

DISTURBING/DESECRATING HUMAN REMAINS
(N.J.S.A. 2C:22-1a(3))

Count (INSERT) of the Indictment charges the defendant with the crime of disturbing/desecrating human remains. The statute on which this count of the Indictment is based reads in pertinent part:

A person commits an offense if, he commits an act of (sexual penetration) (sexual contact) upon human remains.

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

- (1) That the defendant committed an act of (sexual penetration) or (sexual contact).
- (2) That the act of (sexual penetration) or (sexual contact) was upon human remains.
- (3) That the defendant knew the act was being committed upon human remains.

(CHARGE IF ALLEGATION OF SEXUAL PENETRATION)¹

The first element the State must prove beyond a reasonable doubt is that the defendant committed an act of sexual penetration.

Here, the State alleges that defendant committed an act of sexual penetration by (describe conduct alleged).

Sexual penetration means vaginal intercourse, cunnilingus, fellatio or anal intercourse or insertion of the hand, finger or object into the anus or vagina by the actor.² The depth of insertion shall not be relevant as to the question of commission of the crime.

The definition of “vaginal intercourse” is the penetration of the vagina, or [where

¹ See Model Jury Charge (Criminal), Aggravated Sexual Assault, N.J.S.A. 2C:14-2a(1).

² N.J.S.A. 2C:14-1(c) also references acts done at the actor’s instruction. This language should be charged if it is alleged the acts of sexual penetration upon the human remains were committed by a third party at the actor’s request or direction.

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appropriate] of the space between the labia majora or outer lips of the vulva.³

The definition of “cunnilingus” is oral contact with the female sex organ.⁴

The definition of “fellatio” is oral contact with the male sexual organ.⁵

The definition of “anal intercourse” is penetration of any depth into the anus.⁶

The State must prove beyond a reasonable doubt that defendant committed the act of sexual penetration knowingly.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inferences from defendant’s 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 that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been

³ State v. J.A., 337 N.J. Super. 114 (App. Div. 2001). The Appellate Division upheld the charge given by the trial court in that case which included the following language which can be used if the circumstances of the specific case are appropriate: “This means that if you find from all of the evidence presented beyond a reasonable doubt that there was [penile] penetration to the outer area of the vaginal opening, what is commonly referred to as the vaginal lips, that is sufficient to establish penetration under the law.”

⁴ State v. Fraction, 206 N.J. Super. 532, 535-36 (App. Div. 1985), certif. denied, 104 N.J. 434 (1986). Penetration is not necessary for this act.

⁵ State in the Interest of S.M., 284 N.J. Super. 611, 616-19 (App. Div. 1995). Penetration is not necessary for this act.

⁶ State v. Gallagher, 286 N.J. Super. 1, 13 (App. Div. 1995), certif. denied, 146 N.J. 569 (1996).

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furnished beyond a reasonable doubt by inferences which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

(CHARGE IF ALLEGATION OF SEXUAL CONTACT)⁷

The first element the State must prove beyond a reasonable doubt is that the defendant committed an act of sexual contact.

Here, the State alleges that defendant committed an act of sexual contact by (describe conduct alleged).

Sexual contact means an intentional touching by the defendant, either directly or through clothing, of the (intimate parts of the corpse) or (defendant's intimate parts) for the purpose of degrading or humiliating (name of the corpse) or sexually arousing or gratifying defendant.

Intimate parts means [**CHOOSE APPROPRIATE**] (sexual organs)(genital area)(anal area)(inner thigh)(groin)(buttock of a person)(breast of a person).

To find that defendant committed an act of sexual contact, you must find beyond a reasonable doubt both that the touching was intentional and that it was done with the purpose of degrading or humiliating (name of victim) or sexually arousing or gratifying the defendant.

Intentional means purposeful. A person acts purposely with respect to the nature of his/her conduct or a result thereof 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 believes or hopes that they exist.

Purpose is a condition of the mind that cannot be seen and that can be determined only by

⁷ See Model Jury Charge (Criminal), Criminal Sexual Contact.

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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 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 the defendant's acts and conduct, from all that he/she said and did at the particular time and place, and from all surrounding circumstances.

[WHEN DEFENDANT IS CHARGED WITH TOUCHING HIMSELF/HERSELF, ADD THE FOLLOWING: The State must prove beyond a reasonable doubt that the defendant knew a corpse was present. The State must prove beyond a reasonable doubt that the touching would have been in the view of the corpse if the corpse were alive.⁸ The State is not required to prove that (name of victim) actually observed or witnessed the alleged sexual contact. Rather, the State must prove that the alleged sexual contact could have occurred in the view of (name of victim). "Field of vision" is not limited to the visual direction in which the alleged victim would have been focused upon at the particular time when the alleged sexual contact is said to have occurred. Field of vision includes the areas that (name of victim) would have been capable of viewing.⁹ The State must prove beyond a reasonable doubt that (name of victim) was present.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her

⁸ State v. Zeidell, 154 N.J. 417 (1998).

⁹ State v. Breitweiser, 373 N.J. Super. 271, 276, 286-87 (App. Div. 2004).

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conduct will cause such a result.¹⁰

Knowledge is a condition of the mind that cannot be seen and that can be determined only 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 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 the defendant's acts and conduct, from all that he/she said and did at the particular time and place, and from all surrounding circumstances.

(RESUMPTION OF MAIN CHARGE)

The second element the State must prove beyond a reasonable doubt is that the act was committed upon human remains.

“Human remains” means the body of a deceased person or the dismembered part of a body of a living person. It does not include cremated remains.¹¹

The third element the State must prove beyond a reasonable doubt is that the defendant knew the act was being committed upon human remains.

Knowledge is a condition of the mind that cannot be seen and that can be determined only 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 that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when

¹⁰ Since there is no enumerated mental state codified in the statute, the gap-filler provision of N.J.S.A. 2C:2-2(c)(3) renders the mental state to be “knowingly.”

¹¹ N.J.S.A. 2C:22-1(c).

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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 the defendant's acts and conduct, from all that he/she said and did at the particular time and place, and from all surrounding circumstances.

If you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find the defendant not guilty.

If you find that the State has proved each element of the offense beyond a reasonable doubt, then you must find the defendant guilty.