

Corruption of a Witness s 127¹

The prosecution must prove that:

1. The defendant gave (or conferred or procured or promised or offered to give, confer, procure or attempt to procure) property or benefit to a person;
2. Upon any agreement or understanding;²
3. That any person called (or to be called) as a witness;³
4. In a judicial proceeding;
5. Would give false testimony or withhold true testimony.⁴

OR

1. The defendant attempted;⁵
2. To induce any person;
3. To give false testimony or withhold true testimony;
4. The person was to be called as a witness;
5. In a judicial proceeding.⁶

OR

1. The defendant asked for (received, obtained or agreed or attempted to obtain) any property or benefit for himself or another;
2. Upon any agreement or understanding;
3. That any person as a witness;
4. In any judicial proceeding;

¹ The offence is a prescribed offence under s 161Q *Penalties and Sentences Act 1992* so a serious organised crime circumstance of aggravation is applicable.

² The offence is corrupting a witness by entering into an understanding or agreement and the offence is complete whether or not true testimony was in fact withheld: *R v Danahay* [1993] 1 Qd R 271.

³ A person who was the complainant in relation to certain alleged offences and had been served with a subpoena to attend at the committal proceedings is a person “to be called as a witness”: *Danahay* (ibid).

⁴ An agreement or understanding that a person would not present himself as a witness at a judicial proceeding when required was an agreement or undertaking to withhold true testimony: *Danahay*. Also per Williams J: an offence against s 127(1) could be made out without proof that the testimony to be withheld was in fact true.

⁵ See footnotes to “Attempts” s 4. The prosecution does not have to prove that true testimony was in fact withheld or would have been withheld.

⁶ “Judicial proceeding” includes any proceeding had or taken in or before any court, tribunal or person in which evidence might be taken: s 119.

5. Would give false testimony or withhold true testimony.