

22.02 Issues In Perjury

To sustain the charge of perjury, the State must prove the following propositions:

First Proposition: That while under [(oath) (affirmation)], the defendant knowingly made a false statement; and

Second Proposition: That the false statement was material to the issue or point in question when the statement was made; and

Third Proposition: That the defendant believed at the time he made the statement that the statement was not true.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/32-2(a) (West 2011) (formerly Ill.Rev.Stat. ch. 38, §32-2 (1991)).

Give Instruction 22.01.

Give Instruction 22.01A, defining “material”.

Give Instruction 22.01B.

The materiality of the alleged false statement is a question of fact for the jury. *United States v. Gaudin*, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

The issue of whether an oath or affirmation is required is a question of law for the court. *People v. Dyer*, 51 Ill.App.3d 731, 734, 366 N.E.2d 572 (5th Dist. 1977).

The language of the perjury statute does not require the alleged false statement to be before the trier of fact or anyone else. *People v. Davis*, 164 Ill.2d 309, 311, 647 N.E.2d 977 (1995). The pertinent inquiry is not whether the statement did in fact influence the trier of fact, but whether it could have influenced the trier of fact. *Davis*, 164 Ill.2d at 316 (J. McMorrow concurring), citing 70 CJS, *Perjury* §13, at 262 (1987).

Knowledge of the falsity of the statement made at the time it was made is an essential element of the crime of perjury. *People v. Kang*, 269 Ill.App.3d 546, 552, 646 N.E.2d 279 (4th Dist. 1995), citing *People v. Taylor*, 6 Ill.App.3d 961, 963, 286 N.E.2d 122 (4th Dist. 1972). In other words, the perjury statute requires the defendant not believe the false statement is true at the time he or she made the false statement. *People v. Penn*, 177 Ill.App.3d 179, 182, 533 N.E.2d 383 (5th Dist. 1988).

“Materiality is derived from the relationship between the proposition of the allegedly false statement and the issues in the case. The test of materiality for an allegedly perjured statement is whether the statement tends to prove or disprove an issue in the case.” *Acevado*, 275 Ill.App.3d at

423 (internal citations omitted).

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.