

TAMPERING WITH PHYSICAL EVIDENCE
(E Felony)
(Offering False Evidence)
PENAL LAW 215.40(1)(b)
(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 produces or offers false physical evidence at such a proceeding knowing it to be false.

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,” and “intent.”

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.¹

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.²

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.³

¹ Penal Law § 215.35(2).

² Penal Law § 215.35(1).

³ See Penal Law § 15.05(1).

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*), produced or offered false physical evidence at an official proceeding [or a prospective official proceeding];
2. That the defendant did so knowing that such physical evidence was false; 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.