

RECEIVING SOMETHING OF VALUE FRAUDULENTLY OBTAINED BY CREDIT CARD

G.L. c. 266, § 37B(j)

The defendant is charged with receiving something of value fraudulently obtained with a credit card. To prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

First, that the defendant received (money) (goods) (services) (anything of value);

Second, that the defendant did so by:

- 1) fraudulently using a (forged) (expired) (revoked) credit card [see instruction ____ for §37B(f)];
- 2) obtaining goods with a credit card by making a false representation [see instruction ____ for §37B(g)];
- 3) fraudulently accepting a credit card as a vendor [see instruction ____ for §37B(h)]; or
- 4) failing to provide goods paid for by credit card [see instruction ____ for §37B(i)];

and *Third*, 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 defendant received (money) (goods) (services) (anything of value) by using a credit card. A credit card is a device that enables the cardholder to obtain money, services, or things on credit without immediate payment.¹

To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the defendant:

- 1) fraudulently used a (forged) (expired) (revoked) credit card** [see instruction ____ for §37B(f)];
- 2) obtained goods with a credit card by making a false representation** [see instruction ____ for §37B(g)];
- 3) fraudulently accepted a credit card as a vendor** [see instruction ____ for §37B(h)]; or
- 4) failed to provide goods paid for by credit card** [see instruction ____ for §37B(i)].

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, 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.”

To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the defendant engaged in this conduct with the specific 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.² You may examine the evidence in the case, all 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 three 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 must find the defendant not guilty.

NOTES

1. **"Anything else of value"**. The term "anything else of value" is limited to that which can be exchanged for a financial payment. See *Commonwealth v. Escobar*, 479 Mass. 225, 229 (2018) (interpreting the term "anything of value" as it appears in G.L. c. 266, § 37E.) As in the identity fraud statute, the term "anything else of value" should be "interpreted to mean only those things that share the characteristics of the terms that appear before it, here, "money, ... goods, [or] services... all [which] refer to that which has a market or monetary value." *Id.*

² 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).