

Receiving s 433 (Before 1 December 2008)

The prosecution must prove beyond a reasonable doubt that:

1. The defendant received the property.

The prosecution can prove that the defendant received the property if it establishes that, either alone or jointly with some other person, he had it in his possession (or he aided in concealing it or disposing of it¹).

A person possesses something if:

- (a) he has it in his physical custody; or
- (b) he knowingly has it under his control.

2. The property was obtained by means of any act constituting an indictable offence.

Property is stolen if it is taken from the owner, without the owner's consent and with an intent to permanently deprive the owner of it.

3. At the time the defendant received the property he had reason to believe that the property was stolen.^{2 3} (This applies to offences committed after 1 July 1997

¹ Section 433(7).

² See Gleeson CJ in *Watkins* ([unreported, Court of Criminal Appeal NSW, 5 April 1995](#)) in which His Honour said:

“In my belief the common direction that is presently given on the issue of guilty knowledge in cases of receiving is as follows:

The Crown must prove and prove beyond reasonable doubt that at the time when an accused received the goods he knew that they were stolen or obtained in circumstances amounting to felony. The receipt of stolen goods in circumstances where the person receiving them did not know that the goods were stolen or obtained feloniously does not constitute the crime of receiving. It is an essential feature of the offence that the person receiving the goods knew that they were stolen or feloniously obtained. But if a person believes the goods to be stolen or feloniously obtained at the time when he receives them, that is sufficient to constitute the requisite guilty knowledge since belief without actual knowledge is sufficient. The knowledge required to constitute the offence need not be such as would be required if the accused had actually seen the property stolen.

Indeed, it is not necessary that the accused knew when or by whom the property was stolen. In order to prove the required knowledge of the accused it is sufficient if you as judges of the facts think that the circumstances accompanying his receipt of the goods were such that they made the accused believe the goods were stolen goods. Mere negligence or carelessness or even recklessness in not realising that the goods were stolen does not create guilt. The test is not ‘Ought he to have realised that they were stolen?’ It is ‘Did he realise that they were stolen?’

However, if you think that the facts known to him would have put a reasonable man on inquiry, that would be a relevant factor when you are considering whether he did not know it. It must be kept in mind that the issue finally for you to determine and the Crown to prove beyond reasonable doubt is ‘What did the accused believe?’ not ‘What would the ordinary man have believed?’

That in my view is an appropriate direction.”

³ See notes on Recent Possession.

– see footnote 3. Otherwise, for offences committed earlier, it would be appropriate to follow the direction given by Gleeson CJ in *Watkins*, reproduced in footnote 1).

The defendant’s state of mind as to the property being stolen must be more than suspicion, but it does not require the defendant to have actually seen the property being stolen, nor does it require him to know when and by whom the property was stolen.

It is sufficient for the prosecution to prove that the circumstances surrounding the defendant’s receipt of the property were such that he had reason to believe that the property was stolen.

Mere negligence, or carelessness or even recklessness in not realising that the property was stolen is not enough however if you think that the facts known to the defendant would have put a reasonable man on inquiry that would be a relevant factor when you are considering whether he had reason to believe it was stolen.⁴

Where the thing so obtained has been –

1. converted into other property in any manner whatsoever; or
2. mortgaged or pledged or exchanged for any other property;
3. any person who, having reason to believe –
4. that the said property is wholly or in part the property into which the thing so obtained has been converted or for which the same has been mortgaged or pledged or exchanged; and
5. that the thing so obtained was obtained under such circumstances as to constitute a crime under s 433(1);
6. receives the whole or any part of the property into which the thing so obtained has been converted, mortgaged, pledged or exchanged, also commits the offence (see s 433(2)).

⁴ The words “had reason to believe” that the property was obtained by means of the commission of an indictable offence, were inserted by Act No. 3 of 1997 and apply in relation to offences occurring on or after 1 July 1997. For offences committed prior to that date, the prosecution have to prove that the defendant knew that the property had been so obtained.