

228.20 SUBORNATION OF PERJURY. FELONY.

The defendant has been charged with subornation of perjury.

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

First, that the defendant willfully procured or induced (*name perjurer*) to commit perjury at (*describe proceedings, e.g., "the trial of John Jones in Wake County Superior Court for burglary"*).

And Second, that (*name perjurer*) did commit perjury at that (*describe proceeding*).

For you to find that (*name perjurer*) did commit perjury at that (*describe proceeding*), the State must prove five things beyond a reasonable doubt:

First, that (*name perjurer*) testified¹ at (*describe proceeding*).

Second, that at that time (*name perjurer*) 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, the State must prove 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 (*name perjurer*) 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, (*name perjurer*) while under [oath] [affirmation] willfully and corruptly testified that (*describe testimony*), that this 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 (*name perjurer*)'s testimony was false, (*name perjurer*) would have committed perjury. Then if you further find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant willfully procured or induced (*name perjurer*) to commit such perjury, it would be your duty to return a verdict of guilty.

If you do not so find or have a reasonable doubt as to whether (*name perjurer*) committed perjury or whether the defendant willfully induced or procured the perjury, 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 "testifies." Thereafter, substitute "statement" for "testimony" and "stated" for "testified."

2. Do not name the witness or witnesses. To do so would risk commenting on 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)).

N.C.P.I.-Crim. 228.20
SUBORNATION OF PERJURY. FELONY.
GENERAL CRIMINAL VOLUME
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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).