

STATE OF NEW YORK

2886

2017-2018 Regular Sessions

IN ASSEMBLY

January 23, 2017

Introduced by M. of A. McDONALD, SIMANOWITZ, McLAUGHLIN, FAHY, RA, LUPI-
NACCI, FRIEND, CRESPO, GIGLIO, COLTON, GRAF, McDONOUGH, PALMESANO --
Multi-Sponsored by -- M. of A. BUTLER, McKEVITT -- read once and
referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in
relation to sentences of imprisonment for the offense of murder of a
pregnant woman

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Subparagraph (xiii) of paragraph (a) of subdivision 1 of
2 section 125.27 of the penal law, as added by chapter 300 of the laws of
3 2001, is amended to read as follows:

4 (xiii) the victim was killed in furtherance of an act of terrorism, as
5 defined in paragraph (b) of subdivision one of section 490.05 of this
6 chapter; [~~and~~] or

7 (xiv) when the defendant commits murder in the second degree as
8 defined in section 125.25 of this article and the victim was pregnant
9 and the defendant knew or should have known that the victim was preg-
10 nant; and

11 § 2. Section 300.10 of the criminal procedure law is amended by adding
12 a new subdivision 3-a to read as follows:

13 3-a. Where a defendant has been charged with murder in the first
14 degree pursuant to subparagraph (xiv) of paragraph (a) of subdivision
15 one of section 125.27 of the penal law, the court must, without elabo-
16 ration, instruct the jury as follows:

17 "Under our law, a defendant is guilty of murder in the first degree
18 when, with intent to cause the death of another person, the defendant
19 causes the death of such person (or of a third person) and the victim
20 was pregnant at the time of the killing and the defendant knew or
21 reasonably should have known that the victim was pregnant, and the

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[~~-~~] is old law to be omitted.

LBD04059-01-7

1 defendant was more than eighteen years old at the time of the commission
2 of the crime.

3 Some of the terms used in this definition have their own special mean-
4 ing in our law. I will now give you the meaning of the following terms:
5 'intent,' 'knew' and 'reasonably should have known'.

6 'Intent' means conscious objective or purpose. Thus, a person acts
7 with intent to cause the death of another person when his or her
8 conscious objective or purpose is to cause the death of that person.

9 A person 'knows' that his or her intended victim is pregnant when he
10 or she is aware that such victim is pregnant.

11 A person 'reasonably should know' that his or her intended victim is
12 pregnant if, in the same circumstances, a reasonable person in the same
13 position and possessing the same knowledge, would know that such victim
14 is pregnant.

15 In order for you to find the defendant guilty of this crime, the
16 People are required to prove, from all the evidence in the case, beyond
17 a reasonable doubt, each of the following five elements:

18 1. That on or about (date) , in the county of (county) , the defend-
19 ant, (defendant's name) , caused the death of (actual victim) ;

20 2. That the defendant did so with the intent to cause the death of
21 (intended victim) ;

22 3. That, at the time of the killing, (actual victim) was pregnant;

23 4. That, at the time of the killing, the defendant knew or reasonably
24 should have known that (actual victim) was pregnant; and

25 5. That the defendant was more than eighteen years old at the time of
26 the commission of the crime.

27 Therefore, if you find that the People have proven beyond a reasonable
28 doubt each of those elements, you must find the defendant guilty of the
29 crime of murder in the first degree as charged in the count.

30 On the other hand, if you find that the People have not proven beyond
31 a reasonable doubt any one or more of those elements, you must find the
32 defendant not guilty of the crime of murder in the first degree as
33 charged in the count."

34 § 3. This act shall take effect immediately.