

# ADA ELLIOTT ON BURGLARY TOOLS

Possession of burglary tools consists of having in the person's possession a device . . . designed or commonly used for . . . burglary and under circumstances evincing an intent to use the same in the commission of burglary. NMSA 1978, Section 30-16-5. Fourth Degree Felony.

What is "device commonly used for burglary"?

Actually, it doesn't have to be a specially designed burglary tool. It may be an ordinary item - a hammer, a shovel, or even a clothes hanger. The critical question to determine is the context or circumstance in which the person is carrying the particular item. State v. Najera (1976).

APD officers surveilled a gas station which was closed. They could hear the sound of metal pounding on metal coming from the back of the station where there was a stairway leading down to a basement door. Two subjects were apprehended. One had a screwdriver and the other a flashlight. Fresh tool marks on the lock mechanism appeared to be screwdriver marks.

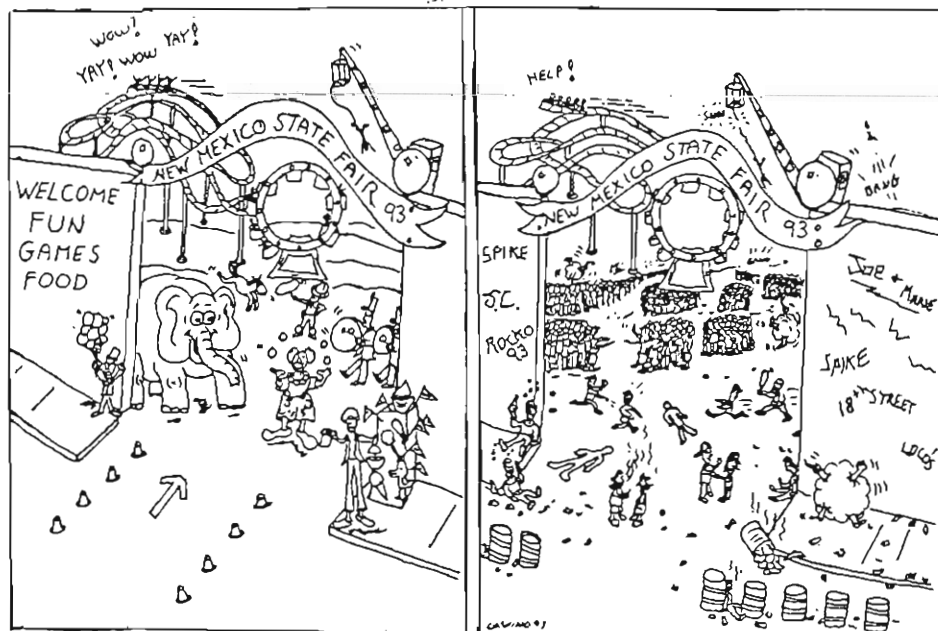
Court of Appeals affirmed conviction for possession of burglary tools. It noted that the evidence allowed a reasonable inference that the tools were burglary tools. In view of this actual use, evidence that flashlights and screwdrivers were "commonly used" in burglaries was unnecessary. State v. Jennings (1984).

Actual possession of burglary tools on person not required

The statute does not require that the defendant have the tools on his or her person. Police found tools in the truck occupied by defendants at the time of their arrest on the night of the burglary. This was held to be possession of burglary tools. State v. Garcia (1969).

A bonus charge for police and prosecution

This offense can be added to a burglary charge. Even if the charge is a misdemeanor, i.e., attempted commercial burglary, possession of burglary tools is still a fourth degree felony. State v. Everitt (1969).



WHAT PEOPLE SEE

WHAT COPS SEE