

206.32 SECOND DEGREE MURDER BY VEHICLE, INCLUDING INVOLUNTARY
MANSLAUGHTER. FELONY, MISDEMEANOR. (IMPAIRED DRIVING
INVOLVED.)

NOTE WELL: This instruction applies to Second Degree Murder by Vehicle including Involuntary Manslaughter where impaired driving is involved. When an underlying offense other than impaired driving is involved, use N.C.P.I.—Crim. 206.32A.

NOTE WELL: If a separate charge of driving while impaired is submitted, then the jury may also convict the defendant of this offense if it also convicts the defendant of driving while impaired. See State v. Armstrong, 203 N.C. App. 399 (2010). If the jury finds the defendant not guilty of driving while impaired, the court must arrest judgment on this offense.

The defendant has been charged with second degree murder.¹ Under the law and the evidence in this case it is your duty to return one of the following verdicts:

- (1) Guilty of second degree murder, or
- (2) Guilty of involuntary manslaughter, or
- (3) Not guilty.

Second degree murder is the unlawful killing of a human being with malice.

Involuntary manslaughter is the unlawful, unintentional killing of a human being by an act done in a culpably negligent way.

For you to find the defendant guilty of second degree murder by vehicle, the State must prove seven things beyond a reasonable doubt:

First, that the defendant was driving² a vehicle³.

Second, that the defendant was driving that vehicle upon a [highway] [street] [public vehicular area] within the state.⁴

Third, that while being operated by the defendant the motor vehicle was involved in a(n) [accident] [collision].

Fourth, that a person was killed in this [accident] [collision].

Fifth, that the defendant was driving while impaired. For you to find the defendant guilty of driving while impaired, the State must prove these things beyond a reasonable doubt:

That the defendant was driving⁵ a vehicle.⁶

That the defendant was driving that vehicle upon a [highway] [street] [public vehicular area] within the state.⁷

And that at the time the defendant was driving that vehicle the defendant:

NOTE WELL: If the evidence supports submission of the case under alternatives (A) (B) and (C), instructions on each alternative should be given.

- (A) [was under the influence of an impairing substance.⁸ (*Name substance*) is an impairing substance. The defendant is under the influence of an impairing substance when the defendant has taken (or consumed) a sufficient quantity of that impairing substance to cause the defendant to lose the normal control of the defendant's bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties.]
- (B) [had consumed sufficient alcohol that at any relevant time after driving the defendant had an alcohol concentration⁹ of 0.08 or more grams of alcohol [per 210 liters of breath] [per 100 milliliters of blood]. A relevant time is any time after driving in which the driver still has in the driver's body alcohol consumed

before or during driving].

- (C) [had any amount of [a Schedule I controlled substance] [metabolites of a Schedule I controlled substance] in the defendant's blood or urine]. (*Name substance*) is a Schedule I controlled substance or is a metabolite¹⁰ of a Schedule I controlled substance.].¹¹

(If you find that a chemical test known as a [breathalyzer] [blood test] [urine test]¹² was offered to the defendant and that the defendant [refused to take the test] [did not blow into the breathalyzer with sufficient force] you may consider this evidence together with all other evidence in determining whether the defendant was under the influence of an impairing substance at the time the defendant (allegedly) drove a motor vehicle.)

Sixth, that the defendant acted unlawfully and with malice. Malice is a necessary element which distinguishes second degree murder from manslaughter.¹³ Malice arises when an act which is inherently dangerous to human life is intentionally done so recklessly and wantonly as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief.¹⁴

And Seventh, that the death of the victim was proximately caused by the unlawful act(s) of the defendant done in a malicious manner. A proximate cause is a real cause, without which the victim's death would not have occurred, and one that a reasonably careful and prudent person could foresee would probably produce such [injury] [damage] or some similar injurious result. (The defendant's act(s) need not have been the last, or nearest cause. It is sufficient if [it] [they] concurred with some other cause acting at the same time which, in combination with [it] [them], proximately caused the victim's death.) (A child has been killed if the child was born

alive, but died as a result of injuries inflicted prior to being born alive.)¹⁵

If you do not find the defendant guilty of second degree murder, you must consider whether the defendant is guilty of involuntary manslaughter. Involuntary manslaughter is the unlawful, unintentional killing of a human being by an act done in a culpably negligent way.

For you to find the defendant guilty of involuntary manslaughter, the State must prove two things beyond a reasonable doubt:

First, that in operating a motor vehicle the defendant drove while impaired, as I previously instructed you.

And Second, that the defendant's [impaired driving] [culpable negligence] proximately caused the victim's death.¹⁶

FINAL MANDATE

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant drove a vehicle on a [highway] [street] [other public vehicular area], and that when the defendant did so the defendant [was under the influence of an impairing substance] [had consumed sufficient alcohol that a chemical analysis made at any relevant time after driving showed the defendant to have an alcohol concentration of 0.08 or more grams of alcohol [per 210 liters of breath] [per 100 milliliters of blood] [had any amount of [a Schedule I controlled substance] [metabolites of a Schedule I controlled substance] in the defendant's blood or urine] (and) [(*describe driving, e.g. violated the posted speed limit*)] and that the defendant acted intentionally and so recklessly and wantonly as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief, that this conduct constituted malice, and that such conduct proximately caused the death of the victim, it would be your duty to return a verdict of guilty of second degree murder. If you do not so

find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of second degree murder. You must then determine whether the defendant is guilty of involuntary manslaughter.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant drove a motor vehicle on a [highway] [street] [other public vehicular area], [while impaired] [and without malice, but in a culpably negligent manner, violated the laws of this State governing the operation of motor vehicles] and that this [impaired driving] [culpably negligent conduct] proximately caused the death of the victim, it would be your duty to return a verdict of guilty of involuntary manslaughter. If you do not so find or have a reasonable doubt as to one or more of these things, you will return a verdict of not guilty.

1. If the vehicle was used as a deadly weapon in an intentional killing, use the appropriate murder charge.

2. N.C. Gen. Stat. § 20-4.01 defines the driver as the operator of a vehicle.

3. If there is any doubt, define "vehicle" under N.C. Gen. Stat. § 20-4.01(49), or "motor vehicle" under N.C. Gen. Stat. § 20-4.01(23). The Safe Roads Act of 1983 makes this offense applicable to drivers of vehicles owned or operated by the State or any political subdivision thereof while engaged in maintenance or construction work on the highways. N.C. Gen. Stat. § 20-168(b). Effective December 1, 2006, lawnmowers and bicycles are no longer exempt. Horses remain exempt.

4. If there is any doubt, define "highway" or "street" in accordance with N.C. Gen. Stat. § 20-4.01(13). "Public vehicular area" is defined in N.C. Gen. Stat. § 20-4.01(32).

5. N.C. Gen. Stat. § 20-4.01 defines the driver as the operator of a vehicle.

6. If there is any doubt, define "vehicle" under N.C. Gen. Stat. § 20-4.01(49), or "motor vehicle" under N.C. Gen. Stat. § 20-4.01(23). The Safe Roads Act of 1983 makes this offense applicable to drivers of vehicles owned or operated by the State or any political subdivision thereof while engaged in maintenance or construction work on the highways. N.C. Gen. Stat. § 20-168(b).

7. If there is any doubt, define "highway" or "street" in accordance with N.C. Gen. Stat. § 20-4.01(13). "Public vehicular area" is defined in N.C. Gen. Stat. § 20-4.01(32).

8. An impairing substance includes alcohol, a controlled substance under Chapter 90 of the General Statutes, or any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances. N.C. Gen. Stat. § 20-4.01(14a).

9. N.C. Gen. Stat. § 20-4.01(0.2) defines alcohol concentration as "the concentration of alcohol in a person, expressed either as (a) grams of alcohol per 100 milliliters of blood; or (b) grams of alcohol per 210 liters of breath."

10. A metabolite is any substance produced or used during metabolism (digestion). In drug use, the term usually refers to the end product that remains after metabolism.

11. Driving with any Schedule I controlled substance, or its metabolites in one's blood or urine is a per se violation of impaired driving offense.

12. Note that if the offense occurred between December 1, 2006 and June 27, 2007, there was no statutory provision during this time that required the defendant to take a urine test.

13. If the defendant claims amnesia or unconsciousness (automatism) regarding the acts in question, see N.C.P.I.-Crim. 302.10 for an instruction on unconsciousness.

14. *S. v. Snyder*, 311 N.C. 391, 393-94 (1984), quoting *S. v. Reynolds*, 307 N.C. 184 (1982). In certain cases it may be appropriate to instruct further that voluntary intoxication (from alcohol or drugs) is not a defense to the crime of second degree murder or manslaughter, and does not negate the element of malice. See N.C.P.I.-Crim 305.10.

15. This sentence is only to be provided if the offense involved the killing of a child.

16. "When a death is caused by one who was driving under the influence of alcohol, only two elements must exist for the successful prosecution of manslaughter: a willful violation of N.C. Gen. Stat. § 20-130 and the causal link between that violation and the death." *State v. McGill*, 314 N.C. 633, (1985).