

6 N.Y. Prac., Criminal Law § 17:10 (4th ed.)

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Chapter 17. Offenses Involving False Written Statements—Article 175

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§ 17:10. Offering a false instrument for filing—Elements of offense

The elements of offering a false instrument for filing in the second degree are (1) knowledge that the written instrument contains a false statement or false information, and (2) offering or presenting such an instrument to a public office or public servant (3) with the knowledge or belief that it will become a permanent record of the public office to which it was submitted. To make out offering a false instrument for filing in the first degree, the People are also required to prove (4) the defendant's intent to defraud the state, one of its political subdivisions, a public authority or public benefit corporation.

The first and most elemental requirement is that an instrument that is filed contain a false statement. For example, in *People v. Mount Hope Asphalt Corporation*,¹ the court acquitted the defendants after a bench trial of offering a false instrument for filing, based on its finding that the defendants' incomplete and inadequate entries in “soil logs” for purposes of complying with the terms of an environmental permit to process certain petroleum contaminated sand and soil did not render the documents false instruments within the meaning of the statute since the defendants never claimed that the logs represented a complete accounting of all incoming contaminated soil.²

Mount Hope is an example of a case in which an omission was held to be insufficient to make out the “false statement” element of offering a false instrument for filing. The distinction between a false statement and an omission makes perfect sense in the context of offering a false instrument for filing. Unlike the crime of falsifying business records, which expressly permits prosecution of a defendant who “omits to make a true entry in the business records of an enterprise in violation of a duty to do so ... ”³ the false filing statute does not expressly refer to or contemplate prosecution of omissions, but only instruments containing “a false statement or false information.”⁴ Yet, in context, an omission can undoubtedly make an instrument false within the meaning of and punishable by the false filing statute.⁵

Moreover, not every false statement contained in a public filing is punished by the statute. Some courts have held that the false statement must be material in the sense that the agency with which it is filed would reasonably rely upon it in making, changing or failing to make a decision:

[T]he false statement or information must be material to the written instrument in which it is contained. There must be a sufficient nexus between that which the complete instrument is intended to accomplish and those portions of it which are not accurate. The inaccurate facts or statements must be such as will determine the effectiveness of the whole writing or go to the integrity of the entire instrument. It must reasonably appear that the erroneous information will cause, influence or determine a result that would not otherwise occur.⁶

While actual reliance by the public agency upon the false document is not required under either degree of the statute,⁷ some courts have held that the false information must have some tendency to mislead the agency about a material fact.⁸

In *People v. Norman*,⁹ the court considered whether the proposition established in *Bronston v. United States*¹⁰ applies to offering a false instrument for filing. While *Norman* held that the *Bronston* doctrine could be a defense to false filing charges, it nonetheless denied the defendant's motion to dismiss the false filing charges because the charged false filings (certifications to the Legislature required for reimbursement of travel expenses) were not literally true when viewed in context, even if they could be viewed as literally true in isolation, because the defendant knew at the time he was certifying to the Legislature that “the balance shown is actually due and owing” that the same travel expenses for which he sought reimbursement would be paid by the Kings County Democratic Committee of which he was chairman.¹¹

Nor must the false document be filed directly with the public office or agency to make out the crime of offering a false instrument for filing. It is enough to file a false document with an agent or intermediary for the public office,^{11.50} at least where the defendant knows that the intermediary is operating in that capacity.¹² Of course, a defendant cannot escape liability under the false filing statute by giving the false document to an innocent third party who thereafter files it with a public agency.¹³ Under these circumstances, the filing is attributable to the defendant as his own, on the theory that he aided and abetted the innocent third party who made the filing.¹⁴

Under the statute, however, the false instrument must be offered or submitted with the “knowledge or belief that it will be filed with, registered or recorded in otherwise become a part of the records” of the public agency. In other words, the false filing statute is designed to punish the filing of the kinds of false documents that a public agency is likely to keep or rely on, or that the defendant at least believes that the false documents are of that nature.¹⁵ Thus, in *People v. Insalaco*,¹⁶ where the defendant was an assistant to the Public Administrator in which capacity he supervised the sale of assets of a particular estate, the court reversed the false filing conviction and dismissed the indictment where the defendant had provided a false document regarding bids on those assets to the former Public Administrator, who told the defendant that the information was sought by the new Public Administrator. The court held that the fact that the former Public Administrator had informed the defendant that the information was sought by the new Public Administrator “does not warrant the inference that defendant, by sending the letter to the former Public Administrator, offered the letter as an instrument to the Office of the Public Administrator,” believing that it would become a permanent record of that office.

To make out the felony level of the false filing offense, proof of a fraudulent intent is the distinguishing and critical element. For example, in *People v. Asar*,¹⁷ the defendant, a salaried pharmacist, on several occasions filled prescriptions calling for name brand drugs with the generic equivalent, and thereafter attached the prescription to a blank Medicaid invoice, causing Medicaid to reimburse the pharmacy at the higher name brand rate. While the defendant's employer pleaded guilty, the Appellate Division affirmed the vacatur of the jury's verdict convicting the defendant of offering a false instrument for filing: “Absent any proof that the defendant individually had the intent to defraud the State, or was familiar with, or participated in the preparation and submission of the vouchers, it would be improper to infer such intent or knowledge from the fact that his employer pleaded

guilty to the crime of offering a false instrument for filing. The defendant's guilt of the crime cannot be premised solely on the fact that he initiated the false information.”¹⁸

The intent to defraud required by the first degree statute does not mean that the false filing was intended to result in a pecuniary loss to the public agency or the state. For example, in *People v. Kase*,¹⁹ the leading decision on the meaning of intent to defraud in the context of offering a false instrument for filing, the defendant submitted to the Alcohol Beverage Control Board a contract for the sale of a tavern which did not accurately reflect the selling price, as the law required when title to a tavern is transferred. While no pecuniary loss to the state occurred or was contemplated, the court held that a pecuniary loss, actual or contemplated, was not required to make out the false filing offense:

There are few responsibilities of government more important than the obligation faithfully to carry out its own law. Whoever intentionally files a false statement with a public office or public servant for the purpose of frustrating the state's power to fulfill this responsibility, violates the statute.²⁰

Pecuniary or property loss is not necessary to make out the “intent to defraud” element of the felony false filing statute. Indeed, even reliance by the public office on the false filing may no longer be required for the felony offense. Thus, in *People v. Taylor*,²¹ the Court of Appeals reversed the Appellate Division and reinstated the defendant law firm's conviction for offering a false instrument for filing in the first degree based on the law firm's filing of false personal injury retainer statements with OCA, even though the trial evidence showed that such retainer statements “are not to be acted upon [by OCA] in any way, not even checked for accuracy.”²² Of course, courts have held that both degrees of a false filing offense require the false information to have some tendency to mislead the agency about a material fact.²³

An intent to defraud, however, is not enough; the intent must be to defraud the state or a political subdivision, not a private person. Thus, in *People v. Enfeld*,²⁴ the defendant, who held herself out to be a licensed attorney when she was not, was charged with offering a false instrument for filing based on the various documents she had filed in Housing Court, all containing the representation that she was an attorney, and causing the Housing Court to issue process. The felony false filing charges were reduced to the misdemeanor level, based on the court's finding that the defendant may have intended to defraud her clients, but no intent to defraud the state could be inferred from her act of falsely representing herself to be an attorney in her filings with the Housing Court.

One of the most important strategic questions for the People in charging any crime is whether the crime can be characterized as a continuing offense. If a crime can be characterized as a continuing offense, the People can reach and punish conduct that may otherwise be time-barred, on the theory that the offense conduct continued into the limitations period, or the People can aggregate small amounts of money to make out a more serious offense, on the theory that each taking was part of a single continuous taking.

In *People v. Taub*,²⁵ the court considered the question, apparently for the first time, whether offering a false instrument for filing is a continuing offense or a single event crime. In *Taub*, the court dismissed as time-barred one count of an indictment charging offering a false instrument for filing in the first degree, based on the court's holding that a false filing offense is *not* a continuing crime. The indictment in *Taub* alleged that the defendant, a nursing home operator, filed a false application with the Department of Social Services seeking authorization to operate a nursing home “from about January 1995 through and including September 2000.” The evidence before the grand jury established that the application was filed in 1995, and was renewed every two years thereafter. Rejecting the People's argument that [N.Y. Penal Law § 175.35](#) defines a continuing crime, the court held that the crime was complete in January 1995 when the defendant first filed the false application, and an indictment returned more than five years later was barred by the statute of limitations:

[A] reading of the statute compels the conclusion that the crime punishes the discrete act of offering or presenting a document, rather than a continuous course of conduct. That the license is renewable every two years is irrelevant; it was filed only once [in January 1995].²⁶

Like the doctrine of “continuing offense,” the People occasionally resort to another kind of pleading tactic, *i.e.*, a multiplicitous pleading, to create the illusion of more extensive wrongdoing than the defendant actually committed, a pleading sleight of hand accomplished by arbitrarily dividing one crime into multiple counts. Thus, in *People v. Quinn*,²⁷ the Appellate Division modified the judgment in the exercise of its interest of justice jurisdiction (because defense counsel had failed to preserve the issue for review as a matter of law) by reducing the defendant's conviction on two counts of first degree offering a false instrument for filing to one false filing count because the two counts “are based on the same instrument and that instrument was offered for filing only once.”

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Footnotes

- 1 [People v. Mount Hope Asphalt Corp.](#), 167 Misc. 2d 517, 634 N.Y.S.2d 976 (County Ct. 1995).
- 2 See also [People v. Oberlander](#), 60 A.D.3d 1288, 876 N.Y.S.2d 574 (4th Dep't 2009) (reversing on grounds of insufficiency where defendant was convicted of multiple counts of offering a false instrument for filing in the first degree based on allegedly false re-certification applications for public assistance which omitted the name of defendant's boyfriend as someone “living in [defendant's] household” where the evidence failed to establish the boyfriend's residency “within the commonly understood meaning of that phrase”) (jury verdict convicting defendant on remand of remaining count of offering a false instrument for filing was against the weight of the evidence based on Appellate Division's finding that the testimony of defendant's coworker and coworker's boyfriend, both of whom admitted smoking crack cocaine in front of defendant's infant child for whom they occasionally babysat, was not credible on the question whether defendant's father lived with her when she filed food stamp application omitting father as resident of her home at the time, and certainly not when compared to the testimony of defendant, who held down two jobs, and defendant's mother that the father did not live with daughter at the time, and the documentary evidence, including a rental agreement signed by defendant and her father, was inconclusive in view of defendant's and landlord's testimony that father was required to co-sign rental agreement when defendant informed landlord that her father would eventually be moving in with her); [People v. Espinal](#), 8 Misc. 3d 1014(A), 801 N.Y.S.2d 780 (N.Y. City Crim. Ct. 2005) (dismissing accusatory instrument charging defendant with offering a false instrument for filing in the second degree for operating an automobile bearing a home-made license plate where there was no allegation that the information reflected on the “license plate” was false, as the accusatory instrument alleged).
- 3 [N.Y. Penal Law § 175.05\(3\)](#).
- 4 [N.Y. Penal Law §§ 175.30, 175.35](#).
- 5 [People v. Castaldo](#), 146 A.D.3d 797, 46 N.Y.S.3d 115 (2d Dep't 2017) (reversing trial court's order dismissing indictment and reinstating the indictment charging, *inter alia*, offering a false instrument for filing in the first degree where defendant police officer failed to reflect in his police report the fact that he used a prohibited choke hold to subdue a prisoner in custody who reached for the gun of an accompanying officer, rendering the defendant's report a knowingly false statement within the meaning of [Penal Law § 175.35\(1\)](#)); [People v. McCline](#), 42 Misc. 3d 1217(A), 984 N.Y.S.2d 633 (County Ct. 2014) (rejecting claim that jury's verdict was repugnant because it acquitted defendant of falsifying business records but convicted him of offering a false instrument for filing where the defendant had failed to reveal his youthful offender and juvenile

records on his application to become a police officer; the jury could have concluded that defendant was unaware of his duty to disclose the omitted material when he first prepared and submitted the application, but that he subsequently learned that the omission made his application inaccurate and incomplete). See, e.g., *People v. Niver*, 45 A.D.3d 1051, 846 N.Y.S.2d 417 (3d Dep't 2007) (failure to reveal on public assistance application expected receipt of workers' compensation; “conspicuously absent from the application was any acknowledgment of the potential income from wife's active workers' compensation claim from which she actually received income both before and after [public assistance application]”).

6 *People v. Altman*, 83 Misc. 2d 771, 773, 372 N.Y.S.2d 926, 929 (County Ct. 1975) (dismissing indictment charging offering false instrument for filing in second degree, where registration form filed with DMV contained false representation that the vehicle was new when it was not).

7 *People v. Papatonis*, 243 A.D.2d 898, 899, 663 N.Y.S.2d 341, 343 (3d Dep't 1997) (“a plain reading of the statute reveals that it does not require that the State rely upon the defendant's false statement”).

8 *People v. Crawford*, 73 A.D.2d 721, 422 N.Y.S.2d 540 (3d Dep't 1979) (since falsely created rent receipt reflected true rent of applicant for public assistance, the instrument, though false, could not support false filing charge).

9 *People v. Norman*, 6 Misc. 3d 317, 789 N.Y.S.2d 613 (Sup 2004).

10 *Bronston v. U.S.*, 409 U.S. 352, 93 S. Ct. 595, 34 L. Ed. 2d 568 (1973) (conviction for perjury cannot be based on an answer made under oath that is “literally true but not responsive to the question asked and arguably misleading by negative implication”).

11 *People v. Norman*, 6 Misc. 3d 317, 789 N.Y.S.2d 613, 629–630 (Sup 2004). See also *People v. Palmeri*, 35 Misc. 3d 25, 942 N.Y.S.2d 759 (App. Term 2012) (defense to false filing, like defense to perjury, will not lie by “isolating a statement from context, giving it in this manner a meaning entirely different from that which it has when the testimony is considered as a whole,” citing *People v. Neumann*, 51 N.Y.2d 658, 667, 435 N.Y.S.2d 956, 417 N.E.2d 69 (1980)).

11.50 *People v. Rafferty*, 155 A.D.3d 1520, 63 N.Y.S.3d 769 (4th Dep't 2017) (defendant's submission of false reports to private company acting as agent for the county in the operation of a county landfill satisfied the first degree false filing statute).

12 See *People v. Rafferty*, 155 A.D.3d 1520, 63 N.Y.S.3d 769 (4th Dep't 2017) (reversing trial court's order dismissing indictment because of insufficient evidence before the grand jury to make out offering a false instrument for filing in the first degree, and reinstating the indictment, where the defendant submitted a false report to a private company on contract with the county to manage a landfill facility for the county; the private firm managing the landfill, “in accepting the reports from defendant for purposes of complying with the County's permit issued by the State, was ... exercising a governmental function as an agent of the County, and thus was acting as a public servant within the meaning of the statute”) (citations omitted).

Compare *People v. Cohen*, N.Y.L.J., November 30, 2000, p.31, col.3 (Sup. Ct. New York County) (dismissing false filing charges on pretrial motion because there was no evidence before the grand jury that the NASD acted as an agent of the Attorney General for purposes of securities filings through the CRD system); *People v. Scotti*, 232 A.D.2d 775, 649 N.Y.S.2d 55 (3d Dep't 1996) (filing claims with private company acting as fiscal intermediary for the state to facilitate and process Medicaid claims and payments makes out offense of offering false instrument for filing since the fiscal intermediary deemed to be fiscal agent of the state); *People v. Fiedler*, 155 A.D.2d 613, 547 N.Y.S.2d 668 (2d Dep't 1989) (same), with *People v. Shu*, 216 A.D.2d 46, 627 N.Y.S.2d 657 (1st Dep't 1995) (coconspirator's false oral confession, reduced to writing by attorney unaware of its falsity and “filed” with prosecutor, did not make out offense of offering a false instrument for filing since the defendant did not know that the innocent intermediary attorney would reduce the statement to writing).

- 13 See [People v. Baureczarski](#), 31 Misc. 3d 141(A), 929 N.Y.S.2d 201 (App. Term 2011) (signing false DMV form declaring that defendant owned the van she wanted an auto wrecking company to tow and scrap was presented to a public agency within the meaning of the false filing statute because, even though defendant gave the form to the wrecking company's driver, the form made clear that the signer was aware that the form would be filed with New York's DMV).
- 14 [People v. Papatonis](#), 243 A.D.2d 898, 899, 663 N.Y.S.2d 341, 343 (3d Dep't 1997) (false filing count reinstated where defendant's application to a prospective employer for position as security guard falsely denied any prior criminal record, and defendant knew that the prospective employer would submit the license application to the relevant state agency). [People v. Norman](#), 5 Misc. 3d 1016(A), 798 N.Y.S.2d 712 (Sup 2004) (the fact that defendant did not personally prepare, sign or file false campaign financial report submitted to Board of Elections was no defense to a prosecution for offering a false instrument for filing since the grand jury could find that defendant had the false filing "in mind" when he failed to inform the otherwise innocent campaign committee treasurer that defendant had received a check made payable to the campaign committee which he deposited into his personal bank account, causing the treasurer to file a false financial report on defendant's behalf). Compare [People v. Parks](#), 53 A.D.3d 688, 861 N.Y.S.2d 449 (3d Dep't 2008) (vacating conviction for offering false instrument for filing where, other than evidence of opportunity, there was no evidence of defendant's involvement or complicity in making false entries in records of Justice Court in Schoharie County; "no testimony or evidence was adduced that defendant herself compiled or made representations regarding the information for the subject report, that she signed that report or knew its contents or assisted anyone in its preparation or filing").
- 15 [People v. Wolf](#), 59 A.D.2d 547, 397 N.Y.S.2d 131, 133 (2d Dep't 1977), on reargument, 60 A.D.2d 586, 399 N.Y.S.2d 1018 (2d Dep't 1977) ("Simply put, an element for conviction under the filing of false instrument counts is that the person charged with submitting the questioned instruments knew or believed they would become a permanent record of the public office to which it was submitted"; thus, a false filing offense is not a lesser included offense of grand larceny because the jury could find a larcenous taking by means of a false instrument that the defendant neither knew or believed would become permanent record of the agency).
- 16 [People v. Insalaco](#), 158 A.D.2d 973, 551 N.Y.S.2d 125 (4th Dep't 1990).
- 17 [People v. Asar](#), 136 A.D.2d 712, 523 N.Y.S.2d 910 (2d Dep't 1988).
- 18 [People v. Asar](#), 136 A.D.2d 712, 523 N.Y.S.2d 910, 911 (2d Dep't 1988); see also [People v. Stumbrice](#), 194 A.D.2d 931, 599 N.Y.S.2d 325 (3d Dep't 1993) (defendant's knowledge that her omission of her husband's name on her application for public assistance violated her obligations for public assistance eligibility was sufficient to establish her intent to defraud under the statute); [People v. Martinez](#), 202 A.D.2d 735, 608 N.Y.S.2d 573 (3d Dep't 1994) (same result when defendant omitted some of her assets when applying for public assistance); [People v. Scutt](#), 19 A.D.3d 1131, 796 N.Y.S.2d 816 (4th Dep't 2005) (intent to defraud could be inferred from defendant's false statement in his Medicaid recertification application that his daughter resided with him when he knew that she did not); [People v. Thompson](#), 33 A.D.3d 825, 823 N.Y.S.2d 112 (2d Dep't 2006) (failure to disclose on State Insurance Fund questionnaire as condition of continued receipt of benefits defendant's work performed for his own business supported inference of an intent to defraud).
- 19 [People v. Kase](#), 76 A.D.2d 532, 431 N.Y.S.2d 531 (1st Dep't 1980), order aff'd, 53 N.Y.2d 989, 441 N.Y.S.2d 671, 424 N.E.2d 558 (1981).
- 20 [People v. Kase](#), 76 A.D.2d 532, 537, 538, 431 N.Y.S.2d 531, 534 (1st Dep't 1980), order aff'd, 53 N.Y.2d 989, 441 N.Y.S.2d 671, 424 N.E.2d 558 (1981). See also [People v. Vanguard Meter Service, Inc.](#), 160 Misc. 2d 685, 611 N.Y.S.2d 430 (Sup 1994) (defendants' filing of false certifications with the state asserting compliance with the prevailing wage provisions of N.Y. Lab. Law § 220 in order to receive progress payments were sufficient frustration of governmental interests and processes to sustain a conviction under the false filing statute even though the People could show no pecuniary loss to the state); [People v. Brady](#), N.Y.L.J., February 16, 1996, p. 30, col. 2 (Sup. Ct. New York County) (false filing charges against police

officer were upheld where the officer filed false reports concerning the manner and date of the loss of his weapon; defendant-officer's intent to mislead the Police Department and frustrate its investigative function made out the first degree of the false filing offense). *People v. Maxam*, 301 A.D.2d 791, 753 N.Y.S.2d 599 (3d Dep't 2003) (filing a criminal complaint and supporting affidavit falsely accusing neighbors of stalking and harassing defendant made out intent to defraud the state within the meaning of felony false filing statute).

21 *People v. Taylor*, 14 N.Y.3d 727, 900 N.Y.S.2d 237, 926 N.E.2d 591 (2010).

22 *People v. Taylor*, 55 A.D.3d 640, 865 N.Y.S.2d 266, 268 (2d Dep't 2008), order rev'd, 14 N.Y.3d 727, 900 N.Y.S.2d 237, 926 N.E.2d 591 (2010).

23 See text accompanying footnotes 6 to 8 in § 17:10.

24 *People v. Enfeld*, 136 Misc. 2d 252, 518 N.Y.S.2d 536 (Sup 1987).

25 *People v. Taub*, 2003 WL 1870239 (N.Y. Sup 2003).

26 *People v. Taub*, 2003 WL 1870239 (N.Y. Sup 2003).

27 *People v. Quinn*, 103 A.D.3d 1258, 962 N.Y.S.2d 527 (4th Dep't 2013).

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