

171. Recent Possession

171.1 Legislation

[Last reviewed: February 2025]

Criminal Code

[Section 391](#) – Definition of Stealing

[Section 433](#) – Receiving Tainted Property

171.2 Commentary

[Last reviewed: February 2025]

The doctrine of recent possession is that if a Defendant is found in possession of property that has only recently been stolen, without reasonable explanation, those circumstances support the inference the Defendant stole it or received it, knowing it was stolen.

In *Bruce v The Queen* ([1987](#)) 74 ALR 219, the High Court (Mason CJ, Brennan, Deane, Dawson and Gaudron JJ) said at [1] that:

Where an accused person is in possession of property which is recently stolen, the jury is entitled to infer as a matter of fact, in the absence of any reasonable explanation, guilty knowledge on the part of the accused. Such an inference will be drawn from the unexplained fact of possession of such property and not from any admission of guilt arising from the failure to proffer an explanation. It is the possession of recently stolen property in the absence of explanation or explanatory circumstances, which enables the inference to be drawn. Thus the absence of any reasonable explanation must not itself be explicable in a manner consistent with innocence.

The explanation having been given, it is for the jury to say on the whole of the evidence whether the Defendant is guilty or not guilty.

The burden of proof on this issue lies on the prosecution.

171.3 Suggested Direction

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The prosecution relies on what it alleges was the recent possession of the [identify the relevant property] by the Defendant, which the prosecution says is stolen.

Where a Defendant is in possession of property which has recently been stolen the jury may – not must – in the absence of any reasonable explanation, draw the inference that the Defendant stole the property or received the property.

Before such an inference can be drawn, the prosecution must prove that:

- 1. The Defendant was in possession of the property, in this case the [property in question].**

Possession means that the Defendant knew it was there and had control over it.

[Refer to the evidence on whether the Defendant had possession].

- 2. The property had recently been stolen.**

There is no rule about what length of time qualifies as recent. It depends on the circumstances generally, and particularly on the nature of the property stolen. If the property stolen is commonplace, the time would be very short. If on the other hand, the thing was uncommon or unusual, the time would be longer.

[Refer to the evidence on this point].

The Defendant must have had an opportunity to give an explanation in circumstances where if [he/she] is innocent an explanation might reasonably be expected. [Enlarge on the evidence on this point].

(As appropriate, add the following): Those circumstances do not include the Defendant, having been duly cautioned, declining to answer questions by the police. They also do not include the Defendant's decision not to give or call evidence in [his/her] own defence.

(Where appropriate, add the following): The Defendant has given an explanation and if you accept that explanation or think it might be true, even though not convinced that it is true, the prosecution has not discharged the onus it has of satisfying you beyond reasonable doubt of the guilt of the Defendant.