their offices on drug use disorder and its impact, more women and their children can remain together. If innocence organizations represent mass claims of wrongful prosecution on behalf of juveniles charged with prostitution, girls can become women outside of the juvenile incarceration system. If legislatures pass Safe Harbor laws, trafficked women can receive assistance and options, rather than further punishment and incarceration.

But the question should no longer be “if” but “when.” It is past time to advocate for justice for these women and girls.

## CHAPTER 16

# Women in Rankin Prison, Mississippi

Interstate 55, down from Memphis, intersects with Batesville on its way south to Jackson, Mississippi. Perhaps surprisingly, Batesville is home to Magnolia Grove Monastery, a mindfulness practice center established by followers of Thich Nhat Hanh. Batesville also has a Chili's. I watched and celebrated the Saints victory over the Colts in the 2010 Super Bowl at that Chili's—my adopted regional home team, since Mississippi doesn't have professional sports teams, versus my birthplace home team for Indiana. At the time, alcohol couldn't be sold on Sundays in my nearby town of Oxford, and the restaurants closed on Sunday and Wednesday evenings when people went to church services and mid-week potluck dinners. Chili's, half an hour away, was open on Sundays, had a TV, and had beer.

I'd also stop at that Chili's late at night on my way back from visiting Rankin prison. Technically named Central Mississippi Correctional Facility, I could make it to Rankin in just under two hours from Batesville, speeding down the interstate with the Mississippi Delta to the west. Rankin prison, nicknamed after the county, is just east of the state capital, Jackson. The last stretch of the drive includes an oak-lined road far older than the tar and asphalt. Then the road curves past Whitfield, the state mental hospital. Whitfield was itself built on a former penal colony, and originally was known as the Mississippi State Insane Asylum. Similar to the farm prisons of the South like Parchman in Mississippi and Angola in Louisiana, Whitfield Hospital was at one

time self-sufficient with 3,500 acres and working inhabitants. But people incarcerated at Parchman prison farm had a target date to end their sentence. At Whitfield, people walked in and never walked out. Whitfield today has an official nursing home for residents.

Whitfield also now has a unit for Substance Use Services, though many Mississippians with substance use disorder are farther down around the bend in the road at Rankin prison. Rankin is the only prison for women in the state, meaning no matter where they're from they can't be moved to a prison closer to their family, or to their children. The only option for women is Rankin. Trans women are often placed in male prisons around the state that don't correspond to their gender.

Leigh and Tami moved to Rankin after they were sentenced by Judge Smith. I'd visit them every month or two, updating them on their case, asking about them and their health, and checking if there were any other women we should be representing. Not that the Mississippi Innocence Project had the bandwidth—we were a small non-profit and clinic out of the University of Mississippi School of Law. But at least we could try.

Sometimes the only way these women got out of prison was thanks to community mobilization, pressure on politicians, and attention from outside of the prison walls. Community fury is powerful, and prosecutors should not have a corner on outrage.

The stories below show how community outrage freed people when the legal system stalled.

Our guide through Rankin is another one of my clients, Tasha Mercedes Shelby. Incarcerated for over twenty years and still in prison today, Tasha has worked jobs inside at the Hair Zone, in the mailroom, as a tutor, and in the chapel. Most of the women she knew in this chapter are cisgender women.

Individuals who identify or are perceived as gender-nonconforming, such as people who are trans or non-binary, face additional challenges because they are often forced into prisons that don't correspond with their gender. Tasha knew an intersex person who identified as masculine through delivering mail to the women's Maximum Security Unit—the MSU. MSU is solitary confinement. Tasha delivered mail from friends

who sent “masculine” toiletries, a form of humanity. People who are gender non-conforming are cruelly housed in solitary confinement when prisons fail to consider other solutions—and even the solitary confinement units are gendered.

Each Christmas, the prison chaplain would send gift bags to the people incarcerated in the prison. The gift bags were gendered: “feminine gifts” or “masculine gifts.” Tasha was working in the chapel when she received a note from a trans woman in solitary confinement housed in the male MSU. She wanted a feminine gift bag.

When the chaplain said yes, Tasha put together the bag: barrettes, hair bows, “girly” shampoo, and deodorant. Even in these small ways, the recognition of someone’s identity matters. And it is often people on the outside creating both that recognition and change for incarcerated people.

#### **STATE-SANCTIONED SEXUAL ASSAULT**

Tasha, Leigh, and Tami were incarcerated with about 1,400 women at Rankin. The majority of incarcerated women are sexual abuse and assault survivors, who enter or leave with trauma-induced disabilities including PTSD, depression, and anxiety. Transgender and gender nonconforming people in prisons suffer physical and sexual harassment and abuse in prison at even higher rates than cisgender women.

Tasha, Leigh, and Tami spent years being strip-searched for every visit with family members or with me, their attorney. Each visit, the women had to remove all of their clothes and be examined and searched by fully clothed guards. The purpose of strip searches is nominally to search for contraband; it is overwhelmingly to denigrate the individual and their body, insult and humiliate them, emphasize their powerlessness, and turn them from a human with a soul into an object, a body. The message is that their body does not matter and that their body does not belong to them.

Tasha, Leigh, and Tami rarely mentioned the searches. They were a mandatory concession in order to see their family, friends, or attorneys.

One horrific example haunts me. A prison in Illinois was conducting a routine “training exercise for cadet guards.” The guards brought two hundred incarcerated and handcuffed women into a room with

male and female cadets, prison guards, and even civilian observers. The guards forced the incarcerated women to take off all their clothes and stand naked in front of the watching people.

The incarcerated women stood so close together that their bodies touched. They were ordered to remove tampons and sanitary pads, menstrual blood dripping down their legs and onto the floor. The guards, the cadets, the civilians, were all watching, all fully clothed. And under those staring eyes, the guards ordered the women to do what they're required to do before every family member visit, before every attorney visit: "raise their breasts, lift their hair, turn around, bend over, spread their buttocks and vaginas, and cough."

This was a routine training exercise. It's also rape culture. It is state-sanctioned sexual assault.

#### **TASHA MERCEDEZ SHELBY: WRONGFULLY CONVICTED**

I first learned about Tasha from Leigh and Tami. They told me about two women whom they believed to be innocent in prison. Tasha was one of them.

Tasha moved to Mississippi when she was a teenager. She attended high school through the tenth grade, when she became pregnant with her son Dakota and left school to work. Time passed, Tasha raised her son, and she started dating Big Bryan. Big Bryan was a few years older and had just gotten his long-haul trucking license. Big Bryan had a son of his own who was the same age as Dakota, two and a half years old. They called him Little Bryan. Little Bryan was big for his age, weighing thirty-three pounds and standing three feet tall.

He was already half the height of Tasha, who is a little person at four feet nine inches tall.

They were soon all living together in their own home, a trailer in Biloxi, close to the long beaches and water of the Gulf. Little Bryan was on a nebulizer for his asthma and had absence seizures, where he would stare off into space. Tasha and Big Bryan worried about him and took him to the pediatrician, who recommended a neurologist. The family made an appointment with the neurologist for mid-June.

Despite the concern about Little Bryan, the blended family was happy. Tasha was pregnant with a little girl. When she gave birth to that little girl in May, they named her Devin. Tasha had a C-section

and at the same time she had the surgeon tie her tubes; their family was complete.

Tasha was on bedrest after surgery and the birth of her daughter, and she stayed in the hospital days after giving birth. Tasha's doctor prescribed her pain pills for the C-section, but she couldn't afford them. The doctor advised against any heavy lifting, bending over, or exertion that could rip the stitches in her body. She had a hard enough time picking up her newborn baby. Her relatives would come by and pick up Dakota to give Tasha a break while Big Bryan worked a night shift at 9 Lumber.

It was on one of those evenings when Dakota was with relatives, and Tasha had put the baby and Little Bryan to sleep, when she heard a loud thump from Little Bryan's room. She went into his room to find Little Bryan convulsing on the floor. He had fallen out of his bed and was having a seizure. He couldn't breathe.

Tasha called the hospital where she had just given birth to Devin, and they told her to come in immediately—driving would be faster than an ambulance.

Tasha then called Big Bryan to come home and started performing CPR on Little Bryan. When her fiancé arrived, they all rushed to the hospital—so fast that police pulled them over. Big Bryan yelled at the police that he needed to get to the hospital. He started to drive off, but not before one of the officers jumped in their van and took over for Tasha performing CPR.

In the Emergency Room the doctors tried to revive Little Bryan.

It was too late. Little Bryan was brain dead from the lack of oxygen. His brain was swollen, and he had a trace of bleeding in his brain. They took him off of the oxygen machine the next day.

The hospital called the police to investigate if Little Bryan's death was the result of child abuse. The police interrogated Tasha. She said what she always has said since: she heard a thump, Little Bryan was on the floor having a seizure and not able to breathe, and she started performing CPR. She was never able to revive him.

At the time of Little Bryan's death, doctors did not yet know how damaging short falls can be, or how seizures can interact with a short fall. Instead, in 1997 the theory of "Shaken Baby Syndrome" was more prevalent in legal and medical fields than it is today. That theory held

that when a baby—usually less than six months old—presented with three specific symptoms (bleeding around the brain, bleeding in the back of the eyes, and brain swelling), then the child must have been shaken to death.

Little Bryan had brain swelling and a tiny spot of subdural hemorrhaging, but no retinal hemorrhaging. Even though Tasha's story never changed, no one believed that short falls or seizures could account for Little Bryan's symptoms. The autopsy report concluded that Little Bryan's death was the result of homicide. As the only person who had been at home with the child, Tasha was arrested and charged.

It was her first time ever being arrested.

Big Bryan married Tasha shortly after Little Bryan's death. Then Tasha was booked into jail to await her trial.

Tasha waited three years. By that point, relatives had taken both her daughter and her son; Big Bryan did not keep custody of their newborn daughter.

When Tasha went to trial, her defense attorneys agreed with the diagnosis that Little Bryan had been shaken to death—everyone did. But her attorneys argued that Big Bryan was the culprit. Tasha was four feet nine inches in height, and she had given birth via C-section and had her fallopian tubes removed less than two weeks earlier. How could she pick up a thirty-three-pound toddler and shake him forcefully enough to kill him? Tasha told her attorneys about the short fall, she told them about the appointment with the neurologist scheduled for a week after Little Bryan's death, she told them about the seizures and Little Bryan's asthma and nebulizer. None of it mattered.

In the very first sentence of the State's opening statement against Tasha Shelby, the prosecutor told the jury, "On May 30th, 1997, Tasha Shelby shook a two-and-a-half-year-old child, Bryan Thompson, so violently that the child died the next day from those injuries." By the end of the trial, the prosecutor told the jury, "[t]he things in this case, ladies and gentlemen, that are not in dispute . . . Bryan Thompson was violently shaken to death. That is undisputed." At the time of trial, that statement was correct: it was undisputed.

The State's star witness was medical examiner Dr. LeRoy Riddick. Dr. Riddick had performed the autopsy. He testified that Little Bryan



was violently shaken to death. He dismissed that the injuries could be caused by a short fall or another non-abuse-related accident.

Tasha's defense witness, similar to Leigh and Tami's defense witness, agreed with the State that the cause of death was Shaken Baby Syndrome.

In 2000, the jury found Tasha guilty of capital murder. She was terrified of going to death row. But then the jury sentenced her to life in prison instead, without any hope of parole.

In 2008, Audrey Edmunds became the first person to be exonerated on the basis of the newly discovered unreliability of Shaken Baby Syndrome.

In 2010, I first met Tasha. All these years later, I am still representing her. Since the time of her trial, advancements in pediatric medicine, traumatic medicine, and biomechanical engineering have undermined the State's essential contentions. The Centers for Disease Control and Prevention now identify falls as the most common cause of traumatic brain injury in children less than four years old.

The advancements in science also led the State's original forensic pathologist, Dr. LeRoy Riddick, to change his opinion on the cause and manner of death.

In 1997, Dr. Riddick concluded that Little Bryan's death was a homicide—in line with the prevailing wisdom of the time. However, upon reexamining his records in 2015, Dr. Riddick believed that he made a mistake with his diagnosis.

Dr. Riddick changed the cause of death on Little Bryan's death certificate from homicide to accident. He then testified for Tasha at a Post-Conviction Relief Hearing, along with three other defense medical experts.

The courts have not yet reversed Tasha's conviction or granted her any relief. She remains at Rankin. And as such, she is our guide through this chapter of wrongfully convicted women in Rankin.

#### **WOMEN ON DEATH ROW**

As the only prison for women in the state, Rankin is home to the women on death row in Mississippi. At the time of my regular visits to Rankin, there were only two women on death row. Both were white

and both were completely isolated. Lisa Jo Chamberlin was sentenced to death in 2006. Michelle Byrom was on death row until 2014.

Lisa Jo admits to her crime. But Michele Byrom was innocent, and freed thanks to community outrage and journalistic investigations.

Not many women are sentenced to death, but when they are, prosecutors often use gender stereotypes against the women, characterizing them as “abnormal.” Poor parenting, rarely used against cisgender men, is frequently claimed against cisgender women defendants.

Michelle Byrom was one of those women.

Michelle’s son Eddie Jr. shot and killed his abusive father Eddie Byrom Sr. Michelle was in the hospital when her son killed her husband. Indeed, she was in treatment on multiple prescribed medications at the hospital. Nevertheless, Tishomingo County Sheriff David Smith came to the hospital to interrogate Michelle about the murder. He encouraged Michelle to help out her son, to take ownership. He told Michelle that she must have hired someone, an accomplice, making this a conspiracy to murder. Michelle told the sheriff that she would take responsibility for her husband’s death.

After Michelle’s statement to the sheriff, the local prosecutors charged her with capital murder. At trial, Eddie Jr. testified against Michelle, stating under oath that his mom had hired his friend Joey Gillis to kill Eddie Sr. The jury found Michelle guilty.

Before sentencing in capital cases, defense attorneys present evidence of why their client should not receive the death penalty. A psychologist had evaluated Michelle and uncovered that Michelle’s stepfather had sexually abused her. Michelle ran away from home to escape the sexual violence and worked as a stripper to support herself. Her relationship with Eddie Sr. began when she was only fifteen years old and Eddie Sr. was thirty-one. Eddie Sr. physically and sexually abused Michelle, forcing her to have sex with him and with other men. Michelle tried to leave but her husband threatened her with violence every time. With no resources to support herself and her son, Michelle stayed.

The male prosecutor at trial, Arch Bullard, used this against her. “There’s been arguments made that maybe Eddie wasn’t the husband or the father that he should’ve been,” he told the jury. “Why didn’t she

just leave him? Why didn't she divorce him? Why didn't she seek sanctuary somewhere else?"

Michelle did—she would ingest rat poison in order to have a reprieve in the hospital from her home life. Michelle suffered from depression, alcohol dependence, and mental health issues. Her male attorneys did not present this information, or any of Michelle's history. They then waived her constitutional right to a jury sentencing and asked the judge to sentence her instead.

Circuit Judge Thomas Gardner sentenced Michelle to death.

It was only in 2014, when Attorney General Jim Hood requested an execution date of March 27, that Michelle's case actually received any scrutiny. That attention and ultimate outrage came from citizens and the media.

Journalists uncovered four written confessions by Michelle's son—all of which were known by the defense attorneys at the time of trial, and by the judge who sentenced her to death. Eddie Jr. even led the police to the murder weapon.

These white men in the courtroom had committed the true conspiracy—not conspiracy to murder, conspiracy to convict an innocent woman. Eddie Jr., Joey Gillis and Tishomingo Sheriff David Smith; then prosecutor Arch Bullard, Michelle's defense attorneys, and Judge Thomas Gardner all knew about the repeated confessions by Michelle's son. The only people who didn't know about the confessions were the jury. When the defense attorneys tried to admit some of the confessions at trial, Judge Gardner denied their request.

In 2014, weeks before Michelle's scheduled execution, citizens organized a call-in campaign to the governor's office. The *Jackson Free Press* covered Michelle's case and exposed the confessions. It worked.

In a shocking move, the Mississippi Supreme Court denied the attorney general's request for an execution date, and then reversed Michelle's conviction on March 31, 2014. Days after Michelle was initially set to be executed by the State of Mississippi by lethal injection, she was instead leaving prison.

Michelle was free thanks to community advocacy.

But that's not the end of the story.

The prosecutor re-brought the same charges against Michelle. He

demanded that Michelle be incarcerated until her new trial, rather than released on bail. The prosecutor couldn't charge the true perpetrator because Eddie Jr. had pled guilty to a lesser offense in exchange for testifying against his mother.

Michelle sat in jail for a year pending the new trial, just as Kenny Brewer had, incarcerated while the prosecutors waited them out.

Michelle's prosecutor was in no rush. But after sixteen years in prison, and fourteen of those years on death row, Michelle wanted to live the rest of her life free. The prosecutor offered her an Alford plea—she could plead guilty to the crime but maintain her innocence, instead saying the state had enough evidence to convict her rather than that she was guilty. In exchange, Michelle would get a sentence of “time-served” and walk free.

Michelle took the Alford plea. The prosecutor and judge agreed to release her from jail.

Michelle didn't know how little of her life would remain. While she was on death row she had developed breast cancer. The cancer bloomed across her body to stage IV, a reality she learned only when she went to a doctor as a free woman. Michelle died of breast cancer after three and a half years of freedom, in 2019.

Her son, Eddie Jr., who killed his father and set up his mother to take the blame, had choice words on her death: “Life's a lot like poker, sometimes you just don't have a winning hand . . . I believe she did the best she could with the hand she was dealt.”

He helped deal that hand against her, along with the police and players in the criminal legal system.

Michelle was not the only woman ever wrongfully convicted on Mississippi's death row, set to be executed for a crime she didn't commit. Sabrina Butler, a Black woman from Columbus, Mississippi, was the first woman on Mississippi's death row. At just seventeen, Sabrina was charged with murdering her baby son Walter. In her own powerful book Sabrina writes: “I was a teenager who, less than 24 hours before, had lost my precious baby boy. Ambitious men questioned, demoralized and intimidated me. In that state of mind, I signed the lies they wrote on a piece of paper.”

Sabrina lived on death row for thirty-three months, and in prison

for five years, until she was exonerated and proven not guilty in 1995 with proof that her son died from natural causes.

The prosecutor who brought the murder charge against teenage Sabrina, Forrest Allgood, also wrongfully convicted at least three Black men with the assistance of Dr. West: Kenny Brewer, Levon Brooks, and Eddie Lee Howard. In 2015 Forrest Allgood's reign as prosecutor in Columbus finally ended when he was defeated by challenger Scott Colom. Scott's father, a widely known and well-respected attorney, was a board member of the Mississippi Innocence Project. Change is possible.

Michelle Byrom and Lisa Jo Chamberlin were isolated from anyone else in the prison. But on occasion, the women on Mississippi's death row could have a reminder that they were human. They could have another person touch them kindly.

Tasha Shelby was the hairdresser at the Hair Zone—a salon in the women's prison. Tasha earned her cosmetology licenses while inside, and women could pay from their canteen to get their hair done up, share gossip, and get some personal attention.

Tasha cut Lisa's and Michelle's hair, an intimate experience for these women on death row. She tended to Lisa's long brown hair, an act of normalcy bringing them together. Even under the constant gaze of guards, it was a reminder of being human, of having an identity. Lisa would be bubbly and talkative the whole time, excited to see Tasha, catching up on her nails and hair. Michelle was subdued and quiet, never causing any trouble.

The guards would set up a barber chair in a little room in the Maximum Security Unit. Tasha had been in the MSU when she initially came to Rankin because she has a life sentence for a crime she did not commit. All women with a life sentence first go to MSU and then work their way to more freedom—within the prison, that is.

MSU is solitary confinement. The United Nations Mandela Rules, named after South African president Nelson Mandela who was imprisoned for twenty-seven years during South Africa's apartheid, define solitary confinement as twenty-two hours a day or more without meaningful human contact. Solitary confinement has existed in the

United States as a “solution” since the founding of our country. Cells are designed to block human interaction with solid metal doors, a combined toilet-and-sink in the cell, and little or no access to windows or natural light. Food can be inserted on a tray through a slot in the metal door. People in solitary can’t participate in educational or vocational programs, and generally can’t have televisions, radios, and only limited reading material. They exercise in a single person cage; sometimes outside sometimes not. And again, visits with family are limited and frequently no-contact.

The Mandela Rules prohibit prolonged solitary confinement, defined as more than fifteen days, because solitary confinement harms people. Isolating people from anyone else actually changes our brain activity. We as humans suffer mentally and physically from enforced isolation with panic attacks, paranoia, hallucinations, depression, self-harm, and suicide.

When Tasha first came to MSU she cried so hard that one of the sergeants took notice.

“Shelby, what is wrong with you?”

“Sergeant, it’s just me in here. And . . . I’ve never gone this long without a hug.”

One of the hardest sergeants then came and sat on the metal cot next to Tasha. She turned to Tasha and hugged her. Tasha cried into her arms.

Tasha never forgot. Each time she’d cut Lisa’s and Michelle’s hair, she’d ask the guard if she could give them a hug at the end. A simple gesture. A physical kindness that women on Mississippi’s death row could otherwise only receive from a chaplain or guards.

### **ORGANIZING COMMUNITY ACTIVISM TO FREE WOMEN**

Through Tasha, I met still other women—women who were freed due to community activism.

Tasha shared a cell with Jamie Scott, a Black woman sentenced along with her sister Gladys to life in prison for stealing \$11.

Jamie and Gladys had no prior arrests or convictions when they were arrested by the Scott County Sheriff’s Department for armed robbery on December 24, 1993, Christmas Eve. At the time, both sisters were working full time at a nearby chicken-processing plant and at

Hardee's. The sisters started working before graduating from high school in order to support their families. Three teenage boys confessed to a robbery, and implicated Jamie and Gladys in the crime. In exchange for sentences of ten months to two years each, the boys gave statements to the police. They said that Jamie and Gladys were the masterminds of the robbery, even though the sisters hadn't even been present. Gladys was nineteen years old and Jamie was twenty-one.

The teenage boys testified at trial. Howard Patrick testified that the deputy sheriff told him that "if I didn't participate with them, they would send me to Parchman and make me out to be female." Only fourteen years old, Howard was kept in jail until the Scott sisters' trial.

The jury found Gladys and Jamie both guilty of armed robbery and sentenced them to two life sentences—each. Gladys was pregnant at the time and gave birth to her child while incarcerated, shackled to a hospital bed.

Attorney Chokwe Lumumba took on the sisters' case on direct appeal and post-conviction. In post-conviction, he obtained a written statement by the only Patrick boy who didn't testify, Chris. In the signed affidavit, Chris said the Scott sisters had nothing to do with the \$11 robbery. Lumumba gathered affidavits from other witnesses that the sheriff's office was coercive.

The courts refused to grant any relief to the Scott sisters.

In 2010, Jamie's kidneys began to fail and she went on dialysis. When the prison moved Jamie to its intensive care unit, family members and supporters began a petition for her to be released from prison. Jamie and Gladys's mom, Evelyn Rasco, began a "Free the Scott Sisters" blog, and talked with nonprofit organizations and the press. Lumumba by that point had become a councilman in Jackson, Mississippi, and he would later become mayor of Jackson. Lumumba filed a request for medical release. The prison denied it.

Then Lumumba filed a petition for pardon with Mississippi governor Haley Barbour, and organized a rally at the state capital for the next day. After sixteen years of incarceration, Governor Barbour granted clemency to Jamie and Gladys. He ordered them released from prison—on the bizarre condition that Gladys had to donate a kidney to Jamie. She did.

Community organizing had freed the two women and helped them regain their lives outside.

Can we do the same for Tasha? We're on social media, in contact with reporters, and I've talked with her family about purchasing a billboard, explaining her case in downtown Jackson, Mississippi—and in Los Angeles. We've drafted letters to the governor and the commissioner for the Mississippi Department of Corrections, asking for her sentence to be commuted. In the meantime, we fight her case in the courts, with claims of innocence and manifest injustice. In our last court hearing, she had friends, family, church members, professors, lawyers, and even state legislators in the audience supporting her. Next time we will have more.



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