

TAMPERING WITH PHYSICAL EVIDENCE
(N.J.S.A. 2C:28-6(1))

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) Alters, destroys, conceals or removes any article, object, record, document or thing of physical substance with purpose to impair its verity or availability 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**) altered, destroyed, concealed or removed an (choose relevant object) article, object, record, document or thing of physical substance;
- (3) that the defendant's purpose in (**choose appropriate conduct**) altering, destroying, concealing, or removing the (**choose relevant object**) was to impair its verity or availability in the 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

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

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 and third elements that the State must prove beyond a reasonable doubt are that the defendant purposely (**choose appropriate conduct**) altered, destroyed, concealed or removed² the (**choose relevant object**) article, object, record, document, or thing of physical substance in order to impair its verity or availability in the official proceeding or investigation. Verity means truthfulness or accuracy. 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.

The defendant's belief 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.

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

² Note that in *State v. Sharpless*, 314 N.J. Super. 440 (App. Div. 1998) the Court held that the phrase "concealment of any article with the purpose to impair its availability" in N.J.S.A. 2C:28-6 refers only to evidence of a completed criminal act, not a current possessory crime. Caution must be exercised when giving this instruction in connection with an indictment that also charges possession of the tampered evidence.