

People v. Lee

(2019) 40 Cal.App.5th 853

Issues

(1) Did an officer have probable cause to search a suspect's car for drugs? (2) Was the inventory search of the car a pretext to look for drugs?

Facts

San Diego police officers stopped a car for illegally-tinted windows and no front license plate. When the driver, Brandon Lee, said he did not have his license with him, one of the officers pat searched him "to confirm he did not have any sort of identification." During the search, the officer found \$100-\$200 in cash and a small bag of marijuana. He also learned via DMV that Lee's license had been suspended, so he decided to impound the vehicle pursuant to Vehicle Code sections 14602.6. and 22651. Although Lee offered to have someone pick up the car for him, the officer responded, "That's not going to work." In the course of an intensive inventory search, the officer found two ounces of cocaine in the glovebox and a firearm in the trunk.

Lee was charged with transportation of cocaine for personal use while armed with a firearm. He then filed a motion to suppress the evidence which, as we will explain, was granted.

Discussion

On appeal, prosecutors argued that the suppression motion should have been denied because (1) the officer had probable cause to search the car for drugs, and (2) of the suppression order,

PROBABLE CAUSE? It is settled that officers may search a vehicle without a warrant if they had probable cause to believe it contained evidence of a crime. Prosecutors argued that the officer in *Lee* had probable cause to believe there were illegal drugs in the vehicle based mainly on finding marijuana and \$100-\$200 in Lee's pockets. It is true that probable cause to search a vehicle for drugs may be based on finding other drugs in the possession of an occupant. This is commonly known as the "where there's some, there's usually more" doctrine, but it applies only if officers had probable cause to believe the drugs were possessed for sale. And even the arresting officer acknowledged that the amount of marijuana in Lee's possession was for "personal use and not illegal on its own." Thus, the court concluded that "[t]he recent legalization of marijuana in California means we can now attach fairly minimal significance to the presence of a legal amount of the drug."

As noted, in addition to finding a legal amount of marijuana, the officer found \$100-\$200 in Lee's pockets. This was hardly incriminating. Nor were the officer's other reasons to believe that Lee was trafficking in marijuana; i.e., that he informed the officer that he delivered medical marijuana, and that he "tensed up" when the officer started to handcuff him. Accordingly, the court ruled that the officer did not have probable cause to search Lee's car.

INVENTORY SEARCH: For various reasons, officers may order a vehicle impounded. And when they do, they are ordinarily permitted to conduct an inventory search in which they list items of some value. The objectives of these searches are to (1) provide a record of the property inside the vehicle so as to furnish the owner with an accounting; (2)

protect officers, their departments (and ultimately taxpayers) from false claims that property in the vehicle was lost, stolen, or damaged; and (3) protect officers and others from harm if the vehicle contained a dangerous device or substance.¹

Inventory searches are, however, illegal if a court concludes that the objective of the search was to discover evidence of a crime. As the court explained, “The absence of a proper community caretaking function suggests an impound is a pretext to investigate without probable cause, a purpose which is inconsistent with an inventory search.” Even in the absence of a pretextual search, an inventory search will be invalidated if a court finds there was insufficient reason to tow the vehicle.

Although Lee’s license was suspended, and although the Vehicle Code permits officers to tow vehicles that were driven by a person with a suspended license, the court concluded there was insufficient reason to tow Lee’s car because it “was parked in or alongside an apartment complex; it was “not blocking a roadway, the sidewalk, or a driveway”; and Lee “offered to have someone else come pick it up so it would not need to be impounded.”

The court also concluded that the inventory search was, in reality, a pretext to look for incriminating evidence. Said the court, “Rather than search areas where someone might normally keep valuables, [the officer] examined places where illegal items might be stashed, such as the underside of the back seat.” It also noted that the officer “repeatedly asked Lee and [his] passenger if there was anything illegal in the car, as opposed to whether there were valuables or other items in the car he needed to inventory.”

For these reasons, the court ruled that the search was illegal.² POV

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¹ See *Whren v. United States* (1996) 517 U.S. 806, 811, fn.1 [“An inventory search is the search of property lawfully seized and detained, in order to ensure that it is harmless, to secure valuable items such as might be kept in a towed car), and to protect against false claims of loss or damage.”].

² **NOTE:** As noted, when Lee said he did not have a driver’s license with him, the officer pat searched him “to confirm he did not have any sort of identification.” This, too, was illegal because the sole purpose of pat searches is to locate weapons or items that could be used as weapons. See *People v. Garcia* (2006) 145 Cal.App.4th 782, 788 [authority to conduct a pat search “by no means authorizes a search for contraband, evidentiary material, or anything else in the absence of reasonable grounds to arrest.”]; *King v. U.S.* (6th Cir. 2019) 917 F.3d 409, 428 [search of suspect’s “wallet was not necessary to determine if the suspect was armed and was therefore unreasonable”].