

**DEFACING FIREARM SERIAL NUMBER;
RECEIVING FIREARM WITH DEFACED SERIAL NUMBER**

I. DEFACING FIREARM SERIAL NUMBER

The defendant is charged with defacing or obliterating the serial or identification number of a firearm. Section 11C of chapter 269 of our General Laws provides as follows:

**“Whoever
removes, defaces, alters, obliterates or mutilates in any manner
the serial number or identification number of a firearm,
or in any way participates therein,
shall be punished”**

To prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

***First:* That the item in question was a firearm;**

***Second:* That defendant knew that it was a firearm; and**

***Third:* That the defendant intentionally removed, defaced, altered, obliterated or mutilated in some manner a serial or identification number on the firearm.**

Our law provides that every firearm shall bear a serial number

permanently inscribed on a visible metal area of the firearm. You must determine whether the Commonwealth has proven beyond a reasonable doubt that a serial or identification number on the firearm was removed, defaced, altered, obliterated or mutilated by the defendant. The Commonwealth need not prove that every part of the number was physically damaged. It must prove that some part of the number was intentionally removed, defaced, altered, obliterated or mutilated or, to use other words, damaged, scratched out, or destroyed by the defendant.

Definition of firearm.

The Commonwealth must prove that the damaged number was on a “firearm.” A firearm is defined in section 121 of chapter 140 of our General Laws as:

“a pistol, revolver or other weapon . . . loaded or unloaded, from which a shot or bullet can be discharged and the length of [whose] barrel is less than sixteen inches”

For an item to be a firearm, it must:

First: be a weapon;

Second: be capable of discharging a shot or bullet; and

Third: have a barrel length of less than 16 inches. “Barrel length”

refers to “that portion of a firearm . . . through which a shot or bullet is driven, guided or stabilized, and [includes] the chamber.”

G. L. c. 140 § 121.

The Commonwealth must also prove that defendant *knew* that the item was a “firearm,” within the common meaning of that term. If the item is a conventional firearm, with its obvious dangers, the Commonwealth is not required to prove that the defendant knew that the item met the *legal* definition of a firearm.

SUPPLEMENTAL INSTRUCTION

Possession as prima facie evidence of defacing.

You have heard some evidence in this case suggesting that the defendant possessed a firearm with a (defaced) (altered) (obliterated) serial number. If you find that fact to be proven, you are permitted to accept it also as sufficient proof that the defendant was the person who removed, defaced, altered, obliterated or mutilated the serial or identification number on that firearm.

If there *is* contrary evidence about whether it was the

defendant who caused the damage, you are to treat this testimony about possession like any other piece of evidence, and you should weigh it along with all the rest of the evidence on the issue of who caused the damage. In the end you must be satisfied that, on all the evidence, it has been proven beyond a reasonable doubt that the defendant removed, defaced, altered, obliterated, or mutilated the serial or identification number on the firearm.

See Instruction 3.260 (Prima Facie Evidence).

Here the jury must be instructed on specific intent from Instruction 3.120 (Intent).

To summarize, the Commonwealth must prove three things beyond a reasonable doubt:

***First:* That the defendant intentionally removed, defaced, altered, obliterated or mutilated in some manner a serial or identification number;**

***Second:* That the number was on a firearm; and**

***Third:* That the defendant knew it was a firearm.**

If you find the Commonwealth has proven each of these elements beyond a reasonable doubt, you should find defendant guilty on this

charge. If you find the Commonwealth has not proven one or more of these three elements beyond a reasonable doubt, you must find defendant not guilty on this charge.

Commonwealth v. Rupp, 57 Mass. App. Ct. 377, 386, 783 N.E.2d 475, 482 (2003).

II. RECEIVING FIREARM WITH DEFACED SERIAL NUMBER

The defendant is charged with receiving a firearm with a defaced or obliterated serial or identification number. Section 11C of chapter 269 of our General Laws provides as follows:

“Whoever...

receives a firearm

with knowledge that its serial number or identification number

has been removed, defaced, altered, obliterated or

mutilated in any manner

shall be punished”

To prove the defendant guilty of this offense, the Commonwealth must prove five things beyond reasonable doubt:

***First:* That the item in question was a firearm;**

***Second:* That the defendant received the firearm;**

Third: That the defendant knew that the item was a firearm;

Fourth: That the serial number or identification number on the firearm was removed, defaced, altered, obliterated, or mutilated in some manner; and

Fifth: That the defendant knew that the serial or identification number had been removed, defaced, altered, obliterated, or mutilated in some manner at the time when he (she) received it.

Our law provides that every firearm shall bear a serial number permanently inscribed on a visible metal area of the firearm. You must determine whether the Commonwealth has proven beyond a reasonable doubt that a serial or identification number on the firearm at issue here had been removed, defaced, altered, obliterated or mutilated. The Commonwealth need not prove that every part of the number was physically damaged. It must prove that some part of the number was removed, defaced, altered, obliterated or mutilated or, to use other words, damaged, scratched out, or destroyed.

Here the jury must be instructed on the definition of a "Firearm" as set forth in I above.

To prove that the defendant “received” the firearm, the Commonwealth must prove that he (she) knowingly took custody or control of it. It is not necessary that the defendant personally possessed the firearm, as long as it is proved that he (she) knowingly exerted control over it in some way.

To establish that a firearm was under the defendant’s “control,” it is not enough for the Commonwealth just to prove that the defendant was present in the same place as the firearm. The Commonwealth must also prove that the defendant knew that the firearm was there, and that the defendant had both the power and intent to exercise control over the firearm. It is not necessary for the Commonwealth to prove that the defendant had exclusive control over the firearm.

SUPPLEMENTAL INSTRUCTION

Possession as prima facie evidence of knowledge of defacing.

You have

heard some evidence in this case suggesting that the defendant knowingly received a firearm whose serial identification number had been removed, defaced, altered or obliterated, or mutilated

in some manner at the time when he (she) received it. If you find that fact to be proven, you are permitted to accept it also as sufficient proof that defendant knew that the serial or identification number on that firearm had been removed, defaced, altered, obliterated or mutilated. You are not required to accept that as proven, but you may. If there *is* contrary evidence on that issue you are to treat the testimony about the defendant's receipt of the firearm like any other piece of evidence, and you should weigh it along with all the rest of the evidence on the issue of whether the defendant knew that the serial identification number had been removed, defaced, altered or obliterated, or mutilated in some manner at the time when he (she) received it.

In the end, you must be satisfied that, on all the evidence, it has been proven beyond a reasonable doubt that the defendant knew that the serial or identification number had been removed, defaced, altered, obliterated, or mutilated in some manner at the time when he received it.

See Instruction 3.260 (Prima Facie Evidence).

To summarize, the Commonwealth must prove five things beyond reasonable doubt:

First: That the item in question is a firearm;

Second: That the defendant received the firearm;

Third: That the defendant knew that the item was a firearm;

Fourth: That the serial number or identification number on the firearm was removed, defaced, altered, obliterated, or mutilated in some manner; and

Fifth: That the defendant knew that the serial or identification number had been removed, defaced, altered, obliterated, or mutilated in some manner at the time when he received it.

If you find that the Commonwealth has proven each of these five elements beyond reasonable doubt, you should find defendant guilty on this charge. If you find that the Commonwealth has failed to prove one or more of these five elements beyond reasonable doubt, you must find defendant not guilty on this charge.

See *Commonwealth v. Alcala*, 54 Mass. App. Ct. 49, 52; 763 N.E.2d 516, 519 (2002) as to circumstances which may evidence "guilty knowledge," or "consciousness of guilt" in connection with receiving items not immediately identifiable as illegal.