

208.90D DISCHARGING A FIREARM INTO OCCUPIED VEHICLE IN OPERATION. FELONY.

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

For you to find the defendant guilty of this offense, the State must prove four 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.

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

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant willfully or wantonly 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, and that the defendant [knew] [had reasonable grounds to believe] that it was occupied by one or more persons and that the [vehicle] [aircraft][watercraft] [(*describe other conveyance*)] was in operation, 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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1. While the term “operation” is not defined, N.C. Gen. Stat. § 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.

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

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

4. See *State v. Ayers*, 261 N.C. App. 220, 819 S.E.2d 407 (2018) (holding that defendant was “entitled to a self-defense instruction, including language that Defendant had no duty to retreat or could defend and stand his ground where he was in a location where he had a ‘lawful right to be,’” and rejecting the notion that defendant would have been required to slow down while being “paced,” pull off the road, or cease maintaining his lawful course of travel to avoid the victim’s use of a truck as a deadly weapon to force the defendant off the road), disc. rev. denied, 372 N.C. 103, 824 S.E.2d 407 (2019).