

228.10 PERJURY. 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 testified¹ 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].²

Fourth, that the testimony was material,³ that is, that it tended to mislead the [jury] [court]⁴ in regard to a significant issue of fact. Testimony is material when it is so connected with the fact directly in issue as to have a legitimate tendency to prove or disprove such fact.⁵

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]⁶ 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.

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

2. 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).

3. 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).

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

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

6. 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).

N.C.P.I.-Crim. 311.10
LACK OF JURISDICTION (SPECIAL VERDICT FORM).
GENERAL CRIMINAL VOLUME
MAY 2003

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA)
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Defendant

SPECIAL VERDICT
AS TO JURISDICTION

We the jury return the unanimous special verdict as follows:

- _____ North Carolina HAS jurisdiction to try the defendant

- _____ North Carolina DOES NOT have jurisdiction to try the defendant.

This ____ day of _____, 19__.

Foreman of Jury (signature)