, the defendant in this case, has been charged with the crime of theft by receiving in the second 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 bought, received, retained, concealed, or disposed of stolen property;

(2) the defendant recklessly disregarded that the property was stolen;

(3) the defendant intended to deprive another of the property or to appropriate the stolen property to the defendant, or a third person who was not the rightful owner; [and]

[(4) the value of the property was $750 or more.]

[(4) the property was a firearm or explosive.]

[(4) the property was taken from the person of another.]

[(4) the property was taken from a vessel; and

(5) the property was vessel safety or survival equipment.]

[(4) the property was taken from an aircraft; and

(5) the property was aircraft safety or survival equipment.]

[(4) the value of the property was $250 or more; and

(5) within the preceding 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.]

# USE NOTE

The following terms are defined in other instructions:

"aircraft" - 11.46.130(b)(1)

"aircraft safety or survival equipment" - 11.46.130(b)(2)

"appropriate" – 11.46.990

"deprive" – 11.46.990

"firearm" – 11.81.900(b)

"intentionally" - 11.81.900(a)

"property" - 11.81.900(b)

"reckless disregard" - 11.46.190 #7

"stolen property" – 11.46.990

"vessel" – 11.46.130(b)(3)

"vessel safety or survival equipment" – 11.46.130(b)(4)

For determination of value, see AS 11.46.980.

See Ace v. State, 672 P.2d 159 (Alaska App. 1983), for a discussion of the third element.

See Andrew v. State, 653 P.2d 1063 (Alaska App. 1982), for a discussion of the standard of "reckless disregard." See also Pattern Instruction 11.46.190 #5.

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 Second Degree is defined as theft of property worth less than $25,000 but more than $750 (except for recidivists); however, any value over $750 will suffice. (For recidivists, any value over $250 will suffice.) *See* AS 11.81.615.