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¶ 23A.02 Receiving Stolen Government Property (18 U.S.C. § 641)

Instruction 23A-7 The Indictment and the Statute

The indictment charges the defendant with receiving (*or* concealing *or* retaining) stolen money or property belonging to the United States government. The indictment reads as follows:

[Read Indictment]

The indictment charges the defendant with violating [section 641 of Title 18 of the United States Code](#). That section provides in relevant part:

Whoever receives, conceals, or retains [any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof] with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted [shall be guilty of a crime].

Comment

See Comment to Instruction 23A-1, *above*.

Instruction 23A-8 Elements of the Offense

In order to prove the defendant guilty of receiving (*or* concealing *or* retaining) stolen money or property belonging to the United States government, the government must prove each of the following elements beyond a reasonable doubt:

First, that the money or property described in the Indictment belonged to the United States government;

Second, that the defendant received (*or* concealed *or* retained) that property;

Third, that the defendant knew the property was stolen;

Fourth, that the defendant acted knowingly and willfully with the intent to convert the property; and

Fifth, that the value of the property was greater than \$1,000.

Authority

Third Circuit: [*United States v. Stuart*, 22 F.3d 76 \(3d Cir. 1994\)](#); *United States v. Trzcinski*, 553 F.2d 851 (3d Cir. 1976).

Instruction 23A-9 First Element—Money or Property Belonged to United States

The first element the government must prove beyond a reasonable doubt is that the money or property described in the Indictment belonged to the United States government.

To satisfy this element, the government must prove that [describe property] was a “thing of value of the United States.” That means that at the time the property was allegedly stolen (*or* received *or* concealed *or* retained) the United States government or an agency of the United States government had either title to, possession of or control over the property (*or* the property was made under contract for the United States).

The government is not required to prove that the defendant knew that the property was a “thing of value of the United States.”

Comment

For a general discussion of this element, see Comment to Instruction 23-3, *above*.

¹ See [31 C.F.R. § 315.28\(b\)](#).

² [United States v. Stuart, 22 F.3d 76, 80 \(3d Cir. 1994\)](#); [United States v. Bauer, 713 F.2d 71, 73 \(4th Cir. 1983\)](#); [United States v. Carr, 706 F.2d 1108, 1109–11 \(11th Cir. 1983\)](#).

Note that under certain limited circumstances the property in question may not have belonged to the United States at the time of the taking, but became government property at some later date. This commonly occurs when government bonds are stolen from a third-party owner and the government provides relief to that owner by replacing the bonds.¹ In that situation, the stolen bonds become property of the United States at the time relief is granted, so retaining the bonds after that time satisfies this element.²

Unlike the situation with stealing and embezzling, there has not been any discussion concerning receiving intangible property. Accordingly, language concerning that issue is not included in Instruction 23A-9, although it might be appropriate to add if the situation should arise.

Instruction 23A-10 Second Element—Defendant Received Property

The second element the government must prove beyond a reasonable doubt is that the defendant received (*or* concealed *or* retained) that property.

A person receives property when he or she takes possession of it.

Authority

District of Columbia Circuit: [United States v. Morgan, 393 F.3d 192 \(D.C. Cir. 2005\)](#).

Instruction 23A-11 Third Element—Knowledge that Property Was Stolen

The third element the government must prove beyond a reasonable doubt is that the defendant knew the property was stolen.

To satisfy its burden on this element, the government must prove both that the property was stolen and that the defendant knew it was stolen.

To act knowingly means to act intentionally and voluntarily, and not because of ignorance, mistake, accident or carelessness. Whether the defendant acted knowingly may be proven by the defendant's conduct and by all of the circumstances surrounding the case.

Authority

Second Circuit: [*United States v. Golomb*, 811 F.2d 787 \(2d Cir. 1987\)](#).

Third Circuit: [*United States v. Stuart*, 22 F.3d 76 \(3d Cir. 1994\)](#).

District of Columbia Circuit: [*United States v. Mudd*, 798 F.2d 1509 \(D.C. Cir. 1986\)](#).

Comment

¹ [*United States v. Golomb*, 811 F.2d 787, 792–93 \(2d Cir. 1987\)](#).

² [*United States v. Stuart*, 22 F.3d 76 \(3d Cir. 1994\)](#); [*United States v. Golomb*, 811 F.2d 787, 792–93 \(2d Cir. 1987\)](#); [*United States v. Mudd*, 798 F.2d 1509, 1515 \(D.C. Cir. 1986\)](#); see also [*United States v. Fairley*, 880 F.3d 198, 210 \(5th Cir. 2018\)](#) (finding erroneous combining of theft and receipt of stolen property provisions of § 641; jury had been provided three different descriptions of essential elements to convict under § 641 in instruction, verdict form, and indictment; “[a]ll included verbs from the ‘receiving prong,’ ” but none included “knowing” requirement, and only one included acting with intent to convert).

³ [*United States v. Golomb*, 811 F.2d 787, 792–93 \(2d Cir. 1987\)](#) (defendant’s belief that the property was stolen is not sufficient).

Knowledge that property received, retained, or concealed was stolen is specifically required by the second paragraph of section 641. Thus, in order to satisfy this element, the government must prove both that the property was stolen¹ and that defendant knew that to be the case.² Thus, if the property was not stolen, as is often the case in sting operations, then this element is not satisfied.³

⁴ Ninth Circuit Model Criminal Jury Instruction 8.40.

⁵ Comment to Ninth Circuit Model Criminal Jury Instruction 8.39.

The Ninth Circuit pattern instruction includes as part of this element knowledge that the property “had been stolen from the United States.”⁴ It is not clear whether this goes beyond Instruction 23A-11 to require proof that the defendant knew that the property belonged to the United States at the time of its theft. There is no caselaw suggesting that such knowledge is an element of the offense, and the Comment to the pattern instruction consists only of a cross-reference to the Comment to the previous instruction concerning the first paragraph of section 641,⁵ which accurately states that knowledge that the property belonged to the United States is not an element.

⁶ See Instruction 3A-1, *above*.

⁷ [*United States v. Mellen*, 393 F.3d 175, 181 \(D.C. Cir. 2005\)](#); [*United States v. Stuart*, 22 F.3d 76, 81 \(3d Cir. 1994\)](#); [*United States v. Fowler*, 932 F.2d 306, 317 \(4th Cir. 1991\)](#); [*United States v. Henderson*, 721 F.2d 276, 277–79 \(9th Cir. 1983\)](#); see Instruction 3A-2, *above*; [*United States v. Romanoff*, 2008 U.S. Dist. LEXIS 116413 \(S.D. Ohio July 16, 2008\)](#) (in bench trial, government could not establish that defendant acted with deliberate ignorance that road signs were stolen by his son, and not purchased at flea markets).

The definition of knowingly is a standard definition.⁶ A deliberate ignorance instruction is appropriate when supported by the evidence.⁷

Instruction 23A-12 Fourth Element—Intent

The fourth element the government must prove beyond a reasonable doubt is that the defendant acted knowingly and willfully with the intent to deprive the government of the use and benefit of its property.

To act knowingly means to act intentionally and voluntarily, and not because of ignorance, mistake, accident or carelessness.

To act willfully means to act with knowledge that one’s conduct is unlawful and with the intent to do something the law forbids, that is to say with the bad purpose to disobey or disregard the law.

Whether the defendant acted knowingly and willfully may be proven by the defendant's conduct and by all of the circumstances surrounding the case.

Authority

United States Supreme Court: [*Morrisette v. United States*, 342 U.S. 246, 72 S. Ct. 240, 96 L. Ed. 288 \(1952\)](#).

Fourth Circuit: [*United States v. Fowler*, 932 F.2d 306 \(4th Cir. 1991\)](#).

Fifth Circuit: [*United States v. Shackelford*, 677 F.2d 422 \(5th Cir. 1982\)](#).

Sixth Circuit: [*United States v. McGahee*, 257 F.3d 520 \(6th Cir. 2001\)](#).

Seventh Circuit: [*United States v. Croft*, 750 F.2d 1354 \(7th Cir. 1984\)](#).

Eighth Circuit: [*United States v. Wilson*, 636 F.2d 225 \(8th Cir. 1980\)](#).

Ninth Circuit: [*United States v. Scott*, 789 F.2d 795 \(9th Cir. 1986\)](#); [*United States v. Eden*, 659 F.2d 1376 \(9th Cir. 1981\)](#).

Eleventh Circuit: [*United States v. McRee*, 7 F.3d 976 \(11th Cir. 1993\)](#); [*United States v. Burton*, 871 F.2d 1566 \(11th Cir. 1989\)](#).

Comment

See Comment to Instruction 23-5, *above*.

Instruction 23A-13 Fifth Element—Value of Property

The fifth and final element the government must prove beyond a reasonable doubt is that the value of the property received (*or concealed or retained*) was greater than \$1,000.

The word “value” means face, par or market value, or cost price, either wholesale or retail, whichever is greater. “Market value” means the price a willing buyer would pay a willing seller at the time the property was stolen (*or at any time during defendant’s receipt or concealment of the property*).

(If appropriate: In determining the value of the property stolen, you may consider the aggregate or total value of the property referred to in the Indictment. If you find that the aggregate value is \$1,000 or less, then you must find the defendant not guilty. On the other hand, if the you find that the aggregate value to be greater than \$1,000, then this element is satisfied.)

Comment

See Comment to Instruction 23-6, above.

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