

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

DAR NO. _____
APPEALS COURT NO. 2025-P-1582

COMMONWEALTH

v.

ERIS A. PAULA-MARIA

DEFENDANT'S APPLICATION FOR DIRECT APPELLATE REVIEW

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FEBRUARY 2026

REQUEST FOR DIRECT APPELLATE REVIEW

The defendant, Eris Adalberto Paula-Maria, requests that the Supreme Judicial Court (SJC) consider his appeal on direct appellate review. This case raises an important issue with respect to the crime of knowingly receiving stolen property. This offense is codified at G. L. c. 266, s. 60. The statutory language creating the offense reads as follows:

Whoever . . . receives . . . stolen or embezzled property, knowing it to have been stolen or embezzled . . . shall be punished.

G. L. c. 266, s. 60.

As is clear from this language, one must knowingly receive stolen property to commit the offense. However, the model jury instructions allow someone to be convicted for the simple act of knowingly possessing stolen property. This is a significant deviation from the statutory language. The act of possessing an item differs from the act of receiving it. An individual receives an item when it is given by another party. In contrast, an individual possesses an item whenever they have the item under their control regardless of how they acquired it. Someone can possess an item without ever having received it from another person. By incorrectly equating the act of

possession with the act of receipt, the model jury instructions allow someone to be convicted of knowingly receiving stolen property under G. L. c. 266, s. 60, without any proof that the person ever received the property in question. The Court should correct this serious flaw in the model jury instructions.

STATEMENT OF PRIOR PROCEEDINGS

The Fitchburg District Court issued a criminal complaint charging the defendant, Eris Adalberto Paula-Maria, with receiving stolen property with a value greater than \$1,200 in violation of G. L. c. 266, s. 60.¹ (R. 3). The defendant proceeded to a jury trial on April 2, 2025. (R. 13-14). The jury found the defendant guilty. (R. 6). The trial judge sentenced the defendant to a year of probation. (R. 12). The defendant filed a timely notice of appeal. (R. 16). The Appeals Court docketed the case on December 26, 2025. (R. 15). The defendant filed his brief and record appendix with the Appeals Court on February 6, 2026.

¹ The citations in this section are to the defendant's record appendix that he filed with the Appeals Court. The appendix will be cited by page number as (R. _).

STATEMENT OF FACTS

The facts are derived from the trial transcript and the evidentiary exhibits introduced at trial.

A. The Missing Motorcycle.

William Pepper purchased an orange Suzuki motorcycle from someone in Leominster in 2021.² (Tr. 108-109). The motorcycle was a model GT185 and it was originally manufactured in 1974. (Tr. 107). Pepper paid approximately \$2,500 for the motorcycle. (Tr. 109). The motorcycle was in excellent condition. (Tr. 109).

On October 14, 2022, Pepper parked the motorcycle on the driveway of his home in Fitchburg. (Tr. 108-111). A day later, he noticed that the motorcycle was no longer parked in this location. (Tr. 107-109). He subsequently called the Fitchburg police department and reported the motorcycle as missing. (Tr. 112).

B. The Recovery of the Motorcycle.

Nearly nineteen months after making his report, Pepper was driving on Electric Avenue in Fitchburg and saw the motorcycle outside of a CVS pharmacy. (Tr. 114). The defendant was riding the

² The trial transcript will be cited by page number as (Tr. _).

motorcycle. (Tr. 115, 125). Pepper called the Fitchburg police to report his observation and followed the defendant as he rode the motorcycle through Fitchburg. (Tr. 115-118). The defendant rode the motorcycle to Maverick Street. (Tr. 115). Pepper called the police again after the defendant stopped on Maverick Street. (Tr. 117-118).

Multiple police officers arrived at Maverick Street shortly thereafter. (Tr. 118). The defendant and a number of other individuals were congregated outside of a residence at 92 Maverick Street. (Tr. 167-168). The motorcycle was parked next to the group. (Tr. 167-170). The motorcycle did not have an ignition lock on it. (Tr. 136). Officer Travis Morcaldi approached the group and engaged them in conversation regarding the motorcycle. (Tr. 125). The defendant stated that he owned the motorcycle. (Tr. 125). Another officer informed the defendant that the motorcycle was stolen.³ (Vid. 2 at 0:00:28). Officer Morcaldi asked the defendant

³ Prior to trial, the Commonwealth cut five video clips from Officer Morcaldi's body-worn camera footage. The Commonwealth only introduced the second, third, and fifth video clip into evidence at trial. (Tr. 177). Each clip depicts a portion of Officer Morcaldi's conversation with the defendant. The video clips will be cited by number and time stamp as (Vid. _ at _:_:_). Copies of the three clips that were introduced into evidence have been provided to the Appeals Court on a zip drive.

where he got the motorcycle. (Vid. 2 at 0:00:35). The defendant stated that he purchased the motorcycle from someone who lived on High Rock Road near Fitchburg High School. (Vid. 2 at 0:00:40). He said that the purchase was arranged through Facebook. (Vid. 2 at 0:00:44). Officer Morcaldi asked the defendant if he still had the messages arranging the purchase on Facebook. (Vid. 2 at 0:01:00). The defendant said that he did not. (Vid. 2 at 0:01:02). One of the other officers asked the defendant if he had a bill of sale from the seller. (Vid. 2 at 1:04). The defendant stated that the seller provided him with a bill of sale but further explained that he did not have this document on his person. (Vid. 2 at 1:06).

Officer Morcaldi asked the defendant for his name and date of birth. (Vid. 2 at 0:01:16). The defendant provided this information as well as his Massachusetts identification card. (Vid. 2 at 0:01:18; Vid. 3 at 0:00:02). After recording the defendant's biographical information, Officer Morcaldi asked the defendant if he remembered the name or address of the seller. (Vid. 3 at 0:00:06). The defendant stated that he did not. (Vid. 3 at 0:00:08). Officer Morcaldi asked where the defendant got the license plate for the motorcycle. (Vid. 3 at 0:00:20). The defendant explained that the license plate was on

the motorcycle when he purchased it. (Vid. 3 at 0:00:24). Officer Morcaldi asked the defendant when he purchased the motorcycle. (Vid. 3 at 28). The defendant said that he bought the motorcycle a couple of months earlier when it was still cold out.⁴ (Vid. 3 at 30). Officer Morcaldi asked the defendant if he had a license to operate a motorcycle. (Vid. 3 at 0:00:50). The defendant said that he did not and explained that he was trying to get the motorcycle ready for the summer. (Vid. 3 at 0:00:56). The defendant did not have a key to the motorcycle. (Tr. 137).

Officer Morcaldi eventually informed the defendant that the motorcycle was going to be towed. (Tr. 137, 162). The defendant was concerned about this and expressed interest in getting the motorcycle back. (Tr. 162). He said that he wanted to buy the motorcycle from its rightful owner (Pepper). (Tr. 138; Vid. 5 at 0:00:10). The defendant asked Officer Morcaldi to tell the owner

⁴ Officer Morcaldi subsequently informed the defendant that, under Massachusetts law, he was obligated to register the motorcycle within a week of purchasing it. (Vid. 3 at 0:00:34). The defendant objected to the introduction of this comment prior to the Commonwealth introducing the video clips from Officer Morcaldi's body-worn camera footage. (Tr. 176-178). The judge ordered the Commonwealth to mute the video clip so that this comment was not played to the jury. (Tr. 178).

that he (the defendant) was willing to purchase the motorcycle if the owner was inclined to sell it. (Vid. 5 at 0:00:12). The defendant emphasized that he had no way of getting in contact with the owner and thus requested that Officer Morcaldi relay his phone number to the owner. (Vid. 5 at 0:00:34).

Officer Morcaldi did not arrest the defendant. (Tr. 171). He instead applied for a criminal complaint charging the defendant with knowingly receiving stolen property with a value greater than \$1,200 in violation of G. L. c. 266, s. 60. (Tr. 171; R. 3). The Fitchburg District Court issued the complaint and the defendant was sent a summons to appear. (Tr. 171; R. 3).

C. The Trial.

The defendant proceeded to a jury trial on April 2, 2025. (R. 13). At trial, the Commonwealth presented its case through the testimony of Pepper and Officer Morcaldi. (Tr. 105-183). In addition to the testimony of these two witnesses, the Commonwealth introduced three video clips taken from Officer Morcaldi's body-worn camera footage. (Tr. 183).

The Commonwealth's theory of the case was that the defendant violated G. L. c. 266, s. 60, by possessing the motorcycle

with knowledge that it was stolen. (Tr. 199-200). In her closing statement, the prosecutor argued that the defendant fabricated his claim that he purchased the motorcycle. (Tr. 197-198). The prosecutor argued that the defendant did not buy the motorcycle and asserted that “[n]obody turned it over to him.” (Tr. 198). She instead argued that the defendant “took” the motorcycle. (Tr. 198). To cast doubt on the defendant’s claim that he purchased the motorcycle, the prosecutor emphasized that the defendant did not have a bill of sale or any other ownership documents and could not provide Officer Morcaldi with the name of the seller. (Tr. 195-197). The prosecutor also highlighted the fact that the defendant did not have a key to the motorcycle as well as the fact that the ignition lock was removed. (Tr. 198-200). With respect to the burden of proof, the prosecutor told the jury that the Commonwealth had to prove that the defendant was in possession of property that he knew was stolen. (Tr. 199-200).

The trial judge provided an identical instruction to the jury regarding the elements of the offense. (Tr. 209). The judge stated as follows:

I'm now going to define for you the elements of the offense. The defendant was charged with receiving stolen property in excess of \$1,200. In order to prove the defendant guilty of this offense, the Commonwealth must prove the following three things beyond a reasonable doubt. First, that the property in question was stolen. Second, that the defendant knew that the property had been stolen. And third, that the defendant knowingly had the stolen property in his possession.

(Tr. 209).

The judge later reemphasized that the Commonwealth “must prove that the defendant possessed the stolen item” and provided an instruction specifying what constitutes possession. (Tr. 211-212).

After instructing on the concept of possession, the judge stated that the Commonwealth “must show that the defendant knowingly received the property.” (Tr. 212). The judge explained that “[a] person receives property by knowingly taking custody or control of it.” (Tr. 212). The judge followed the model jury instructions when describing the elements of the offense. (Tr. 209-213). The defendant did not object to these instructions. (Tr. 217). The jury found the defendant guilty. (Tr. 223).

ISSUE OF LAW RAISED BY THE APPEAL

This case raises an important issue regarding the offense of knowingly receiving stolen property: Can a defendant be convicted

of this offense for the simple act of knowingly possessing stolen property? Or must the defendant actually receive the stolen property from another person?

The defendant did not object to the judge's instructions at trial. The defendant's position on appeal is that the judge's instructions were flawed because they allowed the jury to convict him based on the simple act of knowingly possessing stolen property. The defendant argues that an essential element of the offense is that the accused received stolen property from another person. Due to the defendant's lack of objection at trial, the standard of review asks whether there is a substantial risk of a miscarriage of justice.

ARGUMENT IN SUPPORT OF THE DEFENDANT'S POSITION

As always, the first place to start is the statutory language. *See Patel v. 7-Eleven, Inc.*, 489 Mass. 356, 362 (2022) ("Our analysis begins with the principal source of insight into legislative intent – the plain language of the statute."). The crime of knowingly receiving stolen property is codified at G. L. c. 266, s. 60. The relevant statutory language reads as follows:

Whoever . . . receives . . . stolen or embezzled property, knowing it to have been stolen or embezzled . . . shall be punished.

G. L. c. 266, s. 60.

This language is straightforward. To commit the offense, the defendant must knowingly receive stolen property.

The model jury instructions are inconsistent with this statutory language. Under the model instructions, the Commonwealth does not need to prove that the defendant received the stolen property in question. The Commonwealth simply needs to prove that the defendant “had the stolen property in his possession.”⁵ Criminal Model Jury Instructions for Use in the District Court, Instruction 8.600 (receiving stolen property) (2019).

This is a significant deviation from the statutory language.

Possessing an item is not the equivalent of receiving an item.

Someone receives an item when they are given the item by someone else. Someone possesses an item whenever they have the item under their control regardless of how they acquired it. The two words do not mean the same thing. Someone can possess an item

⁵ A copy of the model jury instructions is appended to this application.

without ever having received it. For instance, consider a person who comes across a twenty-dollar bill lying on the sidewalk and picks it up. That person is in possession of the twenty-dollar bill. Yet that person did not receive the twenty-dollar bill. Nobody would say that the person “received” the twenty-dollar bill from the sidewalk. Of course, the situation would be different if the person got the twenty-dollar bill from someone else. In this situation, it would be proper to say that the person received the twenty-dollar bill because another individual gave it to them.

Consulting a dictionary confirms that there is a distinction between receiving an item and possessing an item. Black’s Law Dictionary provides the following definition for the word “receive”:

To take (something offered, given, sent, etc.); to come into possession of or get from some outside source.

Black’s Law Dictionary 1523 (12th ed. 2024).⁶

The Oxford English Dictionary has a similar definition. It defines the word “receive” as follows:

⁶ The SJC has previously looked to Black’s Law Dictionary to define the word “receive” when interpreting the meaning of the word as it is used in the public records law. *See Rahim v. District Attorney for Suffolk Dist.*, 486 Mass. 544, 547-548 (2020) (consulting dictionary).

To take in one's hand, or into one's possession (something held out or offered by another); to take delivery of (a thing) from another, either for oneself or for a third party.

13 Oxford English Dictionary 314 (2d ed. 1989).

The American Heritage Dictionary offers a comparable definition as well. It reads as follows:

To take or acquire (something given, offered, or transmitted).

American Heritage Dictionary (4th ed. 2004).

As demonstrated by these dictionary definitions, the word "receive" means the act of taking an item being given by someone else.

Possession is a far broader concept. Someone possesses an item whenever they know of its existence and have "the ability and intent to exercise dominion and control over it." *Commonwealth v.*

Santana, 95 Mass. App. Ct. 265, 268 (2019). Unlike the act of receiving an item, the act of possessing an item does not necessitate that the item was acquired from someone else.

The statutory language of G. L. c. 266, s. 60, must be given its plain meaning. *See Commonwealth v. Wassilie*, 482 Mass. 562, 573 (2019) ("A fundamental tenet of statutory interpretation is that statutory language should be given effect consistent with its plain meaning and in light of the aim of the legislature unless to do so

would achieve an illogical result.”). The plain meaning of the word “receive” is to acquire an item given by someone else. Thus, to prove the statutory offense of knowingly receiving stolen property, the Commonwealth must establish that the defendant was given the stolen property by a third party.⁷ Simple possession of stolen property is not enough under the plain meaning of the statutory language. Criminalizing such conduct stretches the statutory language beyond its plain meaning and therefore intrudes upon the

⁷ Numerous courts from other jurisdictions have reached this same conclusion when analyzing statutory language that criminalizes the act of receiving stolen property. *See Fuller v. United States*, 407 F.2d 1199, 1223 (D.C. Cir. 1967) (“[A]n element of the crime of receiving is that the goods be ‘received’ from another person after they are stolen.”); *In re Emerson*, 250 So.2d 439, 441 (La. Ct. App. 1971) (“Receiving is the acceptance of possession by delivery. By implication, it involves a transfer from another individual.”); *State v. Davis*, 607 S.W.2d 149, 152 (Mo. 1980) (“It is an essential element of receiving stolen property that there be at least two actors involved; the accused must receive the property from another, some person other than the owner.”); *Deerfield v. State*, 420 S.W.2d 649, 651 (Tenn. 1967) (“For the defendant to be guilty of the crime of receiving stolen property, it is necessary that he be shown to have received from a third party stolen property, knowing it to be stolen, and with the intention of depriving the true owner thereof.”); *State v. Bleau*, 428 A.2d 1097, 1099 (Vt. 1981) (“[T]he State must prove beyond a reasonable doubt that there was a receiving of the goods from another person.”); *State v. Barker*, 346 S.E.2d 344, 348 (W. Va. 1986) (recognizing that defendant must have “received the property from another person” to be guilty of receiving stolen property).

role of the Legislature. See *Commonwealth v. LeBlanc*, 475 Mass. 820, 824 (2016) (“It is the function of the judiciary to apply the statutory language, not amend it.”).

The Legislature’s omission of statutory language criminalizing the act of knowingly possessing stolen property further suggests that G. L. c. 266, s. 60, was not intended to address this conduct. This is especially true because the Legislature has adopted such language in a similar statute. See *Doe v. Board of Registration in Medicine*, 485 Mass. 554, 562 (2020) (“The omission of particular language from a statute is deemed deliberate where the Legislature included such omitted language in related or similar statutes.”). The statute codified at G. L. c. 266, s. 28, originally criminalized the act of knowingly receiving a stolen motor vehicle. The relevant language from the original statute was as follows:

Whoever receives . . . an automobile or motorcycle knowing the same to have been stolen . . . shall be punished.

St. 1919, c. 249, s. 1.

The Legislature later amended the statute by inserting language that explicitly criminalizes the act of knowingly possessing a stolen motor vehicle. St. 1980, c. 463, s. 4. After the amendment, the

statute criminalizes both the act of knowingly receiving a stolen motor vehicle and the act of knowingly possessing a stolen motor vehicle. This amendment would have been unnecessary if receiving was the same as possessing. The original version of the statute which criminalized the act of knowingly receiving a stolen motor vehicle would have also criminalized the act of knowingly possessing a stolen motor vehicle. Yet the Legislature recognized that there is a difference between the two and thus added language that explicitly criminalizes the latter.

Having expanded the scope of G. L. c. 266, s. 28, to cover the act of knowingly possessing a stolen motor vehicle, the Legislature could have easily done the same with G. L. c. 266, s. 60, such that it prohibited the act of knowingly possessing stolen property. The Legislature did not do so. This inaction speaks volumes about the Legislature's intent. Simply put, the Legislature did not intend to criminalize the act of knowingly possessing stolen property via G. L. c. 266, s. 60. *See Commonwealth v. Gagnon*, 439 Mass. 826, 833 (2003) ("Where the Legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded.").

Expanding the statutory interpretation of G. L. c. 266, s. 60, to include the simple act of knowingly possessing stolen property would also conflict with the longstanding legal distinction between the crimes of larceny and receiving stolen goods. It is well-established that someone cannot be guilty of both stealing and receiving the same property. See *Commonwealth v. Haskins*, 128 Mass. 60, 61 (1880) (“[I]n law the guilty receiver of stolen goods cannot himself be the thief; nor can the thief be guilty of a crime of receiving stolen goods which he himself had stolen.”); *Commonwealth v. Corcoran*, 69 Mass. App. Ct. 123, 128 (2007) (“We continue to maintain, as has been the law of the Commonwealth for more than a century, that a person cannot be convicted of both larceny and receipt of the same goods.”). If someone is charged with and convicted of both offenses, the verdict is inconsistent and one of the convictions must be vacated. See *Commonwealth v. Nascimento*, 421 Mass. 677, 683 (1996) (recognizing inconsistency and concluding that vacatur of one conviction is adequate remedy). The inconsistency exists because the offense of larceny is committed when someone steals property while the offense of receiving stolen property is committed when someone receives

stolen property from the thief. *See Commonwealth v. Rodriguez*, 476 Mass. 367, 373 (2017) (“Larceny . . . requires that the defendant be the thief, whereas receipt requires that the property already be stolen at the time of receipt.”). It is impossible to commit both offenses. Someone can either be the thief or they can receive the stolen property from the thief. They cannot do both.

This inconsistency would not exist if someone could commit the offense of receiving stolen property by simply possessing stolen property. Someone can both steal property and possess that stolen property. For example, consider a purse snatcher. The thief would be guilty of larceny for stealing the purse from the victim. Yet the thief would also be guilty of possessing stolen property for continuing to maintain control over the purse after having stolen it. The act of stealing the property and the act of possessing the

property would not be inconsistent with each other.⁸ Thus, if the statutory language prohibiting the receipt of stolen property covered the act of possessing stolen property, a defendant could be properly convicted of both larceny and receiving stolen property. The SJC has never recognized this possibility. Instead, the Court has continued to adhere to the aforementioned principle prohibiting a defendant from being convicted for both larceny and receiving stolen property. *See Nascimento*, 421 Mass. at 683 (“It is well established that it is inconsistent in law for a defendant to be convicted both of stealing property and of receiving the same property.”). The continued recognition of this principle strongly indicates that the statutory language of G. L. c. 266, s. 60, does not criminalize the simple act of knowingly possessing stolen property.

⁸ *See Commonwealth v. McArthur*, 55 Mass. App. Ct. 596, 598-599 (2002) (“[T]here is nothing inconsistent with charging and convicting the actual thief of the crime of possession of the stolen motor vehicle”); *United States v. Sharpe*, 452 F.2d 1117, 1119 (1st Cir. 1971) (“There is nothing inconsistent in being involved in the theft and being guilty of possession of stolen goods.”); *Bloch v. United States*, 261 F.3d 321, 325 (5th Cir. 1919) (“It is clear that the unlawful possession of stolen property by the thief is not excluded from the terms of a statute which punishes the unlawful possession as well as the unlawful receiving of stolen goods. The thief may well be also the unlawful possessor of the property stolen by him.”).

WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

The model jury instructions for knowingly receiving stolen property are wrong. By permitting defendants to be convicted based on the simple act of knowingly possessing stolen property, the model jury instructions significantly lower the Commonwealth's burden of proof below what is required by the statutory language of G. L. c. 266, s. 60. This is a huge problem, as defendants are frequently charged with knowingly receiving stolen property in the trial courts of the Commonwealth. The Court should take this opportunity to fix the model jury instructions so that they align with the statutory language. To violate G. L. c. 266, s. 60, the defendant must knowingly receive stolen property from another person. The simple act of knowingly possessing stolen property is not sufficient to support a conviction. If this conduct is to be criminalized as well, it is up to the Legislature to do so.

CONCLUSION

For the reasons set forth above, the Court should allow the defendant's application for direct appellate review.

Respectfully Submitted,
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By His Attorney,

/s/ Edward Crane /s/
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Dated: 2/9/26

APPENDIX TABLE OF CONTENTS

Docket Entries.....24-29
Model Jury Instructions.....30-37

CRIMINAL DOCKET	DOCKET NUMBER 2416CR000401	NO. OF COUNTS 1	Trial Court of Massachusetts District Court Department
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DEFENDANT NAME AND ADDRESS Eris A Paula-Maria 40 Myrtle Avenue Apartment #2 Fitchburg, MA 01420	DOB 11/21/1989	GENDER Male	COURT NAME & ADDRESS Fitchburg District Court 100 Elm Street Fitchburg, MA 01420
	DATE COMPLAINT ISSUED 05/09/2024		
	PRECOMPLAINT ARREST DATE		INTERPRETER REQUIRED

FIRST FIVE OFFENSE COUNTS			
COUNT 1	CODE 266/60/A	OFFENSE DESCRIPTION RECEIVE STOLEN PROPERTY +\$1200 c266 §60	OFFENSE DATE 05/07/2024

7-2-25 CA P. Cormier on VP no fee

DEFENSE ATTORNEY CPCS	OFFENSE CITY/TOWN Fitchburg	POLICE DEPARTMENT Fitchburg PD
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DATE & JUDGE	DOCKET ENTRY	DATE & JUDGE	FEES IMPOSED
6.25.24 Plea NG LOCONTO, J.	<input checked="" type="checkbox"/> Attorney appointed (SJC R. 3:10) <input type="checkbox"/> Atty denied & Deft. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy	6.25.24 LOCONTO, J.	Counsel Fee (211D § 2A) \$ <input checked="" type="checkbox"/> WAIVED
	Terms of release set: <input checked="" type="checkbox"/> PR <input type="checkbox"/> Bail <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Held (276 §58A)		Counsel Contribution (211D § 2) \$ <input type="checkbox"/> WAIVED
			Default Warrant Fee (276 § 30) \$ <input type="checkbox"/> WAIVED
			Default Warrant Arrest Fee (276 § 30) \$ <input type="checkbox"/> WAIVED
	Arraigned and advised: <input checked="" type="checkbox"/> Potential of bail revocation (276 §58B) <input type="checkbox"/> Right to bail to review (276 §58) <input type="checkbox"/> Right to drug exam (111E § 10) <input type="checkbox"/> Inquiry made by Court under 276 § 56A		Probation Supervision Fee (276 § 87A) \$ <input type="checkbox"/> WAIVED
	Abuse Allegation: <input type="checkbox"/> C276 § 56A form filed by Commonwealth <input type="checkbox"/> Allegation of abuse under C276 § 56A found <input type="checkbox"/> No allegation of abuse under C276 § 56A found		Bail Order Forfeited
			Advised of right to jury trial: <input type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive
			Advised of trial rights as pro se (Dist. Ct. Supp.R.4)
			Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)

SCHEDULING HISTORY

NO.	SCHEDULED DATE	EVENT	RESULT	JUDGE	TAPE START/STOP
1	06/25/2024	Arraignment	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	LOCONTO, J.	
2	8.8.24	PTH	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	Longton, J.	
3	10.3.24	CE	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd	LoConto, J.	
4	11.14.24	CE	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd via Zoom	LoConto, J.	
5	12.13.24	TAD	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd counsel request	LoConto, J.	
6	1.17.25	TAD	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd	LOCONTO, J.	
7	1.31.25	TAD	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	LOCONTO, J.	
8	4.2.25	J. Trial	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	BROWN, J.	
9	4.28.25	Rest. Hrg.	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	HILLMAN, J.	
10	4.3.26	Prob.	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		

APPROVED ABBREVIATIONS
 ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & Jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review
 SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate
 DFTA = Defendant failed to appear & was defaulted WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.

A TRUE COPY ATTEST:	CLERK-MAGISTRATE / ASST CLERK	TOTAL NO. OF PAGES	ON (DATE)
	X		



CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Eris A Paula-Maria			DOCKET NUMBER 2416CR000401	
COUNT / OFFENSE 1 RECEIVE STOLEN PROPERTY +\$1200 c266 §60				DISPOSITION DATE AND JUDGE 4.2.25 Brown, J.		
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input checked="" type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
		HEAD INJURY ASMT	RESTITUTION 4.28.25 550 LoConto, J.	V/W ASSESSMENT	BATTERER'S FEE	OTHER
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input checked="" type="checkbox"/> Defendant placed on probation until: 4.3.26 <input type="checkbox"/> Risk/Need or OUI <input checked="" type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:				
FINDING <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE	DATE	
COUNT / OFFENSE				DISPOSITION DATE AND JUDGE		
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
		HEAD INJURY ASMT	RESTITUTION	V/W ASSESSMENT	BATTERER'S FEE	OTHER
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:				
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE	DATE	
COUNT / OFFENSE				DISPOSITION DATE AND JUDGE		
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		HEAD INJURY ASMT	RESTITUTION	V/W ASSESSMENT	BATTERER'S FEE	OTHER
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:				
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE	DATE	
COUNT / OFFENSE				DISPOSITION DATE AND JUDGE		



CRIMINAL DOCKET	DEFENDANT NAME	DOCKET NUMBER
DOCKET ENTRIES	Eris A Paula-Maria	2416CR000401

DATE	DOCKET ENTRIES
5/9/2024	Summons mailed
8.8.24	PTCR filed Longton, J.
3/4/25	ORDER REGARDING THE USE OF AUDIO / VIDEO RECORDINGS filed. CLO Conn
	NOTIFIED PARTIES
4.2.25	Comm. reports ready for trial Brown, J.
4.2.25	Deft. reports ready for trial Brown, J.
4.2.25	Comm.'s list of exhibits filed Brown, J.
4.2.25	Comm.'s list of witnesses filed Brown, J.
4.2.25	Comm.'s motion in limine to admit in court ID of the defendant filed & allowed Brown, J.
4.2.25	Deft.'s request for voir dire filed & allowed in part Brown, J.
4.2.25	Deft.'s motion in limine to preclude reference to absence of proof of date filed & denied Brown, J.
4.2.25	Deft.'s motion in limine to exclude results of license plate queries filed & allowed Brown, J.
4.2.25	Deft.'s motion in limine to exclude first-time in court ID filed & denied Brown, J.
4.2.25	Deft.'s motion to sequester filed & allowed Brown, J.
4.2.25	Deft.'s motion in limine to preclude reference to complainant as "victim" filed & allowed Brown, J.
4.2.25	Deft.'s motion in limine to exclude video clip with timestamp 19:33-19:40 filed & allowed Brown, J.
4.2.25	Deft.'s motion in limine to preclude evidence of complainant's out-of-court statements to police filed & allowed in part
4.2.25	Jurors rendering verdict filed Brown, J.

APPROVED ABBREVIATIONS

ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review
 SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate
 DFTA = Defendant failed to appear & was defaulted WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.



CRIMINAL DOCKET DOCKET ENTRIES		DEFENDANT NAME Eris A Paula-Maria In this Case Known As Eris A Paula-Maria	DOCKET NUMBER 2416CR000401
DATE	DOCKET ENTRIES		
4.2.25	Exhibit List filed		Brown, J.
4.2.25	Deft.'s renewed motion for required finding of not guilty filed & denied		Brown, J.
4.2.25	Deft.'s request for jury instructions filed		Brown, J.
4.2.25	Verdict slip filed		Brown, J.
4.2.25	Deft.'s notice of appeal filed		Brown, J.
4.14.25	Notice of Ordering Transcript filed.		
4.28.25	Based on the chrg. total of just \$1081.53 but A will be obligated to pay \$50. a month for a total of \$550.00		
4/30/2025	Deft's notice of appeal following restitution hearing filed.		
6-30-25	Probation violation notice filed w/ request for immediate issuance of warrant		
6.30.25	Brought forward by Probation requesting non-bailable warrant.		LoConto, J.
	Non-Bailable warrant to issue		LoConto, J.
7.2.25	Notice of probation violation and hearing filed		
	Notice of probation detention hearing filed.		LoConto, J.
7.2.25	warrant recalled.		
7.2.25	After preliminary hrg. Probable Cause found. Deft held w/o pending full viol. hrg.		LoConto, J.
7.2.25	CA P. Commiser on VP no fee		LoConto, J.
7.28.25	A admits to Probation violation		
	Probation violation found		
	Prob. revoked 90 Days HOC Comm. 27 Days credit		
	All monies remitted		LoConto, J.

APPROVED ABBREVIATIONS

ARR = Arraignment PT = Pretrial hearing CE = Discovery compliance & jury selection T = Bench trial JT = Jury trial PC = Probable cause hearing M = Motion hearing SR = Status review
 SRP = Status review of payments FA = First appearance in jury session S = Sentencing CW = Continuance-without-finding scheduled to terminate P = Probation scheduled to terminate
 DFTA = Defendant failed to appear & was defaulted WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled PR = probation revocation hearing



RECEIVING STOLEN PROPERTY

G.L. c. 266, § 60

The defendant is charged with knowingly receiving stolen property.

In order to prove the defendant guilty of this offense, the Commonwealth must prove the following three things beyond a reasonable doubt.

***First:* That the property in question was stolen;**

***Second:* That the defendant knew that the property had been stolen; and**

***Third:* That the defendant knowingly (had the stolen property in his [her] possession) (bought the stolen property) (aided in concealing the stolen property).**

To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the property was stolen – that is, that someone had taken and carried it away without right and without the consent of the owner, while intending to deprive the owner of it permanently. The Commonwealth is not required to prove who it was who stole the property.

The Commonwealth must also prove that the defendant knew or believed that the property was stolen. This is a question of the defendant's actual knowledge or belief at the time. Even if you find that, under the circumstances, a prudent person would have known or believed that the property was stolen, the defendant cannot be found guilty unless the Commonwealth has proved that he (she) actually knew that the property was stolen, or at least believed that it was stolen.

A person's knowledge is a question of fact. Because you cannot look directly into someone's mind, a person's knowledge is normally shown by inferences from all the facts and circumstances surrounding the event. You may infer that the defendant knew that the goods were stolen if the Commonwealth has proved beyond a reasonable doubt that the defendant (possessed) (bought) (helped to conceal) recently stolen goods, and if the facts and circumstances in this case support an inference that the defendant knew that those goods were stolen. You should consider all the facts and circumstances surrounding the defendant's alleged (possession) (purchase) (concealment) of stolen goods in deciding whether or not it is reasonable for you to draw such an inference, and in determining

whether the Commonwealth has proved beyond a reasonable doubt that the defendant knew that the goods he (she) allegedly (possessed) (bought) (concealed) were stolen. Remember, under such circumstances you may, but are not required to, draw an inference that the defendant knew that the goods were stolen.

Commonwealth v. Burns, 388 Mass. 178, 183 n.11, 445 N.E.2d 613, 616 n.11 (1983).

If the case involves receipt rather than purchase or concealment. Finally, the Commonwealth must show that the defendant knowingly “received” the property. A person “receives” property by knowingly taking custody or control of it. It is not necessary that the defendant personally possessed the stolen property, as long as it is proved that he (she) knowingly exerted control over it in some way.

The Commonwealth does not have to show that the defendant made any personal profit from receiving or disposing of the stolen property.

SUPPLEMENTAL INSTRUCTIONS

1. "Recently" stolen goods. **The term "recently" is a relative term, and has no fixed meaning. Whether property should be considered to be recently stolen depends on the type of property it is, its size and appearance, its marketability, the circumstances of its recovery, and all the other circumstances of the situation. The longer the period of time since the theft, the less likely it is that you can draw any reasonable inference simply from the defendant's possession of stolen goods.**

Commonwealth v. Kirkpatrick, 26 Mass. App. Ct. 595, 600-601, 530 N.E.2d 362, 366 (1988); *United States v. Redd*, 438 F.2d 335, 336 (9th Cir. 1971). A judge must initially determine as a matter of law whether the facts would warrant the jury in inferring that the theft was recent. *Kirkpatrick, supra* (collecting cases). Whether or not it was recent then becomes a fact issue for the jury unless the theft was so remote or so recent as to render it a question of law. *Commonwealth v. Sandler*, 368 Mass. 729, 744, 335 N.E.2d 903, 913 (1975).

2. Stolen property worth more than \$1,200. **If you determine that the Commonwealth has proved beyond a reasonable doubt that the defendant is guilty of receiving stolen property, you must also go on to determine whether the stolen property (was) (if there were multiple items: all together were) worth more than \$1,200. You may use your general knowledge in evaluating the**

value of a piece of property; it is not required that you have any expert evidence of its value.

So if your verdict is guilty, you must also indicate on your verdict slip whether or not the Commonwealth has also proved beyond a reasonable doubt that the stolen property (was) (all together were) worth more than \$1,200.

The sample verdict slip for Larceny by Stealing (Instruction 8.521) may be adapted for such cases.

Effective April 13, 2018, St. 2018, c. 69 increased from \$250 to \$1,200 the felony threshold for the offenses of receiving stolen property (G.L. c. 266, § 60), larceny (§ 30) and wilful or wanton destruction of property (§ 127). For offenses committed prior to April 13, 2018, this instruction can be utilized, just inserting \$250 wherever it refers to \$1,200.

Commonwealth v. Kelly, 24 Mass. App. Ct. 181, 183-186 & n.4, 507 N.E.2d 777, 778-780 & n.4 (1987), held that, whether or not the value of the property stolen is alleged in the complaint, in a prosecution for larceny (G.L. c. 266, § 30) “the judge should instruct the jury that if they convict, they must determine by their verdict whether the value did or did not exceed [\$1,200] so that the judge will know what range of punishments is available. Otherwise the judge will be required to sentence as if the value did not exceed” \$1,200. *Kelly* also indicated that the value of the stolen property need not be alleged in the complaint, since “the value of the property . . . is an element of the punishment but not an element of the offense of larceny . . .” *Commonwealth v. Tracy*, 27 Mass. App. Ct. 455, 467, 539 N.E.2d 1043, 1050 (1989), cited *Kelly* approvingly in seemingly applying the same rule to receiving stolen property cases. Since the language of G.L. c. 266, § 60 is similar to that of § 30, it appears that a similar approach to instructing the jury should be utilized in prosecutions for receiving stolen property when the evidence indicates a possible value of more than \$1,200 but the complaint does not so allege.

Compare *Commonwealth v. Pyburn*, 26 Mass. App. Ct. 967, 968-970, 527 N.E.2d 1174, 1175-1176 (1988) (in prosecution for wanton destruction of property under G.L. c. 266, § 127, “if there is an allegation in a complaint . . . that the value of the property so destroyed or injured exceeded” \$1,200 then jury must determine that issue, but instruction need not present that factor as an essential element of the offense since it is not such) with *Commonwealth v. Beale*, 434 Mass. 1024, 1025 & n.2, 751 N.E.2d 845, 847 & n.2 (2001) (“the value of the property must be treated as an element of the felony of malicious destruction of property” but “the focus of the constitutional inquiry is not a formalistic examination of whether a finding is labeled an ‘element’ or a ‘sentencing factor,’ but whether the finding is made by a jury on proof beyond a reasonable doubt”).

The jury may use its common knowledge, and does not require expert evidence, in evaluating value. *Commonwealth v. Hosman*, 257 Mass. 379, 386 (1926); *Commonwealth v. McCann*, 16 Mass. App. Ct. 990, 991 (1983).

3. Subsequently learning property stolen. Even if the defendant did not know that the property was stolen at the time he (she) received it, the defendant is still guilty of receiving stolen property if he (she) subsequently learned that the property had been stolen, and at that point decided to keep it and to deprive the owner of its use.

Sandler, 368 Mass. at 740-741, 335 N.E.2d at 911; Commissioner of Pub. Safety v. Treadway, 368 Mass. 155, 160, 330 N.E.2d 468, 472 (1975); Kirkpatrick, 26 Mass. App. Ct. at 599, 530 N.E.2d at 365.

NOTES:

1. **Model instruction.** The model instruction has been prepared for instructing a jury relative to a charge of receiving stolen property under G.L. c. 266, § 60. The fact patterns of particular cases may require additional definitions of the three main elements (stolen property, knowledge and possession). See Instructions 3.140 (Knowledge) and 3.220 (Possession).

2. **Inference of knowledge from possession of recently stolen goods.** The jury may draw a permissive inference that the defendant knew the property was stolen from his or her possession of recently stolen property where the facts of the case do not show that the possession was innocent. Such an inference is constitutionally permissible. *Barnes v. United States*, 412 U.S. 827, 841-847, 93 S.Ct. 2357, 2360-2364 (1973). See *Sandler*, 368 Mass. at 741-742, 335 N.E.2d at 911. Such an inference may itself support a finding of knowledge beyond a reasonable doubt. See *Commonwealth v. Sala*, 18 Mass. App. Ct. 762, 766, 470 N.E.2d 807, 810 (1984); *Commonwealth v. Taylor*, 10 Mass. App. Ct. 452, 458 n.8, 409 N.E.2d 212, 216 n.8, aff'd on other grounds, 383 Mass. 272, 418 N.E.2d 1226 (1981). "However, '[c]autious vigilance must be maintained against the employment of a naked legal principle in a factual setting which provides no reasonable basis for the principle's application'" (citation omitted). *Kirkpatrick*, 26 Mass. App. Ct. at 600, 530 N.E.2d at 366.

It is reversible error for the judge to suggest that there is some "burden of explanation" on the defendant with regard to possession of recently stolen property, since the jury is likely to confuse this "burden of explanation" with the burden of proof. *Burns*, 388 Mass. at 180-183, 445 N.E.2d at 614-616. If the defendant does offer an innocent explanation, the Commonwealth is not required to disprove that explanation beyond a reasonable doubt; evidence rebutting a permissible inference is to be weighed by the jury. *Id.*, 388 Mass. at 182 n.8, 445 N.E.2d at 616 n.8.

3. **Knowledge.** The defendant's subjective knowledge that the property was stolen is required; a negligent or reckless failure to inquire is not enough. *Commonwealth v. Boris*, 317 Mass. 309, 315-317, 58 N.E.2d 8, 12-13 (1944); *Commonwealth v. May*, 26 Mass. App. Ct. 801, 806-808, 533 N.E.2d 216, 220-221 (1989). The knowledge requirement is satisfied if the defendant either knew or believed that

the property was stolen, or later discovered that it was stolen and undertook to deprive the owner of its use. *Commonwealth v. Dellamano*, 393 Mass. 132, 138, 469 N.E.2d 1254, 1257-1258 (1984); *Sandler, supra*; *Treadway, supra*; *Kirkpatrick, supra*.

The defendant's knowledge can be inferred from circumstantial evidence. See, e.g., *Commonwealth v. Imbruglia*, 377 Mass. 682, 693-694, 387 N.E.2d 559, 566-568 (1979) (recent fencing of similar goods); *Commonwealth v. Kelley*, 333 Mass. 191, 194, 129 N.E.2d 900, 902 (1955) (improbable explanation); *Commonwealth v. Matheson*, 328 Mass. 371, 373-374, 103 N.E.2d 714, 715 (1952) (joint occupancy of apartment where goods trafficked openly); *Boris*, 317 Mass. at 316, 58 N.E.2d at 11 (suspicious circumstances of sale which would satisfy a reasonable person that goods were stolen); *Commonwealth v. Billings*, 167 Mass. 283, 285-286, 45 N.E. 910, 910-911 (1897) (possession of unusually large quantity of goods in defendant's home); *Commonwealth v. Leonard*, 140 Mass. 473, 4 N.E. 96, 101-102 (1886) (failure to keep records in ordinary course of business); *Commonwealth v. Dias*, 14 Mass. App. Ct. 560, 562, 441 N.E.2d 266, 267-268 (1982) (same); *Commonwealth v. McGann*, 20 Mass. App. Ct. 59, 66-67, 477 N.E.2d 1075, 1081 (1985) (price; circumstances of receipt; type of seller; location and circumstances of storage); *Commonwealth v. Santucci*, 13 Mass. 933, 934, 430 N.E.2d 1239, 1241 (1982) (improbable explanation; steeply discounted price; cash payment required); *Commonwealth v. Segal*, 3 Mass. App. Ct. 732, 733, 325 N.E.2d 291, 292 (1975) (prior course of dealings with thief); *Commonwealth v. Smith*, 3 Mass. App. Ct. 144, 147, 324 N.E.2d 924, 927 (1975) (possession of many stolen items, whether recently stolen or not). Compare *Commonwealth v. Scarborough*, 5 Mass. App. Ct. 302, 362 N.E.2d 546 (1977) (merely riding as passenger in auto with stolen goods in trunk is insufficient to infer possession and knowledge). For the same reason, the defendant may introduce evidence of his reputation as an honest merchant to disprove his knowledge that the goods were stolen. *Commonwealth v. Gazzolo*, 123 Mass. 220, 221 (1877).

It is irrelevant whether the defendant intended to derive personal benefit from receiving the goods, *Commonwealth v. Bean*, 117 Mass. 141, 142 (1875) (receiver doing personal favor for another equally guilty), or thought the actions justified, *Commonwealth v. Cabot*, 241 Mass. 131, 143-144, 135 N.E. 465, 469 (1922) (knowing use of stolen papers in bar discipline investigation).

4. **Possession.** Buying, receiving, or aiding in the concealment of stolen property are disjunctive, alternate ways of violating the statute. *Commonwealth v. Ciesla*, 380 Mass. 346, 347, 403 N.E.2d 381, 382 (1980). A complaint drawn in the language of G.L. c. 277, § 79 (that the defendant did "buy, receive, and aid in the concealment of" stolen property) is sufficient, even though G.L. c. 266, § 60 is phrased in the disjunctive, and the defendant may be convicted upon proof of any one of the three branches. *Commonwealth v. Valleca*, 358 Mass. 242, 244-245, 263 N.E.2d 468, 469 (1970). The Commonwealth is not required to elect among them before trial. *Commonwealth v. Colella*, 2 Mass. App. Ct. 706, 708, 319 N.E.2d 923, 925 (1974).

Constructive possession is enough. *Commonwealth v. Carroll*, 360 Mass. 580, 586, 276 N.E.2d 705, 710 (1971) (items held by others in a joint criminal enterprise); *Commonwealth v. Settignano*, 5 Mass. App. Ct. 648, 652, 368 N.E.2d 1213, 1216 (1977) (same); *Commonwealth v. Kuperstein*, 207 Mass. 25, 27, 92 N.E. 1008, 1009 (1910) (offering to sell goods to undercover agent); *Smith*, 3 Mass. App. Ct. at 146, 324 N.E.2d at 926 (dominion and control is equivalent of possession). A prosecution based upon concealment can be made out by any purposeful action to withhold the property from its owner or to make it more difficult for the owner to discover. *Ciesla*, 380 Mass. at 349, 403 N.E.2d at 383; *Commissioner of Pub. Safety, supra*; *Matheson, supra*.

5. **Severance of multiple charges.** As to whether severance of multiple charges of receiving stolen property is required, see *McGann*, 20 Mass. app. Ct. at 63, 477 N.E.2d at 1079.

6. **"Stolen" property.** The Commonwealth must prove that the property was in fact stolen. *Commonwealth v. Budreau*, 372 Mass. 641, 643-644, 363 N.E.2d 506, 508-509 (1977). The stolen property must either be such as could be the subject of larceny at common law, or be listed in G.L. c. 266, § 30(2). *Commonwealth v. Yourawski*, 384 Mass. 386, 387, 425 N.E.2d 298, 299 (1981). It is not necessary to prove who the thief was, or that the defendant received the goods directly from the thief. *Commonwealth v. Grossman*, 261 Mass. 68, 70-71, 158 N.E. 338, 339 (1927).

Circumstantial evidence can suffice to demonstrate that the goods were stolen. *Commonwealth v. Ryan*, 11 Mass. App. Ct. 906, 414 N.E.2d 1020 (1981). It is insufficient merely to prove that the

RECEIVING STOLEN PROPERTY

Revised April 2019

defendant was found with common, fungible goods without identifying marks, which are similar to goods previously stolen. *Budreau, supra; Billings*, 167 Mass. at 286, 45 N.E. at 911. However, “[t]he law does not require the impossible. Not every exemplar of every kind of property can be individually recognized, and the closer to fungibility the property comes the less possible is accuracy of identification. Likelihood plays a part Time is a factor too” (citation omitted). Often this is a jury issue. *Commonwealth v. Rossi*, 15 Mass. App. Ct. 950, 952, 445 N.E.2d 1090, 1092 (1983).

7. **Statute of limitations.** Concealing stolen property is not a continuing offense if the defendant took no further actions after the initial concealment, and the statute of limitations runs from the initial concealment date. However, the limitations period begins to run anew from the date of any specific, subsequent affirmative act in aid of the continued purposeful concealment. *Ciesla, supra*.

8. **Stealing and receiving same property.** A defendant cannot be convicted both of stealing and receiving the same goods, since receipt of stolen property requires that the property already be stolen at the time of receipt. *Dellamano*, 393 Mass. at 134, 469 N.E.2d at 1255; *Commonwealth v. Haskins*, 128 Mass. 60, 61 (1880); *Commonwealth v. Corcoran*, 69 Mass. App. Ct. 123, 127 n.6, 866 N.E.2d 948, 952 n.6 (2007). A defendant may be charged with both crimes; if the evidence would support either, it is for the jury to decide “under clear and precise instructions” of which to convict. *Commonwealth v. Ross*, 339 Mass. 428, 430-432, 159 N.E.2d 330, 332-334 (1959); *Kelley*, 333 Mass. at 195, 129 N.E.2d at 903; *Commonwealth v. Obshatkin*, 2 Mass. App. Ct. 1, 4-5, 307 N.E.2d 341, 343-344 (1974). See Instruction 5.41 (Larceny by Stealing). Each crime should be charged in a separate count or complaint. *Dellamano*, 393 Mass. at 134 n.7, 469 N.E.2d at 1255 n.7. If the jury incorrectly convicts on both charges, the judge should reinstruct the jury and send them out again. If the jury persists, the charge of receiving stolen property should be dismissed. *Commonwealth v. Nascimento*, 421 Mass. 677, 684-685, 659 N.E.2d 745, 750 (1996).

However, a conviction for receipt of stolen property does not require the Commonwealth to preclude the possibility that the defendant was the thief. If there is sufficient evidence to support a conviction for receipt of stolen property, such a conviction may stand even if there is also evidence that the defendant may be, or is in fact, the thief, since the jury is free to reject the evidence tending to prove theft and to infer receipt from the fact of possession. *Corcoran*, 69 Mass. App. Ct. at 127, 866 N.E.2d at 951 (defendant charged only with receipt of stolen property), overruling *Commonwealth v. Janvrin*, 44 Mass. App. Ct. 917, 690 N.E.2d 828 (1998).

9. **Receiving stolen property not duplicative of breaking and entering.** While a defendant cannot be convicted both of larceny and receiving the same stolen property, a defendant may be convicted both of breaking and entering in the nighttime to commit larceny (G.L. c. 266, § 16) and of receiving (G.L. c. 266, § 60) the same stolen property. *Commonwealth v. Cabrera*, 449 Mass. 825, 874 N.E.2d 654 (2007).

10. **Venue.** Venue lies either where the goods were stolen or where they were received. G.L. c. 277, § 58A. The place of receipt can be established by circumstantial evidence. *Obshatkin*, 2 Mass. App. Ct. at 3, 307 N.E.2d at 343. The Commonwealth is not required to allege or prove either the place of the theft or the place of receipt. *Commonwealth v. Parrotta*, 316 Mass. 307, 308-309, 55 N.E.2d 456, 457 (1944).

CERTIFICATE OF SERVICE

I hereby certify, under the pains and penalties of perjury, that I have served a copy of the defendant's application for direct appellate review to Assistant District Attorney Ellyn H. Lazar, Worcester County District Attorney's Office, 225 Main Street, Room G301, Worcester, MA 01608. I have made service via email.

/s/ Edward Crane /s/
Edward Crane
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218 Adams Street
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617-851-8404

Date: 2/9/26

CERTIFICATE OF COMPLIANCE

I, Edward Crane, hereby certify, that this application complies with all applicable rules of court pertaining to the filing of such applications. This application was written using Bookman Old Style font in 14-point size. There are 1,993 non-excluded words that count towards the 2,000 word-limit imposed by Mass. R. App. Pro. 11(b)(5). The word count was determined using Microsoft Word.

/s/ Edward Crane /s/
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