

7.09Y

Inferences Of “Reckless” Conduct—Reckless Homicide

In cases involving the offense of reckless homicide, you may infer that the defendant’s actions were performed recklessly if you find that:

[1] the defendant committed the offense while driving [(at a speed of more than 20 miles per hour in excess of the posted speed limit) (under the influence of alcohol, other drugs, intoxicating compounds, or any combination thereof)] in [(a school speed zone, while children are present) (a construction or maintenance zone, while construction or maintenance workers are present)].

You are never required to make this inference. It is for the jury to determine whether the inference should be drawn. During your deliberations on your verdict you should consider all of the evidence in the case.

[or]

[2] the defendant committed the offense by driving a vehicle approaching a stationary authorized emergency vehicle that was displaying alternately flashing [(red) (red and white) (blue) (red and blue lights) (amber) (yellow)] warning lights, while on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the defendant’s vehicle, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, be prepared to stop, and leave a safe distance until safely passed the authorized emergency vehicle, and yield the right-of-way by making a lane change into a lane not adjacent to that of an authorized emergency vehicle, if possible with due regard for safety and traffic conditions.

You are never required to make this inference. It is for the jury to determine whether the inference should be drawn. During your deliberations on your verdict you should consider all of the evidence in the case.

[or]

[3] the defendant committed the offense by driving a vehicle approaching a stationary authorized emergency vehicle that was displaying alternately flashing [(red) (red and white) (blue) (red and blue lights) (amber) (yellow)] warning lights, while on a roadway where changing lanes would be impossible or unsafe, and then failing to proceed with due caution, reduce the speed of the vehicle, to maintain a safe speed for road conditions, and leave a safe distance until safely past authorized emergency vehicle.

You are never required to make this inference. It is for the jury to determine whether the inference should be drawn. During your deliberations on your verdict you should consider all of the evidence in the case.

Committee Note

720 ILCS 5/9-3(e-11), last amended by P.A. 95-876, effective August 21, 2008. 720 ILCS 5/9-3(e-14), last amended by P.A. 96-328, effective August 11, 2009; 625 ILCS 5/11-907 (West 2021), amended by P.A. 102-0336, effective January 1, 2022.

Give Instruction 5.01, defining the term “recklessness”.

When applicable give Instruction 23.13, defining the term “driving under the influence of alcohol”.

When applicable give Instruction 23.15, defining the term “driving under the influence of drugs”.

When applicable give Instruction 23.17, defining the term “driving under the combined influence of alcohol and drugs”.

When applicable give Instruction 23.79X, defining the term “authorized emergency vehicle”.

When applicable give Instruction 4.23, defining the term “school speed zone”.

When applicable, define the term “construction or maintenance zone”. See Instruction 4.23 regarding school speed zones.

The inference set forth in paragraph [1] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-11), enacted by P.A. 59-587, effective June 1, 2008, and last amended by P.A. 95-876, effective August 21, 2008. Paragraph [1] may be given when the defendant is charged with reckless homicide in a “posted school zone” or a “construction or maintenance zone”, and there is evidence that the defendant was either: driving at a speed of more than 20 miles per hour in excess of the posted speed limit; or driving while under the influence of alcohol, other drugs, intoxicating compounds, or any combination thereof.

The inferences set forth in paragraphs [2] and [3] reflect the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-14), enacted by P.A. 95-884, effective January 1, 2009, and last amended by P.A. 96-328, effective August 11, 2009. Paragraphs [2] and [3] may be given when the defendant is charged with reckless homicide, and there is evidence that the defendant also violated Scott’s Law (625 ILCS 5/11-907(c) (West 2020)).

Because the reckless homicide statute expressly refers to subsection (c) of Section 11-907 of the Illinois Vehicle Code, the bracketed language used in paragraphs [2] and [3] incorporates the requirements of Scott’s Law as set forth in Instruction 23.79 and Instruction 23.79A.

For constitutional reasons, an inference in a criminal case may not be mandatory when it operates against a defendant, and it may not shift the burden of proof. The Illinois Supreme Court has not addressed whether the permissive inferences set forth in Section 9-3(e-11) and Section 9-3(e-14) satisfy the requirements of constitutional due process. However, in *People v. Funches*, 212 Ill. 2d 334, 342-43 (2004), the Illinois Supreme Court reiterated that “[a]n inference does not violate due process guarantees where three conditions are satisfied: (1) there must be a rational connection between the basic fact and the presumed fact; (2) the presumed fact must be more likely than not to flow from the basic fact; and (3) the inference must be supported by corroborating evidence of guilt. If there is no corroborating evidence, the leap from the basic fact to the presumed element must still be proved beyond a reasonable doubt.” Applying those factors, the *Funches* court rejected the defendant’s as-applied challenge to the constitutionality of a permissive inference in a criminal statute.

The terms “due caution” and “due regard for safety and traffic conditions” in paragraphs [2] and [3] are undefined in the Illinois Vehicle Code, and the Committee takes no position on their meaning.

Use applicable paragraph and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.