San Diego District Attorney

D.A. LIAISON LEGAL UPDATE

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Remember 9/11/01; Support Our Troops
Have you forgotten what happened six years ago?

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THIS EDITION'S WORDS OF WISDOM:

"*It's a frightening feeling to wake up one morning and discover that while you were asleep you went out of style*." (Erma Bombeck)

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***Administrative Notes*:**

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***ADMINISTRATIVE NOTES*:**

***Future Legal Updates; Distribution*:** In addition to publishing the *Legal Update* through www.cacrimenews.com (which is up and running as we speak, and

which, in addition to the *Update*, carries a wealth of other law enforcement-related information), and the excellent webpage set up by the San Diego Sheriff at www.sdsheriff.net/legalupdates, I flirted with the idea of sending out future *Legal Updates* to a single representative of individual law enforcement and prosecutorial agencies, leaving the further distribution to these persons. And a lot of you have volunteered to represent your agency in this regard (for which I thank you). But, with somewhere close to 100 people volunteering, I have found that this idea would continue to stretch my capabilities through AOL (my home ISP) and would still leave a lot of people out of the loop who are presently on the subscription list. Fortunately, an organization out of Santa Rosa named "*The Distance Learning Company*," an innovator of on-line legal educational programs and related topics, has come to the rescue and is presently working on a webpage through which I will not only be able to continue to e-mail the *Update* to individuals, but will also make it available to anyone else who has a legitimate interest in staying current on the law. The next *Legal Update* you receive will be through the generous assistance of this group. The website address, which has not yet been established, will be listed for you at that time. My sincere gratitude to Joe Soldis for his efforts in making this possible. So, after this edition, you will either automatically receive, and/or be able to access, the Legal Update through (1) this new webpage, (2) at www.cacrimenews.com, and (3) www.sdsheriff.net/legalupdates. All these websites are free. My goal is to make the *Legal Update* as available, and as easily accessible, to as many law enforcement officers, prosecutors, students, educators, and other legal professionals as possible. Through the generous help of these three organizations, this goal is appearing to become a reality.

***Retirement Celebration*:** In response to a number of you who have asked: "*Yes*," we're going to have a retirement "celebration;" *Friday evening, 5:00 p.m., November 9*. My beautiful wife, Jan, having served the citizens of San Diego County for some 34 years now, is retiring in December. So we're having a joint retirement celebration for our friends, family, and professional acquaintances to give us a chance to properly say thanks for the privilege of working with you, and for all the years (70 in total) that you have been here for us. If you're going to be in the neighborhood (San Diego/Poway) and think you might like to attend, let me know and I'll make sure you get the flyer with the specifics when we get one written up.

***Replacement Liaison DDA*:** My replacement, *Robert Amador*, is here, and, as of 9/10/07, is officially the new "*Law Enforcement Liaison Deputy District Attorney*" for the San Diego Sheriff and all the North and East County agencies. His contact phone numbers are 858-974-2419 (W), and 619-405-8855 (C). I'm officially out of here on 9/21, allowing for a 10-day overlap. However, as indicated above, I will continue to write, do some teaching, answer my cell phone (858-395-0302), and respond to e-mails (RCPhill808@aol.com) for the indefinite future; probably until I'm too old to remember who your are and what you're calling me about. Please don't hesitate to contact me when you've got questions.

CASE LAW:

***Anonymous Information, Knock and Talks, and Consensual Searches*:**

People v. Rivera **(Jun. 14, 2007) 41 Cal.App.4th 304**

Rule: A "*knock and talk*" and the resulting consensual search of a residence are both lawful despite the fact that the initial contact was the result of an anonymous tip.

Facts: Oceanside Police Officer Scott Hunter received a radio call concerning an anonymous tip that a subject named Juan Rivera, defendant in this case, was at a particular residence in Oceanside and that he had an outstanding warrant for his arrest. Without doing any checks on the name or the address given, Officer Hunter and a partner went to the address. At the residence they contacted a woman who said that she was the homeowner. She invited the officers in and consented to a search of the house for Rivera. Defendant was found in a shed in the backyard. Upon contacting him, defendant was found to have a large knife concealed beneath his shirt; a concealed dirk or dagger per P.C. § 12020(a)(4). It was also determined that he had two outstanding traffic warrants and a parole warrant. Charged with possession of a dirk or dagger, defendant's motion to suppress the knife was denied by the trial court. On appeal, however, a split Fourth District Court of Appeal reversed, ruling that the initial contact between the officers and the homeowner, based upon an anonymous tip, was improper. The People appealed.

Held: The California Supreme Court, in a unanimous decision, reversed. The issue on appeal to the Supreme Court was whether the officers, armed with no more than an anonymous tip, could make contact with the homeowner and seek permission to search her house. Defendant argued for a new rule to the effect that a police officer must corroborate an anonymous tip before contacting a homeowner and seeking her consent to enter and search that person's residence. The Court declined to establish such a rule. While an uncorroborated anonymous tip alone does not justify "*detaining*" someone (*Florida v. J.L.* (2000) 529 U.S. 266.), it does not prevent an officer from conducting a "*consensual encounter*." Going to someone's front door and making inquiries into possible illegal conduct, or even asking for permission to come in and search, follows the same rules as a consensual encounter of a person on the street. So long as the person contacted would have reasonably felt, under the circumstances, free to decline, there is no constitutional impediment to an officer making contact at their front door and asking for permission to search. The real issue here, not properly litigated per the Court, is whether defendant (as opposed to the homeowner) was lawfully detained and searched. The case was therefore remanded for a determination of this issue.

Note: I'm confused. At one point early in the decision, the Supreme Court noted that the District Court of Appeal had ruled that defendant had been illegally detained. (pg. 307.) But then at the end of the decision, the Supreme Court ruled that the Court of Appeal erred only in finding an "*improper contact*" with the homeowner, remanding the case back to the Court of Appeal for a determination on the issue of the legality of the "*detention and search*" of the defendant. (pg. 311) The Court does not give us enough

facts in the decision for me to venture a guess on how that issue might turn out. Nor do they discuss whether information from an anonymous tipster that the defendant had outstanding warrants is, by itself, enough to overcome the rule that a belatedly discovered arrest warrant will not justify an otherwise illegal detention, arrest, and/or search. (*People v. Sanders* (2003) 31 Cal.4th 318.) However, these little problems aside, the obvious importance of this case is in pointing out that a "*knock and talk*" at the door of someone's residence is no different than conducting a "*consensual encounter*" with someone on the street. The legal test is the same; i.e., whether a reasonable person under the circumstances would have believed that he was not required to talk to the officer. But be wary of other cases that have held that if you get too pushy at the front door, you might just convert your "*knock and talk*" into an "*investigative detention*." (E.g.; *United States v. Washington* (9th Cir. 2004) 387 F.3rd 1060.) Such a detention would be illegal absent a reasonable suspicion of criminal activity. Anonymous information does *not* constitute a reasonable suspicion. (*Florida v. J.L.*, *supra*.) Remember: The key to keeping a knock and talk consensual is *not* to get so pushy that a reasonable homeowner, under the circumstances, would no longer have felt free to tell you to pound sand.

***Consensual Encounters, Detentions, and Consent to Search*:**

United States v. Washington **(9th Cir. Jun. 19, 2007) 490 F.3rd 765**

Rule: Conducting a consensual search in a manner that is too "*authoritative*" may convert a consensual encounter into a detention.

Facts: Defendant was seated in his lawfully parked car at 11:30 p.m., in downtown Portland when he was observed by Officer Daryl Shaw. Although having no reason to suspect defendant of doing anything illegal, Officer Shaw decided to contact him. Parking his patrol car a full car length behind defendant, and without using his lights or siren, Officer Shaw walked up to the driver's side door. Officer Shaw was in uniform, carrying a firearm and baton, both of which were visible but neither or which were brandished or even touched. In response to the officer's question about what he was doing, defendant said that he was waiting for a friend. Officer Shaw then asked defendant if he had anything on him that he should not have. Defendant said that he did not. Officer Shaw asked if defendant minded if he checked, to which defendant responded "sure" (apparently meaning that he didn't mind). Officer Shaw, who throughout the contact remained "cordial and courteous," asked defendant to step out of his vehicle and directed him back to the patrol car where he was patted down for weapons. Nothing was found. When defendant first got out of his car, Officer Troy Pahlke arrived to cover and walked up to defendant's now-open driver's door, effectively blocking any potential attempt by defendant to get back into his car. Officer Shaw next asked defendant if he had anything in his car he shouldn't have. Defendant said that he did not. Officer Shaw asked defendant if he could search his car. Defendant told him to "go ahead." The car was searched and a firearm was found. Charged in federal court with being a felon in possession of a firearm, per 18 U.S.C. § 922(g)(1), defendant's motion to suppress the gun was denied by the district (trial) court. Defendant appealed from his 5-year, 10-month prison sentence.

Held: The Ninth Circuit Court of Appeal reversed. The Court first ruled that the initial contact with defendant, asking him what he was doing, was a lawful "*consensual encounter*." "No Fourth Amendment seizure (i.e., a detention) occurs when a law enforcement officer merely identifies himself and poses questions to a person if the person is willing to listen." It matters not whether the person is on foot or sitting in his car. It is also clear that merely asking for a consent to search does not, by itself, convert the contact into a detention "as long as the police do not convey a message that compliance with their requests is required." Nothing occurred here, in this initial contact, that could be said to be anything other than a consensual encounter. However, despite the fact that Officer Shaw was "cordial and courteous" to defendant, and that neither physical force nor the threat to use force was ever used, the Court determined that the search of defendant's person was done in a manner that converted the contact into an unlawful detention. Specifically, it was noted that in the prior year and a half, two African-Americans had been shot—one fatally—by white Portland police officers, a fact about which defendant later testified that he was aware. As a result, the "Portland Police Bureau" had published and distributed a pamphlet advising citizens that "if ordered, comply with the procedures for a search." Defendant, an African-American, testified that he was familiar with this pamphlet. The Court noted that neither officer, both of whom are white, had told defendant he was free to terminate the contact. Also, the manner in which Shaw searched defendant was described as "*authoritative*" by having him walk to the rear of Shaw's patrol car and put his hands on the trunk lid, patting him down from behind him while telling him to face forward. The contact, although in a public place, was late a night; around 11:30 p.m. Also, Officer Pahlke stood between defendant and his vehicle, blocking his ability to return to his car and leave if he had wanted to. Lastly, both officers were physically larger than defendant. Based upon the totality of these circumstances, no reasonable person in defendant's position would have felt free to leave. Defendant, therefore, was detained. Because there was no reason to suspect him of any criminal activity, the detention was illegal. The consent to search his car was the product of that illegal detention. The gun, therefore, should have been suppressed.

Note: Well, here we go again with another blatantly reversible Ninth Circuit decision that needs to be taken up on appeal. While I don't disagree with the theory of the case (i.e., that if you get too pushy, you can inadvertently convert a consensual encounter into a detention), this particular decision has to really stretch to reach the dumb conclusion that this is one of those cases. If this case stands, it just about negates the possibility that any white Portland police officer will ever be able to conduct a consensual encounter and/or consensual search of an African-American, at least if done at night and with more than one officer present. And it doesn't matter that it is done in a civilized "cordial and courteous" manner. Citing absolutely no evidence to suggest that either Officers Shaw or Pahlke are bigots, or otherwise acted out of any animosity (racial or otherwise) towards defendant, or that defendant was treated inappropriately in any way, the Court here simply assumes the worse. I find it difficult to see anything these officers could have done any differently in this case to keep it a consensual encounter. And the pamphlet published by the Portland Police Bureau, by the Court's own description, merely instructs citizens to submit to being searched when "ordered" by a police officer to comply. This is no different than what I've been preaching for years; i.e., that any person (no matter

what his race or ethnicity) should comply with a police officer's orders. The lawfulness of that order can better be tested at some later date in a courtroom rather than there on the street. Defendant in this case was never ordered to do anything. But the Court here interprets the pamphlet as commanding Portland's Black citizens to submit to warrantless searches even though only "asked" (not "ordered") if they "would mind" submitting to a search. *Ridiculous*!

***Residential Entry to Execute an Arrest Warrant; Probable Cause*:**

***United States v. Diaz* (9th Cir. Jun. 22, 2007) 491 F.3rd 1074**

Rule: Forcing entry into the suspect's home in the execution of an arrest warrant requires that there be a "*fair probability*" that he be home at the time.

Facts: Defendant lived on the Fort Hall Indian Reservation in Idaho, and was well-known to local law enforcement due to his prior felony criminal history. In July, 2003, defendant consented to the search of his home, resulting in the recovery of an assault rifle and drug paraphernalia. No charges were filed at that time. Over the next 18 months, police visited defendant some 3 or 4 times during which, as a mechanic working from his home, he usually answered the door himself. In all but one instance, he was home. He told officers that they could usually find him at home, at least during the day. During these visits, defendant's black SUV was also usually there, but not always. Finally, in February, 2005, defendant was indicted for the weapons and paraphernalia possession from 2003 and a warrant was issued for his arrest. With this warrant in hand, officers from several law enforcement agencies surrounded defendant's house. Impeded by defendant's dogs and surveillance cameras, the officers merely watched from a distance for about an hour and a half. Two people could be seen in front of defendant's house. Defendant's SUV was not seen (although it was later found parked in a shed). One person, who did not appear to be defendant, drove away in another vehicle. Finally, surmising that the remaining individual must be defendant, the officers went up to his home and knocked. No one responded, however. The officers could not see inside because of blankets covering the windows. After waiting a reasonable time, they finally forced entry. Although defendant was not found, the officers did find a baggie of methamphetamine. A search warrant was obtained resulting in the recovery of the meth and some "drug equipment." Defendant was later found at a nearby casino and arrested. Charged in federal court, defendant's motion to suppress the evidence as the product of an illegal entry was denied. Convicted after a jury trial, defendant appealed.

Held: The Ninth Circuit Court of Appeal affirmed defendant's conviction. Defendant's argument on appeal (as it was in the trial court) was that the officers did not have sufficient cause to believe he was home when they forced entry into his house. The methamphetamine and the later-obtained search warrant, according to defendant's argument, were the products of that unlawful entry. The officers in this case had a warrant for defendant's arrest. But an arrest warrant alone is not enough to get a police officer into a suspect's home. Per the U.S. Supreme Court (*Payton v. New York* (1980) 445 U.S. 573.), a non-consensual entry into a residence for the purpose of executing an

arrest warrant is lawful only when the officers have a "*reason to believe*" defendant is in fact in the house at the time. While courts have for some time debated what this means, it has pretty much been accepted now that this requires "*probable cause*" to believe defendant is home. (*United States v. Gorman* (9th Cir. 2002) 314 F.3rd 1105.) "*Probable cause*" is legally defined as "facts and circumstances within (the officers') knowledge and of which they had reasonably trustworthy information (that is) sufficient in themselves to warrant a man of reasonable caution in the belief (that defendant is home) . . . ." (*Brinegar v. United States* (1949) 338 U.S. 160.) This, in turn, has been held to require only a "*fair probability*." (*Illinois v. Gates* (1983) 452 U.S. 213.) In this case, defendant argued that all indications were that he was not home (e.g., neither defendant nor his car were seen; no one answered the door) and that the officers, therefore, were not acting reasonably in believing otherwise. The Court, however, noted that none of these factors necessarily meant that he was not home. To the contrary, the officers knew that defendant was almost always home during the day, that he was often slow in answering the door, and that his car wasn't always there even though he was. Also, it was reasonable for the officers to assume that the one person who remained at the house when the other person drove off was probably defendant. This was enough to establish the necessary "*fair probability*" to believe that he was home at the time execution of the arrest warrant was attempted.

Note: The necessity for having "*probable cause*" to believe a suspect is home at the time when attempting to execute an arrest warrant is consistent with the California rule. (See *People v. Jacobs* (1987) 43 Cal.3rd 472.) The United States Supreme Court, however, has never defined "*reason to believe*" for us. My prediction is that when they do, they will find it to be something less than "*probable cause*," such as merely a "*reasonable suspicion*." (See *People v. White* (1986) 183 Cal.App.3rd 1199, 1204-1209.) Had the Supreme Court intended in *Peyton v. New York* for a probable cause standard to apply, they could, and would, have said so, in my humble opinion. But defining "*probable cause*" as requiring no more than a "*fair probability*" helps. It's always been my philosophy that "*probable cause*" does not require us to be right; only that we be "*probably*" right, or even better than that; that there be only a "*fair probability*" that we're right. I like those odds.

***Rape, Carjacking, and Evidence of Prior Acts of Domestic Violence*:**

***People v. Cabrera* (Jun. 25, 2007) 152 Cal.App.4th 695**

Rule: (1) Testimony from a recanting rape victim does not preclude defendant's conviction for rape when the victim's prior inconsistent statements are entered into evidence. (2) An ownership interest in a carjacked car is not a defense to taking the car by force in that carjacking is a "*crime against possession*," not "*ownership*." (3) Evidence Code § 1109 allows for evidence of prior acts of domestic violence when its probative value outweighs its prejudicial effect.

Facts: Defendant was in love. The only problem was that defendant had a tendency to beat on his girlfriends and couldn't handle rejection. When his girlfriend, Claudia T.,

caught him messing around with another woman, she attempted to break off their relationship. Claudia was afraid of defendant and attempted to hide from him by living with a friend. Defendant, however, found her at a carwash in San Diego and, while threatening to stab her, forced her to go with him in her car to a motel in Tijuana where he raped her. Thinking that all was good again between them, defendant drove Claudia back to the carwash. Claudia reported the rape a week later to Chula Vista Police Department. Defendant continued to make repeated telephone calls to her and constantly drove by the house where she was staying. After almost a week of this, Claudia found defendant sitting in the back seat of her car one morning. When she began to scream, defendant grabbed her, twisted her shirt collar and punched her in the chin, forcing her into her car. Noticing them struggling in the car, concerned neighbors called the police. Defendant attempted to drive her to the San Ysidro border crossing when he was stopped by police. He was arrested when he attempted to flee on foot. When one of the arresting officers asked defendant if he had taken Claudia against her will, he (being the rocket scientist that he is) responded; "Yes, but I didn't know it was 'kidnapping' (to take) an adult." In jail with a pile of charges pending (i.e., rape, kidnapping, criminal threats, carjacking and corporal punishment on a roommate), defendant telephoned Claudia from jail and apologized, attempting to talk her into testifying that the sex was consensual; a conversation that was recorded. Claudia did in fact testify at the preliminary hearing (and, apparently, later at trial) that the Tijuana rape was consensual, causing the magistrate to refuse to bind over on that charge. The D.A. filed an Information, however, alleging all the original charges, including the rape. Defendant failed to challenge the inclusion of the rape charge on the Information through a pre-trial motion to dismiss (per P.C. § 995). At trial, the prosecution introduced the testimony of two former girlfriends who said that defendant physically abused them as well. Defendant was found guilty of all charges and sentenced to prison forever. He appealed alleging a number of issues.

Held: The Fourth District Court of Appeal (Div. 1) affirmed (with the exception of a minor sentencing error). Defendant first argued that the trial court erred in not dismissing the rape charge after Claudia testified that the sexual intercourse in the Tijuana motel was consensual. At trial, Claudia apparently continued to claim that she had consented to the sexual intercourse. The prosecution, however, introduced evidence of Claudia's rape report she made to the Chula Vista Police Department and the taped conversation when defendant called her to apologize, asking her to change her story. This was enough to support the jury's conviction on this charge. Defendant next complained that the trial court judge would not allow him to present evidence that he had an ownership interest in Claudia's car, and that he therefore can not legally be held liable for carjacking his own car. At Common Law, and as the courts presently interpret both the larceny (theft) and robbery statutes, a "claim of right" *is* a defense to both of these charges. You cannot steal, nor rob, your own property. However, carjacking, per P.C. § 215(a), is different. While larceny and robbery are "*crimes against ownership*," carjacking, by its very terms, is a "*crime against possession*." Whether or not defendant had an ownership interest in Claudia's car is irrelevant to a charge of carjacking when the car was taken from her immediate presence. Third, defendant argued that it was unfair (i.e., a "*due process*" violation) for the trial court to allow his previous girlfriends to testify to prior acts of domestic violence against them. The Court rejected this argument,

noting that this type of evidence is admissible pursuant to Evidence Code § 1109. Citing prior case law allowing similar types of evidence (prior sex offenses under E.C. § 1108), the Court ruled that so long as a trial judge retains the discretion to disallow such evidence of prior bad acts whenever its probative value is outweighed by its prejudicial impact (per E.C. § 352), there is no due process violation. The prior girlfriends' testimony about the acts of physical abuse were properly admitted in this case.

Note: All three issues in this case are important, albeit for different reasons. First, the rape conviction shows that we can get a conviction without the cooperation of the victim, at least where we have neat stuff like the significant prior inconsistent statements present in this case. Claudia's reluctance to be the cause of her former boyfriend's significant prison sentence is both understandable and not unusual; something with which juries will often sympathize. Secondly, the fact that a claimed ownership of the property taken in a robbery case can be a defense to the charge of robbery (by negating the underlying theft element) has always been something I have had a hard time accepting. (Note the new legal problems for O.J. Simpson that may involve this same issue.) It's good that this antiquated Common Law concept doesn't spill over onto a charge of carjacking as well. And lastly, the presumptive inadmissibility of prior bad acts of a defendant, pursuant to E.C. § 1101, has always been the subject of some frustration for prosecutors. The advent of Evidence Code Sections 1108 (prior sex offenses) and 1109 (prior acts of domestic violence), making such evidence presumptively admissible, has been a real benefit.

***Possession of Burglary Tools, per P.C. § 466*:**

***People v. Southard* (Jun. 27, 2007) 152 Cal.App.4th 1079**

Rule: Possession of burglary tools, per P.C. § 466, is a "*general intent*" crime, and does not require proof of a specific intent to commit any particular burglary.

Facts: Officer Eric Apperson of the Crescent City Police Department observed defendant's black Oldsmobile Achieva traveling at 35 to 40 miles per hour in a 25 mph residential speed zone at around noon, and, with lights and siren, gave chase. After a brief chase with speeds of up to nearly 50 mph, Apperson broke it off as being too dangerous. Based upon a description of defendant's vehicle broadcast by Officer Apperson, Officer Paul Arnett saw defendant's vehicle and, with his lights and siren, renewed the chase. Defendant, now doing an estimated 90 mph, pulled away from Officer Arnett and disappeared. However, defendant's abandoned car was soon found. He was arrested some 40 minutes later hiding in a nearby swamp. An inventory search of his impounded car resulted in the recovery of "a myriad of tools," including a steel pry bar, a crow bar, five pairs of pliers, a large pair of bolt cutters, a sledge hammer, an unspecified number of screwdrivers and hammers, and a tool box. There was also three walkie-talkies, two black sweatshirts, a strap-on head light, a flashlight, a ski mask, a pair of binoculars, a bundle of about 100 keys and an assortment of other, loose keys. Defendant was charged with felony evading, per V.C. § 2800.2, and misdemeanor possession of burglary tools. At some point prior to trial, defendant called the local District Attorney's Office, talking to a chief deputy district attorney, and asked when he

could have his "burglary tools back." At trial, this statement was admitted into evidence. Officer Arnett also testified that in his opinion, while none of the tools were illegal to possess, given the collection of such tools (and other items), they were likely possessed with the intent to commit burglaries. Officer Arnett also testified that a number of keys had recently been stolen from a city yard. Convicted of both counts, defendant appealed, challenging only the possession of burglary conviction.

Held: The First District Court of Appeal affirmed. Penal Code section 466 provides that "(e)very person having upon him or her in his or her possession (certain listed tools), or other instrument or tool with intent feloniously to break or enter into any building . . . is guilty of a misdemeanor." The offense is made up of three elements: (1) Defendant's possession, (2) of one or more of the type of tools within the purview of the section, and (3) the intent to use the tools for the felonious purpose of breaking or entering into a building. Defendant's argument on appeal was that there was no evidence of his "intent to use the tools" to commit a burglary. On appeal, the only question for the appellate court was whether there was "substantial evidence" supporting the jury's verdict. The Court ruled that there was. In response to defendant's argument that P.C. § 466 is a "*specific intent*" crime (i.e., "with intent feloniously to break or enter into any building"), the court ruled that despite this language, section 466 is only a "*general intent*" crime. While it is necessary to show that the tools were possessed "with intent to feloniously break or enter into any building," there is no requirement that it be proved that any particular place was to be broken into, or that defendant had any special purpose in mind, or that the tools were to be used in any definite manner. "(I)t was sufficient to allege such possession with the guilty intent, without further specific averment. The offence was complete when the tools were procured with a design to use them for a burglarious purpose." It is not necessary to prove a specific intent to burglarize any particular structure. In this case, there was substantial evidence of defendant's "burglarious purpose" in possessing these tools. Specifically, defendant took "extreme measures" to avoid arrest, reflecting some measure of a "consciousness of guilt." It is also relevant that defendant was driving around with all these tools in his car instead of keeping them in a workshop or garage somewhere. Also, defendant himself referred to the tools as "burglary tools" when he called the DA's Office, asking for their return. Officer Arnett testified that in his experience, possessing so many of these types of tools was indicative of an intent to commit burglaries. Lastly, the large number keys, with evidence that the City had recently lost some keys by theft, tended to support a general intent to commit burglaries. Defendant was therefore properly convicted of possessing burglary tools.

Note: Surprises the heck out of me. Typically, statutory language such as "with intent feloniously to break or enter into any building" signifies a specific intent element which, at trial, must be proven beyond a reasonable doubt. Interpreting P.C. § 466 as a general intent crime greatly expands the reach of this section making it applicable almost anytime you catch a person with tools in his possession under suspicious circumstances. And while it is only a misdemeanor, think of this section as a great tool (no pun intended) for law enforcement, justifying at least a detention and an investigation into a person's suspicious activities. Great case.