1499 CRIMINAL SLANDER OF TITLE — § 943.60

Statutory Definition of the Crime

Criminal slander of title, as defined in § 943.60 of the Criminal Code of Wisconsin, is committed by a person who submits for filing, docketing, or recording any instrument relating to a security interest in or title to real or personal property, and who knows or should have known that the contents or any part of the contents of the instrument are false, a sham, or frivolous.

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 three elements[1] were present.

Elements of the Crime That the State Must Prove

1. The defendant submitted an instrument for (filing) (docketing) (recording) that related to (a security interest[2] in) (title to) real or personal property.

   "Instrument" means a document that appears to have some legal effect.[3]

   ["Real property" means real estate.]

2. The contents or any part of the contents of the instrument were false, a sham, or frivolous.

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This requires that, while the instrument may have been represented to be a legal document, it had no proper legal significance either because its contents were false or because it related to no legitimate legal claim, interest, or remedy.[4]

3. The defendant knew or should have known[5] that the contents or any part of the contents of the instrument were false, a sham, or frivolous.

In determining what the defendant should have known, consider what an ordinary, reasonable, and prudent person would have known about the contents of the document under the same or similar circumstances.

Deciding About Knowledge

You cannot look into a person's mind to find knowledge. 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 knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of criminal slander of title 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 1499 was originally published in 1988 and revised in 1995, and 1998. This revision was approved by the Committee in October 2008 and involved adoption of a new format and nonsubstantive changes to the text.

The following changes were made in § 943.60 by 1997 Wisconsin Act 27 (effective date: October 14, 1997):

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(1) the penalty was increased to a Class D felony [changed to a Class I felony by 2001 Wisconsin Act 109];

(2) "financing statement" was added to the list of instruments;

(3) the coverage was expanded to include instruments relating to a security interest in real or personal property; and,

(4) the mental element was changed to refer to "or should have known" that the contents of the instrument are false.

1. The three elements in the instruction are essentially the same as those set forth in State v. Leist, 141 Wis.2d 34, 414 N.W.2d 45 (Ct. App. 1987). However, the Leist summary of the elements included "intentionally" in the first element. See 141 Wis.2d 34 at 36. "Intentionally" is not included in the instruction because it does not appear in the statute defining the crime. Because that issue was not really before the court in Leist, the Committee concluded that the decision did not explicitly hold that "intentionally" does apply to violations of § 943.60.

2. "Security interest" was added to the statute by 1997 Wisconsin Act 27. The term is defined as follows in § 943.84(4): "'Security interest' means an interest in property which secures payment of or other performance of an obligation." Other definitions are provided in §§ 234.907(1)(h), 401.201(37), and 421.301.

3. The definition of "instrument" is based on dictionary definitions of the word. The Committee concluded that in the context of this offense, there was also the connotation of a written document purporting to have legal significance. See, on the latter point, Garner, A Dictionary of Modern Legal Usage, Second Edition, Oxford University Press, 1995. For general definitions, the Committee referred to Black's Law Dictionary and Webster's Third New International Dictionary (Unabridged).

4. The question whether the document was false, a sham, or frivolous must be left for the jury to determine:

> We agree that it is within the province of a trial court to define an element for the jury's enlightenment. In fact, the trial court here did just that when it defined a frivolous document as one "without legal significance." It is not within the province of the trial court, however, to determine as a matter of law that certain facts before the jury fit within the given definition. In that case, the trial court is applying the facts to the law, thus invading the province of the jury.
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> . . . . We hold that the unambiguous intent of the legislature was to place upon the government the responsibility of convincing the jury that a document is without legal significance.

State v. Leist, 141 Wis.2d 34, 37, 38-39, 414 N.W.2d 45 (Ct. App. 1987), emphasis in original.

The definition of "false, sham, or frivolous" in the instruction is based on the one ("without legal significance") used in Leist, though it was adapted to directly recognize that while the document may purport to have legal significance (and in fact, is often filed precisely because it will have legal effect), it in fact does not have a legitimate legal effect.

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5. The alternative "or should have known" was added to § 943.60 by 1997 Wisconsin Act 27.

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