

ASSAULT BY AUTO OR VESSEL
(SERIOUS BODILY INJURY – Third Degree
With Lesser-included Fourth Degree Bodily Injury)
(N.J.S.A. 2C:12-1c(4))

The defendant (name) is charged in count _____ of the indictment with the crime of assault by [auto] [vessel].

(Read Appropriate Count of Indictment)

The statute upon which this charge is based provides:

Assault by [auto] [vessel] is a crime if the person purposely drives a vehicle in an aggressive manner directed at another vehicle and serious bodily injury results.

In order for you to find the defendant guilty of this crime, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant drove a vehicle;
2. That the defendant drove the vehicle in an aggressive manner directed at another vehicle;
3. That the defendant acted purposely;¹
4. That serious bodily injury resulted.

The first element the State must prove beyond a reasonable doubt is that the defendant drove a vehicle. In this case, the State alleges that the [auto] [vessel] is a vehicle. **(Charge appropriate:** An auto is a means of conveyance propelled other wise than by muscular power. A vessel means a means of conveyance for travel on water and propelled otherwise than by muscular power.²)

The second element the State must prove beyond a reasonable doubt is that the defendant drove the vehicle in an aggressive manner directed at another vehicle. “Driving a vehicle in an aggressive manner” includes, but is not limited to, unexpectedly altering the speed of the vehicle, making improper or erratic traffic lane changes, disregarding traffic control devices, failing to yield

¹ Please note that this statute is specifically limited to purposeful conduct. N.J.S.A. 2C:12-1c(1) is a reckless conduct statute, however, the Model Criminal Jury Charge Committee does not believe that N.J.S.A. 2C:12-1c(1) is a lesser included offense of this crime.

² Please note that N.J.S.A. 2C:12-1c(4) does not define the term “auto.” It does specifically define the term vessel as just noted in the charge. N.J.S.A. 2C:11-5d, Death by Auto or Vessel, defines both auto or vessel as “all means of conveyance propelled other wise than by muscular power.” It would seem prudent to define auto in this section in compliance with that in N.J.S.A. 2C:11-5d.

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the right of way, or following another vehicle too closely.³

The third element the State must prove beyond a reasonable doubt is that the defendant acted purposely.

A person acts purposely with respect to the nature of his/her conduct or a result of his/her conduct if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to the attendant circumstances if he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist. “With purpose,” “designed,” “with design” or equivalent terms have the same meaning.⁴

Purpose is a state of the mind which cannot be seen, and can only be determined by inference drawn from the defendant’s conduct, words or acts as they have been presented in the evidence you have heard and seen in this case. It is not necessary that the State produce a witness or witnesses to testify that the defendant stated, for example, that it was his/her purpose in driving a vehicle in an aggressive manner directed at another vehicle. His/her purpose may be gathered from his/her acts and conduct, from all that he/she said and did at the particular time and place, and from all the surrounding circumstances reflected in the testimony [and adduced at trial].

The fourth element that the State must prove beyond a reasonable doubt is that serious bodily injury resulted. Serious bodily injury is defined as bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.⁵ Bodily injury is defined as physical pain, illness or any impairment of physical condition.⁶ **[If causation is an issue, charge the following:** In order to find that the defendant caused (name of victim(s))’s injury (or injuries), you must find that (the victim(s)) would not have been injured but for the defendant’s conduct.⁷]

If you find that the State has proven every element of the crime of assault by [auto] [vessel] causing serious bodily injury beyond a reasonable doubt, then you must find the defendant guilty.

If you find that the State has failed to prove any element of assault by [auto] [vessel] causing

³ N.J.S.A. 2C:12-1c(4).

⁴ N.J.S.A. 2C:2-2b.

⁵ N.J.S.A. 2C:11-1b.

⁶ N.J.S.A. 2C:11-1a.

⁷ N.J.S.A. 2C:2-3a(1). If foreseeable result is an issue, then N.J.S.A. 2C:2-3b should be charged.

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serious bodily injury beyond a reasonable doubt then you must find the defendant not guilty and go on to consider the crime of assault by [auto] [vessel] causing bodily injury.

The law requires that the Court instruct the jury with respect to a possible (lesser) included offense, even if it is not contained in the indictment. Just because the Court is instructing you concerning these offenses does not mean that the Court has any opinion one way or another about whether the defendant committed these, or any, offenses. You should consider this offense along with those for which the defendant is indicted. However, you are not to render a verdict on this offense or answer the questions on the verdict sheet unless you find that the State has failed to meet its burden of proof with regard to the offense(s) in the indictment.

In order to find the defendant guilty of the crime of assault by [auto] [vessel] causing bodily injury, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant drove a vehicle;
2. That the defendant drove the vehicle in an aggressive manner directed at another vehicle;
3. That the defendant acted purposely;
4. That bodily injury resulted.

As you can see, the first three elements of this crime are the same as before. I have already defined these three elements for you. The fourth element the State must prove beyond a reasonable doubt is that bodily injury resulted. I have already defined bodily injury for you but will repeat it again. Bodily injury is defined as physical pain, illness or any impairment of physical condition.⁸

If you find that the State has proven every element of the crime of assault by [auto] [vessel] causing bodily injury beyond a reasonable doubt, then you must find the defendant guilty.

If you find that the State has failed to prove any element of assault by [auto] [vessel] causing bodily injury beyond a reasonable doubt then you must find the defendant not guilty.

⁸ N.J.S.A. 2C:11-1a.