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CPJC 62.6 General Comments on False Report

Culpable Mental State. Texas Penal Code section 37.08 requires proof that the accused acted “knowingly” in giving a false report to a peace officer, federal special investigator, or law enforcement employee. Case law and the language of the statute indicate that this culpable mental state applies to both making the statement and the statement’s falsity. Wood v. State, [577 S.W.2d 477](http://www.TexasBarCLE.com/CLE/PMCasemaker.asp?table=caselaw&volume=577&edition=S.W.2d&page=477&sort=2), 480 (Tex. Crim. App. 1978) (conviction for making false statement that officer was intoxicated reversed and defendant acquitted; evidence insufficient to show defendant knew officer in fact was not intoxicated). The Committee drafted its instruction on the assumption that this is the case.

No Definition of “Material.”  The false statement must be proved to be “material to a criminal investigation.” Texas Penal Code section 37.04(a) contains a definition of when a statement is material. Because it appears within the same Penal Code Chapter as both Perjury and False Report to a Peace Officer, some have argued that the Section 37.04(a) definition might apply to False Report. The Fort Worth Court of Appeals expressly rejected that argument in a sufficiency of the evidence case. *McCreary v. State*, \_\_ S.W.3d \_\_\_, No. 02-21-00114-CR, 2022 WL 2840144 (Tex. App.—Fort Worth July 21, 2022, no pet. h.). The statute is drafted in terms suggesting it applies only to aggravated perjury under Tex. Penal Code § 37.03(a). For instance, section 37.07(a) defines the word in terms of its effect on the “official proceeding” rather than the criminal investigation, which is the focus of False Report to a Peace Officer, Tex. Penal Code § 37.08. *McCreary* held that jurors were entitled to rely on the common, everyday meaning of the word “material.” The Committee agrees that no definition of “material” should be provided in a jury charge for False Report.

Effort to Obtain Redress for Wrongful Official Behavior. If a prosecution for false report is based on a statement possibly made as part of an effort to obtain redress for wrongful official conduct, special care is necessary to avoid basing criminal liability on activity protected by the right to seek redress for grievances protected by article I, section 27, of the Texas Constitution. Wood, [577 S.W.2d 477](http://www.TexasBarCLE.com/CLE/PMCasemaker.asp?table=caselaw&volume=577&edition=S.W.2d&page=477&sort=2), and McGee v. State, [671 S.W.2d 892](http://www.TexasBarCLE.com/CLE/PMCasemaker.asp?table=caselaw&volume=671&edition=S.W.2d&page=892&sort=2) (Tex. Crim. App. 1984), can be read as holding that in such cases, the jury must be told that the state must prove, in addition to the statutory elements of the crime, that (1) the false statement was made in “bad faith,” and (2) the false statement was made for reasons other than to obtain action on a valid grievance. SeeZahorik v. State, No. 14-13-00763-CR, 2015 WL 5042105 (Tex. App.—Houston [14th Dist.] Aug. 25, 2015, no pet.) (hypothetical jury instruction used to determine sufficiency of evidence on appeal should contain requirements suggested by Wood and McGee).

On the other hand, Wood and McGee can be read as requiring only that special care must be taken to assure that sufficient evidence supports a jury finding that the defendant actually knew that the statement constituting the offense was false. Further, this requirement may be one applied only on appellate review for evidence sufficiency and thus not one that should be included in the jury instructions.

The Committee was unable to determine with reasonable confidence that Woodand McGee, when they applied, required any particular jury instruction. Thus, the Committee chose not to attempt to address how, under one of several possible readings of these decisions, they might increase the state’s burden of proof under this offense in a manner that might have to be reflected in the jury instructions.

CPJC 62.7 Instruction—False Report to Peace Officer

INSTRUCTIONS OF THE COURT

Accusation

The state accuses the defendant of having committed the offense of making a false report to law enforcement. Specifically, the accusation is that the defendant [*insert specific allegations, e.g.*, knowingly and with intent to deceive made to [*name*], a peace officer conducting a criminal investigation, a false statement that was material to the criminal investigation].

Relevant Statutes

A person commits an offense if the person, with intent to deceive, knowingly makes a false statement that is material to a criminal investigation and makes the statement to a peace officer or federal special investigator conducting the investigation or to any employee of a law enforcement agency who is authorized by the agency to conduct the investigation and whom the defendant knows is conducting the investigation.

To prove that the defendant is guilty of making a false report to law enforcement, the state must prove, beyond a reasonable doubt, four elements. The elements are that—

1. the defendant knowingly made a false statement;

2. the statement was made to a peace officer or federal special investigator conducting the investigation or to any employee of a law enforcement agency who is authorized by the agency to conduct the investigation and whom the defendant knows is conducting the investigation;

3. the statement was material to a criminal investigation; and

4. the defendant had the intent to deceive.

Burden of Proof

The state must prove, beyond a reasonable doubt, the accusation of making a false report to law enforcement.

Definitions

Knowingly Making a False Statement

“Knowingly making a false statement” means to make a false statement with awareness that the statement is being made and that it is false.

Intent to Deceive

“Intent to deceive” means the conscious objective or desire to deceive.

Statement

“Statement” means any representation of fact.

Law Enforcement Agency

“Law enforcement agency” means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.

Application of Law to Facts

You must determine whether the state has proved, beyond a reasonable doubt, four elements. The elements are that—

1. the defendant, in [*county*] County, Texas, on or about [*date*], knowingly made a false statement;

2. the statement was made to [*name*], [a peace officer/*insert other type of officer or investigator*] conducting a criminal investigation;

3. the statement was material to the criminal investigation; and

4. the defendant had the intent to deceive.

You must all agree on elements 1 through 4 listed above.

If you all agree the state has failed to prove, beyond a reasonable doubt, one or more of elements 1 through 4 above, you must find the defendant “not guilty.”

If you all agree the state has proved, beyond a reasonable doubt, each of the four elements listed above, you must find the defendant “guilty.”

[Insert any other instructions raised by the evidence. Then continue with the verdict form found in CPJC 2.1, the general charge, in Texas Criminal Pattern Jury Charges—General, Evidentiary & Ancillary Instructions.]

Making a false report to a peace officer is prohibited by and defined in Tex. Penal Code § 37.08. The definitions of culpable mental states are derived from Tex. Penal Code § 6.03. The definition of “statement” is from Tex. Penal Code § 37.01(3). The definition of “law enforcement agency” is from Tex. Code Crim. Proc. art. 59.01.