

## RECEIVING A STOLEN CREDIT CARD

G.L. c. 266, § 37B(b) – Part II

**The defendant is charged with knowingly receiving a stolen credit card. To prove the defendant guilty of this offense, the Commonwealth must prove five things beyond a reasonable doubt:**

***First*, that the defendant was in possession of a credit card;**

***Second*, that the card had been stolen;**

***Third*, that the defendant knew the card had been stolen;**

***Fourth*, that the defendant intended to (use it) (sell it) (transfer it to a person other than the issuer or cardholder); and**

***Fifth*, that the defendant did so with the intent to defraud.**

**To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the object in question is a credit card. A credit card is a device that enables the cardholder to obtain money, services, or things on credit without immediate payment or by debit from a cash account.<sup>1</sup>**

---

<sup>1</sup> Section 1 of G.L. c. 266, § 37, provides a more expansive definition of a credit card than the one provided in this instruction: A credit card is “an instrument or device, whether known as a credit card, credit plate or other name, or the code of number used to identify that instrument or device or an account of credit or cash accessed by that instrument or device, issued with or without a fee by an issuer for the

**The Commonwealth must also prove beyond a reasonable doubt that the card was (on the person) (in the possession, custody, or control) of the defendant. A person obviously possesses something if they have direct physical control of it at a given time. However, a person need not have physical custody of something to possess it. A card is within the possession, custody, or control of a person if they have:**

- **knowledge that the card is there,**
- **the ability to exercise control over it, either directly or through another person, and**
- **the intent to exercise control over it.**

**(Merely being present in the vicinity of an item or of a person who has it in their possession does not amount to possession, even if one knows that it is there.)**

**To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the card had been stolen. A card is stolen if it is taken from the person, possession, custody, or control**

---

use of the cardholder in obtaining money, goods, services or anything else of value on credit or by debit from a cash account.”

**of another without the cardholder’s consent, and with an intent to deprive the person of that card permanently. (It need not be taken from the actual cardholder, but it must be taken without the cardholder’s consent.)**

**To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the defendant knew the card had been stolen. This requires you to make a decision about the defendant’s state of mind at that time. It is not enough to prove that a prudent person would have known or believed that the card stolen. The Commonwealth must prove the defendant actually knew, or at least believed, that it was. You may examine any evidence regarding the defendant’s actions or words, and all of the surrounding circumstances, to help you determine whether the defendant knew the card had been stolen.**

**To prove the fourth element, the Commonwealth must prove beyond a reasonable doubt that the defendant intended to use the card or to sell or transfer the card to a person other than the issuer or cardholder. The issuer is the business organization or financial**

**institution, or its authorized agent, which issued the card. The cardholder is the (person) (entity) named on the face of the card to whom or for whose benefit the card was issued. You may examine the evidence in the case, all of the surrounding circumstances, and any reasonable inferences you draw from that evidence to help you determine whether the defendant intended to use or to sell or transfer the card.**

**To prove the fifth element, the Commonwealth must prove beyond a reasonable doubt that the defendant engaged in this conduct with the intent to defraud. To act with an intent to defraud means to act knowingly with the aim of deceiving or cheating another person or entity. The purpose is often to bring about gain or benefit either for oneself or for another person or entity.<sup>2</sup> You may examine the evidence in the case, all of the surrounding circumstances, and any reasonable inferences you draw from that evidence to help you determine whether the defendant had an intent to defraud.**

See *Commonwealth v. O'Connell*, 438 Mass. 658, 664 (2003) (Commonwealth need not show intent to defraud particular person, but sufficient that defendant "intended to injure or defraud someone"; proof of intent to defraud may be inferred from the circumstances).

---

<sup>2</sup> See *United States v. Phath*, 144 F.3d 146, 149 (1st Cir. 1998); *United States v. Leahy*, 445 F.3d 634, 644 (3d Cir. 2006).

*If the defendant had credit cards in the names of four or more other persons*

**If the defendant had in their possession or under their control stolen credit cards in the names of four or more other persons, you may, but are not required to, infer that the defendant had the requisite knowledge and intent at the relevant time.**

See G. L. c. 266, § 37B, para. 2.

**If the Commonwealth has proven all five elements beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth has failed to prove one or more of these elements beyond a reasonable doubt, you should find the defendant not guilty.**