1481 RECEIVING STOLEN PROPERTY — § 943.34

Statutory Definition of the Crime

Receiving stolen property, as defined in § 943.34 of the Criminal Code of Wisconsin, is committed by one who knowingly or intentionally receives or conceals stolen property.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant (knowingly) (intentionally) (received) (concealed)[1] the (describe property) .

   ["Intentionally" requires that the defendant had the mental purpose to (receive) (conceal) the property.][2]

   ["Knowingly" requires that the defendant believed (he) (she) (received) (concealed) the property.][3]

   GIVE ONE OR BOTH OF THE FOLLOWING INSTRUCTIONS IN BRACKETS AS REQUIRED BY THE EVIDENCE:[4]

   ["To receive" means to acquire possession or control over the property.][5]

   ["To conceal" means to hide the property or to do something else which prevents or makes more difficult the discovery of the property.][6]

2. The (describe property) was stolen property.[7]

Property is stolen property when it has intentionally been taken from the owner without consent and with the intent to deprive the owner of its possession permanently.[8]

3. When the property was (received) (concealed), the defendant knew that it was stolen property.[9]

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent or knowledge. Intent and knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.[10]

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

IF A FELONY OFFENSE IS CHARGED BASED ON THE PROPERTY BEING A FIREARM, ADD THE FOLLOWING.[11]

[If you find the defendant guilty, answer the following question:

"Was the property a firearm?"

A firearm is a weapon that acts by force of gunpowder.[12]

Answer: "yes" or "no."]

IF A FELONY OFFENSE IS CHARGED, BASED ON THE VALUE OF THE PROPERTY, A JURY DETERMINATION OF VALUE MUST BE MADE.

ADD THE FOLLOWING IF THE EVIDENCE WOULD SUPPORT A FINDING THAT THE VALUE WAS MORE THAN THE AMOUNT STATED IN THE QUESTION.[13]

[Determining Value]

[If you find the defendant guilty, answer the following question:

("Was the value of the property more than $10,000?"

Answer: "yes" or "no.")

("Was the value of the property more than $5,000?"

Answer: "yes" or "no.")

("Was the value of the property more than $2,500?"

Answer: "yes" or "no.")

"Value" means the market value of the property or the replacement cost, whichever is less.[14] Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the value of the property was more than the amount stated in the question.]

COMMENT

Wis JI-Criminal 1481 was originally published in 1966 and revised in 1981, 1989, 1991, and 2003. The 2003 revision adopted a new format and made nonsubstantive changes in the text and reflected changes in the amount determining the penalty made by 2001 Wisconsin Act 109. This revision was approved by the Committee in February 2012; it reflects changes made by 2011 Wisconsin Act 99.

2011 Wisconsin Act 99 [effective date: December 21, 2011] amended § 943.34(1) to refer to "knowingly or intentionally" receiving stolen property and amended § 943.34(1)(bm) to apply the Class H felony penalty to receiving a stolen firearm as well as to property whose value exceeds $5,000.

The amounts determining the penalty were changed twice during the 2000-2001 legislative session. The amount making the offense a felony was increased to $2,500 by 2001 Wisconsin Act 16, effective date: September 1, 2001. The penalty structure was revised again by 2001 Wisconsin Act 109 [effective date: February 1, 2003]. See footnote 10, below.

The purpose of the 1989 revision was to reflect a change made in § 943.34 by 1987 Wisconsin Act 332. Effective July 1, 1989, § 943.34 is amended to eliminate receipt of stolen property from a child as a fact increasing the penalty for this offense. A separate statute now addresses that offense. See § 948.62 and Wis JI-Criminal 2180.

1. The Committee recommends that either "receives" or "conceals" be used in the instruction where the evidence makes that election possible. There is no authority specific to this statute requiring election of one alternative. However, cases interpreting the theft statute, § 943.20, address a closely comparable situation and hold that the statute identifies different ways of committing the offense: by taking and carrying way, or by using, by transferring, by concealing, or by retaining possession of property of another. The alternatives may not be charged in the disjunctive, Jackson v. State, 92 Wis.2d 1, 284 N.W.2d 685 (Ct. App. 1979); the jury must unanimously agree on the manner in which the statute was violated, State v. Seymour, 183 Wis.2d 682, 515 N.W.2d 874 (1994). See Wis JI-Criminal 517 for an instruction on jury agreement.

2. "Intentionally" is defined in § 939.23(3). The definition changed effective January 1, 1989, though both the old and new version have "mental purpose" as one definition of "intentionally." It is the other alternative that changed from "reasonably believes his act, if successful, will cause that result" to "is aware that his conduct is practically certain to cause that result." See Wis JI-Criminal 923A and 923B. The Committee concluded that the "mental purpose" part of the definition is most likely to apply in the context of this offense.

3. This was added to the instruction as part of the 2012 revision because "knowingly" was added to § 943.34 by 2011 Wisconsin Act 99. See § 939.23(2): "'Know' requires only that the actor believes that the specified fact exists." Because "intentionally" already requires knowledge (see § 939.23(3)), the purpose of the change is not apparent to the Committee.

4. See note 1, supra.

5. Control over the property constitutes receipt within the meaning of the Code. 2 Wharton Criminal Law and Procedure (Anderson ed. 1957) § 569, pp. 287-88; Baldwin, "Criminal Misappropriations in Wisconsin—Part II," 44 Marq. L. Rev. 430, 454 (1961).

6. The 2002 revision changed this definition to make it more understandable; no change in meaning was intended. As revised, the definition conforms to the one used in Wis JI-Criminal 2168 for violations of § 948.31(3)(a) involving concealing a child from a parent. That definition was termed "correct" in State v. Inglin, 224 Wis.2d 764, 592 N.W.2d 666 (Ct. App. 1999).

7. A prior theft or other misappropriation in violation of the Criminal Code is an essential element of the crime. Accordingly, the state must prove beyond a reasonable doubt that the property was stolen property. State v. Godsey, 272 Wis. 406, 75 N.W.2d 572 (1956). The term "stolen" is not defined in the Criminal Code. Necessarily, the term includes all forms of theft covered by § 943.20(1) of the Criminal Code. See note 8, below.

8. The definition of "stolen property" provided in the instruction is appropriate for the usual case where the property was obtained by theft under § 943.20(1)(a). The standard instruction must be

modified if the property was obtained by fraudulent representation or other type of criminal misappropriation.

9. Section 939.23(3) provides that when the word "intentionally" is used in a statute, it requires "knowledge of those facts which are necessary to make the conduct criminal and which are set forth after the word 'intentionally'." Also see, State v. Godsey, 272 Wis. 406, 75 N.W.2d 572 (1956); Oosterwyk v. State, 242 Wis. 398, 8 N.W.2d 346 (1943); Heyroth v. State, 275 Wis. 104, 81 N.W.2d 56 (1956); Meath v. State, 174 Wis. 80, 82, 83, 182 N.W. 334 (1921).

10. Evidence that the defendant was in "unexplained possession of recently stolen property" will often be offered as evidence tending to prove knowledge that the property was stolen. Caution should be exercised in instructing the jury on this issue, see Wis JI-Criminal 173, Circumstantial Evidence – Unexplained Possession of Recently Stolen Property, and the Comment to that instruction.

11. 2011 Wisconsin Act 99 [effective date December 21, 2011] amended § 943.34(1)(bm) to provide that a violation of the statute is a Class H felony "if the property is a firearm." Formerly, the Class H felony penalty applied only if the value of the property exceeded $5,000. The Committee has concluded that addressing these penalty-increasing facts by submitting a special question is the most efficient approach.

12. Harris v. Cameron, 81 Wis. 239, 51 N.W. 437 (1892).

13. The jury must make a finding of the value of the stolen property if the felony offense is charged and if the evidence supports a finding that the required amount is involved. Heyroth v. State, 275 Wis. 104, 81 N.W.2d 56 (1957). While value may not, strictly speaking, be an element of the crime, it determines the range of permissible penalties and should be established "beyond a reasonable doubt." The Committee concluded that if the misdemeanor offense is charged, the jury need not make a finding as to value.

The amounts determining the penalty were changed twice during the 2000-2001 legislative session. The amount making the offense a felony was increased to $2,500 by 2001 Wisconsin Act 16, effective date: September 1, 2001. The penalty structure was revised again by 2001 Wisconsin Act 109 [effective date: February 1, 2003]. The revised penalties are as follows:

- if the value of the property does not exceed $2,500, the offense is a Class A misdemeanor;
- if the value of the property exceeds $2,500 but not $5,000, the offense is a Class I felony;
- if the value of the property exceeds $5,000 but not $10,000, the offense is a Class H felony; and,
- if the value of the property exceeds $10,000, the offense is a Class G felony.

The questions in the instruction omit the upper limits of the categories for Class I and Class H felonies; it is no defense that the value was actually greater than the amount alleged. More than one question may be presented to the jury, however. If the evidence would allow a reasonable jury to find, for example, that the value did not exceed $10,000 but did exceed $5,000, the two relevant questions could be submitted. The Committee concluded that if the misdemeanor offense is charged, the jury need not make a finding as to value.

14. This is based on the definition provided in § 943.20(2)(d). See note 9, Wis JI-Criminal 1441.

