

VEHICULAR HOMICIDE
(DEATH BY AUTO OR VESSEL WITHOUT DRUNK DRIVING OR REFUSAL)
(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];¹
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.²

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

¹ 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."

² 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.³ 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.]⁴

[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

³ State v. Pelham, 176 N.J. 44, 455-456 and n. 2 (2003).

⁴ 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.

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:]**

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 any 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.

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

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[CHARGE WHERE APPROPRIATE]

In this case, the State has presented evidence suggesting that defendant may have fallen asleep while driving [or that defendant was driving after having been without sleep for a period in excess of 24 consecutive hours]. Proof that defendant may have fallen asleep [or that defendant was driving after having been without sleep for a period in excess of 24 consecutive hours] may give rise to an inference that defendant was driving recklessly.⁶ 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:

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.

⁶ N.J.S.A. 2C:11-5a.