

**THEFT, PURCHASE, RECEIPT, POSSESSION OR CONCEALMENT
OF STOLEN MOTOR VEHICLE;
MALICIOUS DAMAGE TO MOTOR VEHICLE;
STEALING PARTS FROM MOTOR VEHICLE TAKEN WITHOUT AUTHORITY;
CONCEALING MOTOR VEHICLE THIEF**

The defendant is charged with _____. Section 28 of chapter 266 of our General Laws provides as follows:

Based on the complaint, use one or more of the following five alternatives:

A. *Stealing motor vehicle.* “Whoever steals a motor vehicle . . . shall be punished”

B. *Malicious damage to motor vehicle.* “[W]hoever maliciously damages a motor vehicle . . . shall be punished”

C. *Receiving stolen motor vehicle.* “[W]hoever (buys) (receives) (possesses) (conceals) (obtains control of) a motor vehicle . . . , knowing . . . [it] to have been stolen, . . . shall be punished”

D. *Stealing parts.* “[W]hoever takes a motor vehicle without the authority of the owner and steals from it any of its parts or accessories, shall be punished”

E. *Concealing motor vehicle thief.* “Whoever conceals any motor vehicle . . . thief knowing him to be such, shall be punished”

In order to prove the defendant guilty of this offense, the Commonwealth must prove beyond a reasonable doubt:

Based on the complaint, use one or more of the following five alternatives:

A. *Stealing motor vehicle.* **That the defendant stole a motor vehicle.**

Here instruct on the definition of stealing from Larceny by Stealing (Instruction 5.820).

The value of the stolen vehicle is not an element of the offense. *Commonwealth. v. Casserly*, 23 Mass. App. Ct. 947, 948, 501 N.E.2d 540, 541 (1986).

B. *Malicious damage to motor vehicle.* **That the defendant injured or destroyed a motor vehicle belonging to another person, and did so with malice. The term “malice” refers to a state of mind of cruelty, hostility or revenge. To prove that an act was malicious, the Commonwealth must prove beyond a reasonable doubt not only that it was done deliberately, but also that it was done out of hostility toward the owner of the property. This does not require that the defendant knew the identity of the vehicle’s owner, but it does require that he (she) was hostile toward the owner, whoever that was.**

C. Receiving stolen motor vehicle.

That the defendant (bought) (received) (possessed) (concealed) (obtained control of) a stolen motor vehicle, while knowing that it had been stolen.

Where applicable, instruct on Receiving Stolen Property (Instruction 8.600) or Possession (Instruction 3.220).

Mere presence in a stolen car is insufficient to support an inference of knowledge that the car was stolen, but “presence supplemented by other incriminating evidence will serve to tip the scales.” *Commonwealth v. Johnson*, 6 Mass. App. Ct. 956, 957, 383 N.E.2d 541, 542 (1978). See also *Commonwealth v. Boone*, 356 Mass. 85, 87, 248 N.E.2d 279, 280 (1969); *Commonwealth v. Johnson*, 7 Mass. App. Ct. 191, 193, 386 N.E.2d 798, 800 (1979); *Commonwealth v. Conway*, 2 Mass. App. Ct. 547, 554, 316 N.E.2d 757, 761-762 (1974).

D. Stealing parts.

That the defendant intentionally took a motor vehicle without authority of the owner and stole from it one or more of its parts or accessories.

Here instruct on Intent (Instruction 3.120) and the definition of stealing from Larceny by Stealing (Instruction 5.820).

E. Concealing motor vehicle thief.

That the defendant concealed a person who had stolen a motor vehicle, while knowing that the person had done so.

SUPPLEMENTAL INSTRUCTION

Knowledge.

It is an essential element of this offense that the defendant actually knew or believed that (the motor vehicle had been stolen) (the person concealed had stolen a motor vehicle).

Whenever a person's knowledge is at issue, you normally must rely on circumstantial evidence to determine what the person did or didn't know, since it is not possible to look directly into a person's mind. Looking to all the circumstances of the transaction may be particularly necessary where stolen property is involved. Often neither the thief who is disposing of stolen goods nor the person who is receiving them will openly discuss the fact that the goods are stolen.

However, in the end you must be satisfied beyond a reasonable doubt that, at the time, the defendant actually knew or believed that (the motor vehicle had been stolen) (the person concealed had stolen a motor vehicle). Mere negligence or failure to exercise a reasonable level of care is not enough. Personal knowledge or belief is required, and our law allows for no substitute.

See also Instruction 3.140 (Knowledge).

Commonwealth v. Dellamano, 393 Mass. 132, 138, 469 N.E.2d 1254, 1257-1258 (1984); *Commonwealth v. Boris*, 317 Mass. 309, 315-317, 58 N.E.2d 8, 12-13 (1944). The statutory language in the first group of offenses above is "knowing or having reason to know the same to have been stolen," but such terms only permit an inference of actual knowledge or belief from circumstantial evidence, and do not permit conviction upon proof only of recklessness in acquiring stolen property. *Dellamano*, 393 Mass. at 137, 469 N.E.2d at 1257.

NOTES:

1. **Altered vehicle identification number as prima facie evidence of knowledge.** “Evidence that an identifying number or numbers of a motor vehicle or trailer or part thereof has been intentionally and maliciously removed, defaced, altered, changed, destroyed, obliterated, or mutilated, shall be prima facie evidence that the defendant knew or had reason to know that the motor vehicle, or trailer or part thereof had been stolen.” G.L. c. 266, § 28(a), second par. See Instruction 3.260 (Prima Facie Evidence). See *Commonwealth v. Gonsalves*, 56 Mass. App. Ct. 506, 512, 778 N.E.2d 997, 1002 (2002) (emphasizing that “the use of prima facie evidence, sufficient to establish a presumption in favor of the scienter, carries no particular presumption of validity” and that “the presumed fact [scienter] must be proven beyond a reasonable doubt.”

2. **Certificate of title as evidence of unauthorized use.** “[A] certified copy of the certificate of title on file as an official record in the registry of motor vehicles, shall be admissible as proof of ownership in the motor vehicle and shall raise a rebuttable presumption that the use of the motor vehicle was unauthorized. If the defendant rebuts such presumption, the commonwealth may be granted a reasonable continuance to enable the owner of the vehicle to be brought into court to testify.” G.L. c. 147, § 4G. This statutory provision should be presented to the jury only as a permissive inference. See Instruction 3.240 (Presumption). Since its language may imply that the effect of the provision disappears if “rebutt[ed],” it is not clear whether it rises to the level of prima facie evidence, which remains evidence even though contrary evidence is introduced. See the notes to Instruction 3.260 (Prima Facie Evidence).

A defendant’s reliance on a title certificate in his or her name is not itself a defense to a charge of receiving a stolen motor vehicle, but merely one factor to be weighed in determining whether the Commonwealth has proven that the defendant knew that the vehicle was stolen. *Cassery*, *supra*.

3. **Charging both theft and receiving.** A defendant may be charged both with theft of a motor vehicle and receiving that stolen motor vehicle, but may not be convicted of both. *Dellamano*, 393 Mass. at 134 n.4, 469 N.E.2d at 1255 n.4.

4. **Restitution is mandatory.** Upon conviction under this section, in addition to any other punishment a restitution order is mandatory for any financial loss (including, but not limited to, loss of earnings, out-of-pocket expenses, and replacement costs) sustained by the victim, his dependents or insurer. G.L. c. 266, § 29; G.L. c. 276, § 92A.