

PERJURY
(N.J.S.A. 2C:28-1)

The indictment charges this defendant in Count(s) with perjury in violation of 2C:28-1, which provides in pertinent part as follows:

A person is guilty of perjury, a crime of the third degree, if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.¹

So that you may determine whether or not the defendant was guilty of perjury, I will define for you the offense of perjury.

Perjury is the assertion, under oath [or equivalent affirmation], of a false statement, or the swearing or affirming under oath [or equivalent affirmation] as to the truth of a previously made statement, when the person making the statement does not believe that the statement is true and the statement is material.

In Count(s) _____ of the indictment, the State alleges that the defendant committed the crime of perjury by virtue of the following testimony before [the official proceeding] on [date].

This is the actual quote from the testimony out of which Counts(s) _____ arises:

[INSERT STATEMENT]

In order to sustain its burden, the State must prove beyond a reasonable doubt each and every one of the following elements:

- (1) That the statement was made at an official proceeding;

The term official proceeding is defined as "a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence, under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

¹ The question of materiality is now an issue for the jury. State v. Anderson, 127 N.J. 191 (1992). Prior to Anderson the issue was a threshold question for the court. See State v. Molnar, 161 N.J. Super. 424 (App. Div. 1978), aff'd 81 N.J. 475.

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The term "official proceeding" is intended to include any type of proceeding where the taking of testimony under oath is authorized.

- (2) That the testimony, given before the [the official proceeding], was given under oath or equivalent affirmation;

Under this element, any device employed to demonstrate the special importance of the declaration, that is, the seriousness of the demand for honesty, constitutes an oath or equivalent affirmation.

It is not a defense to perjury that the oath or affirmation was administered or taken in an irregular manner. A document that purports to be made under oath or affirmation shall be considered as under oath if it is subsequently presented as being so verified regardless of any technical irregularities in the effectiveness of the oath for legal purposes.

- (3) That the statement given was knowingly false;

In this context, a statement is defined as "any representation, but includes a representation of opinion, belief or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation." The State must prove beyond a reasonable doubt that the statement made by the defendant was false, and that he/she did not believe it to be true.

Under this section, however, there is no criminal liability for misstatements that are inadvertent in the sense that the declarant misunderstood the question put to him/her or unconsciously made a slip of the tongue in responding.

The State also alleges that the defendant made a statement that he/she did not believe to be true. The defendant's belief that the statement was not true may be established by proof of actual knowledge on the part of the defendant that the statement was untrue; or from proof of such facts from which it might reasonably be inferred that the defendant believed the statement was untrue.

Additionally, under the law of the State of New Jersey, a defendant cannot be found guilty of perjury solely on the testimony of one witness. In this State we have adopted the test that the oath of a single witness must be supported by proof of corroborating testimony or

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circumstances of such character as to clearly overcome the oath of the defendant and legal presumption of his/her innocence.

To corroborate means to strengthen, to confirm by additional security, to add strength. Corroborating circumstances when used in reference to testimony given, are such as serve to strengthen the testimony, to render it more probable; such, in short as may serve to impress a jury with a belief of its truth.

Evidence is not corroborative unless it tends to prove the fact alleged to have been falsely stated. It must relate to the substance of the evidence on which perjury is assigned; that is, it must be inconsistent with the truth of the defendant's testimony before the _____ (official proceeding).

- 4) That the statement is material;

Falsification is material in the official proceeding if it could have affected the course or outcome of that proceeding or the disposition of the matter. It is irrelevant if the declarant mistakenly believed that the falsification was not material.

[DISCUSS THE PARTICULAR FACTS]

Again, the State must prove each of these elements beyond a reasonable doubt. If the State has failed to prove one or more of these elements beyond a reasonable doubt, your verdict must be not guilty. If, on the other hand, the State have proven each of these elements beyond a reasonable doubt, your verdict must be guilty.

AFFIRMATIVE DEFENSE OF RETRACTION (where applicable)

If the defendant retracted the falsification in the course of the proceeding or matter in which it was made prior to termination of the proceeding or matter without having caused irreparable harm to any party, then the defendant is not guilty of perjury. To retract means to take back (what the declarant said) or recant.

There has been evidence in this case that the defendant did attempt to retract his/her falsification.

If you find that the defendant retracted his/her statement during the course of the proceeding and before causing irreparable harm to any party, then he/she must be found not guilty of perjury. However, if the State has proven beyond a reasonable doubt that the defendant

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did not retract the false statement and the other above enumerated elements of the offense have also been proven beyond a reasonable doubt, then a verdict of guilty must be rendered.