

**TAMPERING WITH PHYSICAL EVIDENCE**  
**(E Felony)**  
**(Making False Evidence)**  
**PENAL LAW 215.40(1)(a)**  
**(Committed on or after Sept. 1, 1967)**

The \_\_\_\_\_ count is Tampering with Physical Evidence.

Under our law, a person is guilty of Tampering with Physical Evidence when, with intent that it be used or introduced in an official proceeding or a prospective official proceeding, he or she knowingly makes, devises or prepares false physical evidence.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "official proceeding," "physical evidence," "intent," and "knowingly."

**OFFICIAL PROCEEDING** means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence may properly be received.<sup>1</sup>

**PHYSICAL EVIDENCE** means any article, object, document, record or other thing of physical substance which is or is about to be produced or used as evidence in an official proceeding.<sup>2</sup>

**INTENT** means conscious objective or purpose. Thus, a person acts with intent that evidence be used or introduced in an official proceeding or a prospective official proceeding when his or her conscious objective or purpose is to do so.<sup>3</sup>

A person **KNOWINGLY** makes, devises or prepares false

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<sup>1</sup> Penal Law § 215.35(2).

<sup>2</sup> Penal Law § 215.35(1).

<sup>3</sup> See Penal Law § 15.05(1).

physical evidence when he or she is aware that he or she is doing so.<sup>4</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (*date*), in the county of (*specify*), the defendant, (*defendant's name*), made, devised or prepared false physical evidence; and
2. That the defendant did so knowingly; and
3. That the defendant did so with the intent that such physical evidence be used or introduced in an official proceeding or a prospective official proceeding.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Tampering with Physical Evidence as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Tampering with Physical Evidence as charged in the \_\_\_\_\_ count.

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<sup>4</sup>See Penal Law §15.05(2).