

206.57 FELONY DEATH BY VEHICLE. (IMPAIRED DRIVING INVOLVED)
FELONY.

NOTE WELL: This instruction is to be used for offenses occurring before December 1, 2006. For offenses occurring on or after December 1, 2006, use N.C.P.I.-Crim. 206.57A.

NOTE WELL: If a separate charge of driving while impaired is submitted, then the jury may only convict the defendant of this offense if it also convicts the defendant of driving while impaired. 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 driving while impaired, the court should arrest judgment on the driving while impaired offense. 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 felony death by vehicle.

For you to find the defendant guilty of this offense, the State must prove four things beyond a reasonable doubt:

First, that the defendant was driving¹ a [vehicle]² [commercial vehicle].³

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

Third, that at the time the defendant was driving that [vehicle] [commercial vehicle] the defendant

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

(A) [was under the influence of an impairing substance.⁵ ((Name

substance involved) 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.^{6]}

- (B) [had consumed sufficient alcohol that a chemical analysis⁷ made at any relevant time after driving showed the defendant to have an alcohol concentration⁸ of [0.08] [0.04]⁹ 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].¹⁰

(Evidence in this case tends to show that a chemical test known as a(n) [intoxilizer] [blood test] was offered to the defendant by a law enforcement officer and that the defendant refused to take the test. 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 drove a motor vehicle.)

And Fourth, that the impaired driving by the defendant proximately but unintentionally caused the victim's death. Proximate cause is a real cause, a 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.)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant drove a [vehicle] [commercial vehicle] on a [highway] [street] [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] [0.04] or more grams of alcohol [per 210 liters of breath] [per 100 milliliters of blood], and that defendant's impaired driving proximately but unintentionally caused the victim's death, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.¹¹

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

2 If there is any doubt, define "vehicle" under N.C. Gen. Stat. § 20-4.01(49), or "motor vehicle" under § 20-4.01(23).

3 N.C. Gen. Stat. § 20-4.01(3d)a and b defines commercial vehicle. *See also State v. Jones*, 140 N.C. App. 691, 538 S.E.2d 228 (2000).

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 An impairing substance includes alcohol, 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).

6 N.C. Gen. Stat. § 20-4.01(48a).

7 N.C. Gen. Stat. § 20-4.01(3a) defines chemical analysis as "a chemical analysis of the breath or blood of a person to determine his alcohol concentration, performed in accordance with N.C. Gen. Stat. § 20-139.1. The term 'chemical analysis' includes duplicate or sequential analyses when necessary or desirable to insure the integrity of test results."

8 N.C. Gen. Stat. § 20-4.01(1b) 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.

9 Use 0.04 where a commercial vehicle is involved.

10 N.C. Gen. Stat. § 20-4.01(33a).

11 Note that Misdemeanor Death by Vehicle is not a lesser offense included within this offense. *See* N.C.P.I. - Crim. 206.58.