

FOSTERING THE SALE OF STOLEN GOODS
Penal Law § 165.66
(Committed on or after November 1, 2024)

The (specify) count is Fostering the Sale of Stolen Goods.

Under our law a person is guilty of Fostering the Sale of Stolen Goods when such person, for the purposes of financial gain, [acting alone or in concert with another person (or persons)]¹ uses any

Select appropriate alternative(s):

internet website [or]
application [or]
online marketplace [or]
digital service, [or]

any [other] platform or venue, [including any physical building, public or private space], or location

to offer for sale retail goods or merchandise which are stolen [or unlawfully obtained]; and

knew or should have known that such retail goods or merchandise were stolen or unlawfully obtained.

The following term used in this definition have a special meaning:

¹ The words in brackets are normally unnecessary because: "An indictment charging a defendant as a principal is not unlawfully amended by the admission of proof and instruction to the jury that a defendant is additionally charged with acting-in-concert to commit the same crime, nor does it impermissibly broaden a defendant's basis of liability, as there is no legal distinction between liability as a principal or criminal culpability as an accomplice " *People v Rivera*, 84 N.Y.2d 766, 769 (1995). Those words accordingly need only be included here if "acting in concert" is a viable theory in the case at hand and will be included in the elements of this instruction.

STOLEN [OR UNLAWFULLY OBTAINED] RETAIL GOODS OR MERCHANDISE are retail goods or merchandise that have been wrongfully taken, obtained, or withheld from an owner by a person who did so with the intent to deprive another of such property or to appropriate such property to himself or herself or a third person.²

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the County of (County), the defendant, (defendant's name) [acting alone or in concert with another person (or persons)]³ used

Select appropriate alternative(s):

an internet website [or]
an application [or]
an online marketplace [or]
a digital service, [or]

any [other] platform or venue, [including any

² See Penal Law § 155.05 [1]). If the theft is in issue, add as necessary and appropriate: A person acts with INTENT TO DEPRIVE ANOTHER OF PROPERTY OR TO APPROPRIATE PROPERTY TO HIMSELF OR HERSELF [or to a third person] when such person's conscious objective or purpose is: (1) to withhold the property or cause it to be withheld permanently, or (2) to exercise control over the property, [or to aid a third person to exercise control over it], permanently, or (3) to dispose of the property either for the benefit of himself or herself [or a third person], or, under such circumstances as to render it unlikely that an owner will recover such property. See Penal Law § 155.05 (3) and (4).

³ The CJI format for inserting an acting in concert instruction is “the defendant, personally, or by acting in concert with another person.” See Accomplice charge. Here, however, the statutory language is used.

physical building, public or private space], or location

to offer for sale retail goods or merchandise which were stolen [or unlawfully obtained];

2. That the defendant did so for the purposes of financial gain; and
3. That the defendant knew or should have known that the retail goods or merchandise were stolen [or unlawfully obtained].

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt each of those elements, you must find the defendant not guilty of this crime.