

## Receiving s 433<sup>1</sup> (From 1 December 2008)

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The prosecution must prove 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 it<sup>2</sup>).

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 tainted property; that is, it was obtained by way of stealing (or some other act constituting an indictable offence; or it is the property into which tainted property was converted or is the proceeds of a mortgage, pledge or exchange of tainted property<sup>3</sup>).

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.

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

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<sup>1</sup> The offence is a prescribed offence under s 161Q *Penalties and Sentences Act 1992* so a serious organised crime circumstance of aggravation is applicable.

<sup>2</sup> Section 433(2).

<sup>3</sup> See the definition of tainted property in s 432(1); and note, property stops being tainted property after a person acquires a lawful title to it; s 432(2).

**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.**