

PERJURY IN THE FIRST DEGREE
Penal Law § 210.15
(Committed on or after Sept. 1, 1967)

The (specify) count is Perjury in the First Degree.

Under our law, a person is guilty of Perjury in the First Degree when that person swears falsely and when his or her false statement consists of testimony and is material to the action, proceeding or matter in which it is made.

The following terms used in that definition have a special meaning:

A person **SWEARS FALSELY** when that person intentionally makes a false statement which he or she does not believe to be true while giving testimony.¹

A person intentionally makes a false statement which he or she does not believe to be true when that person's conscious objective or purpose is to do so.²

TESTIMONY means an oral statement made under oath in a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding and to administer the oath or cause it to be administered.³

[NOTE: Add where appropriate:

In any prosecution for perjury, falsity of a statement may not be established by the uncorroborated testimony of a single witness. What that means is that the falsity of the defendant's statement may not be established by the testimony of a single witness even if that testimony is found to be believable. There

¹ See Penal Law §210.00(5).

² See Penal Law §15.05(1).

³ Penal Law §210.00(3).

must be some additional evidence, independent of that witness, tending to prove that the defendant's statement was false.^{4]}

[NOTE: Add where appropriate:

The People contend that the defendant has made two statements under oath which are inconsistent to the degree that one of them is necessarily false. Those two statements, as alleged in the indictment, are:

Specify the statements.

Under our law, where a person has made two statements under oath which are inconsistent to the degree that one of them is necessarily false, and where the circumstances are such that each statement, if false, is perjurally so, the inability of the People to establish specifically which of the two statements is the false one does not preclude a conviction for perjury if the falsity of one or the other of the two statements is established by proof or a showing of their irreconcilable inconsistency.^{5]}

A false statement is MATERIAL to an action, proceeding or matter when it reflects on the matter under consideration during the action or proceeding in which it is made, or tends to support and give credit to the witness in respect to a main fact in issue.⁶

[NOTE: Where the alleged false statement constitutes testimony before a grand jury, add: A false statement in a proceeding before a grand jury is also material when that false statement has the

⁴ See *People v. Sabella*, 35 N.Y.2d 158 (1974), *overruled in part on other grounds*, *People v. Brown*, 40 N.Y.2d 381 (1976), *cert. denied* 433 U.S. 913; *People v. Stanard*, 42 N.Y.2d 74 (1977), *cert. denied* 434 U.S. 986; *People v. Rosner*, 67 N.Y.2d 290 (1986).

⁵ See, Penal Law §210.20. If an issue of fact arises as to whether either of the two statements was made within the jurisdiction of this state or within the period of the statute of limitations for the crime charged, the jury must be charged appropriately. Similarly, where the degree of the crime would vary depending upon which of the two statements is false, the jury should be charged in accordance with Penal Law §210.20(3).

⁶ See, e.g., *People v. Stanard*, 42 N.Y.2d 74, 80 (1977), *cert. denied* 434 U.S. 986.

natural effect or tendency to impede, influence or dissuade the grand jury from pursuing its investigation.^{7]}

[NOTE; Add where appropriate:

Under our law, it is no defense to a prosecution for perjury that:

the defendant was not competent to make the false statement alleged;

or

the defendant mistakenly believed the false statement to be immaterial;

or

the oath was administered or taken in an irregular manner or that the authority or jurisdiction of the attesting officer who administered the oath was defective, if such defect was excusable under any statute or rule of law.^{8]}

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, the following three elements:

1. That on or about (date) , in the county of (county) , the defendant, (defendant's name) , intentionally made a false statement which he/she did not believe to be true;
2. That the false statement consisted of testimony; and
3. That the false statement was material to the action, proceeding or matter in which it was made.

[NOTE: If the affirmative defense does not apply, conclude as

⁷ See, *People v. Davis*, 53 N.Y.2d 164, 171 (1981). Depending on the facts of the case, it may be appropriate also to adapt the language of materiality used by the Court of Appeals in the context of a Grand Jury proceeding to a case involving false testimony given in an action or proceeding other than a grand jury proceeding. *Id.*

⁸ See, Penal Law §210.30.

follows:

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

[NOTE: If the affirmative defense applies, continue as follows:

If you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of Perjury in the First Degree.

If you find that the People have proven beyond a reasonable doubt each of those elements, you must consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of Perjury in the First Degree, you will not consider the affirmative defense.

Under our law, in any prosecution for perjury, it is an affirmative defense that the defendant retracted his or her false statement in the course of the proceeding in which it was made before such false statement substantially affected the proceeding and before it became manifest that its falsity was or would be exposed.⁹

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of

⁹ See Penal Law §210.25.

the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

If you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People have proven beyond a reasonable doubt each of the elements of Perjury in the First Degree, you must find the defendant guilty of that crime as charged in the ___ count.

If you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of Perjury in the First Degree.]