**TAMPERING WITH PHYSICAL EVIDENCE   
(Making False Evidence)   
Penal Law § 215.40(1)(a)   
(Committed on or after Sept. 1, 1967)**

The (*specify*) 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.

The following terms used in that definition have a special meaning:

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.3 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.

A person KNOWINGLY makes, devises or prepares false physical evidence when he or she is aware that he or she is doing

1 Penal Law § 215.35(2).

2 Penal Law § 215.35(1).   
3*See* Penal Law § 15.05(1).

so.4

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 (*County*), the defendant, (*defendant’s name*), made, devised or prepared false physical evidence;
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.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

4*See* Penal Law § 15.05(2).

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