

USE OF TELEPHONE FOR BETTING

The defendant is charged with unlawfully (using a telephone) (permitting a telephone to be used) for betting purposes. Section 17A of chapter 271 of our General Laws provides as follows:

“[W]hoever uses a telephone
(or) (being the occupant in control of premises where a
telephone is located or a subscriber for a telephone,
knowingly permits another to use [that] telephone . . .)
for the purpose of (accepting wagers or bets) (buying or selling
of pools) (placing . . . a wager with another) upon the result
of (a trial or contest of skill, speed, or endurance) (an
athletic game or contest) (the lottery called the numbers
game)
or for the purpose of reporting [the results of (a trial or contest
of skill, speed, or endurance) (an athletic game or contest)
(a numbers game)] to a headquarters or booking office . . .
shall be punished”

In order to prove the defendant guilty of this offense, the

Commonwealth must prove two things beyond a reasonable doubt:

***First:* That the defendant (used) (was the subscriber for) (was in control of premises containing) a telephone; and**

***Second:* That the defendant knowingly (used the telephone) (permitted the telephone to be used) for (accepting wagers or bets) (buying or selling pools) (placing bets upon a contest of skill, speed or endurance, or an athletic game) (placing bets in a numbers game) (reporting the results of a contest of skill, speed or endurance, or an athletic game to a headquarters or booking office) (reporting the results of a numbers game to a headquarters or booking office).**

Commonwealth v. Murphy, 342 Mass. 393, 398, 173 N.E.2d 630, 633 (1961) (statute requires scienter); *Commonwealth v. Jensky*, 318 Mass. 350, 352-354, 61 N.E.2d 532, 534 (1945) (police answering the suspect telephone anonymously may testify as to what callers said).