

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

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 unlawfully disturbs, moves or conceals 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 unlawfully (disturbed)(moved) (concealed) human remains.
- (2) That the defendant acted knowingly.¹

The first element the State must prove beyond a reasonable doubt is that the defendant unlawfully (disturbed)(moved)(concealed) human remains.

“Unlawful” means not done in accordance with law.

“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.²

The State must prove beyond a reasonable doubt that the (act/acts) of (disturbing)(moving)(concealing) human remains (was/were) not done in accordance with law.

(CHARGE IF UNLAWFULNESS IS AN ISSUE)

In this case, there is a contention that the acts were done in accordance with law. The State bears the burden to prove beyond a reasonable doubt that the acts were unlawful.

The statute defines lawful acts as those made in accordance with:

(SELECT APPROPRIATE SECTION(S))

- (1) The “State Medical Examiner Act,” P.L.1967, c. 234 (C.52:17B-78 et al.);
- (2) The “Mortuary Science Act,” P.L.1952, c. 340 (C.45:7-32 et seq.);
- (3) The provisions of chapters 6 and 7 of Title 26 of the Revised Statutes concerning disposal of dead bodies and cremation;
- (4) The “New Jersey Cemetery Act,” N.J.S. 8A:1-1 et seq.;
- (5) A criminal investigation conducted by a law enforcement authority;
- (6) An order of a court of competent jurisdiction or other appropriate legal authority.

¹ 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.”

² N.J.S.A. 2C:22-1(c).

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A good faith action involving interment or disinterment which disturbs, moves, conceals, desecrates, damages or destroys human remains is not unlawful. Interment means to deposit a dead body into the earth or a tomb.³ Disinterment means to take a dead body out of a grave or tomb. The State bears the burden to disprove the presence of good faith beyond a reasonable doubt.

(RESUMPTION OF MAIN CHARGE)

The second element that the State must prove beyond a reasonable doubt is that the defendant acted knowingly.

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.

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.

(CHARGE IF APPROPRIATE)

You must be unanimous as to at least one of the following either (1) that there was an unlawful disturbing; (2) that there was an unlawful moving; or (3) that there was an unlawful concealment in order to find that element has been proven beyond a reasonable doubt.

(CHARGE IF APPROPRIATE IN PURPOSEFUL/KNOWING MURDER CASES)

When I charged you on the law regarding murder, as alleged in count ___ of the indictment, I instructed you that you may find defendant guilty even if you do not unanimously agree on whether he/she acted purposely or knowingly in causing death or serious bodily injury

³ Merriam-Webster's Collegiate Dictionary, (11th Ed. 2012).

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so long as you all find beyond a reasonable doubt that he/she acted under one of those mental states. By contrast, in order to find defendant guilty of [disturbing/desecrating] human remains, you must unanimously find beyond a reasonable doubt either (1) that there was unlawful concealment, or (2) that there was an unlawful moving of the remains.

(RESUMPTION OF MAIN CHARGE)

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.