

5/21/2024

**Proposed Instruction on Falsifying Business Records in the First Degree, *People v. Trump*,  
Indictment No. 71543-23**

People's Disputed Request

Defense Disputed Request

**PART 59 MAY 22 2024**

**Falsifying Business Records in the First Degree.**

The first count is Falsifying Business Records in the First Degree, as it pertains to an invoice from Michael Cohen dated February 14, 2017, marked as a record of the Donald J. Trump Revocable Trust, and kept or maintained by the Trump Organization.<sup>1</sup>

Under our law, a person is guilty of Falsifying Business Records in the First Degree when, with intent to defraud that includes an intent to commit another crime or to aid or conceal the commission thereof, that person makes or causes a false entry in the business records of an enterprise.<sup>2</sup>

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

ENTERPRISE means any entity of one or more persons, corporate or otherwise, public or private, engaged in business, commercial, professional, industrial, eleemosynary, social, political or governmental activity.<sup>3</sup> The word "eleemosynary" means relating to charity.

BUSINESS RECORD means any writing or article, including computer data or a computer program, kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity.<sup>4</sup>

INTENT means conscious objective or purpose. Thus, a person acts with intent to defraud when his or her conscious objective or purpose is to do so.<sup>5</sup> Thus, a person acts with intent to defraud when his or her conscious objective or purpose is to lead another into error or to disadvantage.<sup>6</sup>

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<sup>1</sup> This Court used the "as it pertains to" language in the *People v. The Trump Corporation* jury charge to relate the falsifying business records counts to specific records. TC Tr. 3228. (References to "TC Tr." are to the trial transcript in *People v. The Trump Corporation*, Ind. No. 1473-21.)

<sup>2</sup> CJI 2d [NY] Penal Law § 175.10, Falsifying Business Records 1.

<sup>3</sup> CJI 2d [NY] Penal Law § 175.10, Falsifying Business Records 1.

<sup>4</sup> CJI 2d [NY] Penal Law § 175.10, Falsifying Business Records 1.

<sup>5</sup> CJI 2d [NY] Penal Law § 175.10, Falsifying Business Records 1.

<sup>6</sup> See Hon. William C. Donnino, *Practice Commentaries*, Penal Law § 15.00 ("Although a significant number of penal statutes require an 'intent to defraud,' there is no Penal Law definition of that culpable mental state. It has been suggested that an intent to defraud should be 'for the

A person causes a false entry when, even if he does not prepare the relevant business record himself, the creation of a false entry in the business record is a reasonably foreseeable consequence of his conduct.<sup>7</sup>

### **Expanded Charge on Intent.**

Intent does not require premeditation. In other words, intent does not require advance planning. Nor is it necessary that the intent be in a person's mind for any particular period of time. The intent can be formed, and need only exist, at the very moment the person engages in prohibited conduct or acts to cause the prohibited result, and not at any earlier time.

The question naturally arises as to how to determine whether or not a defendant had the intent required for the commission of a crime.

To make that determination in this case, you must decide if the required intent can be inferred beyond a reasonable doubt from the proven facts.

In doing so, you may consider the person's conduct and all of the circumstances surrounding that conduct, including, but not limited to, the following:

what, if anything, did the person do or say;

what result, if any, followed the person's conduct; and

was that result the natural, necessary and probable consequence of that conduct.

Therefore, in this case, from the facts you find to have been proven, decide whether or not you can infer beyond a reasonable doubt that the defendant had the intent required for the commission of this crime.<sup>8</sup>

### **Intent to Defraud.**

As I previously explained, a person acts with intent to defraud when his or her conscious objective or purpose is to do so.

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purpose of leading another into error or to disadvantage.” (quoting *People v. Briggins*, 50 N.Y.2d 302, 309 (1980) (Jones, J., concurring)).

<sup>7</sup> *People v. Murray*, 185 A.D.3d 1507, 1509 (4th Dep't 2020); *People v. Park*, 163 A.D.3d 1060, 1063-64 (3d Dep't 2018); *People v. Barto*, 144 A.D.3d 1641, 1643 (4th Dep't 2016); *People v. Myles*, 58 A.D.3d 889, 892 (3d Dep't 2009).

<sup>8</sup> CJI 2d [NY] Intent.

In order to prove an intent to defraud, the People need not prove that the defendant acted with the intent to defraud any particular person or entity. A general intent to defraud any person or entity—including the government or the voting public—suffices.<sup>9</sup>

Intent to defraud is also not constricted to an intent to deprive another of property or money. In fact, intent to defraud can extend beyond economic concerns.<sup>10</sup>

### **Intent to Commit or Conceal Another Crime.**

For the count of Falsifying Business Records in the First Degree, the intent to defraud must include an intent to commit another crime or to aid or conceal the commission thereof.

Under our law, although the People must prove an intent to commit another crime or to aid or conceal the commission thereof, they need not prove that the other crime was in fact committed, aided, or concealed.<sup>11</sup>

In addition, there is no requirement that a defendant intend to conceal or aid the commission of his own crime; instead, a person can commit the crime of Falsifying Business Records in the First Degree by having the intent to cover up or aid a crime committed by somebody else.<sup>12</sup>

### **Count-Specific Instructions**

In order for you to find the defendant Donald J. Trump 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 two elements:

First, that on or about February 14, 2017, in the county of New York and elsewhere, the defendant, Donald J. Trump, personally, or by acting in concert with another person or persons, made or caused a false entry in the business records of an enterprise, specifically, an invoice from Michael Cohen dated February 14, 2017, marked as a record of the Donald J. Trump Revocable Trust, and kept or maintained by the Trump Organization; and,

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<sup>9</sup> Omnibus Dec. 18-19; *see also* *People v. Dallas*, 46 A.D.3d 489, 491 (1st Dep't 2007) (“[T]he law is clear that the statutory element of intent to defraud does not require an intent to defraud any particular person; a general intent to defraud any person suffices.”); *People v. Lang*, 36 N.Y.2d 366, 371 (1975) (in the electoral context, the Court of Appeals has recognized that the concept of fraud can encompass any “deliberate deception (to be committed upon the electorate)” or any “corrupt act to prevent a free and open election”).

<sup>10</sup> Omnibus Dec. 7.

<sup>11</sup> Omnibus Dec. 8, 11-12; *see* *People v. Holley*, 198 A.D.3d 1351, 1351-52 (4th Dep't 2021); *People v. Thompson*, 124 A.D.3d 448, 449 (1st Dep't 2015); *People v. Houghtaling*, 79 A.D.3d 1155, 1157-58 (3d Dep't 2010); *People v. McCumiskey*, 12 A.D.3d 1145, 1145 (4th Dep't 2004).

<sup>12</sup> Omnibus Dec. 7-8; *see* *People v. Dove*, 15 Misc. 3d 1134(A), at \*6 n.6 (Sup. Ct. Bronx Cnty. 2007), *judgment aff'd*, 85 A.D.3d 547 (1st Dep't 2011).

Second, that the defendant did so with intent to defraud that included an intent to commit another crime or to aid or conceal the commission thereof.<sup>13</sup> Thus, for this second element, the People must establish beyond a reasonable doubt two separate intents: the intent to defraud and intent to aid or conceal the commission of another crime, which I will define for you shortly.<sup>14</sup>

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<sup>13</sup> CJI 2d [NY] Penal Law § 175.10, Falsifying Business Records 1.

<sup>14</sup> See Hon. William C. Donnino, *Practice Commentaries*, Penal Law § 175.05 (“It should be emphasized that for the first-degree crime there must be two separate intents in that the ‘intent to defraud’ must include ‘an intent to commit another crime or to aid or conceal the commission thereof.’”); see also *People v. Flynn*, 79 N.Y.2d 879, 881 (1992) (“It is well settled that all the elements of an indicted crime which are not conceded by defendant or defendant’s counsel must be charged.”)