

## **KNOWLEDGE**

**I have already instructed you that one of the things the Commonwealth must prove beyond a reasonable doubt is that at the time of the offense the defendant knew that \_\_\_\_\_ .**

**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. 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 \_\_\_\_\_ .**

*Commonwealth v. Buckley*, 354 Mass. 508, 512, 238 N.E.2d 335, 338 (1968); *Commonwealth v. Holiday*, 349 Mass. 126, 128, 206 N.E.2d 691, 693 (1965); *Commonwealth v. Settipane*, 5 Mass. App. Ct. 648, 651, 368 N.E.2d 1213, 1216 (1977). "Knowledge" commonly means "a perception of the facts requisite to make up the crime." *Commonwealth v. Horsfall*, 213 Mass. 232, 237, 100 N.E. 362, 364 (1913).

SUPPLEMENTAL INSTRUCTIONS

1. *Example: contraband in plain view.*

**For example, when contraband is found in open view in an area over which a person has control, it may be reasonable to infer that the person knew that it was there.**

*Commonwealth v. Albano*, 373 Mass. 132, 135, 365 N.E.2d 808, 811 (1977).

2. *Knowledge must be personal.*

**As I have indicated, you may look to all the circumstances to help you draw reasonable inferences about what the defendant knew. However, I emphasize that, in the end, you must determine, not what a reasonable person would have known, but what this particular defendant actually did or did not know at the time.**

*Commonwealth v. Boris*, 317 Mass. 309, 315, 58 N.E.2d 8, 12 (1944).

3. *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 that the defendant have known that there is a law that makes it a crime to \_\_\_\_\_, since generally ignorance of the law is not an excuse for violating the law.**

*Ratzlaf v. United States*, 510 U.S. 135, 149, 114 S.Ct. 655, 663 (1994); *Cheek v. United States*, 498 U.S. 192, 199, 111 S.Ct. 604, 609 (1991); *Barlow v. United States*, 32 U.S. (7 Pet.) 404, 410-412 (1833).

NOTES:

1. **Is allegation of knowledge required?** Knowledge, even when an element of the offense, need not always be alleged in the complaint. See *Commonwealth v. Donoghue*, 23 Mass. App. Ct. 103, 100 n.5, 499 N.E.2d 832, 837 n.5 (1986), contrasting *Commonwealth v. Palladino*, 358 Mass. 28, 30-32, 260 N.E.2d 653, 654-656 (1970) (because of ambiguous nature of obscene material, knowledge must be alleged in possession complaint), with *Commonwealth v. Bacon*, 374 Mass. 358, 359-361, 372 N.E.2d 780, 781-782 (1978) (because characteristics of gun are obvious, knowledge need not be alleged in possession complaint). See also *Commonwealth v. Kapsalis*, 26 Mass. App. Ct. 448, 454, 529 N.E.2d 148, 151-152 (1988) (pretrial amendment of complaint to charge willfulness proper where defendant not surprised, since amendment "was in a *practical* sense one of form and not of substance").

2. **Instruction on "willful blindness."** When knowledge is an element of the offense, an instruction on willful blindness is appropriate when "[1] a defendant claims a lack of knowledge, [2] the facts suggest a conscious course of deliberate ignorance, and [3] the instruction, taken as a whole, cannot be misunderstood [by a juror] as mandating an inference of knowledge." *Commonwealth v. Mimless*, 53 Mass. App. Ct. 534, 544, 760 N.E.2d 762, 772 (2002), quoting *United States v. Hogan*, 861 F.2d 312, 316 (1st Cir. 1988).