

KIDNAPPING
(N.J.S.A. 2C:13-1b(1) to (3))

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 his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period, with any of the following purposes:

1. to facilitate commission of any crime or flight thereafter;
2. to inflict bodily injury on or to terrorize the victim or another; or
3. to interfere with the performance of any governmental or political function.

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

(Select as appropriate)

1. That the defendant _____:
 - a. unlawfully removed _____, from (his/her) place of residence... or
 - b. unlawfully removed _____, from (his/her) place of business... or
 - c. unlawfully removed _____, a substantial distance from the vicinity where (he/she) was found... or
 - d. unlawfully confined _____, for a substantial period;

(and)

(Select as appropriate)

2. That the removal (or confinement) was with the purpose to...
 - a. facilitate the commission of any crime or flight thereafter...
 - b. inflict bodily injury on or terrorize the victim or another...
 - c. interfere with the performance of any governmental or political function.

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In relation to the first element you will note that I have used the term(s) "unlawfully removed" and/or "unlawfully confined".

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

A removal (or confinement) is "unlawful" if it is accomplished by force, threat or deception.¹

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

In the case of a person who is under the age of 14 or who is incompetent, a removal (or confinement) is "unlawful" if it is accomplished without the consent of a parent, guardian, or other person responsible for the general supervision of (his/her) welfare.²

(CHARGE AS APPROPRIATE)

When the removal of a victim is from a place other than the victim's residence or place of business, the removal must be to another place which is a "substantial distance" from the vicinity from which the victim was removed. However, for this purpose a "substantial distance" is not measured in feet, yards, or miles, nor by any other standard of linear measurement. Rather, a "substantial distance" is one that is significant, in that it is more than incidental to the underlying crime and substantially increases the risk of harm to the victim. That increased risk of harm must not be trivial. If the victim is removed only a slight distance from the vicinity from which he or she was removed and such movement does not create the isolation and increased risk of harm that are at the heart of the kidnapping statute, then you should not convict the defendant of the kidnapping charge.³

Unlawful confinement must be for a "substantial period." However, for this purpose a "substantial period" is not measured in seconds, minutes or hours, nor by any other standard based strictly on the passage of time. Rather, a "substantial period" is one that is significant, in that it is more than incidental to the underlying crime and substantially increases the risk of harm to the

¹ N.J.S.A. 2C:13-1d.

² Id.

³ State v. Masino, 94 N.J. 436, 447 (1983).

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victim. That increased risk of harm must not be trivial. If the victim is confined for only a slight period of time and such confinement does not create the isolation and increased risk of harm that are at the heart of the kidnapping statute, then you should not convict the defendant of the kidnapping charge.⁴

Therefore, in determining whether the removal (and/or confinement) was substantial, you may consider⁵

- (1) the distance of the removal (and/or the duration of confinement);
- (2) whether the removal (and/or confinement) occurred during the commission of a separate offense;
- (3) whether the removal (and/or confinement) which occurred is inherent in the separate offense; and
- (4) whether the removal (and/or confinement) created a significant danger to the victim independent of that posed by the separate offense.

The second element that the State is required to prove is:

that the removal (and/or confinement) was with the purpose to ...

- a. facilitate the commission of any crime or flight thereafter... or
- b. inflict bodily injury on or terrorize the victim or another... or
- c. interfere with the performance of any governmental or political function.

I have told you that to constitute kidnapping, an unlawful removal or confinement must have been with a specified purpose. Therefore, I must define purpose for you.

A person acts purposely with respect to the nature of 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,

⁴ State v. Smith, 210 N.J. Super. 43, 60-61 (App. Div. 1986), certif. denied, 105 N.J. 582 (1986). State v. Deutsch, 229 N.J. Super. 374, 383, 387 (App. Div. 1988). Cf. State v. Bryant, 217 N.J. Super. 72, 80-82 (App. Div. 1987) certif. denied, 108 N.J. 202 (1987); State v. LaFrance, 117 N.J. 583, 594 (1990).

⁵ In State v. LaFrance, 117 N.J. 583 (1990), the court suggested that "future trials should reflect that we have emphasized that the charge to the jury convey the elements of the crime in the factual context of the case. Court and counsel should frame a charge to the jury in which defendant's conduct is measured in terms of whether the detention was merely incidental to the underlying crimes". State v. LaFrance at 594. The enumerated factors should only be charged if relevant, and the trial judge may charge other factors where

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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 attendant circumstances if the person is aware of the existence of such circumstances, or believes or hopes that they exist. "With purpose," "designed," "with design," or equivalent terms have the same meaning.⁶

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 inferences 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 that the defendant stated, for example, that his/her purpose in removing _____ (and/or) confining _____, was

(Select appropriate section)

...to facilitate the commission of any crime or flight thereafter, that is, to aid in committing a crime or fleeing afterwards.

...to inflict bodily injury on or to terrorize the victim or another.

...to interfere with the performance of any governmental or political function.

It is within the power of the jury to find that 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.

[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,

appropriate.

⁶ N.J.S.A. 2C:2-2b(1).

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

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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 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 conduct will cause such a result. "Knowingly," "with knowledge," or equivalent terms have the same meaning.

⁸ Sherman, 367 N.J. Super. at 331.

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

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. The "harm" component can include "physical, emotional or psychological harm." Id. at 331.

¹¹ In State v. Johnson, 309 N.J. Super. 237, 265 (App. Div.), certif. den. 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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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 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 should 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 should then find the defendant guilty of kidnapping in the first degree.