

206.32A SECOND-DEGREE MURDER BY VEHICLE, INCLUDING INVOLUNTARY MANSLAUGHTER AND MISDEMEANOR DEATH BY VEHICLE. FELONY; MISDEMEANOR. (NOT INVOLVING IMPAIRED DRIVING.)

NOTE WELL: For Second-Degree Murder by Vehicle, including Involuntary Manslaughter offenses involving impaired driving, use N.C.P.I.—Crim. 206.32.

NOTE WELL: If a separate charge for an underlying offense is submitted, then the jury may only convict the defendant of this offense if it also convicts the defendant of the underlying offense. See State v. Mumford, 2010 No. COA09-300, N.C. App. LEXIS 35, (Jan. 5, 2010).

CAUTION: If the jury convicts the defendant of this offense and the underlying offense, the court should arrest judgment on the underlying offense. If the jury finds the defendant not guilty of the underlying offense, 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) Guilty of misdemeanor death by vehicle, or
- (4) 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.

Misdemeanor death by vehicle is the unintentional killing of a human being which is proximately caused by the violation of any law or ordinance governing the operation of motor vehicles.

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 vehicle.³

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 violated the following law or laws of this State governing the operation of motor vehicles. The laws of this State make it unlawful to (*define pertinent law(s) and enumerate its or their elements*). For you to find the defendant guilty of (*state underlying offense*), the State must prove these things beyond a reasonable doubt:

(*List elements of underlying offense.*)

Sixth, that the defendant acted unlawfully and with malice. Malice is a necessary element which distinguishes second degree murder from manslaughter.⁵ 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.⁶

And Seventh, that the death of the alleged 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 alleged 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 alleged 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.)⁷

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 the defendant's violation(s) of law governing the operation of a motor vehicle constituted culpable negligence. Such violation will constitute culpable negligence if the violation is willful, wanton, or intentional. But, where there is an unintentional or inadvertent violation of the law, such violation standing alone does not constitute culpable negligence. To constitute culpable negligence, the inadvertent or unintentional violation of the law must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable foresight, amounting altogether to a thoughtless disregard of consequences or a heedless indifference to the safety of others.⁸

And Second, that the defendant's culpable negligence proximately caused the alleged victim's death.⁹

If you do not find the defendant guilty of involuntary manslaughter, you must consider whether the defendant is guilty of misdemeanor death by vehicle.¹⁰ Misdemeanor death by vehicle differs from involuntary manslaughter in that the State need not prove that the defendant was culpably negligent only that the defendant's violation of a law or ordinance governing the operation of motor vehicles proximately caused the alleged victim's death.

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 (*list elements of underlying offense*) 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, and that this conduct constituted malice, and that such conduct proximately caused the death of the alleged 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], and without malice, but in a culpably negligent manner, violated the laws of this State governing the operation of motor vehicles] and that this culpably negligent conduct proximately caused the death of the alleged 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 not return a verdict of guilty

of involuntary manslaughter. You must then determine if the defendant is guilty of misdemeanor death by vehicle.

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] and in so doing (*describe violation(s), e.g., exceeded the posted speed limit*) and that such violation (or violations) proximately caused the death of the alleged victim, it would be your duty to return a verdict of guilty of misdemeanor death by vehicle. If you do not so find or if you have a reasonable doubt as to one or more of these things, it would be your duty to 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. 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.

6. *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.—305.10.

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

8. See *S. v. Wilkerson*, 295 N.C. 559, 580 (1978).

9. "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).

10. See *S. v. Williams*, 90 N.C. App. 614, *disc. rev. den'd*, 323 N.C. 369 (1989).