

DEALING IN STOLEN PROPERTY
(N.J.S.A. 2C:20-7.1(b))

The defendant is charged with the crime of dealing in stolen property. The statute on which this charge is based reads as follows:

A person is guilty of dealing in stolen property if he traffics in, or initiates, organizes, plans, finances, directs, manages or supervises trafficking in stolen property.

Under our law, a person is guilty of dealing in stolen property although he/she did not steal the property himself/herself, when, with knowledge that the property has been stolen, he/she deals in stolen property with the awareness or knowledge of what he/she is doing. The identity of the person from whom he/she received the property is immaterial. Merely dealing in property that has been stolen is not an offense. It becomes a criminal act when one deals in stolen property knowing it has been stolen.

Thus, the elements that the State must prove beyond a reasonable doubt to convict the defendant of this charge are:

- (1) That the property was stolen.
- (2) That the defendant trafficked in or initiated, organized, planned, financed, directed, managed or supervised trafficking in stolen property.
- (3) That in doing those acts the defendant acted knowingly.
- (4) That at the time he/she dealt in the property he/she knew it had been stolen.

The first element that the State must prove beyond a reasonable doubt is that the property was stolen.

Property means anything of value.¹ Stolen property means property that has been the subject of any unlawful taking.

The second element that the State must prove beyond a reasonable doubt is that the defendant trafficked in or initiated, organized, planned, financed, directed, managed or supervised trafficking in stolen property.

“Traffic” means 1) To sell, transfer, distribute, dispense or otherwise dispose of property to another person; or 2) To buy, receive, possess or obtain control of or use property, with intent

¹ If a more elaborate definition is required, see N.J.S.A. 2C:20-1g.

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to sell, transfer, distribute, dispense or otherwise dispose of such property to another person.

The third element that the State must prove beyond a reasonable doubt is that the defendant acted knowingly in trafficking in or initiating, organizing, planning, financing, directing, managing or supervising trafficking in stolen property.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result. “Knowing,” “with knowledge” or equivalent terms have the same meaning. You must realize that knowledge is a state of mind which can be determined by drawing an inference from one’s conduct, words or actions, and from all of the surrounding circumstances. It, therefore, is not necessary that the State produce witnesses to testify that the defendant said he/she knew the property was stolen. His/Her state of mind is to be determined by you after you examine his/her conduct and actions, all that was said or done at that particular time and place, and all the surrounding circumstances.

The fourth element that the State must prove beyond a reasonable doubt is that at the time the defendant dealt in the property he/she knew it had been stolen.

(Charge Whichever, if any, of the Following are Applicable)²

(1) If you find proof of the purchase or sale of property by the defendant at a price substantially below its fair market value, unless satisfactorily explained, you may infer that the defendant knew that it had been stolen³;

and/or

(2) If you find proof of the purchase or sale of property by a dealer in that property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, or the property or the job lot of which it is a part was bought, received, possessed or

² In the appropriate case, the jury may be advised that knowledge that the property was stolen may be inferred from the presence of the factors set forth in 2C:20-7.1e if there is a factual basis to do so in the evidence, but it must be made clear that the inference is permissive, not conclusive; that it must be considered along with all the other evidence in the case; and that it in no way shifts the burden of proof from the State to the defendant. See State v. Bott, 53 N.J. 391 (1969) and State v. DiRienzo, 53 N.J. 360 (1969).

³ The language “you may infer” has been substituted for the statutory language of “gives rise to an inference” pursuant to N.J.S.A. 2C:1-13(e). See also State v. Bott, supra and State v. DiRienzo, supra.

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controlled in broken succession or title, so that it cannot be traced, by appropriate documents, in unbroken succession to the manufacturer, in all cases where the regular course of business reasonably indicates records of purchase, transfer or sale, unless satisfactorily explained, you may infer that the person buying or selling the property knew that it had been stolen.

“Dealer in property” means a person who buys and sells property as a business.⁴
and/or

(3) If you find proof that a person buying or selling property of the sort received, obtained such property without having ascertained by reasonable inquiry that the person from whom he/she obtained it had a legal right to possess or control it, you may infer that such person knew that it had been stolen.

(Charge When Any of (1), (2), or (3) Above is Charged)

You are never required or compelled to draw any inference. It is your exclusive province to determine whether the facts and circumstances shown by the evidence support any inferences and you are always free to accept or reject them if you wish.

**(NOTE): THE FOLLOWING PARAGRAPH SHOULD NOT BE CHARGED
IF AN AFFIRMATIVE DEFENSE WILL BE CHARGED)**

If you find that the State has proven each of these elements beyond a reasonable doubt, then you must find the defendant guilty. If on the other hand you find that the State has failed to prove one or more of these elements beyond a reasonable doubt, then you must find the defendant not guilty.

(Charge When Applicable)

The defendant contends that he/she:

- (1) Was unaware that the property or service was that of another and/or
- (2) Acted under an honest claim of right to the property or service involved or that he/she had a right to acquire or dispose of it as he/she did.

The defendant is not required to prove his/her contentions; rather the burden is on the State to prove that the defendant was unaware that the property was that of another and/or did not act under an honest claim of right to the property or service involved or that he/she had a

⁴ N.J.S.A. 2C:20-1(j).

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right to acquire or dispose of it as he/she did.

If you find that the State has proven each of the elements of the crime beyond a reasonable doubt and has also proven beyond a reasonable doubt that the defendant was aware that the property was that of another (and) (that the defendant did not act under an honest claim of right to the property or a belief that he/she had the right to acquire or dispose of it as he/she did), then you must find the defendant guilty. If, on the other hand, you find that the State has failed to prove one or more of the elements beyond a reasonable doubt or that the State has failed to prove beyond a reasonable doubt that the defendant was aware that the property was that of another (or that the defendant did not act under an honest claim of right to the property or a belief that he/she had the right to acquire or dispose of it as he/she did), then you must find the defendant not guilty.

(NOTE: **DO NOT CHARGE THE FOLLOWING FOR CERTAIN TYPES OF PROPERTY SUCH AS AN AUTOMOBILE OR FIREARM. SEE N.J.S.A. 2C:20-2b(2)(b) and (c).**

Since the value of the property involved determines the degree or severity of the crime, the State must also prove its value beyond a reasonable doubt. If you find the defendant guilty, then you must indicate whether you find the value of the property involved:

- (1) exceeds \$500;
- (2) is at least \$200, but does not exceed \$500; or
- (3) is less than \$200.⁵

Value is to be determined by the fair market value of the property at the time the defendant is alleged to have trafficked in, or initiated, organized, planned, financed, directed, managed, or supervised trafficking in stolen property. Fair market value means the price that a buyer would be willing to pay and a seller would be willing to accept if both parties were aware of all the relevant surrounding circumstances and neither party were under any compulsion to buy or sell.

⁵ N.J.S.A. 2C:20-2(b); see also State v. Portuondo, 277 N.J. Super. 337 (App. Div. 1994).