

1 **14-1633. Possession of burglary tools; essential elements.**

2 For you to find the defendant guilty of possession of burglary tools [as charged in Count
3 _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the
4 following elements of the crime:

5 1. The defendant had in his possession² _____ (*name of tools or*
6 *devices*);

7 2. _____ (*name of tools or devices*) [is] [are] designed for or commonly
8 used in the commission of a burglary;

9 3. The defendant intended that the _____ (*tools or devices*) be used
10 for the purpose of committing a burglary;

11 4. This happened in New Mexico on or about the _____ day of
12 _____, _____.

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USE NOTES

15 1. Insert the count number if more than one count is charged.

16 2. See UJI 14-130 NMRA for definition of “possession,” if the question of possession
17 is in issue.

18 3. The jury should be instructed on the elements of burglary following this instruction.
19 See UJI 14-1630 NMRA. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA
20 must be used.

21 [As amended by Supreme Court Order No. 17-8300-012, effective for all cases pending or filed
22 on or after December 31, 2017; as amended by Supreme Court Order No. 20-8300-004, effective
23 for all cases pending or filed on or after December 31, 2020.]

1 **Committee commentary.** — *See* NMSA 1978, § 30-16-5. No New Mexico appellate
2 decision defines burglary tools. *See generally* Annot., 33 A.L.R.3d 798 (1970).

3 Possession of burglary tools is a separate offense from the crime of burglary. A defendant
4 does not need to be convicted of the crime of burglary in order be held liable for possession of
5 burglary tools. *State v. Barragan*, 2001-NMCA-086, 131 N.M. 281, *overruled on other grounds*
6 *by State v. Tollardo*, 2012-NMSC-008, 275 P.3d 110.

7 An individual can be “exposed to criminal sanctions if one: (1) possesses an instrumentality
8 or device, (2) the instrumentality or device is designed or commonly used to commit burglary, and
9 (3) the instrumentality or device is possessed under circumstances evincing an intent to use the
10 instrumentality or device in committing burglary.” *State v. Najera*, 1976-NMCA-088, 89 N.M.
11 522, 554 P.2d 983. The statute is therefore not void for vagueness. *Id.*

12 Whether an item is commonly used for burglaries is a factual determination for a jury. *State*
13 *v. Jennings*, 1984-NMCA-051, 102 N.M. 89, 691 P.2d 882.

14 Constructive possession is sufficient for conviction of possession of burglary tools. *State*
15 *v. Langdon*, 1942-NMSC-034, 46 N.M. 277, 127 P.2d 875; *see also, State v. Garcia*, 1969-NMCA-
16 039, 80 N.M. 247, 453 P.2d 767 (burglary tools do not have to be on the person of the defendant
17 in order to be possessed).

18 [As amended by Supreme Court Order No. 17-8300-012, effective for all cases pending or filed
19 on or after December 31, 2017.]