

**POSSESSION OF FIREARM
WITH DEFACED SERIAL NUMBER DURING FELONY**

The defendant is charged with possessing a firearm with a removed, defaced, altered, obliterated or mutilated serial number or identification number while committing a felony.

Section 11B of chapter 269 of our General Laws provides as follows:

“Whoever,
while in the commission or attempted commission of a felony,
has in his possession or under his control a firearm
the serial number or identification number of which has been
removed, defaced, altered, obliterated or mutilated in any
manner
shall be punished”

To prove the defendant guilty of this offense, the Commonwealth must prove four things, beyond a reasonable doubt:

First: That the defendant committed or attempted to commit a felony;

Second: That while doing so, the defendant knowingly possessed a firearm (or) had a firearm under his (her) control;

Third: That the serial or identification number on that firearm had

been removed, defaced, altered, obliterated or mutilated in some manner;
and

Fourth: That the defendant knew that the serial or identification number had been removed, defaced, altered, obliterated or mutilated.

The Commonwealth is not required to prove that the defendant caused the damage to the serial or identification number.

I will now explain some of these legal principles and words in detail.

To prove that the defendant was committing or attempting to commit a felony, the Commonwealth must prove that the defendant was committing or attempting to commit a crime for which a person may be sentenced to state prison. Other, lesser offenses are called “misdemeanors.”

If you conclude that the defendant was committing or was attempting to commit the crime of _____ (or _____), I instruct you as a matter of law that (either of those) (any of those) offense(s) would be a felony.

Here instruct on Possession (Instruction 3.220) and on “Attempt” (Instruction 4.120) if required by the evidence.

If no specific felony was charged, or the evidence suggests a different felony. **The**

Commonwealth is not required to prove that the defendant was committing or attempting to commit any particular felony, but it must prove that the defendant was committing or attempting to commit *some* felony.

The Commonwealth must prove that the object (possessed) (or (controlled) was a “a pistol, revolver or other weapon . . . loaded or unloaded, from which a shot or bullet can be discharged and . . . the length of [whose] barrel is less than sixteen inches”

Proof that an object is a firearm requires proof of three things:

***First:* That the item is a pistol, revolver or other weapon;**

***Second:* That it is capable of discharging a shot or bullet; and**

***Third:* That it has a barrel length of less than 16 inches.**

“Barrel length” refers to “that portion of a firearm . . . through which a shot or bullet is driven, guided or stabilized, and [includes] the chamber.”

G.L. c. 269, § 11A; G.L. c. 140, § 121.

The Commonwealth must also prove that the defendant knew that the

item was a “firearm.” However, if it was a conventional firearm, with its obvious dangers, the Commonwealth is not required to prove that the defendant knew that the item met the legal definition of a firearm.

Our law provides that every firearm shall bear a serial number permanently inscribed on a visible metal area of the weapon. The Commonwealth must prove beyond reasonable doubt that the serial or identification number on the firearm involved here had been removed, defaced, altered, obliterated or mutilated. It is not necessary for the Commonwealth to prove that absolutely every part of the number had been physically removed, only that the number had been removed, defaced, altered, obliterated or mutilated in some manner or, to use other words, that the number had been damaged, scratched out or destroyed.

The Commonwealth must also prove that the defendant knew at the time of the offense that the number had been removed, defaced, altered, obliterated or mutilated. This requires you to make a decision about the defendant’s state of mind at that time. It is obviously impossible to look directly into a person’s mind. But in our everyday affairs, we often look to the actions of others in order to decide what their state of mind is at the time. In this case, you may examine the defendant’s actions and words,

and all of the surrounding circumstances, to help you determine the extent of the defendant's knowledge at that time.

You should consider all of the evidence, and any reasonable inferences you draw from the evidence, in determining whether the Commonwealth has proved beyond a reasonable doubt, as it must, that the defendant acted with the knowledge that the serial or identification number had been damaged.

To summarize, the Commonwealth must prove four things beyond a reasonable doubt:

First: That the defendant committed or attempted to commit a felony;

Second: That while doing so, the defendant knowingly possessed a firearm (*or*) had a firearm under his (her) control;

Third: That the serial or identification number of that firearm had been removed, defaced, altered, obliterated or mutilated in some manner; and

Fourth: That the defendant knew that the serial or identification number had been removed, defaced, altered, obliterated or mutilated.

If you find the Commonwealth has proven each of these four elements beyond a reasonable doubt, you should find the defendant guilty on this

charge. If you find the Commonwealth has not proven one or more of these four elements beyond reasonable doubt, you must find the defendant not guilty on this charge.

SUPPLEMENTAL INSTRUCTIONS

1. Knowledge of law not required. The requirement that the defendant's act must have been done "knowingly" to be a criminal offense means that it must have been done voluntarily and intentionally, and not because of mistake, accident, negligence or other innocent reason. But it is not necessary for the defendant to have known of the law that makes it a crime to commit or attempt to commit a felony while in possession or control of a firearm which has a defaced serial or identification number. Generally ignorance of the law is not an excuse for violating the law.

2. "Serial number." A firearm's "serial number" is the number stamped or placed on that firearm by the manufacturer when the

firearm was made.

G.L. c. 269, § 11A.

3. "Identification number."

A firearm's "identification number" is the number that has been stamped or placed on that firearm by the Massachusetts State Police.

G.L. c. 269, § 11A.

NOTE:

1. **Definition of Firearm.** General Laws c. 269, § 11A provides that for purposes of § 11B the definition of "firearm" in G.L. c. 140, § 121 is to be used: "a pistol, revolver or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of the barrel or barrels is less than 16 inches or 18 inches in the case of a shotgun as originally manufactured; provided, however, that the term firearm shall not include any weapon that is: (i) constructed in a shape that does not resemble a handgun, short-barreled rifle or short-barreled shotgun including, but not limited to, covert weapons that resemble key-chains, pens, cigarette-lighters or cigarette-packages; or (ii) not detectable as a weapon or potential weapon by x-ray machines commonly used at airports or walk- through metal detectors."