

14.2 DEALING IN STOLEN PROPERTY (FENCING)

§ 812.019(1), Fla. Stat.

To prove the crime of Dealing in Stolen Property (Fencing), the State must prove the following two elements beyond a reasonable doubt:

- 1. (Defendant) [trafficked in] [endeavored to traffic in] (property alleged).**
- 2. (Defendant) knew or should have known that (property alleged) was stolen.**

Inferences. Give if applicable. § 812.022(2), Fla. Stat.

Proof of possession of recently stolen property, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.

Inferences. Give if applicable. § 812.022(3), Fla. Stat. Do not give unless there is evidence of the fair market value of the stolen property. Barfield v. State, 613 So. 2d 507 (Fla. 1st DCA 1993).

Proof of the purchase or sale of stolen property at a price substantially below the fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that the property had been stolen.

Inferences. Give if applicable. § 812.022(4), Fla. Stat.

Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that it had been stolen.

Inferences. Give if applicable. § 812.022(5), Fla. Stat.

Proof that a dealer who regularly deals in used property possesses stolen property, upon which a name and phone number of a person other than the offeror of the property are conspicuously displayed, gives rise to an inference that the dealer possessing the property knew or should have known that the property was stolen.

Inferences. Give if applicable. § 812.022(6), Fla. Stat.

Proof that a person was in possession of a stolen motor vehicle and that the ignition mechanism of the motor vehicle had been bypassed or the steering wheel locking mechanism had been broken or bypassed, unless satisfactorily explained, gives rise to an inference that the person in possession of the stolen motor vehicle knew or should have known that the motor vehicle had been stolen.

Definitions.

§ 812.012(3), Fla. Stat.

“Property” means anything of value, and includes: real property, including things growing on, affixed to and found in land; tangible or intangible personal property, including rights, privileges, interests, and claims; and services.

§§ 812.012(6), 812.028(3), Fla. Stat.

“Stolen property” means property that has been the subject of any criminally wrongful taking or if the property has not been stolen, that it was offered for sale to (defendant) as stolen property.

§ 812.012(7), Fla. Stat.

“Traffic” means: to sell, transfer, distribute, dispense or otherwise dispose of property; and to buy, receive, possess, obtain control of or use property with the intent to sell, transfer, distribute, dispense or otherwise dispose of that property.

Give if both theft and dealing in stolen property are submitted to the jury:

You will receive separate verdict forms for theft and dealing in stolen property as the defendant was charged with both crimes.

If you find that the State has not proven theft and dealing in stolen property, then you are to find the defendant not guilty of both offenses.

If you find that the State has proven theft, but not dealing in stolen property, then you are to find the defendant guilty of theft and not guilty of dealing in stolen property.

If you find that the State has proven dealing in stolen property, but not theft, then you are to find the defendant guilty of dealing in stolen property and not guilty of theft.

If you find that the State has proven both theft and dealing in stolen property, you must then decide whether both offenses were in connection with one scheme or course of conduct. “One scheme or course of conduct” means that there was no meaningful disruption of the defendant’s conduct by either an interval of time or a set of circumstances.

If you find that both theft and dealing in stolen property were proven by the State, and the offenses were not in connection with one scheme or course of conduct, then you are to find the defendant guilty of both theft and dealing in stolen property.

If you find that both theft and dealing in stolen property were proven by the State, and the offenses were in connection with one scheme or course of conduct, then the defendant must be convicted of either theft or dealing in stolen property. In making your decision, you must determine whether the defendant is more of a common thief or more of a trafficker. This determination rests on the defendant’s intended use of the stolen property. The defendant is a “common thief” if [he] [she] had the intent to appropriate the property to [his] [her] own use or to the use of any person not entitled to the use of the property. The defendant is a “trafficker” if [he][she] had the intent to traffic in the stolen property. If you find the defendant more of a “common thief,” then you are to

find the defendant guilty of theft only. If you find the defendant more of a “trafficker,” then you are to find the defendant guilty of dealing in stolen property only.

Lesser Included Offenses

DEALING IN STOLEN PROPERTY — TRAFFICKING — 812.019(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None	Grand theft — third degree	812.014(2)(c)	14.1
	Petit theft — first degree	812.014(2)(e)	14.1
	Petit theft — second degree	812.014(3)(a)	14.1

Comment

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 2007 [962 So. 2d 310], 2013 [121 So. 3d 520], 2014 [140 So. 3d 992], and 2016.