

TAMPERING WITH A WITNESS
SECOND DEGREE
(D Felony)
(Causing Injury to Witness Before Testimony)
PENAL LAW § 215.12(1)
(Committed on or after Sept. 1, 1982)

The _____ count is Tampering with a Witness in the Second Degree.

Under our law, a person is guilty of Tampering with a Witness in the Second Degree when he or she intentionally causes physical injury to a person for the purpose of obstructing, delaying, preventing or impeding the giving of testimony in a criminal proceeding by such person or another person or for the purpose of compelling such person or another person to swear falsely.

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: “criminal proceeding,” “physical injury” and “intentionally.”

CRIMINAL PROCEEDING means any proceeding which (a) constitutes a part of a criminal action or (b) occurs in a criminal court and is related to a prospective, pending or completed criminal action, either of this state or of any other jurisdiction, or involves a criminal investigation.¹

PHYSICAL INJURY means impairment of physical condition or substantial pain.²

Intent means conscious objective or purpose. Thus, a

¹ CPL 1.20(18). The term “criminal action,” used in the definition of “criminal proceeding,” is defined in CPL 1.20(16), and that definition in turn employs terms that also are defined in CPL 1.20. When in issue, these definitions should be provided.

² Penal Law § 10.00(9); See *People v. Chiddick*, 8 NY3d 445 (2007).

person INTENTIONALLY causes physical injury to a person when that person's conscious objective or purpose is to do so.³

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

1. That on or about (date), in the county of (county), the defendant, (defendant's name), intentionally caused physical injury to (specify); and
2. That the defendant did so for the purpose of obstructing, delaying, preventing or impeding the giving of testimony in a criminal proceeding by such person or another person, or for the purpose of compelling such person or another person to swear falsely.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Tampering with a Witness in the Second Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Tampering with a Witness in the Second Degree as charged in the _____ count.

³ See Penal Law § 15.05(1).