

N.C.P.I.—Criminal 208.90J

DISCHARGING A FIREARM INTO OCCUPIED VEHICLE IN OPERATION INFLECTING SERIOUS BODILY INJURY. FELONY. G.S. 14-34.1(c).

General Criminal Volume

Replacement June 2011

The defendant has been charged with discharging a firearm into an occupied [vehicle] [aircraft] [watercraft] [(*describe other conveyance*)] while in operation<sup>1</sup> inflicting serious bodily injury.

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

First, that the defendant willfully or wantonly discharged a firearm into a [vehicle] [aircraft] [watercraft] [(*describe other conveyance*)] (without justification or excuse).<sup>2</sup> An act is willful or wanton when it is done intentionally with knowledge or a reasonable ground to believe that the act would endanger the rights or safety or others.

Second, that the [vehicle] [aircraft] [watercraft] [(*describe other conveyance*)] was occupied by one or more persons at the time that the firearm was discharged.

Third, that the defendant [knew] [had reasonable grounds to believe] that the [vehicle] [aircraft] [watercraft] [(*describe other conveyance*)] was occupied by one or more persons.

Fourth, that the [vehicle] [aircraft] [watercraft] [(*describe other conveyance*)] was in operation.

And Fifth, that the defendant's action resulted in serious bodily injury to the victim. Serious bodily injury is defined as bodily injury that creates or causes [a substantial risk of death] [serious permanent disfigurement] [coma] [a permanent or protracted condition that causes extreme pain] [permanent or protracted loss or impairment of the functions of any bodily member or organ] [prolonged hospitalization].

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<sup>1</sup> While the term "operation" is not defined, G.S. 20-4.01(25) defines operator as "[a] person in actual physical control of a vehicle which is in motion or which has the engine running." Accordingly, it can be inferred that the term "operation" means that the vehicle is in motion or has the engine running.

<sup>2</sup> The parenthetical phrase should be used only where there is evidence of justification or excuse, such as self-defense.

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If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant willfully or wantonly and intentionally discharged a firearm into a [vehicle] [aircraft] [watercraft] [(*describe other conveyance*)] (without justification or excuse),<sup>3</sup> while it was occupied by one or more persons, that the defendant [knew] [had reasonable grounds to believe] that it was occupied by one or more persons, that the [vehicle] [aircraft] [watercraft] [(*describe other conveyance*)] was in operation and that the defendant inflicted serious bodily injury, 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.<sup>4</sup>

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<sup>3</sup> The parenthetical phrase should be used only where there is evidence of justification or excuse, such as self-defense.

<sup>4</sup> If there is to be instruction on lesser included offenses, the last phrase should be: ‘...you will not return a verdict of guilty of discharging a firearm into occupied vehicle inflicting serious bodily injury.’”