

UNAUTHORIZED SALE OF A CREDIT CARD

G.L. c. 266, § 37B(d) – Part I

The defendant is charged with the unauthorized sale of a credit card with intent to defraud. To prove the defendant guilty of this offense, the Commonwealth must prove four things beyond a reasonable doubt:

***First*, that the defendant sold a credit card;**

***Second*, that the defendant was neither the issuer nor an authorized agent of the issuer of the card;**

***Third*, that the defendant knew they were not authorized to sell a card; and**

***Fourth*, that the defendant had an intent to defraud.**

To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the defendant sold a credit card. A credit card is a device that enables the cardholder to obtain money, services, or things on credit or without immediate payment or by debit from a cash account.¹ A credit card is sold when its identifying

¹ 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,

numbers or a physical card containing those numbers are exchanged in return for something of value.

To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the defendant did not issue the card or that the bank or company that issued it did not authorize the defendant to sell it to another.

To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the defendant knew they were not authorized to sell the card. 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 they were not authorized to sell the card. The Commonwealth must prove the defendant actually knew, or at least believed, that they were not authorized. You may examine any evidence regarding the defendant’s actions or words, and all of the surrounding

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

circumstances, to help you determine whether the defendant knew they were not authorized to sell the card.

To prove the fourth 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. The purpose is often to bring about gain or benefit either for oneself or for another person or entity.¹ 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 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).

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

¹ 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).