

13.2 POSSESSION OF A BURGLARY TOOL

§ 810.06, Fla. Stat.

To prove the crime of Possession of a Burglary Tool, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) possessed a [tool] [machine] [implement].
2. At the time of the possession, (defendant) intended to commit a burglary or a trespass [or intended that someone else commit a burglary or trespass].
3. At the time of the possession, (defendant) intended that the [tool] [machine] [implement] would be used to commit that burglary or trespass.
4. (Defendant) did some overt act toward committing the burglary or the trespass [or] [The person that (defendant) intended to commit the burglary or trespass did some overt act toward committing the burglary or the trespass].

To prove (defendant) “possessed a burglary tool,” the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [tool] [machine] [implement] and b) intentionally exercised control over it.

Give if applicable.

Control can be exercised over a burglary tool whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a burglary tool does not establish that the person intentionally exercised control over it in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the [tool] [machine] [implement] or the present ability to direct its control by another.

Joint possession. Give if applicable.

Possession of a burglary tool may be sole or joint, that is, two or more persons may possess a burglary tool.

Give if applicable.

Intent to commit (another offense included in the instructions) **does not prove the intent** required for this crime. For this crime, the State must prove the defendant intended that a burglary or a trespass be committed, not a different crime.

Lesser Included Offenses

No lesser included offenses have been identified for this offense. The crime of Attempted Possession of a Burglary Tool does not exist in Florida. *See State v. Thomas*, 362 So. 2d 1348 (Fla. 1978) (Possession of a Burglary Tool is not committed until the item is in the possession of a person who is using or attempting to use the object as a burglary tool).

Comments

Jurors should also be instructed on the elements of burglary or trespass (instructions #13.3 or #13.4) if one or both of those instructions is not given for another count. For burglary, it may also be appropriate to instruct jurors on the elements of the crime intended to be committed at the time of the entering of the structure/conveyance or while remaining therein.

“Trespass” as used in this statute includes offenses that may not include the word “trespass” in the statutory description. For purposes of this statute, trespass can “encompass any act of unlawful interference with property which is defined by statute as a criminal offense, regardless of whether or not the interference is designated as a ‘trespass.’” *Desin v. State*, 414 So. 2d 516, 518 (Fla. 1982). Thus, a special instruction explaining trespass may be necessary.

Common household objects, which may have a useful and lawful purpose, may be classified as “burglary tools” if they are used with intent to commit burglary. However, gloves that are used only to avoid leaving fingerprints are not “burglary tools” since they are not objects that facilitate a burglary. *Green v. State*, 604 So. 2d 471 (1992).

§ 810.06, Fla. Stat., contains “tool, machine, or implement.” In a case where a specific tool is charged and it is undisputed that the tool in question is a specific tool such as a screwdriver, it may be appropriate to substitute the case-specific tool.

This instruction was adopted in 1981 and amended in 1989 [543 So.2d 1205], 1995 [665 So.2d 212], 2007 [953 So. 2d 495], and on December 15, 2021.