

OPERATING A MOTOR VEHICLE TO ELUDE ARREST ACCOMPANIED BY AGGRAVATING FACTORS RESULTING IN DEATH. G.S. 20-141.5(b1). FELONY.

NOTE WELL: For defendant to be guilty of felony operating a motor vehicle to elude arrest resulting in death without aggravating factors, it is only necessary for the state to prove elements 1, 2, and 4. (See N.C.P.I. 270.54B.)

The defendant has been charged with felonious operation of a motor vehicle to elude arrest with aggravating factors resulting in death.

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 operating a motor vehicle¹ on a [street] [highway] [public vehicular area].

Second, that the defendant was [fleeing] [attempting to elude] a law enforcement officer who was in the lawful performance of his duties.

A (*describe officer's status, e.g., highway patrolman*) is a law enforcement officer with authority to enforce the motor vehicle laws of this State. A person [flees] [attempts to elude] arrest or apprehension by a law

¹G.S. 20-141.5(c) provides: 'Whenever evidence is presented in any court or administrative hearing of the fact that a vehicle was operated in violation of this section, it shall be prima facie evidence that the vehicle was operated by the person in whose name the vehicle was registered at the time of the violation, according to the Division's records. If the vehicle is rented, then proof of that rental shall be prima facie evidence that the vehicle was operated by the renter of the vehicle at the time of the violation.'

For a definition of 'motor vehicle' see G.S. 20-4.01(23).

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enforcement officer when he knows or has reasonable grounds to know that an officer is a law enforcement officer, is aware that the officer is attempting to arrest or apprehend that person, and acts with the purpose of getting away in order to avoid arrest or apprehension by the officer.

Third, that two or more of the following factors were present at that time:²

NOTE WELL: Instruct on two or more of the factors alleged in the bill of indictment which are supported by the evidence.

[(1) speeding in excess of 15 miles per hour over the speed limit]

[(2) gross impairment of the defendant's faculties while driving due to [consumption of an impairing substance]³ [a blood alcohol level of 0.14 or more within a relevant time after driving]]

[(3) reckless driving (use N.C.P.I. -- Crim. 270.80 or 270.81)]

²The jury need not unanimously find same aggravating factors to convict. See *State v. Funchess*, 141 N.C. App. 302, 540 S.E.2d 435 (2000).

³An 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.

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- [(4) negligent driving resulting in an accident
causing [property damage in excess of \$1,000]
[personal injury]]
- [(5) driving while his driver's license is revoked]
- [(6) driving in excess of the posted speed limit
during the days and hours when the posted limit
is in effect [on school property] [in an area
designated as a school zone (define school zone;
see G.S. 20-141.1)] [in a highway work zone
(define highway work zone; see G.S. 20-141(j2))]]
- [(7) passing a stopped school bus (*use N.C.P.I. --
Crim. 270.75*)]
- [(8) driving with a child under 12 years of age in the
vehicle.]

And Fourth, that the defendant's [fleeing] [attempt to elude] the law enforcement officer was the proximate cause of the death of any person.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant operated a motor vehicle on a [street] [highway] [public vehicular area] while [fleeing] [attempting to elude] a law enforcement officer who was in the lawful performance of

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his duties and two or more of the following factors were present, [(1) speeding in excess of 15 miles per hour over the speed limit] [(2) gross impairment of the defendant's faculties due to [consumption of an impairing substance] [a blood alcohol level of 0.14 or more within a relevant time after driving]] [(3) reckless driving] [(4) negligent driving resulting in an accident causing [property damage in excess of \$1,000] [personal injury]] [(5) driving while defendant's driver's license is revoked] [(6) driving in excess of the posted limit during the days and hours when the posted limit is in effect [on school property] [in an area designated as a school zone] [in a highway work zone]] [(7) passing a stopped school bus] [(8) driving with a child under 12 years of age in the vehicle], that the defendant knew or had reasonable grounds to know that the officer was a law enforcement officer, and that the defendant's [fleeing] [attempting to elude] the law enforcement officer was the proximate cause of the death of any person, it would be your duty to return a verdict of guilty of felonious operation of a motor vehicle to elude arrest accompanied by aggravating factors resulting in death. If you do not so find or have a reasonable doubt as

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to one of more of these things, you would not return a verdict of guilty but would consider whether the defendant is guilty of felonious operation of a motor vehicle to elude arrest resulting in death, which differs from felonious operation of a motor vehicle to elude arrest accompanied by aggravating factors resulting in death in that the State need not prove that the defendant engaged in two or more aggravating factors.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant was operating a motor vehicle on a [street] [highway] [public vehicular area] while [fleeing] [attempting to elude] a law enforcement officer, that the defendant knew or had reasonable grounds to know that the officer was a law enforcement officer who was in the lawful performance of his duties, and that the defendant's [fleeing] [attempting to elude] the law enforcement officer was the proximate cause of the death of any person it would be your duty to return a verdict of guilty of felonious operation of a motor vehicle to elude arrest resulting in death. If you do not so find or have a reasonable doubt as to one or more of

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these things, it would be your duty to return a verdict of
not guilty.⁴

⁴If there is evidence to support the submission of an additional
lesser included offense, this last phrase would be amended as follows
"If you do not so find or have a reasonable doubt as to one or more of
these things, then you would not return a verdict of guilty of
felonious operation of a motor vehicle to elude arrest resulting in
death, but would consider whether the defendant is guilty of"