

RETALIATION FOR PAST OFFICIAL ACTION
(N.J.S.A. 2C:27-5)

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

A person commits a crime . . . if he harms another by any unlawful act with purpose to retaliate for or on account of the service of another as a public servant.

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 an official act done in the capacity of a public servant.

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 is (his/her) conscious object to engage in conduct of that nature or to cause such a result. A

¹ N.J.S.A. 2C:27-1(c).

RETALIATION FOR PAST OFFICIAL ACTION

(N.J.S.A. 2C:27-5)

Page 2 of 2

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 a past official action done by a public official.

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

_____.

_____ may be considered by you as an official action.

"Public servant" means any officer or employee of government.² 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 an official act done in the capacity of a public servant.

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.

² See N.J.S.A. 2C:27-1(g) for complete definition.