

TAMPERING WITH PHYSICAL EVIDENCE
(N.J.S.A. 2C:28-6(2))

Count _____ of the indictment charges the defendant as follows:

(READ INDICTMENT)

The Statute upon which this charge is based reads as follows:

A person commits a crime . . . if, believing that an official proceeding or investigation is pending or is about to be instituted, he: (1) Makes, devises, prepares, presents, offers or uses any article, object, record, document or thing of physical substance knowing it to be false, and with purpose to mislead a public servant who is engaged in such proceeding or investigation.

The elements that the State must prove beyond a reasonable doubt to establish the defendant's guilt on this count are as follows:

- (1) that the defendant believed that an official proceeding or investigation was pending or about to be instituted;
- (2) that the defendant purposely (**choose appropriate conduct**) made, devised, prepared, presented, offered or used an (**choose relevant object**) article, object, record, document or thing of physical substance, knowing it to be false;
- (3) that the defendant's purpose in (**choose appropriate conduct**) making, devising, preparing, presenting, offering, or using the (**choose relevant object**) was to mislead a public servant who was engaged in such proceeding or investigation.

The first element that the State must prove beyond a reasonable doubt is that the defendant must have believed that an official proceeding or investigation was pending or about to be instituted. An official proceeding¹ means a proceeding heard, or which may be heard, before any legislative, judicial, administrative or other governmental agency, arbitration proceeding, or other official authorized to take evidence under oath, including any arbitrator, referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding.

The second element that the State must prove beyond a reasonable doubt is that the defendant purposely (**choose appropriate conduct**) made, devised, prepared, presented, offered

¹ See N.J.S.A. 2C:27-1d for definition and cite as appropriate.

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or used the (**choose relevant object**) article, object, record, document, or thing of physical substance, knowing it to be false.

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he/she is aware of such circumstances or if he/she believes or hopes that they exist or if he/she means to act in a certain way or to cause a certain result.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or if he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result. “Knowing,” “with knowledge” or equivalent terms have the same meaning.

Belief, knowledge and purpose are conditions of the mind which can not be seen and can only be determined by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof, but must ordinarily be inferred from the facts. Therefore, it is not necessary, members of the jury, that the State produce witnesses to testify that an accused said he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and his/her conduct, and from all he/she said and did at the particular time and place, and from all of the surrounding circumstances.

The third element that the State must prove beyond a reasonable doubt is that defendant’s purpose in (**choose appropriate conduct**) making, devising, preparing, presenting, offering or using the (**choose object**) article, object, record, document or thing of physical substance was to mislead a public servant who was engaged in such proceeding or investigation. Under our law, a public servant is any officer or employee of government, including legislators and judges, and any person participating as a juror, advisor, consultant or otherwise, in performing a governmental function.²

If you find that the State has proven all of the elements of this offense beyond a

² Just serving as a witness in a proceeding does not make a person a public servant. N.J.S.A. 2C:27-1g.

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reasonable doubt, then you must find the defendant guilty.

If you find that the State has failed to prove one or more of the elements beyond a reasonable doubt, then your verdict must be not guilty.