

MURDER AND AGGRAVATED/RECKLESS MANSLAUGHTER¹

N.J.S.A. 2C:11-3a(1)(2); 2C:11-4a, b(1)

The defendant is charged by indictment with the murder of **(insert victim's name)**.
Count _____ of the indictment reads as follows: **(Read pertinent count of indictment)**

A person is guilty of murder if he/she:

- (1) caused the victim's death or serious bodily injury that then resulted in death; and
- (2) the defendant did so purposely or knowingly.

In order for you to find the defendant guilty of murder, the State is required to prove each of the following elements beyond a reasonable doubt:

- (1) that the defendant caused **(insert victim's name)** death or serious bodily injury that then resulted in **(insert victim's name)** death, and
- (2) that the defendant did so purposely or knowingly.

One of the elements that the State must prove beyond a reasonable doubt is that the defendant acted purposely or knowingly.

A person acts purposely when it is the person's conscious object to cause death or serious bodily injury resulting in death.²

A person acts knowingly when the person is aware that it is practically certain that his/her conduct will cause death or serious bodily injury resulting in death.³

The nature of the purpose or knowledge with which the defendant acted toward **(insert victim's name)** is a question of fact for you the jury to decide. Purpose and knowledge are conditions of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. It is not necessary for the State to produce a witness or witnesses who could testify that the defendant stated, for example, that his/her purpose was to cause death or serious bodily injury resulting in death; or that he/she knew that his/her conduct would cause death or serious bodily injury resulting in death. It is within your power to find that proof of

¹ This charge is to be given when passion/provocation manslaughter is not in the case. If passion/provocation manslaughter is in the case, see the model charge on Murder, Passion/Provocation and Aggravated/Reckless Manslaughter. See, for example, footnote 1 of Model Jury Charge, Justification – Self Defense In Self Protection (N.J.S.A. 2C:3-4) (rational basis for either or both forms of manslaughter can be found in evidence supporting pre-Code theory of imperfect self defense). When an auto or vessel is involved, see the model charge on Vehicular Homicide (N.J.S.A. 2C:11-5).

² N.J.S.A. 2C:2-2b(1).

³ N.J.S.A. 2C:2-2b(2).

**MURDER AND AGGRAVATED/
RECKLESS MANSLAUGHTER**
(N.J.S.A. 2C:11-3a(1) and (2); 2C:11-4a, b(1))

purpose or knowledge has been furnished beyond a reasonable doubt by inferences which may arise from the nature of the acts and the surrounding circumstances. Such things as the place where the acts occurred, the weapon used, the location, number and nature of wounds inflicted, and all that was done or said by the defendant preceding, connected with, and immediately succeeding the events leading to the death of **(insert victim's name)** are among the circumstances to be considered.

Although the State must prove that the defendant acted either purposely or knowingly, the State is not required to prove a motive. If the State has proved the essential elements of the offense beyond a reasonable doubt, the defendant must be found guilty of that offense regardless of the defendant's motive or lack of a motive. If the State, however, has proved a motive, you may consider that insofar as it gives meaning to other circumstances.⁴ On the other hand, you may consider the absence of motive in weighing whether or not the defendant is guilty of the crime charged.

A homicide or a killing with a deadly weapon, such as (describe the deadly weapon used) in itself would permit you to draw an inference that the defendant's purpose was to take life or cause serious bodily injury resulting in death.⁵ A deadly weapon is any firearm or other weapon, device, instrument, material or substance, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury.⁶ In your deliberations you may consider the weapon used and the manner and circumstances of the killing, and if you are satisfied beyond a reasonable doubt that the defendant (shot) (stabbed) and killed (insert victim's name) with a (gun) (knife) you may draw an inference from the weapon used, that is, the (gun) (knife), and from the manner and circumstances of the killing, as to the defendant's purpose or knowledge.

The other element that the State must prove beyond a reasonable doubt is that the defendant caused **(insert victim's name)** death or serious bodily injury resulting in death.

As I previously advised you, in order to convict the defendant of murder, the State must prove beyond a reasonable doubt that the defendant either purposely or knowingly caused the victim's death or serious bodily injury resulting in death. In that regard, "serious bodily injury"

⁴ State v. Beard, 16 N.J. 50, 60 (1954).

⁵ State v. Martini, 131 N.J. 176, 269-74 (1993).

⁶ N.J.S.A. 2C:11-1c.

**MURDER AND AGGRAVATED/
RECKLESS MANSLAUGHTER**
(N.J.S.A. 2C:11-3a(1) and (2); 2C:11-4a, b(1)

means bodily injury that creates a substantial risk of death. A substantial risk of death exists where it is highly probable that the injury will result in death.⁷

In order for you to find the defendant guilty of purposeful serious bodily injury murder, the State must prove beyond a reasonable doubt that it was the defendant's conscious object to cause serious bodily injury that then resulted in the victim's death; that the defendant knew that the injury created a substantial risk of death; and that it was highly probable that death would result. In order for you to find the defendant guilty of knowing serious bodily injury murder, the State must prove beyond a reasonable doubt that the defendant was aware that it was practically certain that his/her conduct would cause serious bodily injury that then resulted in the victim's death; that the defendant knew that the injury created a substantial risk of death; and that it was highly probable that death would result.

(If causal relationship between conduct and result is not an issue, charge the following paragraph)

Whether the killing is committed purposely or knowingly, causing death or serious bodily injury resulting in death must be within the design or contemplation of the defendant.

(If causal relationship between conduct and result is an issue, charge the following⁸)

Causation has a special meaning under the law. To establish causation, the State must prove two elements, each beyond a reasonable doubt:

First, that but for the defendant's conduct, **(insert victim's name)** would not have died.

Second, **(insert victim's name)** death must have been within the design or contemplation of the defendant. If not, it must involve the same kind of injury or harm as that designed or contemplated, and must also not be too remote, too accidental in its occurrence, or too dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his/her offense. In other words, the State must prove beyond a reasonable doubt that **(insert victim's name)** death was not so unexpected or unusual that it would be unjust to find the defendant guilty of murder.⁹

[NOTE: In cases where Causation - Removal of Life Support is an issue, the jury should be instructed as follows:

⁷ N.J.S.A. 2C:11-1b; State v. Cruz, 163 N.J. 403 (2000).

⁸ State v. Martin, 119 N.J. 2, 16-18 (1990).

⁹ State v. Martin, 119 N.J. at 33.

**MURDER AND AGGRAVATED/
RECKLESS MANSLAUGHTER**
(N.J.S.A. 2C:11-3a(1) and (2); 2C:11-4a, b(1))

You have heard testimony that on [date], **(insert victim's name)** was taken off life support and that he/she died at some point after this was done. Should you find beyond a reasonable doubt that **(insert victim's name)** died from medical complications that resulted from injuries caused by defendant's actions, the removal of life support, in this case (method of removal), is not an intervening cause that relieves defendant of any criminal liability for those actions.¹⁰ That is, if defendant's actions set in motion **(insert victim's name)** need for life support, without which death would result naturally, then the causal link between defendant's action and the death of **(insert victim's name)** was not broken by an unforeseen, extraordinary act when **(insert victim's name)** was removed from life support and then expired, unless there was an intervening volitional act of another.]¹¹

(Where the defendant and State offer contrasting factual theories of causation, each version should be summarized for the jury.¹²)

[CHARGE IN ALL CASES]

All jurors do not have to agree unanimously concerning which form of murder is present so long as all believe that it was one form of murder or the other. However, for a defendant to be guilty of murder, all jurors must agree that the defendant either knowingly or purposely caused the death or serious bodily injury resulting in the death of **(insert victim's name)**.

If you determine that the State has proven beyond a reasonable doubt that the defendant purposely or knowingly caused death or serious bodily injury resulting in death, you must find the defendant guilty of murder.

If, on the other hand, you determine that the State has not proven beyond a reasonable doubt that the defendant purposely or knowingly caused death or serious bodily injury resulting in death, then you must find him/her not guilty of murder (and go on to consider whether the defendant should be convicted of the crimes of aggravated or reckless manslaughter).

A person is guilty of aggravated manslaughter if he/she recklessly causes the death of another person under circumstances manifesting extreme indifference to human life.

In order for you to find the defendant guilty of aggravated manslaughter, the State is required to prove each of the following elements beyond a reasonable doubt:

¹⁰ State v. Pelham, 176 N.J. 448, 455-56 and n. 2 (2003).

¹¹ Pelham, 176 N.J. at 467.

¹² State v. Martin, 119 N.J. at 18.

**MURDER AND AGGRAVATED/
RECKLESS MANSLAUGHTER**
(N.J.S.A. 2C:11-3a(1) and (2); 2C:11-4a, b(1)

- (1) that the defendant caused (**insert victim's name**) death, and
- (2) that the defendant did so recklessly, and
- (3) that the defendant did so under circumstances manifesting extreme indifference to human life.

One element that the State must prove beyond a reasonable doubt is that the defendant acted recklessly. A person who causes another's death does so recklessly when he/she is aware of and consciously disregards a substantial and unjustifiable risk that death will result from his/her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of defendant's conduct and the circumstances known to defendant, his/her disregard of that risk is a gross deviation from the standard of conduct that a reasonable person would follow in the same situation.¹³

In other words, you must find that defendant was aware of and consciously disregarded the risk of causing death. If you find that defendant was aware of and disregarded the risk of causing death, you must determine whether the risk that he/she disregarded was substantial and unjustifiable. In doing so, you must consider the nature and purpose of defendant's conduct, and the circumstances known to defendant, and you must determine whether, in light of those factors, defendant's disregard of that risk was a gross deviation from the conduct a reasonable person would have observed in defendant's situation.¹⁴

(Summarize, if helpful, all of the evidence relevant to recklessness, including any

¹³ N.J.S.A. 2C:2-2 (3).

¹⁴ This expanded explanation of recklessness is adapted from the following portion of the Code Commentary:

The Code requires, however, that the risk thus consciously disregarded by the actor be substantial and unjustifiable; even substantial risks may be created without recklessness when the actor seeks to serve a proper purpose. Accordingly, to aid the ultimate determination, the Code points expressly to the factors to be weighed in judgement: the nature and degree of the risk disregarded by the actor, the nature and purpose of his conduct and the circumstances known to him in acting.

Some principle must be articulated, however, to indicate what final judgement is demanded after everything is weighed. There is no way to state this value-judgement that does not beg the question in the last analysis. The point is that the jury must evaluate the conduct and determine whether it should be condemned. The Code, therefore, proposes that this difficulty be resolved by asking the jury whether the defendant's conduct involved a gross deviation from the standard of conduct that a reasonable person would observe. This seems to us to be the most appropriate way to put the issue to a jury. (Final Report of the New Jersey Criminal Law Revision Commission, Commentary (1971) at 42.)

**MURDER AND AGGRAVATED/
RECKLESS MANSLAUGHTER**
(N.J.S.A. 2C:11-3a(1) and (2); 2C:11-4a, b(1)

contrasting accounts of events by the defense and the State.)¹⁵

Another element that the State must prove beyond a reasonable doubt is that the defendant acted under circumstances manifesting extreme indifference to human life. The phrase "under circumstances manifesting extreme indifference to human life" does not focus on defendant's state of mind, but rather on the circumstances under which you find he/she acted. If, in light of all the evidence, you find that defendant's conduct resulted in a probability as opposed to a mere possibility of death, then you may find that he/she acted under circumstances manifesting extreme indifference to human life.¹⁶ On the other hand, if you find that his/her conduct resulted in only a possibility of death, then you must acquit him/her of aggravated manslaughter and consider the offense of reckless manslaughter, which I will explain to you shortly.

The final element that the State must prove beyond a reasonable doubt is that the defendant caused **(insert victim's name)** death.

(If causal relationship between conduct and result is not an issue, charge the following:)

You must find that **(insert victim's name)** would not have died but for defendant's conduct.¹⁷

(If causal relationship between conduct and result is an issue, charge the following:)¹⁸

Causation has a special meaning under the law. To establish causation, the State must prove two elements, each beyond a reasonable doubt:

First, that but for the defendant's conduct, **(insert victim's name)** would not have died.

Second, **(insert victim's name)** death must have been within the risk of which the defendant was aware. If not, it must involve the same kind of injury or harm as the probable

¹⁵ In State v. Concepcion, 111 N.J. 373, 380-81 (1988), the Supreme Court reversed the defendant's conviction of reckless manslaughter because the trial judge had selectively summarized only one aspect of the critical events and had failed to explain that the jury must make a preliminary finding resolving contrasting factual accounts of events.

¹⁶ In State v. Curtis, 195 N.J. Super. 354, 364-65 (App. Div. 1984), the court found that the difference between aggravated and reckless manslaughter is the degree of risk created by defendant's conduct. If, under all the surrounding circumstances, the defendant's conduct creates a probability, as opposed to a "mere possibility" of death, then the circumstances manifest "extreme indifference to human life" and the offense is aggravated manslaughter. Id. at 365-65. The Supreme Court endorsed Curtis in State v. Breakiron, 108 N.J. 591, 605 (1987).

¹⁷ N.J.S.A. 2C:2-3 (a)(1).

¹⁸ State v. Concepcion, 111 N.J. 373, 377 (1988); N.J.S.A. 2C:2-3c.

**MURDER AND AGGRAVATED/
RECKLESS MANSLAUGHTER**
(N.J.S.A. 2C:11-3a(1) and (2); 2C:11-4a, b(1)

result of the defendant's conduct, and must also not be too remote, too accidental in its occurrence, or too dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his/her offense. In other words, the State must prove beyond a reasonable doubt that **(insert victim's name)** death was not so unexpected or unusual that it would be unjust to find the defendant guilty of aggravated manslaughter.¹⁹

(Where the defendant and State offer contrasting factual theories of causation, each version should be summarized for the jury.²⁰)

If after consideration of all the evidence you are convinced beyond a reasonable doubt that the defendant recklessly caused **(insert victim's name)** death under circumstances manifesting extreme indifference to human life, then your verdict must be guilty of aggravated manslaughter).

If, however, after consideration of all the evidence you are not convinced beyond a reasonable doubt that the defendant recklessly caused **(insert victim's name)** death under circumstances manifesting extreme indifference to human life, you must find the defendant not guilty of aggravated manslaughter (and go on to consider whether the defendant should be convicted of reckless manslaughter.²¹)

A person is guilty of reckless manslaughter if he/she recklessly causes the death of another person.

In order for you to find the defendant guilty of reckless manslaughter, the State is required to prove each of the following elements beyond a reasonable doubt:

- (1) that the defendant caused **(insert victim's name)** death, and
- (2) that the defendant did so recklessly.

One element that the State must prove beyond a reasonable doubt is that the defendant acted recklessly.

A person who causes another's death does so recklessly when he/she is aware of and consciously disregards a substantial and unjustifiable risk that death will result from his/her conduct. The risk must be of such a nature and degree that, considering the nature and purpose

¹⁹ State v. Martin, 119 N.J. at 33.

²⁰ State v. Martin, 119 N.J. at 18.

²¹ If appropriate, where the instrumentality of death is an auto or vessel, give a separate charge on Vehicular Homicide (N.J.S.A. 2C:11-5).

**MURDER AND AGGRAVATED/
RECKLESS MANSLAUGHTER**
(N.J.S.A. 2C:11-3a(1) and (2); 2C:11-4a, b(1)

of defendant's conduct and the circumstances known to defendant, his/her disregard of that risk is a gross deviation from the standard of conduct that a reasonable person would follow in the same situation.²²

In other words, you must find that defendant was aware of and consciously disregarded the risk of causing death. If you find that defendant was aware of and disregarded the risk of causing death, you must determine whether that risk that he/she disregarded was substantial and unjustifiable. In doing so, you must consider the nature and purpose of defendant's conduct, and the circumstances known to defendant, and you must determine whether, in light of those factors, defendant's disregard of that risk was a gross deviation from the conduct a reasonable person would have observed in defendant's situation.²³

(Summarize, if helpful, all of the evidence relevant to recklessness, including any contrasting accounts of events by the defense and the State.)²⁴

The other element that the State must prove beyond a reasonable doubt is that the defendant caused (**insert victim's name**) death.

(If causal relationship between conduct and result is not an issue, charge the following:)

You must find that (**insert victim's name**) would not have died but for defendant's conduct.²⁵

(If causal relationship between conduct and result is an issue, charge the following:)²⁶

Causation has a special meaning under the law. To establish causation, the State must prove two elements, each beyond a reasonable doubt:

First, that but for the defendant's conduct, the victim would not have died.

Second, (**insert victim's name**) death must have been within the risk of which the defendant was aware. If not, it must involve the same kind of injury or harm as the probable result of the defendant's conduct and must also not be too remote, too accidental in its occurrence, or too dependent on another's volitional act to have a just bearing on the defendant's

²² N.J.S.A. 2C:2-2(3).

²³ N.J.S.A. 2C:2-3 (a)(1).

²⁴ State v. Concepcion, 111 N.J. 373, 377 (1988); N.J.S.A. 2C:2-3c.

²⁵ N.J.S.A. 2C:2-3(a)(1).

²⁶ State v. Concepcion, 111 N.J. 373, 377 (1988); N.J.S.A. 2C:2-3c.

**MURDER AND AGGRAVATED/
RECKLESS MANSLAUGHTER**
(N.J.S.A. 2C:11-3a(1) and (2); 2C:11-4a, b(1))

liability or on the gravity of his/her offense. In other words, the State must prove beyond a reasonable doubt that **(insert victim's name)** death was not so unexpected or unusual that it would be unjust to find the defendant guilty of reckless manslaughter.²⁷

(Where the defendant and State offer contrasting factual theories of causation, each version should be summarized for the jury.²⁸

If after consideration of all the evidence you are convinced beyond a reasonable doubt that the defendant recklessly caused **(insert victim's name)** death, then your verdict must be guilty of reckless manslaughter.

If, however, after consideration of all the evidence you are not convinced beyond a reasonable doubt that the defendant recklessly caused **(insert victim's name)** death, you must find the defendant not guilty of reckless manslaughter.

²⁷ State v. Martin, 119 N.J. at 33.

²⁸ State v. Martin, 119 N.J. at 18.