

Damaging Evidence with Intent s 129

The prosecution must prove that the defendant:

1. knowing that the [relevant thing] may be needed in evidence in a judicial proceeding:
 - (a) ‘judicial proceeding’¹ includes any proceeding before any court, tribunal or person, in which evidence may be taken on oath;
 - (b) in this context, “knowing” means “believing”; and
 - (c) it is sufficient to prove that the defendant believed that the [relevant thing] might be required (that is, there is a realistic possibility) in evidence in a possible future proceeding (that is, there does not have to be a proceeding on foot at the time);²
2. damaged the [relevant thing]:
 - (a) the word “damage” bears its natural and ordinary meaning,³ namely, “injury or harm that impairs value or usefulness”;⁴
 - (b) a thing may be said to be damaged even though the injury to the thing is not permanent but is remediable; a thing is damaged if it is rendered imperfect or inoperative;⁵
 - (c) damage may be caused by either physical harm to the relevant thing (rendering it imperfect), or interference with the functionality of the relevant thing (rendering it inoperative, or unable to be used for its ordinary functions), even if that is for a period of time, while the imperfection or inoperability is being eliminated.⁶
3. with the intention of stopping the [relevant thing] being used in evidence.⁷

¹ See the definition in s 119 of the Criminal Code.

² *R v Ensbey* [2005] 1 Qd R 159 at [15] and [16] per Davies JA and at [48] per Jerrard JA.

³ Enlarged as relevant and appropriate by the definition of “damage, in relation to a document”, in s 1 of the Criminal Code.

⁴ *Prime Infrastructure (DBCT) Management Pty Ltd v Vero Insurance Limited* [2005] QCA 369 at [31].

⁵ *R v Zischke* [1983] 1 Qd R 240 at 246D.

⁶ *Hammond v The Queen* (2013) 85 NSWLR 313 at [42]-[69], in particular [50] and [69].

⁷ See direction on intention at Bench Book No. 59.