

ASSAULT BY AUTO OR VESSEL
(SERIOUS BODILY INJURY, WITHOUT DRUNK DRIVING OR REFUSAL)
(N.J.S.A. 2C:12-1c)

The defendant (Name) is charged in count _____ with the crime of assault by auto [or vessel].

The indictment alleges:

(READ APPROPRIATE COUNT OF INDICTMENT)

The statute upon which this charge is based provides:

A person is guilty of assault by auto [or vessel] when the person drives a vehicle [or vessel] recklessly and causes...serious bodily injury...to another.

In order for you to find the defendant guilty of this crime, the State must prove the following elements beyond a reasonable doubt:

1. That defendant was driving a vehicle [or vessel];¹
2. That defendant caused serious bodily injury to (name victim); and
3. That defendant caused such serious bodily injury by driving the vehicle [or vessel] recklessly.

Bodily injury is defined as physical pain, illness or any impairment of physical condition²

Serious bodily injury is defined as bodily injury which creates a substantial risk of death or which

¹ N.J.S.A. 2C:12-1c provides: "As used in this section, 'vessel' means a means of conveyance for travel on water and propelled otherwise than by muscular power."

² N.J.S.A. 2C:11-1a.

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causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.³

In order to find that defendant caused (victim's) injury, you must find that (victim) would not have been injured but for defendant's conduct⁴

A person acts recklessly when he/she consciously disregards a substantial and unjustifiable risk that serious bodily injury will result from his/her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the defendant's conduct and the circumstances known to him/her, disregard of the risk involves a gross deviation from the standard of conduct that a reasonable person would observe in the defendant's situation.

In other words, in order for you to find the defendant drove a vehicle [or vessel] recklessly, the State must prove beyond a reasonable doubt that the defendant was aware that he/she was operating a vehicle [or vessel] in such a manner or under such circumstances as to create a substantial and unjustifiable risk of serious bodily injury to another. The State must also prove beyond a reasonable doubt that the defendant consciously disregarded this risk and that the disregard of the risk was a gross deviation from the way a reasonable person would have conducted himself/herself in the situation.

Recklessness is a condition of the mind that cannot be seen and that can often be determined only from inferences from conduct, words, or acts. It is not necessary for the State to produce a witness to testify that the defendant stated that he/she acted with a particular state of mind. It is within

³ N.J.S.A. 2C:11-1b.

⁴ N.J.S.A. 2C:2-3a(1). If proximate cause is an issue, N.J.S.A. 2C:2-3c should be charged.

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your power to find that proof of recklessness has been furnished beyond a reasonable doubt by inferences that may arise from the nature of the acts and circumstances surrounding the conduct in question.

**[WHERE A VIOLATION OF THE MOTOR VEHICLE STATUTES
IS ALLEGED, ADD THE FOLLOWING]**

The State alleges that the defendant's conduct involved [a] violation[s] of the motor vehicle laws of this State. Specifically, it is alleged that the defendant **[list motor vehicle violations alleged and their elements]**. Whether he/she is guilty or not of that [those] offense[s] will be determined by an appropriate court.⁵ In other words, it is not your job to decide whether he/she is guilty or not guilty of the motor vehicle offense[s]. However, you may consider the evidence that he/she committed [a] motor vehicle offense[s] in deciding whether he/she was reckless.

[CHARGE IN ALL CASES]

In conclusion, the three elements of the crime of assault by auto [or vessel] are:

1. That the defendant was driving a vehicle [or vessel];
2. That the defendant caused serious bodily injury to (name victim); and
3. That the defendant caused such serious bodily injury by driving the vehicle [or vessel] recklessly.

If you are satisfied that the State has proven each and every one of these elements beyond a reasonable doubt, then you must find the defendant guilty of assault by auto [or vessel]. However, if the State has failed to prove any element beyond a reasonable doubt, then you must find the defendant not guilty of assault by auto [or vessel].

⁵ State v. Muniz, 118 N.J. 319 (1990).