

PERJURY. G.S. 14-209. FELONY.

The defendant has been charged with perjury.

For you to find the defendant guilty of this offense, the State must prove five things beyond a reasonable doubt:

First, that the defendant testified<sup>1</sup> at (*describe proceedings, e.g., "the trial of John Jones in Wake County Superior Court for burglary"*).

Second, that at that time the defendant was under [oath] [affirmation].

Third, that the testimony was false. In order to find that the testimony was false, the State must satisfy you of its falsity beyond a reasonable doubt by the testimony of [two witnesses, each of whom you must find to be believable] (or) [a witness plus other supporting evidence, all of which you must find to be believable].<sup>2</sup>

Fourth, that the testimony was material,<sup>3</sup> that is, that it tended to mislead the [jury] [court]<sup>4</sup> in regard to a significant issue of fact. Testimony is material when it is so connected

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<sup>1</sup>Where the alleged perjury does not involve "testimony," substitute "made a statement" for "testified." Thereafter, substitute "statement" for "testimony" and "stated" for "testified."

<sup>2</sup>Do not name the witness or witnesses. To do so would risk commenting on the evidence. See State v. Hill, 223 N.C. 711, 715-16 (1943).

<sup>3</sup>A defendant has the constitutional right to have the jury decide the issue of materiality in a prosecution for perjury. See United States v. Gaudin, 515 U.S. 506 (1995). See also State v. Linney, 138 N.C. App. 169, 531 S.E.2d 245 (2000).

<sup>4</sup>Substitute name of appropriate official or body where a court or jury is not involved.

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with the fact directly in issue as to have a legitimate tendency to prove or disprove such fact.<sup>5</sup>

And Fifth, that the defendant acted willfully and corruptly, that is, made the false statement knowingly, purposely and designedly.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant, while under [oath] [affirmation], willfully and corruptly testified that (*describe testimony*), that this testimony was material, and further find beyond a reasonable doubt from the testimony of [two believable witnesses] (or) [a believable witness plus other believable supporting evidence]<sup>6</sup> that the defendant's testimony was false, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

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<sup>5</sup>See State v. Basden, 110 N.C. App. 449 (1993) (citing State v. Smith, 230 N.C. 198 (1949)).

<sup>6</sup>Do not name the witness or witnesses. To do so would risk commenting on the evidence. See State v. Hill, 223 N.C. 711, 715-16 (1943).