

Anatomy of a Falsifying Business Records Case Under New York Law



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In the world of white-collar criminal prosecution in New York by either a District Attorney or the Attorney General, the crime of Falsifying Business Records is omnipresent.

The crime of Falsifying Business Records comes in two separate degrees with an aggravating factor that will upgrade the charge to a felony. The base crime of Falsifying Business Records in the Second Degree is a class “A” misdemeanor, which states in pertinent part, “with intent to defraud” the defendant either (1) makes or causes a false entry in the business records of an enterprise; (2) alters, erases, obliterates, deletes, removes or destroys a true entry in the business record; (3) omits to make a true entry in the business records of the enterprise or (4) prevents the making of a true entry in the business record in the enterprise.

A threshold element in these cases is whether the business record is criminally false, rather than the product of an unintended error or some noncriminal rationale for the alleged falsity in the business record.

Moreover, the element of intent to defraud must be present. Under New York law, “intent” is defined as the “conscious objective or purpose” of the defendant. Without a clear admission by the defendant of his/her intent, this element is often proven by circumstantial evidence. The phrase “intent to defraud” is curiously not found in the statutory definitions, but in common law it is defined as an intention to deceive another person, and to induce reliance on a deception to create, alter or terminate a right, obligation or power.

Falsifying Business Records graduates to the class “E” felony level of Falsifying Business Records in the First Degree, when the defendant commits the crime of Falsifying Business Records in the Second Degree, and also does so “when his intent to defraud includes an intent to commit another crime or to aid or conceal the commission thereof.” A classic example of this is when a defendant commits a larceny and then falsifies business records to hide the crime. The record also must be kept or maintained by the business enterprise for the purpose of the business’ condition or activity.

The term “crime” is defined in the Penal Law simply as “a felony or a misdemeanor.”

If a defendant is charged with Falsifying Business Records, the 2020 overhaul of the New York State discovery laws provides for significant disclosures from the prosecutor relatively soon after arraignment. These mandatory disclosures by the prosecution, coupled with vehicles including a demand for a bill of particulars that requires the prosecutor to provide additional factual details concerning the alleged crime, serve as a significant opportunity for defendants in these cases. Because these document-intensive cases can easily translate to thousands, if not millions of pages of records, sifting through the records to find critical documents supporting the defendant’s position can be a painstaking endeavor. But, many cases do hinge on isolating and effectively using documents received in the discovery process. Robust pre-trial motions typically follow in this process seeking to dismiss the charges, and also serve to preserve the issues for an appeal if arguments are unsuccessful at the trial level.

In cases that go to trial, the narrative can be complex and serve as a challenge for both the prosecutor and the defendant to explain the salient facts in a way the jury can understand. This is particularly true given the piecemeal way in which the evidence is put before the jury, witness by witness, and document by document. If the jury cannot understand the theory of the case, either side could find itself in jeopardy of losing for that simple reason.

In New York, all 12 jurors must unanimously conclude that each and every element of the crime has been proven by the prosecutor to the standard of beyond a reasonable doubt. In cases that result in a guilty verdict against the defendant, the defendant has an absolute right to appeal. The appeal is often very involved and focuses on the evidence at trial and the many technical aspects of the applicable law.

If you or someone you know has reason to believe he or she may be under investigation or is facing an allegation of Falsifying Business Records, in New York State, it is important to consult with experienced counsel who can help navigate the legal system’s numerous complexities. For questions or concerns, contact [Dennis C. Vacco \(dvacco@lippes.com\)](mailto:dvacco@lippes.com), [Karl J. Sleight \(ksleight@lippes.com\)](mailto:ksleight@lippes.com) or [Joan P. Sullivan \(jsullivan@lippes.com\)](mailto:jsullivan@lippes.com) of Lippes Mathias LLP's government & corporate investigations practice team.

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