

<input type="checkbox"/> Small Claims <input type="checkbox"/> County Court <input checked="" type="checkbox"/> District Court <input type="checkbox"/> Probate Court <input type="checkbox"/> Juvenile Court <input type="checkbox"/> Water Court Mesa County, Colorado Court Address: 125 N. Spruce Street, Grand Junction, CO 81501	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: 07CR1826 Div.: 11 Ctrm:
<hr/> THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. LOGAN LAGE, Defendant.	
ORDER RE: MOTION TO DISMISS	

This matter comes before the court for consideration of the Defendant's Motion to Dismiss Counts One, Two, Four, Five, Nine, Sixteen and Seventeen, filed with the court February 15, 2008. A preliminary hearing is scheduled for March 21. After reviewing the motion and People's response, the case file, and relevant legal authority, the court finds that a hearing is unnecessary and enters this Order.

A preliminary hearing serves the limited purpose of determining whether there is probable cause to believe that an offense has been committed and the defendant charged committed it. *People v. District Court*, 803 P.2d 193, 196 (Colo. 1990). The prosecution must only present evidence sufficient to induce a person of ordinary prudence and caution to entertain a reasonable belief that the defendant committed the crime charged. *Id.* Accordingly, the court must view the evidence in the light most favorable to the prosecution. *Id.*

For purposes of this Order, the court accepts the prosecution's version of the facts outlined in their response and draws reasonable inferences in their favor. The charges arise from an incident in which law enforcement attempted to pull Defendant over in his vehicle. He fled at high speed and attempted to pass another vehicle on a two lane road. He collided head-on with a car driven by Shea Lehnen. Ms. Lehnen was 8 1/2 months pregnant. She suffered bodily injuries and was taken to St. Mary's Hospital, where she underwent a caesarean section. A baby girl named Lileigh Lehnen was born alive but died within hours of delivery as a result of injuries sustained during the collision.

The Amended Complaint charges Defendant with several offenses based upon his causing the death of or serious bodily injury to Lileigh Lehnen. Defendant seeks to have those charges dismissed because Lileigh had not yet been born at the time of the collision and was therefore not a “person” as defined by statute.

Resolution of this issue turns on proper interpretation of the statutes under which Defendant is charged. Colorado has abolished all common law crimes “and no conduct shall constitute an offense unless it is described as an offense in this code or in another statute of this state. . . .” Section 18-1-104(3), C.R.S. The court must look first to the plain language of the statute, reading words and phrases in context and construing them according to their common usage. *Bostelman v. People*, 162 P.3d 686, 690 (Colo. 2007). Where the statutory language is clear and unambiguous, the court need not consider other aids to interpretation. *Id.*

I. Count One: First Degree Murder-Extreme Indifference

Defendant is charged with violating section 18-3-102(1)(d), C.R.S., which provides that

A person commits the crime of murder in the first degree if:

Under circumstances evidencing an attitude of universal malice manifesting extreme indifference to the value of human life generally, he knowingly engages in conduct which creates a grave risk of death to a person, or persons, other than himself, and thereby causes the death of another. . . .¹

“Person” is a defined term for purposes of the homicide statutes, §§ 18-3-102 through 18-3-107. The definition states that “‘person,’ when referring to the victim of a homicide, means a human being who *had been born and was alive at the time of the homicidal act.*” Section 18-3-101(2), C.R.S. (emphasis added).

At issue is whether Lileigh Lehnen was a “person” under this definition. Defendant argues that she was not, relying upon the plain language of the definition. The People rely upon cases from other jurisdictions decided under similar factual circumstances.

The plain language of the definition could not be any clearer. To qualify as a “person,” three conditions must obtain *at the time of the homicidal act*: (1) the victim is a human being; (2) the victim has already been born; and (3) the victim is still alive. The only act in this case that could possibly qualify as the homicidal act occurred when Defendant drove on the wrong side of the road at high speed and collided with a vehicle being operated by Shea Lehnen. The People do not suggest otherwise. Lileigh Lehnen had not yet been born at this time. Therefore, Lileigh Lehnen was not a “person” who could be the victim of Defendant’s would-be homicidal act.

¹ Unlike subsections (a), (b), (c), and (e), this subsection refers merely to “another” as victim rather than “another person.” It is clear from the context, however, that “another” must mean “another person,” since the preceding portion of the sentence refers to creating risks to a person or persons other than the perpetrator.

The People have suggested that “[t]he defendant has not provided any law that supports the notion that the child must have been born . . . when the act of violence occurs” (Resp. at 18). In fact, Defendant quoted the statutory definition of “person” in his motion. The People curiously and by contrast, do not refer to the applicable statute, C.R.S. section 18-3-101(2), at all. Instead the People rely upon cases from other jurisdictions that are legally distinguishable. The cases the People rely upon do not interpret homicide statutes featuring a definition of “person” like Colorado’s. Nor has the court found any such cases.

The People quote at length from *Cuellar v. State*, 957 S.W.2d 134 (Tex. App. 1997). The manslaughter statute at issue there required that the defendant caused the death of an individual, defined as “a human being who has been born and is alive.” *Id.* at 137. The infant victim died after birth of injuries sustained *in utero*. The court characterized the issue as “whether the Penal Code authorizes a conviction only when a victim meets the definition of an individual at the time of the alleged misconduct, or whether a conviction may also be authorized if a victim attains the status of an individual after the alleged misconduct.” *Id.* The court found the definition ambiguous on this point and therefore relied upon the common law “born alive” rule that where a child is born alive but dies of injuries previously sustained *in utero*, the child may be the victim of a homicide.² The court accordingly held that the victim did not have to be an “individual” at the time of the act that caused death.

Cuellar is clearly distinguishable. Colorado’s addition of the phrase “at the time of the homicidal act” eliminates precisely the ambiguity that concerned the *Cuellar* court. Therefore, the People’s reliance upon it is unavailing. Distinguishable for the same reasons is *People v. Hall*, 557 N.Y.S.2d 879, 883 (1990), which applied the born alive rule to interpret the definition of “person” as “a human being who has been born and is alive.”

Similarly unavailing is the People’s reliance upon *State v. Cotton*, 5 P.3d 918 (Ariz. App. 2000), which noted that “the homicide statutes require that the victim be a ‘person,’” but “do not limit the nature or timing of the injury” and “do not require that all the elements of the offenses be immediately satisfied at the time of the defendant’s conduct.” *Id.* at 922-23. A “person” under Arizona’s definition was simply “a human being.” *Id.* at 920. Colorado’s definition of “person” *does* require certain elements to be fulfilled at the time of defendant’s conduct. Specifically, Colorado requires that the victim already have been born.

² Many jurisdictions apply the “born alive” rule. See, e.g., *Williams v. State*, 561 A.2d 216 (Md. 1989); *Cornelius*, 448 N.W.2d 434, 437 (Wis. App. 1989); *State v. Soto*, 378 N.W.2d 625, 628 n.7 (Minn. 1985) (collecting cases); *Ranger v. State*, 290 S.E.2d 63 (Ga. 1982); *People v. Greer*, 402 N.E.2d 203 (Ill. 1980). Other jurisdictions have departed from the “born alive” rule to allow a viable fetus to be the victim of a homicide. See, e.g., *Commonwealth v. Morris*, 142 S.W.3d 654 (Ky. 2004); *State v. Holcomb*, 956 S.W.2d 286 (Mo. App. 1997); *Hughes v. State*, 868 P.2d 730 (Okl. Cr. 1994). However, none of these cases applying the “born alive” rule or attributing personhood to viable fetuses for purposes of a homicide prosecution deals with a statutory definition of “person” like Colorado’s. Nor do any of the cases cited in *Soto*, *supra*, and listed in the People’s response at paragraph 10.

The court therefore finds that there is not probable cause to believe that Defendant committed the offense of first degree murder by causing the death of Lileigh Lehnen. In making this finding, the court certainly does not wish to minimize the fact that Lileigh's parents have suffered a great loss. Nor does the court wish to minimize the seriousness of the alleged conduct that resulted in this charge. Nevertheless, it is the court's duty to apply and interpret the law as the legislature has written it. As written, the definition of "person" precludes Lileigh Lehnen from being the victim of a homicide under these circumstances.

Accordingly, Count One of the Amended Complaint is dismissed.

II. Counts Four and Sixteen: Vehicular Homicide-Reckless Driving and Vehicular Homicide-DUI

Defendant is charged in these counts with violating § 18-3-106(1)(a), (b)(I), C.R.S. Like § 18-3-102(1)(d), these sections require that Defendant caused "the death of another." The context again makes clear that "another" refers to "another person." Section 18-3-106 is expressly governed by the definition of "person" in 18-3-101. Therefore, for the reasons previously discussed, Lileigh Lehnen could not have been the victim of a vehicular homicide under these circumstances.

Accordingly, Counts Four and Count Sixteen of the Amended Complaint are dismissed.

III. Count Two: Child Abuse-Knowingly/Recklessly Causing Death

Defendant has also been charged with child abuse pursuant to § 18-6-401(1)(a). The statute provides in relevant part that "[a] person commits child abuse if such person causes an injury to a child's life or health, or permits a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health" Defendant is charged with acting knowingly or recklessly where the child abuse resulted in death, § 18-6-401(7)(a)(I). Lileigh Lehnen is identified as the child-victim.

Section 18-6-401(2) provides that "[i]n this section, 'child' means a person under the age of sixteen years." Unlike the homicide statutes, the child abuse statute does not include a specific definition of "person." Nor is there a definition of "person" for purposes of the criminal code generally. It is clear, however, that the child abuse and homicide statutes are *in pari materia* and must be read consistently. See *Huddleston v. Board of Equalization of Montezuma County*, 31 P.3d 155, 159 (Colo. 2001) ("Statutes should not be read in isolation but together with all other statutes relating to the same subject or having the same general purpose This is especially true where a statute intimates by its plain language an intent to incorporate other statutory provisions"); *People v. Low*, 732 P.2d 622, 629 n.10 (Colo. 1987) (defenses of insanity and impaired mental condition concern the same subject matter *because both statutes embody principles of criminal responsibility* and therefore must be construed *in pari materia*).

Section 18-6-401(7) delineates the varying degrees of culpability for child abuse, depending upon such circumstances as the perpetrator's *mens rea* and whether death or injury results. Subsection (7)(c) refers to § 18-3-102(1)(f) of the first degree murder statute, which proscribes knowingly causing the death of a child under age twelve if the perpetrator is in a position of trust. Moreover, criminally negligent homicide (§ 18-3-105) is a lesser included offense of criminally negligent child abuse resulting in death (§ 18-6-401(7)(a)(II)). *People v. Clements*, 732 P.2d 1245 (Colo. App. 1986).

Thus, it is clear that the portions of the child abuse statute dealing with abuse resulting in death clearly relate to the same subject as the homicide statutes. Both address culpable conduct causing the death of persons, and the child abuse statute deals with a limited class of persons. Accordingly, the definition of "child" should be construed consistently with the definition of "person" in the homicide statutes. Interpreting "person" in the definition of "child" to include those not yet born at the time of the proscribed conduct would be at variance with the holding in *Clements*. If the victim were not yet born at the time of the criminally negligent act, a defendant could be guilty of criminally negligent child abuse resulting in death without being guilty of criminally negligent homicide.

It is also worth noting that elsewhere in the criminal code, § 18-8-109, C.R.S., which makes it a crime to conceal the death of "another person," the legislature specifically defined "another person" to include "a fetus born dead" but "[f]or the purpose of this section only." This manifests a legislative intent that "person" elsewhere in the criminal code does not include fetuses. If it did, the added definition of "another person" here would be superfluous.

Accordingly, Count Two of the Amended Complaint is dismissed.

IV. Counts Five, Nine, and Seventeen: Vehicular Eluding Resulting in Death, Careless Driving Resulting in Death, and Vehicular Assault-DUI

Count Five charges Defendant with vehicular eluding resulting in the death of Lileigh Lehnen, in violation of § 18-9-116.5, C.R.S. Vehicular eluding is a class five felony, unless it "results in death to another person," in which case it is a class three felony.

Count Nine charges Defendant with careless driving resulting in the death of Lileigh Lehnen, in violation of § 42-4-1402(1), (2), C.R.S. That section makes careless driving a class one misdemeanor traffic offense "if the person's actions are the proximate cause of bodily injury or death to another. . . ." Again, the context makes clear that "another" means "another person."³

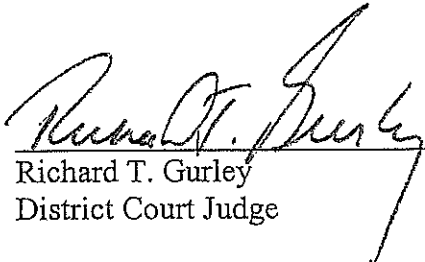
³ For purposes of the traffic code, "person" simply means "a natural person, firm, copartnership, association, corporation, or business entity." "Natural person" is not illuminating under the circumstances. In general, it merely distinguishes human beings from artificial legal "persons" like corporations. See *Charnes v. Central City Opera House Association*, 773 P.2d 546, 552 (Colo. 1989).

Count Seventeen charges Defendant with vehicular assault while driving under the influence, resulting in serious bodily injury to Lileigh Lehnen, in violation of § 18-3-205(1)(b), C.R.S. That section provides that “[i]f a person operates or drives a motor vehicle while under the influence of alcohol or one or more drugs . . . and this conduct is the proximate cause of serious bodily injury to another, such person commits vehicular assault.” Again, “another” can only mean “another person.”

All three statutes embody principles of criminal responsibility and must be read in *pari materia* with the definition of “person” in the homicide statutes. It is not as though homicide statutes generally protect some limited class of potential victims. There simply is no indication that the legislature intended to broaden the category of possible victims in these statutes beyond those that could be the victims of homicide. The People do not suggest otherwise.

Accordingly, Counts Five, Nine, and Seventeen of the Amended Complaint are dismissed.

DONE AND ORDERED this 19th day of March, 2008.


Richard T. Gurley
District Court Judge