

270.54A. OPERATING A MOTOR VEHICLE TO ELUDE ARREST. FELONY;
MISDEMEANOR.

NOTE WELL: For the defendant to be guilty of misdemeanor operating a motor vehicle to elude arrest it is only necessary for the state to prove the first three elements. (See N.C.P.I. 270.54.)

The defendant has been charged with the felonious operation of a motor vehicle to elude arrest.

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.

Second, that the defendant was operating that motor vehicle on a [street] [highway] [public vehicular area].

Third, 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 patrol trooper*) is a law enforcement officer with authority to enforce the motor vehicle laws. A person [flees] [attempts to elude] arrest or apprehension by a law 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 him, and acts with the purpose of getting away in order to avoid arrest or apprehension by the officer.

And Fourth, 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 legal 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*)]
- [(4) negligent driving leading to an accident causing [property damage in excess of \$1000] [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.]

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 his duties and two or more of the following factors were present, [(1) speeding in excess of 15 miles per hour over the legal 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 leading to an accident causing [property damage in excess of \$1000] [personal injury]] [(5) driving while his 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], and the defendant knew or had reasonable grounds to know that the officer was a law enforcement officer, it would be your duty to return a verdict of guilty of felonious operation of a motor vehicle to elude arrest. 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 felonious operation of a motor vehicle to elude arrest, but would determine whether the defendant is guilty of misdemeanor operation of a motor vehicle to elude arrest.

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, knowing or having reasonable grounds to know that the officer is a law enforcement officer, who was in the lawful performance of his duties, it would be your duty to return a verdict of guilty of misdemeanor operation of a motor vehicle to elude arrest. 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.

1. G.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.”

In the appropriate case, the trial court should include the full definition of “motor vehicle” in its instruction. See *State v. Boykin*, ___ N.C. App. ___, 853 S.E.2d 781 (2020) (concluding that the trial court’s failure to instruct on the statutory definition of “motor vehicle” was plain error, where the evidence tended to show that defendant was driving a moped at the time of the alleged offense). A “motor vehicle” is “every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle,” but “this term shall not include mopeds or electric assisted bikes.” G.S. 20-4.01(23).

2. 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).

3. An 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).