

FALSE SWEARING
(N.J.S.A. 2C:28-2a)

(Defendant) is charged with false swearing in violation of a statute which provides in pertinent part as follows:

A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a crime

Here, the State alleges that (defendant) committed false swearing by having [made] [subsequently sworn to the truth of] [subsequently affirmed] the following statement:

[REFER TO STATEMENT]

To find (defendant) guilty of false swearing, the State must prove the following elements beyond a reasonable doubt:

1. That (defendant) made a statement.
2. That he/she made the statement knowingly.
3. That the statement was false.
4. That (defendant) did not believe that the statement was true when he/she made it.
5. That the statement was made under oath or equivalent affirmation [OR, IF APPLICABLE, that (defendant) subsequently swore to, or affirmed, the truth of the previously made statement while under oath or equivalent affirmation].

First, the State must prove beyond a reasonable doubt that (defendant) made a statement.¹ A statement means any representation, including a representation of opinion, belief, or other state of mind, only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

Second, the State must prove beyond a reasonable doubt that (defendant) made the statement knowingly. 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.

Knowledge is a condition of the mind. It cannot be seen. Often, it can only be

¹ N.J.S.A. 2C:27-1(i). For clarification, see 1971 Commentary to N.J.S.A. 2C:28-1.

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determined by inference from conduct, words, or acts. A state of mind is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. Therefore, it is not necessary that the state produce witnesses to testify that a defendant said that he/she knowingly did something. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inferences which may arise from the nature of his/her acts and conduct, and from all that he/she said and did at the particular time and place, and from all the surrounding circumstances.

Third, the State must prove beyond a reasonable doubt that the statement was false.

Fourth, the State must prove beyond a reasonable doubt that (defendant) did not believe that the statement was true when he/she made it. (Defendant's) belief that the statement was not true may be established by proof of (defendant's) actual knowledge that the statement was untrue, or by proof of such facts from which it might reasonably be inferred that (defendant) did not believe that the statement was true. I have previously explained to you what the concept of "knowingly" means. There is no criminal liability, however, for inadvertent misstatements, such as (defendant's) misunderstanding of a statement or a question or an unconscious slip of the tongue.

Fifth, the State must prove beyond a reasonable doubt that the statement was given under oath or equivalent affirmation [OR, IF APPLICABLE, that defendant subsequently affirmed or swore to the truth of the previously made statement while under oath or equivalent affirmation]. Any device employed to demonstrate the special importance of the promise of honesty, that is, the seriousness of the demand for honesty, constitutes an oath or equivalent affirmation.²

The State must prove each of these elements beyond a reasonable doubt. If the State has failed to prove each of these elements beyond a reasonable doubt, your verdict must be not guilty of this offense. If, on the other hand, the State has proven each of these elements beyond a reasonable doubt, your verdict must be guilty.

AFFIRMATIVE DEFENSE OF RETRACTION [WHERE APPLICABLE]³

² WHERE APPLICABLE [Where the manner in which the oath or affirmation is administered is in issue]: It is not a defense to false swearing that the oath or affirmation was administered or taken in an irregular manner. A document that purports to be made under oath or affirmation shall be considered as under oath if it is subsequently presented as being so verified regardless of any technical irregularities in the effectiveness of the oath for legal purposes.

³ As to affirmative defenses generally, see N.J.S.A. 2C:1-13.

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As part of his/her denial of guilt, (defendant) asserts that he/she retracted [attempted to retract] a falsification. If (defendant) retracted [attempted to retract] the false statement in the course of the proceeding in which it was made before that proceeding ended, without having caused irreparable harm to anyone, he/she is not guilty of false swearing. To retract means to take back what was said; to recant. The State has the burden of proving beyond a reasonable doubt that (defendant) did not retract [attempt to retract] his/her false statement.

If the State has failed to prove beyond a reasonable doubt that (defendant) did not retract [attempt to retract] his/her statement during the course of the proceeding and before causing irreparable harm to anyone, he/she must be found not guilty of false swearing. However, if the State has proven beyond a reasonable doubt that (defendant) did not retract [attempt to retract] his/her false statement, and the other enumerated elements of the offense have also been proven beyond a reasonable doubt, you must return a verdict of guilty on this offense.