

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

CARROLL, SS.

OCTOBER 2025

State of New Hampshire

v.

William Kelly

Docket No: 212-2023-CR-337

STATE'S MOTION IN LIMINE: AUTOPSY PHOTOGRAPH

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and hereby submits this motion regarding a photograph of the victim's unborn child that the State intends to introduce at the defendant's trial. In support of this motion, the State submits the following:

1. The defendant is charged with two counts of reckless second-degree murder for causing the deaths of Christine Falzone and her unborn child. Trial is scheduled to commence with jury selection on November 3, 2025. Pertinent to the present motion, the charged offenses allege that the defendant inflicted multiple blunt force injuries to Christine, thereby causing her death and the death of her unborn child. To succeed in proving the fetal murder charge, the State must prove at trial that (1) Christine was pregnant at the time the defendant murdered her; (2) the defendant's murder of Christine ultimately caused the death of the fetus; and (3) Christine's unborn child was gestationally aged 20 weeks or more. RSA 603:1-a, IV; V(b)(1).

2. At trial, the State intends to admit a photograph depicting the condition of Christine's unborn child at the time of autopsy, which was taken by Deputy Chief Medical Examiner Mitchell Weinberg during the course of his autopsy.

3. This photograph is relevant and admissible at trial. Specifically, the photograph depicts how developed the fetus was at the time of death. The photograph also clearly shows the lack of any evidence of maceration to the fetus. Dr. Weinberg is expected to testify at trial that, in his medical opinion, the fetus was gestationally aged 35 to 37 weeks, and that the lack of maceration indicates that the fetus did not die before Christine did, making the sole cause of death maternal death. The photograph clearly depicts an almost full-term baby, which would have been viable but for the defendant's killing of her mother. Such evidence plainly make the facts of Christine's pregnancy, the fetus's gestational age, and the fetus's cause of death more probable than they would be without the evidence. In a trial preparation meeting with the State, Dr. Weinberg specifically indicated that the photo the State seeks to introduce which depicts a viable fetus, as well as the healthy placenta, would assist in illustrating and explaining his testimony to the jury.

4. Admission of the photograph offered by the State is governed only by New Hampshire Rules of Evidence 401-403. At this time, the State has identified the photograph that it intends to introduce at trial and has proffered the relevance of that evidence. Defense counsel has indicated they object to the introduction of the photograph.¹ Such objection could only be based on an argument that the photograph's probative value is substantially outweighed by the danger of unfair prejudice.

5. "Evidence is unfairly prejudicial if its primary purpose or effect is to appeal to a jury's sympathies, arouse its sense of horror, provoke its instinct to punish, or trigger other mainsprings of human action that may cause a jury to abuse its decision on something other than

¹ In lieu of introducing the photograph, the State offered to defense counsel a stipulation as to the fetus's gestational age, and that the cause of death was maternal death. Defense counsel declined to enter into such a stipulation. Thus, the State must introduce the photograph at issue for its proffered purpose.

the established propositions in the case.” State v. Nightingale, 160 N.H. 569, 574 (2010). “Unfair prejudice is not, of course, mere detriment to a defendant from the tendency of the evidence to prove guilt, in which sense all evidence offered by the prosecution is meant to be prejudicial.” Id. “Rather, the prejudice required to predicate reversible error is an undue tendency to induce a decision against the defendant on some improper basis, commonly one that is emotionally charged.” Id.

6. While defense counsel may argue risk of prejudice due to the emotional impact the photograph would have on the jury, such risk does not substantially outweigh the photograph’s probative value. See, e.g., Ex Parte Phillips, 287 So.3d 1179, 1217-19 (Ala. 2018) (in concluding that admission of photograph of pregnant victim’s reproductive organs proper, reasoning that “[t]he State had the burden of proving beyond a reasonable doubt that Erica was pregnant and that Baby Doe did not survive to prove that [the defendant] killed two persons. Thus, the photograph was used as probative evidence to establish that Erica was pregnant at the time Phillips shot her.”) ; State v. Seba, 380 P.3d 209, 213, 213-14 (Kan. 2016) (in upholding admission of autopsy photos depicting fetus shown in support of coroner’s testimony that death of fetus was due to death of mother, explaining that “[w]hile most would describe the photographs as gruesome, that alone does not render the photographs inadmissible. Gruesome crimes result in gruesome photographs, but accurate representations of a crime typically do not unduly prejudice a defendant.”) (internal quotation marks omitted); People v. Branch, 206 N.Y.S.3d 168, 170 (N.Y. App. Div. 2024) (in upholding admission of autopsy photo of fetus, noting that photograph was “neither excessively gruesome nor introduced for the sole purpose of arousing the jurors’ passions and prejudicing the defendant Rather, it was relevant to help illustrate the testimony of the medical examiner and to prove the material elements of the

abortion in the first degree count.”) (internal quotation marks omitted); State v. Hopkins, 112 N.E.3d 98, 125-26 (Ohio App. 2018) (in upholding admission of autopsy photos of fetus, noting that “[t]he trial court properly admitted the autopsy photographs because they helped the jury to understand the coroner’s testimony regarding the cause of the fetus’s death. Further, the photographs were relevant and probative of the allegation that [the defendant] caused that death by assaulting [the victim mother]. . . . There is no question that these images are unsettling, nor that an ordinary person would find it difficult to look at them. However, the probative value of the autopsy photographs is not substantially outweighed by the danger of unfair prejudice.”).

7. The State does not intend to introduce the photograph at issue for the sole purpose of arousing the jury’s sympathies, but rather for the purpose of proving the required elements of the fetal homicide charge. As such, the photograph is relevant and admissible at trial.

WHEREFORE, the State respectfully asks this Honorable Court to:

- A. Grant the State’s motion and rule the photograph identified by the State admissible at trial; or
- B. Schedule a hearing on the matter; and
- C. Grant such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: October 24, 2025

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via electronic filing to Brett Newkirk, Esq., and Katherine Canny, Esq., counsel for the defendant.

/s/ Brian Greklek-McKeon
Brian N. Greklek-McKeon

As discussed at today's hearing, the Court finds that the content of the photograph itself has probative value that is not substantially outweighed by the prejudicial risks asserted by Defendant. See also *Comm. v. Lawrence*, 404 Mass. 378, 536 N.E.2d 571, 579 (1989); *People v. Blacksher*, 52 Cal.4th 769, 130 Cal. Rptr.3d 191, 247 (2011) ("[t]he prosecution was not obligated to accept antiseptic stipulations in lieu of photographic evidence"). The Court reserves a final ruling, however, until it is able to assess the manner in which the photograph will be presented to the jury.



Honorable Mark D. Attorri

October 27, 2025

Clerk's Notice of Decision
Document Sent to Parties
on 10/27/2025