

KIDNAPPING
(N.J.S.A. 2C:13-1a)

The defendant is charged with the crime of kidnapping. The indictment reads in pertinent part as follows:

(Read Indictment)

The pertinent part of the statute on which this indictment is based reads as follows:

A person is guilty of kidnapping if he unlawfully removes another from the place where he is found or if he unlawfully confines another with the purpose of holding that person for ransom or reward or as a shield or hostage.

(Select appropriate section)

In order for you to find the defendant guilty of kidnapping, the State is required to prove each of the following elements to you beyond a reasonable doubt:

1. That the defendant _____, unlawfully removed _____, from _____.
and/or
That the defendant _____, unlawfully confined _____, at _____.
2. That the removal.....confinement was for the purpose of holding _____, for ransom.... or reward....or as a shield or hostage.

You will note that I have used the terms "unlawfully removed....unlawfully confined."

(IF THE PERSON ALLEGED TO HAVE BEEN REMOVED OR CONFINED IS OVER THE AGE OF 14 AND NOT INCOMPETENT USE THE FOLLOWING)

The term "unlawful" means to accomplish the removal or confinement by force, threat, or deception....¹

(IF THE PERSON REMOVED OR CONFINED IS UNDER THE AGE OF 14 OR INCOMPETENT USE THE FOLLOWING)

The term "unlawful" means to accomplish the removal or confinement without the consent of the parent, guardian, or other person responsible for the general supervision of his/her welfare.²

I have also used the term "purpose." A person acts purposely with respect to the nature of

¹ N.J.S.A. 2C:13-1d.

² Id.

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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, that is, if the person means to do what he/she does 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.³

The nature of the purpose with which the defendant acted towards the victim is a question of fact for the jury to decide. Purpose is a condition 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 or the defendant stated, for example, that his/her purpose in ... removing _____, (and/or) confining _____ was for ransom or reward or as a shield or hostage.

(Select appropriate section)

It is within the power of the jury to find that the proof of purpose has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and the circumstances surrounding the conduct under investigation as they have been presented in the evidence you have heard and seen in this case.

The statute defines the crime of kidnapping in part by using the words "unlawfully removing a person from where (he/she) is found." First you must understand that the unlawfulness of removing a person from where (he/she) is found, that is, where the victim happened to be at the moment of the unlawful removal, does not depend upon the distance a victim is moved.

In other words, the unlawful removal to any specific location or of a specific distance is not necessary to the offense so long as the removal was unlawful, that is,accomplished by force, threat, or deception, ...accomplished without the consent of parent, guardian or other person responsible for the general supervision of his welfare ... and for the purpose of gaining ransom or reward or using the victim as a shield or hostage.

The statute further defines the crime of kidnapping as the unlawful confinement of a person.

The confinement need not be for a specific period of time so long as the confinement was

³ N.J.S.A. 2C:2-2b.

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unlawful, that is, ... accomplished by force, threat, or deception, ... accomplished without the consent of a parent, guardian, or other person responsible for the general supervision of (his/her) welfare ... and for the purpose of gaining ransom or reward or using the victim as a shield or hostage.

(Select appropriate section)

You will note that I have also used the words ransom, reward, shield and hostage.

Ransom is defined as the money, price, or consideration paid or demanded for redemption of a captive person, that is, a payment to secure the release of the captive person.⁴

Reward under the circumstances of this case is not limited to a thing of monetary value, but can include a benefit to the kidnapper.

One used another person as a shield when by force he/she places that person in a position of danger in order to protect himself/herself.⁵

Hostage implies the unlawful taking, restraining, or confining of a person with the intent that the person confined be held as security to ensure that a third person either performs some action or refrains from performing some action.⁶

[CHARGE WHEN FIRST DEGREE KIDNAPPING ALLEGED]

If you find that the State has proven beyond a reasonable doubt that the defendant committed the crime of kidnapping, you must go on to determine whether the State has also proven beyond a reasonable doubt that he/she knowingly harmed _____ or knowingly did not release _____ in a safe place prior to his/her apprehension.⁷ The "harm" component can include physical, emotional or psychological harm.⁸ If the State is contending that the victim suffered emotional or psychological harm, it must prove that the victim suffered emotional or psychological harm beyond that inherent in a kidnapping. That is, it must prove that the victim suffered substantial or enduring emotional or psychological harm."⁹ In this case, the State alleges that defendant [describe conduct

⁴ Black's Law Dictionary, 4th Ed. (West 1968).

⁵ State v. Canola, 73 N.J. 206 (1977); State v. Kress, 105 N.J. Super. 514 (L. Div. 1969).

⁶ State v. Littlefield, 389 A.2d 16 (Me. 1978); State v. Lee, 234 S.E. 2d 482 (N.C. App. 1977); State v. Crump, 484 P2d 329 (N.M. 1971).

⁷ State v. Sherman, 367 N.J. Super. 324, 330-331 (App. Div. 2004), certif. denied, 180 N.J. 356 (2004).

⁸ Sherman, 367 N.J. Super. at 331.

⁹ See Sherman, 367 N.J. Super. at 330.

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allegedly constituting harm¹⁰ or release in an unsafe place]. [INCLUDE WHEN APPROPRIATE:
On the other hand, defendant contends that _____.]

In order to determine whether the victim was released in a safe place, you must examine the totality of the circumstances and evaluate the evidence presented at trial in its entirety. You may consider the following:

- (1) age of the victim and any other physical or mental condition of the victim;¹¹
- (2) the location, the conditions of the area, and the time of the release;
- (3) the circumstances surrounding the release; and
- (4) any other circumstances that occurred or existed surrounding the release.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her 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 conduct will cause such a result. "Knowingly," "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 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 he/she said and did at the particular time and place, and from all of the

¹⁰ "We conclude that the 'harm' component of the unharmed release provision contained in N.J.S.A. 2C:13-1c[1] focuses on the conduct of the kidnapper during the purposeful removal and holding or confining of the victim, as distinguished from the type of harm inherent in every kidnapping." Sherman, 367 N.J. Super. at 330.

¹¹ In State v. Johnson, 309 N.J. Super. 237, 265 (App. Div.), certif. denied, 156 N.J. 387 (1998), the defendant carjacked a mother and her three-year-old daughter, then put the daughter out of the car before driving off with and subsequently robbing, raping, and killing the mother. The Appellate Division held that the jury properly found "that separating an upset, crying three year old child from her distraught mother and leaving her near the bushes of a closed day care center after 9 p.m. on a rainy November night hardly constitutes leaving her in a 'safe place.'"

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surrounding circumstances.

[CHARGE IN ALL CASES]

If you find that the State has not proven any element of the crime of kidnapping beyond a reasonable doubt, then you must find the defendant not guilty. If you find that the State has proven every element beyond a reasonable doubt, then you must find defendant guilty of kidnapping.

[CHARGE WHEN FIRST DEGREE KIDNAPPING IS ALLEGED]

If you find that the State has proven beyond a reasonable doubt that the defendant is guilty of kidnapping, but you have reasonable doubt as to whether the State has proven beyond a reasonable doubt that he/she knowingly harmed _____ or knowingly did not release _____ in a safe place prior to his/her apprehension you must then find the defendant guilty of kidnapping in the second degree.

If you find beyond a reasonable doubt that the defendant is guilty of kidnapping and that he/she knowingly harmed _____ or knowingly did not release _____ in a safe place prior to his/her apprehension, you must then find the defendant guilty of kidnapping in the first degree.