STATE OF NEW YORK

2886

2017-2018 Regular Sessions

IN ASSEMBLY

January 23, 2017

Introduced by M. of A. McDONALD, SIMANOWITZ, McLAUGHLIN, FAHY, RA, LUPINACCI, 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 Assembly, do enact as follows:

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

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

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

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

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

"Under our law, a defendant is guilty of murder in the first degree when, with intent to cause the death of another person, the defendant causes the death of such person (or of a third person) and the victim was pregnant at the time of the killing and the defendant knew or 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3. This act shall take effect immediately.