

RETALIATION AGAINST WITNESS OR INFORMANT
(N.J.S.A. 2C:28-5b)

The statute upon which this indictment is based reads in pertinent part as follows:

A person commits an offense if he harms another by an unlawful act with purpose to retaliate for or on account of the service of another as [a witness] [an informant].

There are four elements of this offense that the State must prove beyond a reasonable doubt.

They are:

- (1) that defendant harmed another,
- (2) that the harm was the result of an unlawful act committed by defendant,
- (3) that defendant's purpose was to retaliate, and
- (4) that the retaliation was for or on account of the service of another as [a witness] [an informant].

Let me explain each of these elements:

First, you must find beyond a reasonable doubt that defendant harmed another, namely _____ . "Harm" means any loss, disadvantage or injury, or anything so regarded by the person affected. It includes loss, disadvantage or injury to any other person or entity in whose welfare _____ is interested.¹

Second, the State must prove beyond a reasonable doubt that defendant committed an unlawful act which caused this harm. The unlawful act that the State alleges that defendant committed is that of (insert offense). A person that _____ another within the meaning of the law commits an unlawful act. _____ is defined elsewhere in our laws as follows: _____.

In short, with regard to the second element, the State must prove beyond a reasonable doubt that defendant committed an unlawful act, namely _____.

The third element the State must prove beyond a reasonable doubt is that defendant's purpose in committing the unlawful act was to retaliate against _____.

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it

¹ N.J.S.A. 2C:27-1(c).

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is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist. That is he/she means to do what he/she does. "With purpose," "designed," "with design," or equivalent terms have the same meaning. Purpose is a state of mind that cannot be seen and can only be determined by inference from conduct, words or acts. Therefore, it is not necessary that the State produce witnesses to testify that a defendant said that he/she purposely did something. His/Her purpose may be gathered from his/her acts and conduct, from all that he/she said and did at the particular time and place, and from all the surrounding circumstances reflected in the testimony [and adduced at trial].

Retaliation means to "pay back" or "get even" with another by inflicting harm on the person for something that person did or is perceived to have done previously to the actor.

The fourth element the State must prove beyond a reasonable doubt is that the retaliation was for or on account of the service of another as [a witness] [an informant].

The State alleges that the prior action for which it claims defendant was retaliating was _____.

The State claims that _____ was acting as _____ when (he/she) _____.

To recap, the State must prove beyond a reasonable doubt:

- (1) that defendant harmed another,
- (2) that the harm was the result of an unlawful act committed by defendant,
- (3) that defendant's purpose was to retaliate, and
- (4) that the retaliation was for or on account of the service of another as [a witness] [an informant].

If you find that the State has proven each and every one of these elements beyond a reasonable doubt, you must find defendant guilty.

If you find that the State has failed to prove any one of these elements beyond a reasonable doubt, you must find defendant not guilty.

[CHARGE WHERE SECOND DEGREE OFFENSE IS ALLEGED]

Our statute provides that retaliation against [a witness] [an informant] is a crime of the third degree, except that it is a crime of the second degree if the actor employed force or the threat of force.

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If you find that the State has proven defendant guilty beyond a reasonable doubt of this crime, then you must determine whether or not the State has proven beyond a reasonable doubt that defendant employed force or threat of force. "Force" means any degree of physical power or strength used against another person, even though it entails no pain or bodily harm and leaves no mark.² "Threat of force" means that the words or actions of defendant must be of such nature as to convey menace or fear of force to the ordinary person. The State contends that defendant (describe force or threat of force alleged).

If you find that the State has proven beyond a reasonable doubt that defendant employed force or threat of force, then you must find him/her guilty of Retaliation against [a witness] [an informant] in the second degree. If, on the other hand, you find that the State has failed to prove this element beyond a reasonable doubt, you must find him/her not guilty of Retaliation against [a witness] [an informant] in the second degree.

² See Model Charge, N.J.S.A. 2C:15-1, Robbery in Second Degree, and Model Charge, N.J.S.A. 2C:29-5, Escape; State v. Brannon, 178 N.J. 500, 510 (2004).