

1488 POSSESSION OF PROPERTY WITH ALTERED IDENTIFICATION MARKS — § 943.37(3)**Statutory Definition of the Crime**

Possession of property with altered identification marks, as defined in § 943.37(3) of the Criminal Code of Wisconsin, is committed by one who possesses any personal property with knowledge that the manufacturer's identification number has been removed or altered and with intent to prevent the identification of the property.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant possessed personal property.¹

"Possessed" means that the defendant knowingly² had the property under (his) (her) actual physical control.³

2. The defendant possessed personal property on which the manufacturer's identification number had been removed or altered.
3. The defendant knew⁴ that the manufacturer's identification number had been removed or altered.⁵
4. The defendant intended⁶ to prevent the identification of the property.

[ADD THE FOLLOWING IF THERE IS EVIDENCE THAT THE DEFENDANT POSSESSED TWO OR MORE SIMILAR ITEMS OF PERSONAL PROPERTY WITH THE MANUFACTURER'S IDENTIFICATION NUMBER ALTERED OR REMOVED:^{7]}

[Evidence has been received that the defendant possessed similar⁸ items of personal property with the manufacturer's identification number altered or removed. If you are satisfied beyond a reasonable doubt that the defendant did possess similar items with the manufacturer's identification numbers altered or removed, you may find from that fact alone that the defendant knew that the numbers had been altered or removed and that he intended to prevent the identification of the property. But you are not required to do so. You are the sole judges of the facts, and you must not find that the defendant knew the identification numbers had been altered or removed or that the defendant intended to prevent the identification of the property unless you are so satisfied beyond a reasonable doubt from all the evidence in the case.]

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent or knowledge. Intent or knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent or knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1488 was originally published in 1990. This revision was approved by the Committee in April 2008 and involved adoption of a new format and nonsubstantive changes to the text.

Section 943.37 has four subsections. This instruction is drafted for one of the two offenses defined in subsec. (3), which the Committee concluded was likely to be the most common type of offense. The crime is a Class A misdemeanor.

1. The Committee does not believe it is necessary to define "personal property" for the jury. A definition of the term is provided in § 990.01(27):

"Personal property" includes money, goods, chattels, things in action, evidences of debt and energy.

2. Inherent in the legal definition of "possession" is the concept of knowing or conscious possession. See Schwartz v. State, 192 Wis.2d 414, 418, 212 N.W.2d 664 (1927); Doscher v. State, 194 Wis. 67, 69, 214 N.W. 359 (1927).

3. The definition of "possess" is that found in Wis JI-Criminal 920 and requires "actual physical control." That instruction also contains additional optional paragraphs for use where the object is not in the physical possession of the defendant or where possession is shared with another.

4. Section 939.23(2) provides that "know" requires only that the defendant believes that the specified fact exists.

5. Section 943.37(3) provides a "prima facie evidence" provision relating to the knowledge element. See the text of the instruction at note 7, below.

6. If further definition of "intent" is necessary, defining intent as "mental purpose" is most likely to be accurate in the context of this offense. See Wis JI-Criminal 923A and 923B for complete discussion of the definition of "with intent to" under § 939.23(4).

7. Section 943.37(3) provides that "[p]ossession of two or more similar items of personal property with the manufacturer's identification number altered or removed is prima facie evidence of knowledge of the alteration or removal and of an intent to prevent identification of the property." The bracketed paragraph which follows in the instruction attempts to implement this provision in the manner required by § 903.03 of the Wis. Rules of Evidence, which applies to instructions on presumptions, inferences, and prima facie cases. See Wis JI-Criminal 225 for an explanation of the Committee's approach to these provisions. Especially note the two cautions discussed in the Comment to Wis JI-Criminal 225: (1) the instruction should not be given unless the evidence, as a whole, would allow the jury to be satisfied beyond a reasonable doubt that the ultimate fact (here, knowledge and intent) exists; and (2) no instruction should be given in a particular case unless, based on the facts of that case, the presumed fact (here, knowledge and intent) is "more likely than not" to follow from the basic fact (here, possession of two or more similar items with identification numbers altered or removed).

The prima facie evidence provision is essentially the same as one found in the 1953 Draft of the Criminal Code in § 343.31. The comment to that section described its purpose as follows:

In subsection (2) possession of 2 or more similar items of personal property with the identification marks altered or removed is prima facie evidence of knowledge that this has been done and of an intent to prevent identification of the property. While a person may innocently have a refrigerator in his home with the serial number removed, there is an inference that a car dealer, who has a number of cars with the motor numbers filed off, is selling stolen cars.

1953 Legislative Council Report on the Criminal Code, p. 129.

8. In State v. Hamilton, 146 Wis.2d 426, 432 N.W.2d 108 (Ct. App. 1988), the court found that the word "similar" in § 943.37(3) "can be understood in different ways by reasonable people and that the statute is therefore ambiguous." The court then went on to define it: ". . . within the context of sec. 943.37(3), items must be comparable, substantially alike or capable of standing in the place of the other before they are similar." 146 Wis.2d 426, 433.