

**MANSLAUGHTER IN COURSE OF ELUDING AN OFFICER**

**(N.J.S.A. 2C:11-4b(3))**

The defendant is charged in count \_\_\_\_\_ with manslaughter in violation of N.J.S.A. 2C:11-4b(3). The indictment reads in pertinent part as follows:

**(Read indictment or appropriate count, if indictment contains more than one count.)<sup>1</sup>**

The State contends that on (date), while committing the crime of fleeing [or attempting to elude] a law enforcement officer, defendant caused the death of **[insert victim's name]**.

The section of the statute applicable to this case reads in pertinent part as follows:

Criminal homicide constitutes manslaughter when:

The actor causes the death of another person while  
fleeing or attempting to elude a law enforcement  
officer.

It does not matter that the act which caused death was committed recklessly, or unintentionally or accidentally.

In order for you to find the defendant guilty of manslaughter, the State is required to prove beyond a reasonable doubt, from all the evidence in the case, all of the essential elements of the crime charged. Accordingly, before you can find the defendant guilty of manslaughter, the State must prove beyond a reasonable doubt:

1. That on or about **[insert date]** the defendant was engaged in the crime of fleeing  
[or attempting to elude] a law enforcement officer.<sup>2</sup>

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<sup>1</sup> It is assumed that the indictment would contain a separate count charging defendant with the predicate crime of eluding an officer.

<sup>2</sup> If the facts indicate an attempted crime, see appropriate charge on attempt elsewhere herein and modify to the

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2. That the death of **[name of victim]** was caused by the defendant.
3. That the death of **[name of victim]** was caused at some time within the course of the defendant's flight [or attempt to elude] the law enforcement officer.

The first element requires the State to prove beyond a reasonable doubt that the defendant was engaged in the crime of eluding by fleeing [or attempting to elude] a law enforcement officer in violation of the criminal code.

**[Charge elements of eluding an officer, N.J.S.A. 2C:29-2b, if not previously charged.  
See Model Charge.]**

**OR**

**[I have already instructed you on the elements of the crime of eluding an officer.]**

The second and third elements require the State to establish that the victim's death was caused by the defendant and was caused during the commission of the crime of eluding. In order to meet its burden of proof as to the second and third elements, the State must prove beyond a reasonable doubt the following:

1. That, but for defendant's conduct in the commission of the crime of eluding, the victim would not have died. In other words, that the victim's death would not have occurred without the commission of the crime of eluding.<sup>3</sup>
2. That the victim's death was a probable consequence of the commission of the crime of eluding.<sup>4</sup> In order for the death to be a "probable consequence" of the crime of

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extent necessary. And if defendant's involvement was or may have been as an accomplice (N.J.S.A. 2C:2-6), see appropriate charges elsewhere herein including, if also applicable, the defense of renunciation (N.J.S.A. 2C:2-6(e)).

<sup>3</sup> State v. Martin, 119 N.J. 2, 11, 19-34 (1990).

<sup>4</sup> The fact that a police officer's pursuit of the defendant may be the direct cause of the victim's death does not necessarily mean that the statute is inapplicable. If the evidence may support such a theory, the court should give a

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eluding, the death must not have been too remote, or too accidental in its occurrence, or too dependent on another's volitional acts to have a just bearing on the defendant's liability or the gravity of his offense. In other words, you must decide if the State has proven beyond a reasonable doubt that, under all the circumstances, the death did not occur in such an unexpected or unusual manner that it would be unjust to find the defendant responsible for the death.<sup>5</sup>

**[NOTE: In cases where Causation - Removal of Life Support is an issue, the jury should be instructed as follows:**

You have heard testimony that on [date], **(insert victim's name)** was taken off life support and that he/she died at some point after this was done. Should you find beyond a reasonable doubt that **(insert victim's name)** died from medical complications that resulted from injuries caused by defendant's actions, the removal of life support, in this case (method of removal), is not an intervening cause that relieves defendant of any criminal liability for those actions.<sup>6</sup> That is, if defendant's actions set in motion **(insert victim's name)** need for life support, without which death would result naturally, then the causal link between defendant's action and the death of **(insert victim's name)** was not broken by an unforeseen, extraordinary act when **(insert victim's name)** was removed from life support and then expired, unless there

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fact-specific causation charge as contemplated in State v. Martin, 119 N.J. at 16-18.

<sup>5</sup> Where divergent factual versions give rise to different theories of causation, the trial court must provide the jury with appropriate instructions to apply, depending on which version it chooses to accept. Thus, in appropriate cases the court must fashion its charge to instruct the jury how to deal with the defendant's (as well as with the State's) factual contentions. Martin, 119 N.J. at 16-18.

<sup>6</sup> State v. Pelham, 176 N.J. 44, 455-456 and n. 2 (2003).

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was an intervening volitional act of another.]]<sup>7</sup>

**[CHARGE IN ALL CASES]**

In conclusion, you must decide whether, after a consideration of all the evidence, that the State has proven to your satisfaction beyond a reasonable doubt each of these elements, as I have just explained them:

- (1) that the defendant was engaged in the commission of crime of eluding, meaning that the State has proven the following [recapitulate the elements of eluding an officer, N.J.S.A. 2C:29-2b];
- (2) that the death of (name of victim) was caused by defendant;
- (3) that the death of that person was caused at some time during the crime of eluding;

If you find, after consideration of all the evidence, that the State has proven each of these elements beyond a reasonable doubt, then you will find the defendant guilty of manslaughter

On the other hand, if you find that the State has failed to prove to your satisfaction beyond a reasonable doubt any one or more of these elements, then you must find the defendant not guilty of manslaughter.

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<sup>7</sup> Pelham, 176 N.J. at 467.