

**CRIMINAL POSSESSION OF STOLEN PROPERTY
IN THE FIFTH DEGREE
Penal Law § 165.40
(Committed on or after Nov. 1, 1986)**

The (*specify*) count is Criminal Possession of Stolen Property in the Fifth Degree.

Under our law, a person is guilty of Criminal Possession of Stolen Property in the Fifth Degree when that person knowingly possesses stolen property, with intent to benefit himself or herself or a person other than an owner thereof or to impede the recovery by an owner thereof.

The following terms used in that definition have a special meaning:

A person KNOWINGLY possesses stolen property when that person is aware that he or she is in possession of property and is aware that such property is stolen.¹

[NOTE: If the property consists of three or more airline tickets or two or more credit, debit or public benefit cards, or if the defendant is a collateral loan broker or dealer in property, add the appropriate presumption(s) from the "Additional Charges" section of this Article.]

POSSESS means to have physical possession or otherwise to exercise dominion and control over tangible property.²

PROPERTY means any money, personal property or thing of value.³

¹See Penal Law § 15.05(2).

²See Penal Law §10.00(8). Where constructive possession is alleged, insert the appropriate instruction as found in the "Additional Charges" section at the end of this chapter.

³See Penal Law § 155.00(1), for the full definition of "property." If the property in issue is "computer data" or a "computer program," and those terms need to be defined for the jury, see Penal Law § 156.00(2) and (3).

STOLEN PROPERTY is property that has been wrongfully taken, obtained, or withheld from an owner by a person who did so with the intent to deprive another of such property or to appropriate such property to himself or herself or a third person.⁴

INTENT means conscious objective or purpose.⁵ Thus, a person acts with intent to benefit himself or herself or a person other than an owner of property or to impede the recovery of property by an owner when that person's conscious objective or purpose is to do so.

Under our law, a person who knowingly possesses stolen property is presumed to possess it with the intent to benefit himself or herself or a person other than an owner thereof or to impede its recovery by an owner thereof.⁶ This means that, if the People have proven beyond a reasonable doubt that the defendant knowingly possessed stolen property, you may, but you are not required to, infer from that fact that the defendant possessed it with the intent to benefit himself/herself or a person other than an owner thereof or to impede its recovery by an owner thereof.

An OWNER means a person having a right to possession of the property superior to that of the person who possesses it.⁷

[NOTE: Add if appropriate:

It is not a defense to this charge:

(Select appropriate alternative[s]:

that the person who stole the property has not been

⁴See Penal Law § 155.05(1).

⁵See Penal Law § 15.05(1).

⁶See Penal Law § 165.55(1).

⁷See, Penal Law § 155.00(5), which has been modified for this crime. Also see that section for special definitions of "owner" to cover the situations (1) where the alleged owner obtained the property by theft, (2) where the alleged owner is a joint or common owner of the property, and (3) where the property is in the possession of the alleged owner but some other person has a security interest in the property.

convicted, apprehended, or identified.⁸

and/or

that the defendant stole or participated in the theft of the property.⁹

and/or

that the theft of the property did not occur within this state.]]¹⁰

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name), knowingly possessed stolen property; and
2. That the defendant did so with the intent to benefit himself/herself or a person other than an owner of such property or to impede the recovery of such property by an owner.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

⁸See Penal Law § 165.60(1).

⁹See Penal Law § 165.60(2).

¹⁰See Penal Law § 165.60(3).