

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

CARROLL, SS.

NOVEMBER 2025

State of New Hampshire

v.

William Kelly

Docket No: 212-2023-CR-337

STATE'S PROPOSED JURY INSTRUCTION

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and hereby submits this proposed jury instruction regarding the charge that the State does not have to prove the defendant's knowledge of the victim's pregnancy in order for the jury to find that the defendant caused the fetus's death. The language the State proposes the Court add to the standard second degree murder charge is bolded below:¹

MURDER – SECOND DEGREE

The defendant is charged with two counts of second-degree murder. The charges of second-degree murder are as follows:

Charge ID: 2159412C

In that William Kelly recklessly caused the death of Christine Falzone under circumstances manifesting an extreme indifference to the value of human life, to wit, by means of multiple blunt force injuries.

Charge ID: 2186362C

In that William Kelly recklessly caused the death of Christine Falzone's fetus, gestationally aged twenty weeks or more, under circumstances manifesting an extreme indifference to the value of human life, to wit, by means of multiple blunt force injuries causing Christine Falzone's death. The definition of second-degree murder has two parts. The State must prove each part of the definition beyond a reasonable doubt. Thus, the State must prove:

RSA 630:1-b(b) – Extreme Indifference

¹ The State has consulted with defense counsel regarding its proposed instruction. While the defendant maintains his underlying legal objection to such an instruction being given, defense counsel have indicated they do not object to the language of this proposed instruction, given the Court's order that such an instruction will be given.

1. That the defendant caused the death of another.
2. That the defendant acted recklessly under circumstances showing an extreme indifference to the value of human life.

These are the elements of second-degree murder. Certain words in the definition need to be further defined.

The word “another” includes a fetus. “Fetus” means an unborn offspring, from the embryo stage which is the end of the twentieth week after conception or, in the case of in vitro fertilization, the end of the twentieth week after implantation, until birth.

It is not necessary that the defendant be aware of the existence of a fetus for you to find he caused the death of the fetus.

To prove that the defendant acted recklessly, the State must prove:

First, that the defendant was aware of a substantial and unjustifiable risk. This means there must be proof that the defendant knew that there was a substantial risk that his conduct would cause a particular result.

Second, if the defendant was aware of the risk, there must be proof that the defendant consciously disregarded the risk. In other words, the defendant decided to disregard the risk and took a chance in doing certain acts that a particular result would occur.

Third, you must examine the circumstances known to the defendant. From what he knew of the circumstances, you must decide whether his disregard of the risk was a gross deviation from what a law abiding person would have done. The key words here are “gross deviation.” If you find that the defendant’s actions were unreasonable or thoughtless, that is not enough. To find that the defendant acted recklessly, you must find that his disregard of the risk was a substantial departure from the actions of a law abiding person under the same circumstances.

It is not enough for the State to prove that the defendant acted negligently; that is, it is not enough to prove that the defendant failed to become aware of the risk involved. The State must prove that the defendant was aware of the risk and consciously disregarded it.

For a killing to be second-degree murder, the defendant must not simply act recklessly, but rather must act recklessly under circumstances showing an extreme indifference to the value of human life. This means something more than merely being aware of and consciously disregarding a substantial and unjustifiable risk. The circumstances must show a blatant disregard for the value of human life. It is not enough if the evidence shows a gross deviation from law abiding conduct.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: November 5, 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