

Possession of Housebreaking Implements s 425(1)(c)

The prosecution must prove that the defendant:

1. **Was found by night.**

That means that the defendant was located between the hours of 9pm and 6am.

2. **Was in possession of an instrument of housebreaking.**

The essence of the concept of possession is that at the relevant time the defendant intentionally had control over the object in question. The defendant may have that control either alone or jointly with some other person or persons.

To be in possession of the object the defendant must know that he is in possession of the object, thus, if the defendant was carrying a case into which somebody had, without his knowledge, slipped an object he would not be in possession of that object.

It is not necessary for the accused to have the object in his hand or on his person for him to be in possession of it. Further, you do not need to own something in order to be in possession of it. You can possess something temporarily or for some limited purpose.

3. **Of an instrument of housebreaking.**

An instrument of housebreaking includes every instrument which, from its nature, is capable of being used for housebreaking although it may ordinarily be used for a lawful purpose.

4. **Without lawful excuse.**

Once the prosecution has established beyond reasonable doubt that the defendant was found at night in possession of an instrument of housebreaking the defendant is guilty of the offence unless he establishes on the balance of probabilities that he had a lawful excuse for possession of the instrument at the time and place alleged.