

**LEAVING THE SCENE OF A BOATING ACCIDENT**  
**RESULTING IN DEATH**  
**(N.J.S.A. 2C:11-5.2)<sup>1</sup>**

The indictment charges the defendant with the offense of leaving the scene of a boating accident resulting in the death of another as follows:

**(Read pertinent count of indictment)**

The defendant is accused of violating a section of our State statutes that reads as follows:

Whenever any vessel . . . is involved in an accident upon the waters of this State, and the operator of that vessel knows he is involved in an accident and knowingly leaves the scene of that accident . . . that actor shall be guilty of a crime . . . if the accident results in the death of another person . . .

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

1. the defendant was operating a vessel
2. the vessel was involved in an accident
3. the accident was upon the waters of this State
4. the defendant knew he/she was involved in an accident
5. the defendant knowingly left the scene of that accident under circumstances that violate N.J.S.A. § 12:7-34.46; and
6. the accident resulted in the death of another person

The first element that the State must prove beyond a reasonable doubt is that the defendant was operating a vessel. A vessel is defined as a boat or watercraft, other than a sea plane on the water, used or capable of being used as a means of transportation on water.<sup>2</sup>

The second element that the State must prove beyond a reasonable doubt is that the vessel operated by defendant was involved in an accident.

The third element that the State must prove beyond a reasonable doubt is that the accident was upon the waters of this State. On the waters of this State means all waters within the jurisdiction of this State, both tidal and nontidal, and the marginal sea adjacent to this State to a distance of three nautical miles from the shoreline.<sup>3</sup>

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<sup>1</sup> This charge should be used for the second-degree crime where the accident is alleged to have resulted in the death of another person.

<sup>2</sup> N.J.S.A. § 12:7-71.

<sup>3</sup> Id.

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The fourth element that the State must prove beyond a reasonable doubt is that the defendant knew he/she was involved in an accident. 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. In other words, a person knows that he/she was involved in an accident if he/she is aware that he/she was involved in an accident or is aware of a high probability that he/she was involved in an accident.

The fifth element that the State must prove beyond a reasonable doubt is that the defendant knowingly left the scene of that accident under circumstances that violate N.J.S.A. § 12:7-34.46. Under that statutory provision, a vessel operator who knows that he/she is involved in an accident must, so far as he/she can do so without serious danger to his/her own passengers, guests, crew, himself/herself or his/her vessel, render to all other persons affected by the accident such assistance as may be necessary in order to save them from or to minimize any danger caused by the accident.<sup>4</sup> However, the State need not prove that the defendant knew of his/her legal obligation to stop at or near the scene of the accident.

The sixth element that the State must prove beyond a reasonable doubt is that the accident resulted in the death of another person.<sup>5</sup> The State need not prove that defendant knew that the accident had resulted in death or would result in death.<sup>6</sup>

It is not a defense to the charge that the defendant was unaware of the death or of the obligations of a vessel operator under New Jersey law as I have just explained to you.<sup>7</sup>

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

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.

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<sup>4</sup> N.J.S.A. § 12:7-34.46(a).

<sup>5</sup> When appropriate, the jury should be instructed on causation. N.J.S.A. 2C:2-3.

<sup>6</sup> N.J.S.A. 2C:11-5.2e.

<sup>7</sup> N.J.S.A. 2C:11-5.2e.