

## **OCGA §16-8-7**

### **Brief Description**

Theft by receiving

### **Statutory Language**

(a) A person commits the offense of theft by receiving stolen property when he receives, disposes of, or retains stolen property which he knows or should know was stolen unless the property was received, disposed of, or retained with intent to restore it to the owner.

### **Form Charge**

#### Property more than \$500 in value

##### Accusation

On behalf of the People of the State of Georgia, the undersigned, Paul L. Howard, Jr., District Attorney, as prosecuting attorney for the County and State aforesaid does charge and accuse Defendant's Full Name with the offense of theft by receiving stolen property in violation of O.C.G.A. §16-8-7 for the said accused, in the County of Fulton and State of Georgia, on Date of Offense, did unlawfully receive and retain the following stolen property, to wit: detailed description of the property, of a value in excess of \$500.00 and the property of Victim's Full Name, said property having been stolen from Victim's Full Name and the said accused knew or should have known said property was stolen; said property not having been received and retained with intent to restore the same to its owner; contrary to the laws of said State, the good order, peace and dignity thereof;

##### Indictment

in the name and behalf of the citizens of Georgia, charge and accuse Defendant's Full Name with the offense of theft by receiving stolen property in violation of O.C.G.A. §16-8-7 for the said accused, in the County of Fulton and State of Georgia, on Date of Offense, did unlawfully receive and retain the following stolen property, to wit: detailed description of the property, of a value in excess of \$500.00 and the property of Victim's Full Name, said property having been stolen from Victim's Full Name and the said accused knew or should have known said property was stolen; said property not having been received and retained with intent to restore the same to its owner; contrary to the laws of said State, the good order, peace and dignity thereof;

##### Motor vehicle

##### Accusation

On behalf of the People of the State of Georgia, the undersigned, Full Name of District Attorney, District Attorney, as prosecuting attorney for the County of Fulton and State of Georgia does charge and accuse Defendant's Full Name with the offense of theft by receiving stolen property in violation of O.C.G.A. §16-8-7 for the said accused, in the County of Fulton and State of Georgia, on Date of Offense, did unlawfully receive and retain a description of vehicle (year, make, model), a motor vehicle, Vehicle Identification Number VIN #, the property of Full Name of Victim, which had been stolen from Full Name of Victim, and accused should have known the property was stolen; and the motor vehicle was not received and retained by accused with intent to restore it to its owner; contrary to the laws of said State, the good order, peace and dignity thereof;

##### Indictment

in the name and behalf of the citizens of Georgia, charge and accuse Defendant's Full Name with the offense of theft by receiving stolen property in violation of O.C.G.A. §16-8-7 for the said accused, in the County of Fulton and State of Georgia, on Date of Offense, did unlawfully receive and retain a description of vehicle (year, make, model), a motor vehicle, the property of Full Name of Victim, which had been stolen from Full Name of Victim, and accused should have known the property was stolen; and the motor vehicle was not received and retained by accused with intent to restore it to its owner; contrary to the laws of said State, the good order, peace and dignity thereof;

Motor vehicle part or component more than \$100 in value

did unlawfully receive and retain a description of the property, motor vehicle parts of a value in excess of \$100.00, the property of Full Name of Victim, which had been stolen from Full Name of Victim, and accused should have known the property was stolen; and said firearm was not received and retained by accused with intent to restore it to its owner;

Destructive devise, explosive or firearm

did unlawfully receive and retain a description of the property, a / an destructive devise / explosive / firearm, the property of Full Name of Victim, which had been stolen from Full Name of Victim, and accused should have known the property was stolen; and said firearm was not received and retained by accused with intent to restore it to its owner;

Grave marker of military veteran

did unlawfully receive and retain the following stolen property, to wit: a grave marker, monument, or memorial to Name Person(s) on the monument, a deceased person who served in the military service of The State of Georgia / United States of America / Confederate States of America of a value less than / more than \$300.00, said property having been stolen from the grave of said Name Person(s) on the monument and said accused should have known said property was stolen; said property not having been received and retained by accused with intent to restore the same to its owner;

Un-harvested commercial agricultural product

did unlawfully receive and retain the following stolen property, to wit: description of the property, un-harvested commercial agricultural products of a value in excess of \$500.00 and the property of Full Name of Victim, said property having been stolen from the said Full Name of Victim and said accused should have known said property was stolen; said property not having been received and retained by accused with intent to restore the same to its owner;

**Elements**

	<b>Element</b>	<b>Witness</b>	<b>Exhibit</b>
0	In County;		
0	A named and identified defendant;		
1a	Received stolen property; OR		
1b	Disposed of stolen property; OR		
1c	Retained stolen property;		
2a	The defendant knew the property was stolen; OR		
2b	The defendant should have known the property was stolen;		
3	The defendant did not intend to return the property to the owner;		
4a	The property was more than \$500 in value; OR		

4b	The property was a motor vehicle; OR		
4c	The property was motor vehicle parts or components more than \$100 in value; OR		
4d	The property was a destructive device; OR		
4e	The property was an explosive device; OR		
4f	The property was a firearm; OR		
4g	The property was a grave marker of a military veteran; OR		
4h	The property was un-harvested commercial agricultural products;		

### **Pattern Jury Instruction**

#### **2.36.10 Theft by Receiving Stolen Property; Knowledge**

A person commits theft by receiving stolen property when that person receives, disposes of, or retains stolen property that the person knows, or should know, was stolen, unless the property is received, disposed of, or retained with the intent to restore it to the owner. "Receiving" means acquiring possession or control or lending on the security of the property.

#### **O.C.G.A. §16-8-7**

Knowledge on the part of the defendant that the goods were stolen or evidence sufficient to show beyond a reasonable doubt that the defendant had reason to know that the goods were stolen is an essential element of the offense of theft by receiving stolen property.

Knowledge that the goods were stolen may be shown by circumstances that would excite suspicion in the mind of an ordinary person.

The burden is upon the State to prove beyond a reasonable doubt that the defendant had knowledge or, under all of the circumstances, should have known that the goods in question were stolen and were in the defendant's possession. If there is any reasonable doubt in your mind as to any of the essential elements, then it would be your duty to acquit the defendant.

**Nichols v. State, 111 Ga. App. 699 (1965)**

**Hudgins v. State, 125 Ga. App. 576 (1972)**

**LaRoche v. State, 140 Ga. App. 509 (1976)**

**Shorts v. State, 137 Ga. App. 314 (1976)**

#### **2.37.50 Theft; Defense; Claim of Right**

It is a defense to a charge of theft by receiving stolen property that the actor

a) was unaware that the property was that of another or

b) acted under an honest claim of right to the property involved or under a right to acquire or dispose of it.

Should you find from the evidence in this case that the accused acted under such claim of right, as I have just instructed you, then it would be your duty to acquit the defendant. The burden of proof rests upon the State to prove beyond a reasonable doubt that the accused did not act under an honest claim of right to the property and that the accused was aware that the property was that of another person. If the State fails to prove such beyond a reasonable doubt, then you should acquit the defendant.

## **O.C.G.A. §16-8-10**

### **2.33.11 Theft; Deprive**

Deprive means to, without justification,

- a) withhold property of another permanently or temporarily or
- b) dispose of the property so as to make it unlikely that the owner will recover it.

### **2.33.13 Theft; Property of Another**

Property of another includes property in which any person other than the accused has an interest (but does not include property belonging to the spouse of an accused or to them jointly).

## **O.C.G.A. §16-8-1**

### **2.33.14 Theft; Owner**

"Owner" in this connection means a person who has a right to possession of property, which is a right superior to that of a person who takes, uses, obtains, or withholds the property from him/her and that the person taking, using, obtaining, or withholding is not privileged to infringe.

## **O.C.G.A. §16-1-3(10)**

In that connection, ownership may be described in an indictment in the name of the real owner or in the name of the person in lawful possession of the property.

If the property alleged to have been stolen was taken from the lawful possession of the person named in the indictment as the owner, then this would constitute sufficient proof of ownership.

### **Morris v. State, 228 Ga. 39, 45 (1971)**

As to theft by receiving stolen property, however, unexplained possession of recently stolen goods in itself will neither support an inference of guilt nor authorize a conviction of theft by receiving stolen property.

### **Hilton v. State, 134 Ga. App. 590 (1975)** **Shorts v. State, 137 Ga. App. 314 (1976)**

### **Punishment**

Statutory:

... imprisonment for not less than one year nor more than ten years and by a fine of not more than \$10,000.

### **Sufficiency of Evidence (case law)**

#### **Generally**

A conviction for a violation of O.C.G.A. §16-8-7 may be sustained if the evidence shows that the defendant received, disposed of, or retained stolen property which he knew or should have known was stolen, and the offense may be proven by circumstantial evidence. Wilson v. State, 211 Ga. App. 791 (1994) (citation omitted).

Unexplained possession of recently stolen property, alone, is not sufficient to support a conviction for receiving stolen property but guilt may be inferred from possession in conjunction with other evidence of knowledge. Guilty knowledge may be inferred from circumstances which would excite suspicion in the mind of an ordinary prudent man. Hurston v. State, 202 Ga. App. 311, 312 (1991) (citations omitted).

#### Theft by Receiving Automobile

Ayers was charged with theft by receiving a stolen 1997 Corvette automobile. ... When Detective Whiteside asked Ayers whether the car belonged to him, Ayers indicated that he had purchased the car from an unnamed individual and regretted having done so because it was the second time that person had sold him a stolen vehicle. The State presented evidence showing that Ayers had registered the Corvette by submitting an application containing fraudulent information. ... The State presented similar transaction evidence relating to five other stolen vehicles. ... The evidence was sufficient to authorize any rational trier of fact to find beyond a reasonable doubt that Ayers possessed the stolen Corvette and the he knew or should have known it was stolen. Ayers v. State, 251 Ga. App. 623, 623-24 (2001).

The State produced evidence that the Chevrolet automobile was stolen in South Carolina, and that Kimble gave a statement to police stating that he knew the automobile was stolen South Carolina by his brother. The State also produced evidence that the automobile was used by Kimble and other robbers in the robbery, that it was found after the robbery with an item stolen in the robbery a few feet from the automobile, and the Kimble's fingerprints were found on the automobile. This evidence was more than sufficient to allow the jury to conclude that Kimble was guilty beyond a reasonable doubt. Kimble v. State, 236 Ga. App. 391, 397 (1999) (citation omitted).

Two men stole a 1967 Volkswagen that was in very good, almost factory condition, and after one of them kept the car for seven months, he transferred it to Wilson with a bill of sale stating Wilson paid \$100 for the car. Wilson in fact paid nothing. Wilson sold the car for \$350. Wilson told the investigating police officer that he thought something was wrong because he was given the car. Moreover, the evidence further shows that Wilson did not register the car in his name while it was in his possession or purchase new license tags. ... The transcript reveals ample evidence from which any rational trier of fact could have found beyond a reasonable doubt that Wilson was guilty of the offense of which he was convicted. Wilson v. State, 211 Ga. App. 791, 791-92 (1994).

The evidence adduced by the State set for circumstances that excite suspicion in the mind of an ordinary prudent person thus authorizing the jury to infer that appellant had the requisite knowledge that the car was stolen. These circumstances include appellant's use of a false name and his testimony that he had borrowed the car from a person he barely knew whose last name he did not know; and that the late model car had been treated in a manner inconsistent with ownership. Turntime v. State, 206 Ga. App. 226, 227 (1992) (citations omitted).

There was sufficient evidence for a jury to find that Hurston knew, or should have known, that the vehicle was stolen. At trial, Hurston admitted that he doubted that the vehicle belonged to Reese. There was evidence from which the jury could reasonably have concluded that Hurston was aware during the two hours that he spent in the small vehicle that it was stolen, in that the vehicle was being driven without keys, the steering wheel was damaged and the interior was disorderly, which was inconsistent both with Reese's ownership of the vehicle and with his explanation that he borrowed it from a relative. Hurston's suspicious behavior at the convenience store and his attempt to flee also indicated that he knew the vehicle was stolen. Hurston v. State, 202 Ga. App. 311, 313 (1991).

#### Theft by Receiving Automobile (driver)

#### Theft by Receiving Automobile (passenger)

There was also evidence from which the jury could conclude that Hurston possessed, controlled or retained the vehicle. Although Hurston was only a passenger in the vehicle, the inquiry does not end here, for in some circumstances, a passenger may possess, control or retain a vehicle. Here, there was

sufficient evidence that Hurston exerted the requisite control over the vehicle in that Reese left Hurston alone in the car with the vehicle running when he went into the convenience store. Hurston v. State, 202 Ga. App. 311, 313 (1991) (citations omitted).