

People v. Lim

(January 3, 2001) __ Cal.App.4th __

ISSUE

Did a search warrant affidavit demonstrate probable cause to search Lim's car for drugs?

FACTS

In May of 1998, officers with the drug task force in Lassen County received a tip from a confidential informant that Robin Lim was selling methamphetamine in the Susanville area. The informant said he had seen Lim in possession of usable amounts of meth, that she had offered to sell meth to the informant, and that Lim's supplier was named Letty Gutierrez. Neither the informant nor the officers knew where Lim was living.

About a year later, a second confidential informant told officers that within the past three days he had seen Lim in possession of a usable quantity of methamphetamine and that he was aware that Lim was a meth dealer. Although officers still did not know where Lim was living, they knew her car was a 1988 Lincoln Continental. They also knew she had been arrested and diverted for selling marijuana in 1991.

Both of the confidential informants were believed to be reliable because they had furnished information to narcotics officers in the past, and the officers had confirmed the information was accurate.

During the same week that officers received the information from the second informant, they learned from a person they did not identify that Lim was presently (the time was 9 p.m.) driving to the home of her supplier "and may be going to pick up more methamphetamine."

Officers immediately sought and obtained a warrant to search the car. The warrant was based on the above information, plus a statement from the affiant that, based on his training and experience, "people who deal in illegal controlled substances often store, conceal and transport illegal controlled substances in their vehicles."

Lim's car was stopped and searched pursuant to the warrant as she was driving to or from her supplier's home. During the search, officers found methamphetamine, syringes, pay/owe sheets and other paraphernalia.

DISCUSSION

Lim contended the drugs and other evidence should be suppressed because the information in the affidavit did not establish probable cause. The court did not, however, rule on this issue because it concluded that even if probable cause did not exist, the "good faith" rule applied, which meant the evidence could not be suppressed.

Under the "good faith" rule, if a court determines that probable cause for a warrant did not exist, evidence obtained during execution of the warrant may nevertheless be admissible if officers reasonably

believed the warrant was valid.¹ The question, then, was whether a reasonably well-trained officer would have known that the affidavit failed to establish probable.

The court ruled the “good faith” rule applied and that the evidence should not be suppressed even if probable cause was lacking. In making this determination, the court noted the following:

- (1) The information from the first informant, although “stale,” “reasonably serves as background for current events.”
- (2) Although Lim’s arrest in 1991 was “extremely stale,” it “tends to show that defendant had actually sold or furnished unlawful drugs in the past.”
- (3) The second informant, who had a good track record for reliability, told officers that within the past three days he had seen Lim in possession of a usable quantity of methamphetamine and that he was aware that Lim was a methamphetamine dealer.
- (4) The affiant’s belief, based on his training and experience, that Lim was storing or transporting methamphetamine in her car “cannot be entirely discounted” in light of the tip from the second informant.

Thus, the court concluded the “good faith” rule applied and the evidence was admissible because the affidavit “was not so lacking in indicia of probable cause that it would be entirely unreasonable for an officer to believe that such cause existed.”

There was one other issue in the case that it worth mentioning. As it turned out, the officer who wrote the affidavit had some additional information that he did not include in the affidavit, even though this information could only have helped establish probable cause. The most significant omitted information was that the person who notified officers that Lim was presently driving to her supplier’s home was actually the second informant who, as noted, was a reliable informant . Furthermore, this informant had told officers he had just passed Lim in her car, and that she was driving in the direction of Wendel, which was where her supplier lived.

Also not included in the affidavit was some mildly incriminating information, such as Letty Gutierrez had at least one conviction for a drug offense, and the first informant had told officers in 1998 that Lim often kept methamphetamine in her Lincoln.

Lim argued that because relevant information was omitted from the affidavit, the “good faith” rule should not apply, even though the omitted information would have helped establish probable cause. This rather bizarre argument was summarily rejected. The court pointed out that although officers have a duty to include information that casts doubt on the existence of probable cause, they have no corresponding duty to include every bit of evidence that supports a finding of probable cause. In the words of the court, “We are unaware of any authority for the proposition that omission of evidence favorable to a probable cause finding, in an affidavit applying for a warrant, renders [the “good faith” rule] inapplicable, and such position would make no sense.”

DA's COMMENT

Lim illustrates why it is sometimes a good idea to seek a warrant before conducting a car search. Although a warrant is not ordinarily required to search a car when there is probable cause to believe there is contraband or other evidence inside,² in situations where probable cause is weak or questionable, it's a smart thing to do because it may enable the prosecution to raise the "good faith" rule.

¹ See *United States v. Leon* (1984) 468 US 897; *People v. Downing* (1995) 33 Cal.App.4th 1641, 1650-7.

² See *United States v. Ross* (1982) 456 US 798, 800, 809, 825; *California v. Carney* (1985) 471 US 386, 390-3; *United States v. Johns* (1985) 469 US 478, 483-4; *Pennsylvania v. Labron* (1996) 518 US 938; *People v. Carpenter* (1997) 15 Cal.4th 312, 365; *People v. Banks* (1990) 217 Cal.App.3d 1358, 1363; *People v. Carrillo* (1995) 37 Cal.App.4th 1662, 1667..