

FALSE PUBLIC ALARMS
(N.J.S.A. 2C:33-3)

The indictment charges the defendant with a violation of a provision of our criminal law which reads in pertinent part:

"A person is guilty of a crime if he initiates or circulates a report or warning of an impending fire, explosion, bombing, crime, catastrophe or emergency, knowing that the report or warning is false or baseless and that it is likely to cause evacuation of a building, place of assembly or facility of public transport, or to cause public inconveniences or alarm."

In order for the defendant to be guilty of this offense, the State must prove all the following elements beyond a reasonable doubt:

(1) The State must first prove that the defendant knowingly initiated or circulated a report or warning of an impending fire, or explosion, or bombing, or crime, or catastrophe, or emergency (charge the applicable warning).

(2) The State must next prove that the defendant knew that the report or warning that he/she initiated or circulated was false or baseless.

To be done knowingly means a person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result.

(3) The State must also prove that the defendant knew the false or baseless report or warning initiated or circulated by him/her was likely to cause the evacuation of a building, or a place of assembly, or a facility of public transport, or to cause public inconvenience or alarm (charge the appropriate alternative).

It is not necessary that, in fact, a building, or a place of public assembly, or a facility of public transport was evacuated or that a public inconvenience or alarm actually occurred. It is only necessary that the State prove that the report or warning was false or baseless, which merely means untrue, and that the defendant knew that it was false, baseless or untrue and knew that the

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report or warning was likely to cause the result that has just been described.

If you determine that the State has proved all of these elements beyond a reasonable doubt, then you should find the defendant guilty. But if you have a reasonable doubt as to one or more of these elements, you should find him/her not guilty.

NOTE: Re: N.J.S.A. 2C:33-3, Causing Evacuation of Building, etc.

The manner in which the report or warning is initiated or circulated under the statute must be scrutinized carefully by the Court so as not to run afoul of the United States Constitution. In State v. Profaci, 56 N.J. 346, 266 A.2d 597 (1970), it was held that the mere uttering of offensive or profane or indecent language is not an offense. It is necessary that the language be spoken loudly in a public place and must be of such a nature as to be likely to incite the hearer to immediate breach of the peace or to be likely, in light of the gender and age of the listener and the setting of the utterance, to affect the sensibilities of the hearer. Accordingly, it is thought that the report or warning, whether it be written or oral, must be of the nature to be communicated to another in the described illicit fashion. When words, whether written or verbal, are labeled criminal, the court must become involved in a balancing before submitting the case to a jury.

In determining whether the report or warning is false, it is submitted that the jury must find that the report or warning is objectively untrue, incorrect or erroneous, and that the defendant knew it to be so. In a malicious prosecution action in Dombrowski v. Met. Life Ins. Co., 126 N.J.L. 545 19 A.2d 678 (E & A, 1941), the Court said "The word 'false' in juristic uses frequently implies something is more than a mere untruth . . . The adverb 'falsely' is defined in Websters New International Dictionary as 'in a false manner; erroneously; not truly; perfidiously; or treacherously.'" It is thought that it is enough that the report or warning was objectively untrue when the defendant knew it to be so, and said report or warning had the capacity to be communicated to a third person and cause the consequences referred to in the statute.