Revised 3/21/05

RECEIVING STOLEN PROPERTY
(N.J.S.A. 2C:20-7a)

The defendant is charged with the crime of receiving stolen property. **[Describe the property allegedly involved]**. This charge is based on a statute which reads:

> A person is guilty of theft if he knowingly receives (or brings into this State) movable property of another knowing that it has been stolen, or believing that it has probably been stolen.[1]

Under this statute the State must prove three elements beyond a reasonable doubt to establish that a defendant is guilty of receiving stolen property. These elements are:

1. That the defendant knowingly received (or brought into this State) movable property of another;
2. That the property was stolen[2];
3. That the defendant either knew that the property had been stolen or believed that it had probably been stolen at the time he/she received the property (or brought the property into this State).

The first element that the State must prove beyond a reasonable doubt is that the defendant knowingly received (or brought into this State) movable property of another. The term "receive" means to acquire possession, control, or title (or to lend on the security) of the property.[3]

(Charge Model Charge on Possession, N.J.S.A. 2C:2-1c)

The term "movable property" means property, the location of which can be changed (including things growing on, affixed to, or found in land, and documents, although the rights represented thereby have no physical location).[4]

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[1] The language "or brings into this State" is placed in parentheses to suggest that in a case where there is nothing to indicate that this language applies, consideration might be given to deleting the language and thereby eliminating unnecessary verbiage.

[2] State v. Hodde, 181 N.J. 375 (2004).

[3] N.J.S.A. 2C:20-7a. It is suggested that the language "or to lend on the security" only be charged when it applies to the facts of the case.

[4] N.J.S.A. 2C:20-1e. It is suggested that the language relating to things on land or documents be charged only when it applies to the facts of the case.

The term "property" means anything of value.[5] "Property of another" means property in which the defendant does not have a lawful interest.[6] The State need not, however, prove the identity of the owner, the identity of the original thief, or the identity of the person from whom the defendant received the 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.[7]

The second element that the State must prove beyond a reasonable doubt is that the property was stolen. Stolen property means property that has been the subject of any unlawful taking. An unlawful taking occurs when a person takes or exercises unlawful control over the property of another with the purpose, that is, the conscious object, of depriving the other of it permanently or for so extended a period as to appropriate a substantial portion of its economic value.[8]

A person acts purposely with respect to the nature of his/her conduct or a result of his/her conduct if it is the person's conscious object to engage in conduct of that nature or to cause such a result. That is, a person acts purposely if he/she means to act in a certain way or to cause a certain result. A person acts purposely with respect to attendant circumstances if the person is aware of the existence of such circumstances or believes or hopes that they exist.[9]

The third element that the State must prove beyond a reasonable doubt is that the defendant either knew that the property had been stolen or believed that it had probably been

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5 N.J.S.A. 2C:20-1g. The statutory definition gives examples of various types of property as being included in the definition, such as trade secrets and choses in action. Reference should be made to the statutory definition in particular cases to determine whether additional language should be charged.

6 N.J.S.A. 2C:20-1h. This is not the complete definition of "property of another," but should be sufficient in the usual case. The definition goes on to address joint ownership issues, contraband, and security interests. When applicable under the facts of a case, this language should be included.

7 N.J.S.A. 2C:2-2b(2).

8 N.J.S.A. 2C:20-1a. and p.

9 N.J.S.A. 2C:2-2b(1).

stolen at the time the defendant received the property (or brought the property into this State).

Mere proof that the property was stolen is not sufficient to establish this element. Rather, what the State must prove is that the defendant either knew that the property was stolen or believed that it had probably been stolen. I have already defined the term "knowing" to you in discussing the first element and I will not repeat it here. A belief that property has probably been stolen is a belief that it is more likely than not that the property had been stolen.

You must realize that knowledge, purpose, and belief are states of mind which cannot be seen but can only be determined by drawing inferences 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 or believed 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.[10]

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[10] In the appropriate case, the jury may be advised that such knowledge or belief may be inferred from the presence of the factors set forth in N.J.S.A. 2C:20-7b if the evidence provides a factual basis for such an instruction. See State v. Humphrey, 183 N.J. Super. 580 (Law Div. 1982); N.J.R.E. 303; N.J.S.A. 2C:1-13e.

If the jury is instructed as to an inference permitted by N.J.S.A. 2C:20-7b, care should be taken to avoid the use of the term "presumption" and it should be clearly stated that the inference is only permissive in nature. Thus, language such as the following should be charged:

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

It should also be noted that aside from the inference authorized by the statute, there is a question as to whether recent unexplained possession of stolen property permits an inference of guilty knowledge. The former receiving stolen property statute (N.J.S.A. 2A:139-1) provided for such an inference (see State v. DiRienzo, 53 N.J. 360 (1969) and one trial level court has held that a common law inference still may be drawn even in the absence of a specific statutory authorization. State in the Interest of L.L.A., 178 N.J. Super. 555 (J. & D.R. Ct. 1980); cf. State v. Burch, 179 N.J. Super. 336 (App. Div. 1981) certif. den. 89 N.J. 396 (1981) (applying inference in theft by unlawful taking prosecution under N.J.S.A. 2C:20-3.); see also State v. Ippolito, 287 N.J. Super. 375, 383 (App. Div. 1996) (holding in theft by unlawful taking case that "{t}he inference charge is given when there is a dispute concerning the identity of the person who physically took the property," but "is inappropriate where . . . defendant admits that he took the property and possessed it from the time it was taken until it was recovered but he has explained his possession as a claim of right.")

To reiterate, the three elements which the State must prove are:

1. That the defendant knowingly received (or brought into this State) movable property of another;
2. That the property was stolen;
3. That the defendant either knew that the property had been stolen or believed that it had probably been stolen when he/she received it (or brought it into this State).

If you find that the State has proven all three elements of this offense beyond a reasonable doubt, you must find the defendant guilty. On the other hand, if you find that the State has failed to prove any element beyond a reasonable doubt, you must find the defendant not guilty.

[AFFIRMATIVE DEFENSE[11] - CHARGE IF APPLICABLE]

Defendant contends that he/she received (or brought into this State) the property with purpose to restore it to its owner. I have already defined purpose for you. It is the State's burden to prove beyond a reasonable doubt that defendant did not receive (or bring into this State) the property with purpose to restore it to its owner.

If you find that the State has proven all three elements of this offense beyond a reasonable doubt, and you find that the State has proven beyond a reasonable doubt that defendant did not receive (or bring into this state) the property with purpose to return it to its

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In contrast, one commentator has suggested that the "common law inference does not appear to have survived the enactment of the Code," at least with respect to receiving, as opposed to unlawful taking, prosecutions. Cannel, Title 2C: CRIMINAL CODE ANNOTATED, COMMENT TO N.J.S.A. 2C:20-7 at p. 437.

If the inference of guilty knowledge from recent, unexplained possession of stolen property is to be charged, care should be taken not to charge it in such a manner or under such circumstances as to violate a non-testifying defendant's right to remain silent. This issue is discussed in State v. Burch, supra, 179 N.J. Super. 336. There, the court stated that "when it is clear from the record that defendant is the only source to supply (an) explanation, the instruction is prejudicial and should not be given." Id. However, the court also noted that in a stolen property case some evidence, other than the defendant's testimony, "such as a sales slip or sales clerk," is usually available to the defense "to account for innocent possession." Id. at 343. Thus, the court concluded that the instruction concerning the inference was proper even though "there (was) an absence of a specific showing in the record as to the availability of an evidence source other than the defendant's own testimony . . ." Id. at 343-44; see also State v. DiRienzo, 53 N.J. 360 (1969) and State v. Dent, 51 N.J. 428 (1968) which are discussed in Burch.

[11] N.J.S.A. 2C:20-7a.

owner, you must find the defendant guilty. On the other hand, if you find that the State has failed to prove any element beyond a reasonable doubt, or that the State has failed to prove beyond a reasonable doubt that defendant did not receive (or bring into this state) the property with purpose to return it to its owner, you must find the defendant not guilty.

[GRADING]

Since the value of the property involved determines the degree or severity of the crime,[12] 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.

Value is to be determined by the fair market value of the property at the time the defendant is alleged to have received or brought into this State the movable property of another. 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.

[12] 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).