

FALSELY REPORTING A CREDIT CARD TO BE LOST OR STOLEN

G.L. c. 266, § 37B(k)

The defendant is charged with falsely reporting a credit card to be (lost) (stolen) 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 made a statement reporting a credit card to be (lost) (stolen);**

***Second*: that the statement was false;**

***Third*: that the defendant knew the statement was false;**

***Fourth*: that the defendant made the statement with the intent to defraud.**

To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the defendant made a statement reporting a credit card to be (lost) (stolen.) A statement may be oral or in writing. A writing may be written physically as when one uses a pen, pencil or electronic device. 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.¹

To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the statement reporting the card to be (lost) (stolen) was false. A statement is false if not true or genuine in a material or significant way.

To prove the third element, the Commonwealth must prove beyond a reasonable doubt that the defendant knew at the time the statement was made that it was false. 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 statement was false. 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, all of the surrounding circumstances, and any reasonable inferences you

¹ General Laws c. 266, § 37A 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."

draw from that evidence to help you determine whether the defendant knew the statement was false.

To prove the fourth element, the Commonwealth must prove beyond a reasonable doubt that the defendant made the statement 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.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.

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 elements beyond a reasonable doubt, you must find the defendant not guilty.

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).