, the defendant in this case, has been charged with the crime of theft by deception in the third degree.

To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt each of the following elements:

(1) the defendant intended to deprive another of property or to appropriate property of another to the defendant, or a third person;

(2) the defendant obtained the property of another;

(3) the defendant obtained the property by deception; [and]

[(4) the value of the property was $250 or more.]

[(4) the value of the property was less than $250; and

(5) within the past five years, the defendant has been convicted and sentenced for theft or concealment of merchandise on two or more separate occasions in this or another jurisdiction.]

["Deception" does not include falsity as to matters having no pecuniary significance or "puffing" by statements unlikely to deceive reasonable persons in the group addressed.]

[That the defendant used deception by promising performance which he or she did not intend to perform or knew would not be performed is not established solely by or inferred solely from the fact that the promise was not performed.]

# USE NOTE

The following terms are defined in other instructions:

"appropriate" – 11.46.990

"deception" – 11.81.900(b)

"deprive" – 11.46.990

"intentionally" - 11.81.900(a)

"obtain" – 11.46.990

"property" - 11.81.900(b)

"property of another" – 11.46.990

For determination of value, see AS 11.46.980.

Alaska Statute 11.46.295 provides that for purposes of considering prior convictions in prosecuting certain subsections of the theft or concealment of merchandise statutes, "a conviction for an offense under law or ordinance with similar elements" is a conviction of an offense having elements similar to those of an offense defined as such under Alaska law at the time the offense was committed.

Unless the parties stipulate to prior convictions, the state must prove them as essential elements to the jury. See Morgan v. State, 661 P.2d 1102 (Alaska App. 1983); Wortham v. State, 689 P.2d 1133 (Alaska App. 1984); and Azzarella v. State, 703 P.2d 1182 (Alaska App. 1985).

Bifurcation of the trial to separate issues regarding prior convictions is required unless the trial judge determines that evidence concerning the prior convictions is otherwise relevant and satisfies Evidence Rule 403. Ostlund v. State, 51 P.3d 938 (Alaska App. 2002).

Theft in the Third Degree is defined as theft of property worth less than $750 but more than $250 (except for recidivists); however, any value over $250 will suffice. (For recidivists, any value will suffice.) *See* AS 11.81.615.