



**JACKIE LACEY**  
**DISTRICT ATTORNEY**

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

# **ONE MINUTE BRIEF**

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**NUMBER:** 2019-09    **DATE:** 03-29-09    **BY:** Devallis Rutledge    **TOPIC:** Burglary Tools

**ISSUE:** What intent must a person have to be guilty of unlawful possession of burglary tools?

PC § 466 sets out 3 ways that possessing, making or altering certain items may be a misdemeanor: (1) possession of 16 listed items or “**other instrument or tool**” with specified intent; (2) making or altering pass keys without proper authorization; and (3) making, altering or repairing an item with specified knowledge.

Some of the items listed in the **first prohibition** are common instruments that are frequently possessed and used for lawful purposes (e.g., crow bar, screwdriver, vise grips). Others are more commonly used to break into structures or vehicles (e.g., slim jim, bump key, porcelain chips). In both of these kinds of cases, what makes possession of the described items unlawful is that they be possessed “with **intent** feloniously to **break into** any building, railroad car, aircraft, or vessel, trailer coach, or vehicle.” PC § 466. What if they are **not** used to facilitate **entry**, but to facilitate **theft** once entry has been made?

- HW entered a department store during business hours, intending to steal a pair of jeans. Clothing is protected by an anti-theft device, so HW brought with him a pair of pliers (not one of the 16 listed items), with which he removed the security tag, and then left the store without paying. The juvenile court charges sustained against him included a violation of PC § 466.

HW appealed, arguing that even if pliers were considered an “other instrument or tool,” he lacked the requisite **intent** to make their possession unlawful. The appellate court rejected HW’s argument, concluding that HW had possessed the pliers when he entered the store for the “burglary purpose” of stealing the jeans, and so was guilty of violating § 466. On further

appeal, the California Supreme Court acknowledged that appellate opinions have disagreed on this interpretation. Agreeing with HW, the California Supreme Court has unanimously reversed.

*“A statutory requirement limiting imposition of criminal liability to individuals with the requisite criminal intent functions as a crucial constraint on the imposition of criminal liability in most penal statutes. ...*

*“What section 466 includes ... is an **intent** requirement focused specifically on commission of a felonious **breaking or entry**. ...*

*“[C]riminal liability for possession of prohibited tools ‘with intent feloniously to break or enter’ requires a showing that the defendant **intended to use the instrument or tool possessed to break or effectuate physical entry** into a structure in order to commit theft or a felony within the structure.”*

*In re HW* (2019) \_\_\_ Cal.5<sup>th</sup> \_\_\_, No. S237415, Slip opn. at 8, 10 (Emphases added.)

**BOTTOM LINE: Criminal possession of burglary tools requires proof that the person intended to use the items to break into a structure or vehicle.**

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.