

INFLICTION OF SERIOUS BODILY INJURY BY OPERATION OF AIRCRAFT
WHILE IMPAIRED (FLYING HIGH). G.S. § 63-28. FELONY.

The defendant has been charged with feloniously inflicting serious bodily injury by operating an aircraft while intoxicated.

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

First, that the defendant operated an aircraft.¹ A person operates an aircraft when he uses it for the purpose of air navigation, whether as pilot or navigator, and whether on the ground or in the air or on water.²

Second, that at the time the defendant was operating the aircraft, he

[A. Was under the influence of an impairing substance.³ A person is under the influence of an impairing substance (within the meaning and intent of the statute), when he has taken (or consumed) a sufficient quantity of that impairing substance to cause him to lose the normal control of his bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties.⁴]
(or)

¹Aircraft means ". . . any contrivance, now known or hereafter invented, used or designed for navigation of or flight in the air." G.S. 63-1(a)(3).

²G.S. §§ 63-1(a)(16); 63-28.

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, or any combination of these substances. G.S. 20-4.01(14a).

⁴G.S. 20-4.02(48a).

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[B. Had consumed sufficient alcohol that at any relevant time after the operation of the aircraft the defendant had an alcohol concentration⁵ of 0.04 or more grams of alcohol [per 210 liters of breath] [per 100 milliliters of blood]. A relevant time is any time after operating the aircraft in which the operator still has in his body alcohol consumed before or during the operation of the aircraft.⁶]

And Third, that while the defendant was so operating the aircraft, he did serious bodily injury⁷ to another person.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant operated an aircraft while under the influence of an impairing substance, and that while the defendant was so operating the aircraft, he did serious bodily injury to another person, it would be your duty to return a verdict 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.

⁵G.S. 20-4.01(02) defines alcohol concentration as "the concentration of alcohol in a person, expressed as (a) grams of alcohol per 100 milliliters of blood; or (b) grams of alcohol per 210 liters of breath."

⁶G.S. 20-4.01(33a).

⁷"Serious bodily injury" may be defined as "such physical injury as causes great pain and suffering." State v. Jones, 258 N.C. 89 (1962); State v. Ferguson, 261 N.C. 558 (1962). If there is evidence as to injuries which could not conceivably be considered anything but serious, the trial judge may instruct the jury as follows, "(Describe injury) would be a serious bodily injury." State v. Davis, 33 N.C. App. 262 (1977); State v. Springs, 33 N.C. App. 61 (1977).