

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

State of New Hampshire

v.

William Kelly

Docket No. 212-2023-CR-337

ORDER ON MOTION TO CHARGE

Defendant, William Kelly, stands charged with two counts of second degree murder arising from the death of his girlfriend, Christine Falzone, and the fetus she was carrying. The indictments charge that the defendant recklessly caused the deaths by inflicting multiple blunt force injuries upon Ms. Falzone. See Docs. 24-25 (indictments). See also RSA 630:1-b, I(b) (reckless second degree murder); RSA 630:1-a, IV (including fetus in definition of “another” as used in homicide statutes). The State now moves the Court to charge the jury that the State does not need to prove that the defendant knew Ms. Falzone was pregnant in order for him to be found guilty of murder of the fetus. (Doc. 44.) Defendant objects. (Doc. 70.) After a hearing, and after carefully considering the parties’ arguments and the relevant law, the Court **GRANTS** the State’s motion.

The Court begins its analysis with the statutory language. RSA 630:1-b provides that a person commits second degree murder if he “causes the death of another . . . recklessly under circumstances manifesting extreme indifference to the value of human life.” RSA 630:1-b, I(b). “Recklessly” is defined in RSA 626:2:

A person acts recklessly with respect to a material element of an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the circumstances known to him, its disregard constitutes a gross deviation from the conduct that a law-abiding person would observe in the situation.

RSA 262:2, II(c). The elements of “reckless[ness]” and “extreme indifference to the value of human life” set forth in the second-degree murder statute, RSA 630:1-b, I(b), are separate and distinct. State v. Howland, 119 N.H. 413, 416 (1979). The issue in this case focuses on the element of recklessness—specifically, whether a defendant

can act “recklessly” with respect to a victim of whose existence he is subjectively unaware.

The State argues that the charged offenses do not require the State to prove that the defendant acted “knowingly,” compare RSA 630:1-b, I(a), but only that he acted “recklessly,” and that “recklessly,” as defined by the code and properly construed, does not require proof that he was aware that the person whom he assaulted was pregnant. (Doc. 44, ¶¶ 2-6.) Defendant responds that if he did not know of Ms. Falzone’s pregnancy, then he could not have been “aware of, and consciously disregarded, a substantial and unjustifiable risk of death to the *fetus*.” (Doc. 70, ¶¶ 11-13; emphasis in objection.) The Court agrees with the State.

“Whether a defendant acted recklessly does not depend upon the actual harm resulting from his conduct.” State v. Belleville, 166 N.H. 58, 63 (2014) (citing State v. Hull, 149 N.H. 706, 713 (2003)). “Nor does it depend upon whether the defendant anticipated the precise risk or injury that resulted.” Id. (citing State v. Evans, 134 N.H. 378, 385 (1991)). What is required is that the defendant was aware of and disregarded a substantial and unjustifiable risk that his conduct would cause the death of “another.” Just as a defendant need not know the precise injury or mechanism of death, he need not know exactly who the “other” might be. Recklessness is determined by the conduct involved, not the resulting harm or the identity of the victim.

This conclusion is supported by the plain meaning of the second-degree murder statute, which defines the offense as recklessly causing the death of “another” under circumstances manifesting extreme indifference to human life. RSA 630:1-b, I(b). The term “another” is not defined by the criminal code (except to include a fetus in certain situations, RSA 630:1-a, IV). “When a term is not defined in the statute, [courts] look to its common usage, looking to the dictionary for guidance.” Felts v. City of Rochester, 2025 N.H. 16 at *3 (2025) (citation omitted). In common usage, “another” means “one of a group of unspecified or indefinite things.” Webster’s New Collegiate Dictionary 47 (1975). Thus, so long as the defendant was aware of and disregarded a substantial and unjustifiable risk of death to *some* person, he can be found guilty of recklessly killing any person whose death was caused by his conduct. The State does not need to prove his awareness of a particular victim. See State v. Dodd, 2022 WL 17244799 at *4 (Minn. App. 2022) (nonprecedential opinion) (affirming conviction for reckless shooting of victim whose presence was unknown to the defendant; “It is unreasonable to read the term ‘another’ to require the defendant’s *mens rea* to attach to a specific victim and know of their presence when the plain meaning refers to a larger class of persons that is owed a duty of care.”).

The Belleville case, though not directly on point, is instructive. There, the defendant was convicted by a jury of recklessly causing serious bodily injury to a motorist when the vehicle he was operating crossed over two sets of double solid lines and collided with an oncoming vehicle in which the victim was a passenger. 166 N.H. at 161. The defendant appealed his conviction on the grounds that the evidence was insufficient to prove that he acted recklessly. He maintained that he “did not see” the

other vehicle, stating that he looked down to check a text message on his cellular telephone while driving and “the next thing you know I crashed.” *Id.* at 60. The Supreme Court affirmed the conviction, holding that “[a] rational trier of fact could have concluded that the risk that *another driver* would suffer serious injury in this situation was substantial and unjustifiable.” *Id.* (emphasis added).

There is no hint in the Belleville decision of any evidence that the defendant was subjectively aware of the vehicle with which he collided, let alone that it contained a passenger. Indeed, as far as the opinion reveals the defendant was not aware of the other car at all (“the next thing you know I crashed”). What was important to the Supreme Court was the defendant’s awareness of the risk that looking down to check a text message “could cause an accident”—*i.e.*, that *someone* could be injured—and that he disregarded that risk. *Id.* at 64.

Although it did not directly address the issue presented here, Belleville strongly suggests that the risk of injury to “another driver” *generally* was sufficient to prove recklessness, *id.* at 63, even in the absence of subjective awareness of the particular victim. Similarly, if the defendant here was aware that his conduct posed a substantial and unjustifiable risk to human life in general, then he may be held criminally responsible for all deaths that resulted therefrom and need not have known which victim or how many victims would be harmed.¹

The result reached here is consistent with decisions by courts in other jurisdictions that have addressed this question in the specific context of fetal homicides. See People v. Taylor, 32 Cal. 4th 863, 11 Cal. Rptr. 3d 510, 86 P.3d 881, 884 (2004) (affirming conviction for second degree murder of fetus, where defendant shot mother but did not know she was pregnant; “When a defendant commits an act, the natural consequences of which are dangerous to human life, with a conscious disregard for life in general, he acts with implied malice towards those he ends up killing. There is no requirement that the defendant specifically know of the existence of each victim.”); Commonwealth v. Crawford, 430 Mass. 683, 722 N.E.2d 960, 967 (2000) (conviction for reckless killing of unborn fetus did not require proof that defendant knew of fetus’s existence; “Wantonness and recklessness are determined by the conduct involved, not the resulting harm.”); People v. Hall, 158 A.D.2d 69, 557 N.Y.S.2d 879, 885 (1990)

¹ The hypothetical offered by the Court at the motion hearing further illustrates this point. The defendant in Belleville would certainly have known that an oncoming car in the opposite lane was occupied by a driver. There would also be a chance, though less than a certainty, that the car contained a passenger (arguably, this probability would be less than 50 percent since it is common experience that most cars on the road have only a single occupant). There would be a smaller chance that the oncoming car contained two passengers, an even *smaller* chance that it contained three, and a still smaller chance than *that* of encountering a car with four passengers. As the number of passengers increases, the odds of encountering it and injuring them in an accident become smaller and smaller until at some point the inattentive driver could not possibly have been aware of, or reasonably have anticipated, the existence of each of his individual victims. It would be an absurd result, however, to hold that even if all four (or five, or six, or seven) passengers in the other car were injured or killed, the defendant could only be found criminally liable for harming those whose presence in the car was known to him. See State v. Maxfield, 167 N.H. 677, 679 (2015) (courts will construe statutes to avoid an absurd or unjust result).

(affirming conviction for manslaughter of infant born prematurely after defendant shot child's mother; "[I]t is entirely irrelevant whether defendant actually knew or should have known that a pregnant woman was in the vicinity and that her fetus could be wounded as a result of his actions. Clearly, it is the nature of defendant's behavior which is at issue, not the identity of the victim(s).").

The Court also observes that to hold as the defendant urges it to do would thwart the clear intention of the Legislature in enacting RSA 630:1-a, IV. That statute was passed in 2017 in direct response to the result in State v. Lamy, 158 N.H. 511 (2009). In Lamy, the Supreme Court overturned the manslaughter conviction of a driver who recklessly collided with another vehicle, whose driver was seven months pregnant. Id. at 513. The collision caused serious injuries to the other driver and ultimately resulted in the death of her fetus. Id. The Supreme Court held that the defendant could not be convicted of manslaughter or negligent homicide because, at that time, "the meaning of 'another' [as used in the criminal code] [did] not include a fetus." Id. at 514. The Legislature enacted RSA 630:1-a, IV to amend the homicide statutes to include a viable fetus in the definition of "another" and thereby to avoid legal outcomes such as the one in Lamy—an outcome which the Supreme Court itself described as "unfortunate," id. at 521. See SB 66-FN Majority Committee Report, Statement of Intent (May 23, 2017) (submitted at motion hearing). This Court will not frustrate that legislative intent in the absence of a clear statutory requirement or binding appellate case law directing otherwise. Neither is present here.

Finally, the Court finds persuasive the State's argument that to require it to prove the defendant's subjective awareness of Ms. Falzone's pregnancy would mean that, in any case where the immediate victim of extremely reckless conduct was not visibly pregnant, the actor would need to have some intimate or personal familiarity with her in order to be criminally culpable for causing the death of her fetus. This would be an absurd and unjust result. See State v. Maxfield, 167 N.H. 677, 679 (2015) (courts will construe statutes to avoid an absurd or unjust result).

For all of these reasons, the State's motion (Doc. 44) is **GRANTED**. The Court will instruct the jury to the effect that the State need not prove that the Defendant knew Ms. Falzone was pregnant in order for him to be found guilty of the second-degree murder of her fetus. The Court reserves ruling on the exact wording of its instructions until the time of the charge conference.

July 19, 2025



Hon. Mark D. Attorri

Clerk's Notice of Decision
Document Sent to Parties
on 07/21/2025