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TRAINING BULLETIN

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Automobile Searches and the Fourth Amendment & Vehicle Inventory Searches

People v. Lee (Oct. 3, 2019) 40 Cal.App.5th 853

Rule: A warrantless search of a motor vehicle requires probable cause to believe it contains contraband or other evidence of a crime. A motor vehicle driver's possession of a lawful amount of marijuana, absent some other evidence that the vehicle contains more marijuana or that the driver is under the influence, is not sufficient to establish the necessary probable cause to search the vehicle. Despite authorizing statutes, it is illegal to impound a vehicle unless allowable under the Community Caretaking Doctrine. An impound search of a motor vehicle, when done for the primary purpose of finding evidence of ordinary criminal wrongdoing, is illegal.

Facts: Two San Diego Police Department officers stopped Defendant Brandon Lance Lee while driving his gold Cadillac DeVille in August, 2017, upon observing that he had no front license plate in violation of V.C. § 5200, and his windows were tinted in possible violation of V.C. § 26708. Upon contacting defendant (and his passenger, Michael H.), defendant told the officers he did not have his driver's license with him (later determined to be suspended). Defendant was removed from his vehicle and patted down in a vain search for any sort of identification. During the patdown, however, a bag containing a small amount of marijuana and a wad of cash (\$100 to \$200) were found in defendant's pocket. (The possible legal issues related to the lawfulness of the patdown for ID and the recovery of the marijuana and cash—irrelevant to the ultimate legal issues in this case—were not discussed.) Some cash (later determined to be only \$10) was also visible on the center console. Asked if he delivered medical marijuana, defendant replied that he did. Defendant was handcuffed, "tens(ing) up" as the cuffs were put on. Defendant verbally identified himself to the officers and admitted that the Cadillac was his. Michael (who also didn't have a license) was also handcuffed, but told that if nothing illegal was found in the car, he would be released. Told that his car was going to be impounded, defendant was asked (on three separate occasions) if there was anything illegal in it. Defendant responded each time that there was not. Defendant offered to have someone come pick up

the car for him, but the officer declined, responding; "That's not going to work." Upon asking if he could "grab something from the car," the officer told him that "he could take whatever he needed after the search confirmed there was nothing illegal in the car." The car was thoroughly searched, including between the seats and the console, in the back pocket behind the driver's seat, inside the center console, underneath the front and back seats, under the floor mats, and in the trunk. In testimony, the officer later indicated that he searched under the back seat because that was an area where people would commonly secrete illegal items. Finally, a backpack was recovered from the trunk (visible upon pulling down the back seat's center armrest). The backpack was found to contain a firearm and a "large sum" of money (how much, not being in the record). The glovebox being locked, it was eventually opened with a key found on Michael. In the glovebox, along with some small plastic baggies, a kitchen knife, and a small glass container, was found an envelope containing two egg-sized plastic baggies containing a white powdery substance later determined to be 56 grams of cocaine. Several small digital scales were later found elsewhere in the vehicle. An impound form was filled out later by another officer (the officers at the scene not having the form with them) after the car was impounded and searched again. Defendant was charged in state court with a host of drug and firearms-related offenses. Defendant filed a motion to suppress the evidence recovered from his car. At this hearing, the officer acknowledged that the small bag of marijuana in defendant's pocket contained an amount consistent with personal use and was not illegal on its own. And he agreed that the money in defendant's pockets combined with the legal amount of marijuana he had was not, by itself, evidence of a crime. The officer further indicated that he asked defendant if he was involved in a medical marijuana delivery service because of his knowledge that illegal delivery services were becoming common. The trial court granted defendant's motion to suppress and the case was dismissed. The People appealed.

Held: The Fourth District Court of Appeal affirmed. On appeal, the People argued that the search of defendant's vehicle was lawful in that the officers had probable cause to search it. In the alternative, the search was a lawful inventory search of an impounded vehicle. The Court rejected both arguments.

1. *Automobile Searches and the Fourth Amendment:*

Warrantless searches are unlawful unless the search in issue "falls within one of the specifically established and well-delineated exceptions." A search of an automobile is one of those exceptions, at least generally. But to be lawful, unless another exception applies (e.g., inventory searches; see below), there must first be established that the search is supported by probable cause to believe it contains contraband or other evidence of a crime. Sometimes referred to as the "automobile exception" to the search warrant requirement, the relaxed standards for searching automobiles are justified by (1) their inherent mobility and (2) a diminished expectation of privacy in a vehicle. The issue in this case was whether the officers had sufficient probable cause to believe defendant's car contained contraband or other evidence of a crime.

In determining whether or not probable cause exists, the totality of the circumstances are considered, using an objective standard. The officer's subjective beliefs are irrelevant. The People argued that probable cause existed in this case, based upon a combination of (1) the marijuana found in defendant's pocket, (2) his affirmative response when asked if he delivered marijuana, (3) the wad of cash (between \$100 and \$200) found in defendant's pocket, (4) the additional \$10 in cash observed on the center console, and (5) the manner in which defendant "tensed up" upon being handcuffed. The Court concluded that this was not enough.

Although agreeing with the People's argument that finding a legal amount of marijuana does not necessarily deprive the police "of the capacity to entertain a suspicion of criminal conduct," the Court held that there must be something else in addition to the simple possession of a legal amount of marijuana to justify a search of the vehicle for more. By the time this arrest occurred, it was no longer illegal for a person to possess up to an ounce (28.5 grams) of marijuana. In fact, subdivision (c) of section 11362.1 HS specifically says that legal cannabis and related products "are not contraband" and their possession and/or use "shall not constitute the basis for detention, search, or arrest." Prior cases holding that an officer finding a legal amount of marijuana did in fact justify the subsequent search of the possessor's vehicle for more marijuana found such searches legal only because there was some additional indication (e.g., the odor of burnt marijuana emanating from the vehicle) that more (i.e., an illegal amount of) marijuana might be in the car, or that the person was driving while under the influence of marijuana.

In this case, however, the only marijuana found was a small (legal) amount in defendant's pocket. There was no evidence that he might have been driving while under the influence of the stuff, or that there was any more marijuana in the car. Per the Court; "(defendant's) possession of a small and legal amount of marijuana provides scant support for an inference that his car contained contraband." The Court further found that defendant's admission that he delivers medical marijuana "is not particularly significant in the absence of evidence that his delivery business was illegal." Also, there was no evidence that either the cash found on defendant's person or on the center console was indicative of drug sales, as the officer admitted when he testified at the suppression hearing.

Lastly, the fact that defendant "tensed up" upon being handcuffed—not an unusual reaction—was not significant. Overall, the Court determined that "the totality of the circumstances falls well short of establishing probable cause to search the Cadillac. Those circumstances simply were not enough to support the 'fair probability that contraband or evidence of a crime will be found.'" The search of defendant's car, therefore, cannot be upheld on a probable cause theory.

2. Vehicle Inventory Search:

An inventory search of a lawfully impounded vehicle is another well-defined exception to the Fourth Amendment's warrant requirement. However, the impoundment of a vehicle, even when authorized by statute, is legal only when the so-called "Community Caretaking Doctrine" is found to apply. For the

community caretaking doctrine to apply, it must be found that the impoundment of a vehicle serves a community caretaking function, such as when the vehicle is parked illegally, is blocking traffic or passage, or stands at risk of being vandalized or stolen. Also relevant to the caretaking inquiry is whether someone other than the defendant is available to remove the car to a safe location, eliminating the need to impound it. In this case, the officer declined to allow defendant to call for someone to come take possession of his vehicle. There was also no evidence that the car was parked illegally, blocked traffic, or was a risk of being stolen or vandalized if left at the scene.

Even though allowed pursuant to Veh. Code §§ 14602.6(a)(1) and 22651(p), impoundment of defendant's car was illegal. The fact that there is an absence of a proper community caretaking function suggests that impounding a car was done as a pretext to investigate possible criminal activity without probable cause, a purpose which is inconsistent with the legally recognized justifications for an inventory search. Because probable cause is not necessary in order to conduct a lawful inventory search, the purpose of such a search is limited to searches done for the purpose of itemizing the contents of the vehicle, done in order to protect the vehicle's owner's interest in those contents. Even if the community caretaking doctrine had been found to allow for the impounding of defendant's car, the evidence in this case indicates that the officer's search of the vehicle was not done for the purpose of protecting defendant's personal possessions, but rather to discover evidence of possible criminal activity. Such a search is not legal when done for the primary purpose of discovering evidence of what is sometimes referred to as "ordinary criminal wrongdoing." In this case, the officer admitted a number of times (either directly or by inference) that he was primarily looking for criminal evidence. For instance, the officer asked defendant several times if there was anything illegal in his car as opposed to whether there were valuables or other items that needed to be inventoried. He also told Michael (the passenger) that he would be released and free to go if nothing illegal was found in the car. The officer also denied defendant's request to remove some of his personal belongings from the car before it was searched.

Lastly, the officer searched areas of the car where one might expect illegal items to be stashed as opposed to where valuables would be kept (e.g., under the floor mats). He even admitted in his testimony that he searched underneath the back seat because it is a common place to hide illegal items. It was also noted that an actual inventory search was not done until later—after the car's actual impoundment—by another officer who was the one who filled out the required impound form. Thus, per the Court, "(i)n their totality, these facts provide substantial evidence to support the trial court's finding that the focus of (the officer's) search was finding incriminating evidence (as opposed to conducting a mere inventory of the car's contents). This motivation is inconsistent with an inventory search." The search of defendant's car, therefore, cannot be justified under the theory that it was a lawful inventory search.

*Source: The California Legal Update
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