

ELUDING AN OFFICER
[Second and Third Degree]
(N.J.S.A. 2C:29-2b)

The indictment charges the defendant with committing the crime of eluding an officer. The indictment reads as follows:

(Read Indictment)

The statute on which this charge is based reads as follows:

Any person, while operating a motor vehicle on any street or highway in this State, [or any vessel, as defined pursuant to section 2 of P.L. 1995, c.401 (C.12:7-71), on the waters of this State], who knowingly flees or attempts to elude any police or law enforcement officer after having received any signal from such officer to bring the vehicle or vessel to a full stop commits [the] crime of [eluding].

In order to convict the defendant of eluding, the State must prove beyond a reasonable doubt each of the following six (6) elements:

1. That _____ was operating a motor vehicle on a street or highway in [or a vessel on the waters of this of] this state.
2. That _____ was a police or law enforcement officer.
3. That _____ signaled _____ to bring the vehicle [**OR:** vessel] to a full stop.
4. That _____ knew that the officer had signaled (him/her) to bring the vehicle [**OR:** vessel] to a full stop.
5. That _____ knew that _____ was a police or law enforcement officer.
6. That defendant knowingly fled or attempted to elude the officer.

If you find that _____ was the owner of the vehicle [**OR:** vessel], you may infer that (he/she) was operating that vehicle [**OR:** vessel] at the time of the offense. However, you are never required or compelled to draw this inference. It is your exclusive province to determine whether the facts and circumstances shown by the evidence support any inference and you are always free to accept them or reject them if you wish.

Mere failure to stop does not constitute flight. In order for you to find that the defendant fled or attempted to elude the police, the State must prove beyond a reasonable doubt that (he/she) knew that (he/she) was being pursued by police officers, but still did not stop.¹

¹ State v. Mendez, 345 N.J. Super. 498, 507-509 (App. Div. 2001).

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A person acts knowingly with respect to the attendant circumstances of (his/her) conduct if (he/she) is aware that such circumstances exist, or is aware of a high probability of their existence. "Knowing" or "with knowledge" or equivalent terms have the same meaning.

Knowledge is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. Therefore, it is not necessary, members of the jury, that the State produce witnesses to testify that an accused said that (he/she) had a certain state of mind when (he/she) engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of (his/her) acts and (his/her) conduct, and from all that (he/she) said and did at the particular time and place, and from all of the surrounding circumstances.

If you find that the State has failed to prove any one of these elements beyond a reasonable doubt you must find the defendant not guilty.

**[CHARGE FOLLOWING SENTENCE IF SUBMITTING
ONLY 3RD DEGREE ELUDING]**

On the other hand, if you find that the State has proven all of these elements beyond a reasonable doubt, you must find the defendant guilty.

**[CHARGE REMAINING PARAGRAPHS IF SUBMITTING
BOTH KINDS OF ELUDING]**

If you find that the State has proven all six of the above elements beyond a reasonable doubt, you must go on in your deliberations to consider a seventh element. The State must prove beyond a reasonable doubt:

7. That the flight or attempt to elude created a risk of death or injury to any person. "Injury" means physical pain, illness, or any impairment of physical condition.² In order to find this element, you must determine that there was at least one person put at risk by the defendant's conduct, which could include defendant himself/herself, any person along the chase route, any police officer in a chasing vehicle [**OR:** vessel], or anyone in the eluding vehicle [**OR:** vessel].³

² State v. Wallace, 158 N.J. 552, 558 (1999), holds that the term "injury" should be defined for the jury, using the Code definition of "bodily injury," N.J.S.A. 2C:11-1a. Property damage, psychological injury, or other nonphysical injury do not satisfy the statutory requirement. Id.

³ Wallace, 158 N.J. at 560. See also State v. Bunch, 180 N.J. 534 (2004) (a defendant who uses a motor vehicle to elude and in doing so creates a risk of death or injury only to himself or herself is guilty of second degree eluding; statute does not require showing of injury to one other than the defendant).

[CHARGE IF APPLICABLE:]⁴

You may infer risk of death or injury to any person if the defendant's conduct in fleeing or in attempting to elude the officer involved a violation of the motor vehicle laws of this State [**OR:** the laws regulating vessels]. It is alleged that the defendant's conduct involved [a] violation[s] of the motor vehicle laws [**OR:** the laws regulating vessels]. Specifically, it is alleged that the defendant [list motor vehicle violations or vessel violations alleged, and list their elements, taking care to list only those violations that allegedly occurred after the signal to stop]. Whether (he/she) is guilty or not guilty of that [those] offense[s] will be determined by an appropriate court.⁵ In other words, it is not your job to decide whether (he/she) is guilty or not guilty of the motor vehicle [**OR:** vessel] offense[s]. However, you may consider the evidence that (he/she) committed [a] motor vehicle offense[s] [**OR:** vessel offense[s]] in deciding whether (he/she) created a risk of death or injury.

At the same time, remember that you are never required or compelled to draw this inference. As I have already explained, it is your exclusive province to determine whether the facts and circumstances shown by the evidence support any inference and you are always free to accept or reject any inference if you wish.

If you find that the State has proven beyond a reasonable doubt all seven elements of the offense, then you must find the defendant guilty of eluding while creating a risk of death or injury to any person. On the other hand, if you find that the State has failed to prove the seventh element beyond a reasonable doubt, but has proven the first six elements beyond a reasonable doubt, then you must find the defendant not guilty of eluding while creating a risk of death or injury to any person, but guilty of eluding. Finally, if you find that the State has failed to prove any of the first six elements beyond a reasonable doubt, then you must find the defendant not guilty of either crime.

⁴ Only violations of Chapter 4 of Title 39 (motor vehicles) or Chapter 7 of Title 12 (vessels) will support this statutory inference. However, not all such violations will support the inference, and it should not be submitted where no reasonable juror on the evidence as a whole, including the evidence of the motor vehicle or vessel violation, could find a risk of death or injury to any person beyond a reasonable doubt. N.J.R.E. 303b; State v. DiRienzo, 53 N.J. 360, 378 (1969).

⁵ State v. Muniz, 118 N.J. 319, 331-32 (1990). However, the failure to explain, in appropriate circumstances, the elements of the motor vehicle offenses that form the basis for the statutory inference of recklessness, so that the jury can make an accurate determination whether the defendant's conduct "created the danger of death or injury," is reversible error. State v. Dorko, 298 N.J. Super. at 59-60. Accordingly, the court should explain the elements of the applicable motor vehicle offenses to the jury, but inform them that the defendant's guilt or innocence of those offenses will be determined by an appropriate court. See State v. Dixon, 346 N.J. Super. 126, 138 (App. Div. 2001). The same principles would appear to apply if a vessel offense, rather than a motor vehicle offense, is alleged as the basis for the statutory inference.