

1 **14-1697. Receipt of property obtained by fraudulent use of credit card; essential elements.**

2 For you to find the defendant guilty of receiving property obtained by fraudulent use of a
3 credit card [as charged in Count _____]¹, the state must prove to your satisfaction beyond a
4 reasonable doubt each of the following elements of the crime:

5 1. The defendant received _____ (*describe money, goods or services*
6 *received*);

7 2. This property was obtained by another's fraudulent use of a credit card²;

8 3. The defendant knew or had reason to believe that:⁴

9 [the credit card was obtained in violation of law and then used;] or

10 [the credit card was invalid, expired or had been revoked, and was used with the
11 intent to deceive or cheat;] or

12 [the credit card was used with the intent to deceive or cheat by a person
13 misrepresenting that he was the cardholder, or was authorized by the cardholder to use the credit
14 card;] or

15 [the credit card was used without the cardholder's consent by a person with the
16 intent to deceive or cheat;]

17 4. These goods or services had a [value]³ [value over \$300.00];

18 5. This happened in New Mexico on or about the _____ day of
19 _____, _____.

20

21 USE NOTES

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

1 2. If the jury requests a definition of “credit card,” the statutory definition set forth in
2 Section 30-16-25 NMSA 1978 is to be given.

3 3. Use applicable alternative.

4 4. Use only the applicable bracketed phrase or phrases set forth in Element 3. If there
5 is an issue as to the underlying elements of one of the crimes set forth in Element 3 of this
6 instruction, then upon request, the court shall give the applicable essential elements instruction
7 modified in the manner illustrated by UJI 14-140 NMRA.

8 [As amended by Supreme Court Order No. 20-8300-004, effective for all cases pending or filed
9 on or after December 31, 2020.]

10 **Committee commentary.** — For general information on credit card crimes, *see* committee
11 commentary to UJI 14-1680; *see also* State v. Castillo, 2011-NMCA-046, ¶¶ 7-12, 149 N.M. 536,
12 252 P.3d 760 (discussing definition of “credit card” and concluding that a debit card does not fall
13 within the statutory definition of “credit card”).

14 Section 30-16-36 NMSA 1978 is similar to our receiving stolen property statute, Section
15 30-16-11 NMSA 1978. Here though, the property was not technically stolen, but was obtained by
16 another’s fraudulent use of a credit card. The knowledge requirement is the same: the defendant
17 “knows or has reason to believe” the money, goods or services were obtained in violation of law.

18 For a discussion on the aggregation of amounts provided for in this section, *see* committee
19 commentary to UJI 14-1689 NMRA.

20 The committee is of the opinion that one or more of the alternatives set forth in Element 3
21 may be given. *See* UJI 14-1686 NMRA.

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