

**STRICT LIABILITY VEHICULAR HOMICIDE**  
**DRIVING WHILE INTOXICATED**

(effective July 21, 2017)

(N.J.S.A. 2C:11-5.3)

Count \_\_\_\_\_ of the indictment charges the defendant as follows:

**(Read Indictment)**

The pertinent part of the statute (N.J.S.A. 2C:11-5.3) on which this indictment is based reads as follows:

Criminal homicide constitutes strict liability vehicular homicide when it is caused by driving a vehicle while intoxicated in violation of R.S.39:4-50 or operating a vessel<sup>1</sup> under the influence of alcohol or drugs in violation of section 3 of P.L.1952, c.157 (C.12:7-46).

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

1. That the defendant was driving a vehicle;
2. That the defendant caused the death of (**name of victim**); and
3. That the defendant caused such death by driving a vehicle while intoxicated in violation of N.J.S.A. 39:4-50.

The first element that the State must prove beyond a reasonable doubt is that the defendant was driving a motor vehicle. A motor vehicle is defined as any means of conveyance propelled otherwise than by muscular power.<sup>2</sup>

The second element that the State must prove beyond a reasonable doubt is that the defendant caused the death of (**name of victim**).

In order to prove causation, as that term is used for this crime, the State must prove: (1)

---

<sup>1</sup> N.J.S.A. 2C:11-5(d) provides: "As used in this section, 'auto or vessel' means all means of conveyance propelled otherwise than by muscular power."

<sup>2</sup> N.J.S.A. 2C:11-5(d).

**STRICT LIABILITY VEHICULAR HOMICIDE**  
**DRIVING WHILE INTOXICATED**  
**(N.J.S.A. 2C:11-5.3)**

that (**name of victim**) would not have died but for defendant's conduct<sup>3</sup>, and (2) that the death was not too remote in its occurrence as to have a just bearing on defendant's liability,<sup>4</sup> or that the death was not too dependent upon the conduct of another person which was unrelated to the defendant's operation of a vehicle as to have a just bearing on the defendant's liability.<sup>5</sup>

**(CHARGE IN APPROPRIATE CASE, IF CAUSATION IS AT ISSUE.** The Court should explain the relationship of the remoteness issue to the facts of the case, if it has not already done so. If the State's and defendant's versions of the facts differ, the charge should include appropriate instructions with respect to each party's position.)

In determining whether the death was not too remote or not too dependent upon the conduct of another person, you should consider, among all other factors suggested by the evidence,<sup>6</sup> whether causes other than the operation of the vehicle contributed to the death, and if so, then the number and nature of such cause or causes.<sup>7</sup> In other words, you should consider whether the State has proven beyond a reasonable doubt that the death did not occur in such an unusual manner that it would be unjust to find the defendant responsible for the death.

**(CHARGE IN APPROPRIATE CASES)**

Causation may have different definitions depending on the crime charged.<sup>8</sup> You should apply the definition I have given you as to the particular crime being considered, even if it differs from what you have been instructed regarding a different charged offense.

---

<sup>3</sup> N.J.S.A. 2C:11-5.3(c)(1).

<sup>4</sup> N.J.S.A. 2C:11-5.3(c)(2)(a).

<sup>5</sup> N.J.S.A. 2C:11-5.3(c)(2)(b).

<sup>6</sup> See State v. Maldonado, 137 N.J. 536, 570 (1994).

<sup>7</sup> Id. at 565.

<sup>8</sup> It should be noted that the causal relationship between conduct and result for violation of this statute codified at N.J.S.A. 2C:2-3(e) is not applicable to this crime. N.J.S.A. 2C:11-5.3(c). Thus, for prosecution of this strict liability crime, it would appear that the State need not prove that death was a probable consequence of the actor's conduct. N.J.S.A. 2C:11-5.3(c).

**STRICT LIABILITY VEHICULAR HOMICIDE**  
**DRIVING WHILE INTOXICATED**  
**(N.J.S.A. 2C:11-5.3)**

**(RESUME MAIN CHARGE)**

It is not a defense to this crime that the decedent contributed to his/her own death by reckless or negligent conduct or operation of a motor vehicle.<sup>9</sup>

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

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.<sup>10</sup> 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.]<sup>11</sup>

**(RESUME MAIN CHARGE)**

The third element that the State must prove beyond a reasonable doubt is that the defendant caused the death of **(name of victim)** by driving a vehicle while intoxicated ("DWI") in violation of N.J.S.A. 39:4-50.

In order for you to find that the defendant violated N.J.S.A. 39:4-50, the State must prove beyond a reasonable doubt that the defendant operated a motor vehicle [or vessel] while under

---

<sup>9</sup> N.J.S.A. 2C:11-5.3(d).

<sup>10</sup> State v. Pelham, 176 N.J. 448, 455-56 (2003).

<sup>11</sup> Id. at 467.

**STRICT LIABILITY VEHICULAR HOMICIDE**  
**DRIVING WHILE INTOXICATED**  
**(N.J.S.A. 2C:11-5.3)**

the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug; or operated a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in his/her blood.

To prove a person guilty of an “under the influence” DWI, the State must establish intoxication based on evidence of a defendant’s physical and behavioral characteristics at the time of arrest.<sup>12</sup> This is determined based on the totality of the facts and circumstances observable at the time of the incident. You have (heard testimony/seen video) about certain tests that were performed by the defendant at the request of police. The defendant’s performance on those tests are one of the factors to be considered, but should not be relied upon to the exclusion of other factors when determining if the defendant was under the influence of alcohol. “Under the influence” is defined as “a substantial deterioration or diminution of the mental faculties or physical capabilities of a person whether it be due to intoxicating liquor, narcotic, hallucinogenic or habit producing drugs.”<sup>13</sup> It is a condition which so affects the judgment or control of a motor vehicle operator as to make it improper for him/her to drive on the highway.<sup>14</sup>

The State can also prove a person guilty of a DWI based on blood alcohol concentration. The State must establish evidence of the results a (blood/breath) test with a blood alcohol concentration of 0.08 or more by weight of alcohol in his/her blood. However, even where (blood/breath) test results are admitted into evidence, the State’s burden of proof at the end of the trial is more rigorous than what is required for evidence to be admissible.<sup>15</sup> After hearing all of the testimony and considering all of the admitted exhibits, you ultimately must be persuaded that

---

<sup>12</sup> State v. Bealor, 187 N.J. 574 (2006).

<sup>13</sup> State v. Tamburro, 68 N.J. 414, 421 (1975).

<sup>14</sup> Id.

<sup>15</sup> State v. Campbell, 436 N.J. Super. 264, 272 (2014).

**STRICT LIABILITY VEHICULAR HOMICIDE**  
**DRIVING WHILE INTOXICATED**  
**(N.J.S.A. 2C:11-5.3)**

the elements of the offense, which can include the defendant's blood alcohol concentration level, have been proven beyond a reasonable doubt.<sup>16</sup> In other words, the fact that the evidence was admitted should not direct you to find that this defendant violated the drunk driving statute. Rather, you must be convinced beyond a reasonable doubt that the results are reliable.

If you find that the State failed to prove any element beyond a reasonable doubt, then you must find the defendant not guilty of the crime of Strict Liability Vehicular Homicide.

If you find that the State has proven each and every element beyond a reasonable doubt, then you must find the defendant guilty of Strict Liability Vehicular Homicide.

---

<sup>16</sup>

Id.