

VEHICULAR HOMICIDE
(DEATH BY AUTO OR VESSEL WITH DRUNK DRIVING OR REFUSAL¹)
(N.J.S.A. 2C:11-5)

The defendant (Name) is charged in count _____ with the crime of vehicular homicide. The indictment alleges:

(READ APPROPRIATE COUNT OF INDICTMENT)

The statute upon which this charge is based provides:

Criminal homicide constitutes vehicular homicide when it is caused by driving a vehicle (or vessel) recklessly.

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 the defendant was driving a vehicle [or vessel];²
2. That the defendant caused the death of (name victim); and
3. That the defendant caused such death by driving the vehicle [or vessel] recklessly.

In order to find that the defendant caused (victim's) death, you must find that (victim) would not have died but for defendant's conduct.³

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

¹ “Drunk Driving” is utilized as a convenient short-hand label in the caption. The statute is broader in scope and also includes driving while under the influence of substances other than alcohol. In appropriate cases the charge will have to be adapted to fit the facts.

² N.J.S.A. 2C:11-5d provides: “As used in this section, ‘auto or vessel’ means all means of conveyance propelled otherwise than by muscular power.”

³ 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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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.⁴ 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.]⁵

[CHARGE IN ALL CASES]

A person acts recklessly when he/she 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 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 that 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

⁴ State v. Pelham, 176 N.J. 44, 455-456 and n. 2 (2003).

⁵ Pelham, 176 N.J. at 467.

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create a substantial and unjustifiable risk of death 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.

In determining whether the State has proven beyond a reasonable doubt that defendant acted recklessly, defendant's unawareness of a risk, due to self-induced intoxication⁶, is immaterial.⁷ In other words, you may find that the State has proven recklessness beyond a reasonable doubt even though the defendant was unaware of a risk of which he/she would have been aware were he/she not intoxicated.⁸

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 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:]**

⁶ There is no legal distinction between intoxication resulting from alcohol use and that resulting from drug use. Cannel, New Jersey Criminal Code Annotated, Comment 2 to N.J.S.A. 2C:2-8 (Gann 2004) (citing State v. Sette, 259 N.J. Super. 156, 173-74 (App. Div. 1992), certif. denied, 130 N.J. 597 (1992); State v. Green, 318 N.J. Super. 361, 370 (App. Div. 1999), aff'd o.b., 163 N.J. 140 (2001).

⁷ N.J.S.A. 2C:2-8b. For the exact statutory definition of self-induced intoxication, please see the full text of N.J.S.A. 2C:2-8b.

⁸ 1971 Code Commentary to N.J.S.A. 2C:2-8 as reproduced in Cannel, supra, Comment to N.J.S.A. 2C:2-8.

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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]**. It may be necessary for you to determine whether defendant operated a motor vehicle while in violation of New Jersey's drunk driving law [and/or that defendant thereafter refused to submit to a breathalyzer examination as required by New Jersey law], as I will explain shortly. **[Charge where appropriate:** However, with that one possible exception, whether defendant is guilty or not of a motor vehicle offense will be determined by an appropriate court.⁹ In other words, it is not your job to decide whether he/she is guilty or not guilty of any motor vehicle offense other than drunk driving (and/or refusal). In any event, you may consider the evidence that he/she committed [a] motor vehicle offense[s] in deciding whether he/she was reckless, and you may draw an inference that defendant was driving recklessly if you are satisfied that he/she was driving while intoxicated in violation of New Jersey's drunk driving law.¹⁰ However, you are never required or compelled to draw this inference. It is your exclusive province to determine whether the facts and circumstances shown by the evidence support any inference and you are always free to accept or reject the inference as you deem appropriate.

[CHARGE IN ALL CASES]

In conclusion, the three elements of the crime of vehicular homicide are:

⁹ State v. Muniz, 118 N.J. 319 (1990).

¹⁰ N.J.S.A. 2C:11-5a. The statute also allows an inference of recklessness to be drawn from proof that the defendant fell asleep while driving or that defendant was driving after having been without sleep for a period in excess of 24 consecutive hours. In an appropriate case, the jury should be charged as to this additional permissive inference.

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1. That the defendant was driving a vehicle [or vessel];
2. That the defendant caused the death of (name victim); and
3. That the defendant caused such death 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 vehicular homicide. However, if the State has failed to prove any element beyond a reasonable doubt, then you must find the defendant not guilty of vehicular homicide.

(CHARGE WHERE AND AS APPROPRIATE)

If, and only if, you find the defendant guilty of the crime charged beyond a reasonable doubt, you must proceed to determine whether the State has also proven beyond a reasonable doubt that the defendant operated the auto [or vessel] while in violation of New Jersey's drunk driving law [or that defendant thereafter refused to submit to a breathalyzer examination as required by New Jersey law]¹¹

In order for you to find that the defendant violated the drunk driving law, the State must prove beyond a reasonable doubt that the defendant operated a motor vehicle [or vessel] while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or

¹¹ A defendant's violation of the drunk driving statutes may be relevant to the sentence imposed for vehicular homicide in two very different ways under N.J.S.A. 2C:11-5. For a second degree offense, the court is required by N.J.S.A. 2C:11-5b(1) and (2) to impose a mandatory minimum term following a sentencing hearing requiring proof of specified elements, drunk driving among them, and under State v. Stanton, 176 N.J. 75 (2003), the issue need not be presented to the jury (although the standard of proof beyond a reasonable doubt should be applied rather than a preponderance of evidence as enunciated in the statute itself). On the other hand, a charge of vehicle homicide in the first degree requires proof of additional elements under N.J.S.A. 2C:11-5b(3) that must be submitted to the jury for determination. State v. Johnson, 166 N.J. 523 (2001).

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operated a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in his/her blood.¹²

[CHARGE WHERE AND TO THE EXTENT APPROPRIATE]

If, and only if, you find the defendant guilty of the crime charged beyond a reasonable doubt, and you also decide that the State has proven beyond a reasonable doubt that the defendant operated the auto [or vessel] while in violation of New Jersey's drunk driving law [or that defendant thereafter refused to submit to a breathalyzer examination as required by New Jersey law], you must also proceed to determine whether the State has further proven beyond a reasonable doubt that

[SELECT APPROPRIATE ALTERNATIVE(S)]

the defendant did so while on any school property used for school purposes which was owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such property.

[OR]

the defendant did so while driving through a school crossing, if the municipality, by ordinance or resolution, had designated the school crossing as such. A "school crossing" means that portion of a highway where school children are required to cross the highway in the vicinity of a school.^{13]}

[OR]

¹² N.J.S.A. 39:4-50. There is a substantial body of case law interpreting this statute, and, in appropriate cases, more elaborate instructions may have to be given as to the definitions and application of the statutory language. The charge will also have to be modified where the State alleges refusal to submit to a breathalyzer examination under N.J.S.A. 39:4-50.4a. Note that N.J.S.A. 39:4-50 was amended, effective January 20, 2004, and that for crimes alleged to have been committed before that date a blood alcohol concentration of 0.10% will be required.

¹³ N.J.S.A. 39:1-1.

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the defendant did so while driving through a school crossing knowing that juveniles were present, if the municipality had not designated the school crossing as such by ordinance or resolution. A “school crossing” means that portion of a highway where school children are required to cross the highway in the vicinity of a school.¹⁴

It is no defense to a prosecution under the statute that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property [**OR** while driving through a school crossing that has been designated as such by municipal ordinance or resolution]. Nor is it a defense in such a case that no juveniles were present on the school property [**OR** crossing zone] at the time of the offense, or that school was not in session.¹⁵

[CHARGE IF APPLICABLE:]

The additional element of operating a vehicle [or vessel] in violation of the drunk driving law through a school crossing that has **not** been designated as such by municipal ordinance or resolution can only be found where there is proof beyond a reasonable doubt that the defendant knew that juveniles were present at the time. A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if a person is aware that his/her conduct is of that nature, or that such circumstances exist, or a person is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if a person is aware that it is practically certain that his/her conduct will cause such a result. One is said to act

¹⁴ N.J.S.A. 39:1-1.

¹⁵ N.J.S.A. 2C:11-5b(3). Note that the last sentence of this paragraph does **not** apply to the third alternative specified in N.J.S.A. 2C:11-5b(3)(c), which requires that a defendant knows juveniles to be present in a school crossing that has not been designated as such by municipal ordinance or resolution.

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knowingly if one acts with knowledge, if one acts consciously, if he/she comprehends his/her acts.¹⁶

Knowledge, like recklessness, is a condition of the mind that cannot be seen and that can often be determined only from inferences from conduct, word, or acts. As I told you before, 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 your power to find that proof of knowledge 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.]

Record your additional finding(s) in the place(s) provided on your verdict sheet.¹⁷

¹⁶ N.J.S.A. 2C:2-2b(2).

¹⁷ N.J.S.A. 2C:11-5b provides for a mandatory sentence to be imposed by the court following a sentencing hearing requiring proof of specified elements by a preponderance of the evidence. However, these sentencing issues should now be presented to the jury for its consideration under the reasonable doubt standard. State v. Johnson, 166 N.J. 523 (2001); State v. Stanton, 339 N.J. Super. 1 (App. Div. 2001), certif. granted 169 N.J. 609 (2001). In appropriate cases, bifurcation may be necessary to prevent prejudice to defendant (e.g., where driving on the revoked list is relevant to sentencing but not to guilt). See State v. Bakka, 350 N.J. Super. 43 (App. Div. 2002).