

N.C.P.I.—CRIM 206.41

VOLUNTARY MANSLAUGHTER NOT INVOLVING SELF-DEFENSE, ALSO INCLUDING INVOLUNTARY MANSLAUGHTER. FELONY.

GENERAL CRIMINAL VOLUME

JUNE 2014

N.C. Gen. Stat. § 14-18

206.41 VOLUNTARY MANSLAUGHTER NOT INVOLVING SELF-DEFENSE, ALSO INCLUDING INVOLUNTARY MANSLAUGHTER. CLASS D AND F FELONIES.

NOTE WELL: This instruction is designed for use in those cases in which the most serious homicide charged is voluntary manslaughter. It should be used only in cases where there is evidence that the defendant killed intentionally, but did so in the heat of passion and not in self-defense. It should not be used in cases, such as child abuse, where the killing is unintentional, but may have been with malice in that it was done in wanton disregard of human life, S. v. Wilkerson, 295 N.C. 559, 583 (1978), nor should it be used in any other case where there is no evidence of heat of passion, provocation or self-defense. Cf. S. v. Wetmore, 298 N.C. 743, 750 (1979); S. v. Montague, 298 N.C. 759 (1979). In all such cases, consult N.C.P.I.—Crim. 206.35 or 206.50.¹ Where self-defense is an issue, use N.C.P.I.—Crim. 206.40.

Effective December 1, 1997 Voluntary Manslaughter is a Class D Felony. For offenses occurring before December 1, 1997 Voluntary Manslaughter is a Class E Felony.

Refer to Punishment Chart for Homicides N.C.P.I.—Crim. 206 Series.

The defendant has been charged with voluntary manslaughter.

Under the law and the evidence in this case, it is your duty to return one of the following verdicts:

1) guilty of voluntary manslaughter

¹ The state by charging at the voluntary manslaughter level concedes that it has no evidence of malice. This may seem to place the traditional definitions of voluntary manslaughter into an awkward context, since at first blush it would appear that the state would have to prove heat of passion, which it usually has to negate when trying to obtain a murder conviction. On closer analysis, however, the real issue in a case involving evidence of heat of passion will be whether the defendant killed the victim intentionally, as the state must prove to establish voluntary manslaughter, or unintentionally, in which case the crime would at most be involuntary manslaughter.

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2) guilty of involuntary manslaughter

3) not guilty

Voluntary manslaughter is the unlawful killing of a human being by an intentional act.

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

First, that the defendant killed the victim by an intentional² and unlawful act.

And Second, that the defendant's act was a proximate cause of the victim's death. A proximate cause is a real cause, a cause without which the victim's death would not have occurred,³ 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 need not have been the only cause, nor the nearest cause. It is sufficient if it occurred with some other cause acting at the same time, which, in combination with, caused the death of the victim.)

2 "Neither second-degree murder nor voluntary manslaughter has as an essential element an intent to kill. In connection with these two offenses, the phrase 'intentional killing' refers not to the presence of a specific intent to kill, but rather to the fact that the act which resulted in death is intentionally committed and is an act of assault which in itself amounts to a felony or is likely to cause death or serious bodily injury. Such an act committed in the heat of passion suddenly aroused by adequate provocation or in the imperfect exercise of the right of self-defense is voluntary manslaughter. But such an act can never be involuntary manslaughter. This is so because the crime of involuntary manslaughter involves the commission of an act, whether intentional or not, which in itself is not a felony or likely to result in death or great bodily harm." *S. v. Ray*, 299 N.C. 151, 158 (1980).

3 Where there is a serious issue as to proximate cause, further instructions may be helpful, *e.g.*, "The defendant's act need not have been the last cause or the nearest cause. It is sufficient if it concurred with some other cause acting at the same time, which in combination with it, proximately caused the death of the victim."

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If you do not find the defendant guilty of voluntary manslaughter you must consider whether the defendant is guilty of involuntary manslaughter. Involuntary manslaughter is the unintentional killing of a human being by an unlawful act not amounting to a felony, or by an act done in a criminally 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 acted a) [unlawfully] (or) (b) [in a criminally negligent way]. a) [The defendant's act was unlawful if [(*describe crime, e.g., "defendant assaulted the victim"*) (*define assault*).] b) [Criminal negligence is more than mere carelessness.

The defendant's act was criminally negligent, if, judging by reasonable foresight, it was done with such gross recklessness or carelessness as to amount to a heedless indifference to the safety and rights of others.]

And Second, the State must prove that this [unlawful] [criminally negligent] act proximately caused the victim's death.

(If the victim died by accident or misadventure, that is, without wrongful purpose or criminal negligence on the part of the defendant, the defendant would not be guilty. The burden of proving accident is not on the defendant. The defendant's assertion of accident is merely a denial that the defendant has committed any crime. The burden remains on the State to prove the defendant's guilt beyond a reasonable doubt.)

FINAL MANDATE ON ALL CHARGES AND DEFENSES

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant, by the defendant's intentional and

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unlawful act proximately caused the victim's death, it would be your duty to find the defendant guilty of voluntary manslaughter.

However, 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 voluntary manslaughter. 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 [*(describe crime)*] [acted in a criminally negligent way] thereby proximately causing the victim's death, it would be your duty to return a verdict of guilty of involuntary manslaughter. However, 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.