

## **UNAUTHORIZED PURCHASE OF A CREDIT CARD**

G.L. c. 266, § 37B(d) – Part II

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

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

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

***Third*, that the defendant knew the seller was neither the issuer of the card, nor an authorized agent of the issuer; and**

***Fourth*, that the defendant purchased the card with the intent to defraud.**

**To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the defendant purchased a credit card. To make a purchase, there must be a transfer of something of value to the seller in return for receipt of the 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>**

**To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the person who sold the card to the defendant was neither the issuer of the card, nor an authorized agent of the issuer. Typically, a credit or debit card is issued by a financial institution such as a bank, business, or store. A cardholder is not an authorized agent of the issuer unless the issuer gave them specific authority to sell the card.**

**To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the defendant knew the seller was neither the issuer of the card, nor an authorized agent of the issuer. This requires you to make a decision about the defendant’s state of mind at that time. You may examine any evidence regarding the defendant’s actions and words, all the surrounding circumstances,**

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

**and any reasonable inferences you draw from that evidence, to help you determine whether the defendant knew the seller was not the issuer of the card, nor an authorized agent of the issuer.**

**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.<sup>2</sup> Again, 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 another.**

*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 of the offense 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 must find the defendant not guilty.**

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<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).