



## SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

# LEGAL AFFAIRS UPDATE

---

NUMBER: 2020-9    DATE: 07/13/2020    BY: ROBERT FAIGIN & AMANDA LOMNICKY    TOPIC: CONSTITUTIONAL LAW

---

### **Legal cannabis and related products are not contraband, and their possession and/or use may not constitute the basis for detention, search, or arrest.**

In August 2017, Brandon Lance Lee was stopped for a traffic violation. During a search of Lee, the officer discovered a bag containing a small amount of marijuana and a wad of cash in his pocket. Lee stated that he delivered medical marijuana. The officer subsequently learned that Lee's driver's license was suspended, and that the passenger did not have a license. The officer told Lee that "he was going to search the car because it was being impounded due to his suspended license." During the search, the officer continually asked Lee and the passenger if there was anything illegal in the car. The officer located a backpack in the trunk containing a large sum of money and a firearm, and two ounces of cocaine in the locked glove box. The officer did not fill out an impound form at the scene. It was eventually filled out by another officer who conducted his own search after the vehicle was impounded. Lee was charged with multiple offenses, including, transportation of cocaine not for personal use. Lee filed a motion to suppress the evidence obtained during the search of the car, and the trial court granted the motion. The People appealed to the Court of Appeal. (*People v. Lee*, Oct. 3, 2019).

On appeal, the People argued that the search was valid under the automobile exception to the warrant requirement because there was probable cause to believe the car contained contraband. Alternatively, they argued that the search was a proper inventory search in the course of impounding the vehicle.

#### **Automobile Exception**

"[P]olice who have probable cause to believe a lawfully stopped vehicle contains evidence of criminal activity or contraband may conduct a warrantless search of any area of the vehicle in which the evidence might be found." In determining whether a reasonable officer would have probable cause to search, the courts consider the totality of the circumstances.

Here, the police relied on several factors including marijuana in Lee's pocket, the fact that he delivered

medical marijuana, wadded up cash in his pocket totaling \$100 to \$200, and the way he tensed when handcuffed.

Proposition 64 provides that "[c]annabis and cannabis products involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure, and no conduct deemed lawful by this section shall constitute the basis for detention, search, or arrest."

Thus, the Court found that Lee's possession of a small and legal amount of marijuana provided little support for an inference that his car contained contraband. Even including the other evidence relied on by the officer, the Court stated that the totality of the circumstances fell well short of the establishing probable cause to search Lee's car.

#### **Inventory Search**

"When a vehicle is impounded or otherwise in lawful police custody, an officer may conduct a warrantless search aimed at securing or protecting the vehicle and its contents." To determine whether a warrantless search is properly characterized as an inventory search, the courts "focus on the purpose of the impound rather than the purpose of the inventory."

Here, the Court stated that although the officer had statutory authority to impound Lee's car after apprehending him for driving on a suspended license, that does not automatically render any impound and subsequent inventory search constitutionally proper. According to the Court, there was no community caretaking function for the impound. Instead, it appeared that the primary purpose of the search was not to inventory the contents of the Lee's car, but rather to investigate Lee for possible criminal behavior.

#### **Conclusion**

Thus, the motion to suppress evidence obtained from the unconstitutional search of Lee's car was affirmed.

#### **WHAT THIS MEANS:**

**Deputies may not utilize legal cannabis and related products as the basis for detention, search, or arrest. Additionally, when conducting an inventory search, the primary purpose of the impound must be to inventory the contents of the vehicle for impounding, not the investigation of possible criminal conduct.**