



# El Segundo Police Department

## Training Section

348 Main Street, El Segundo, CA 90245

Phone (310) 524-2253

## TRAINING BULLETIN

October 11, 2024

---

### Marijuana Case Brings Clarity on Open Containers in Vehicles and Whether a Warrantless Search is Lawful

#### RULES

An officer's plain-sight observation of marijuana in a vehicle that is not properly enclosed in a sealed container, as required by H&S § 11362.3(a)(4), provides the necessary probable cause to justify a warrantless search of the rest of the vehicle for more marijuana. Other illegal items (e.g., illegal firearms) observed in the process are admissible in court.

#### FACTS

On Nov. 10, 2022, at around 11 p.m., 17-year-old defendant Randy C. was driving a borrowed BMW in the city of San Pablo. With him was an unnamed 22-year-old companion. San Pablo Police Officer Dugonjic — an 11-year veteran of the department with training and experience in marijuana identification and consumption, as well as the legality of tinted windows— observed the defendant driving and determined that its windows were in violation of Vehicle Code § 26708(a), illegally tinted windows. Officer Dugonjic conducted a traffic stop. Upon contacting the defendant, it was determined that he did not have a driver's license and he acknowledged being 17. While discussing this with the defendant, Officer Dugonjic noticed the smell of unburnt marijuana coming from within the vehicle. He also observed that the defendant's passenger had an unburnt and unsmoked "marijuana blunt" on his lap, in plain view, with "a little bit of green at [its] tip." Officer Dugonjic determined that the marijuana was a usable amount and not in a closed container, a violation of H&S Code § 11362.3(a)(4).

The officer knew from his training and experience that marijuana is often smoked in paper wrappers taken from tobacco products. In constructing a marijuana blunt, the tobacco is removed from its wrapper and replaced with marijuana. According to Officer Dugonjic, if there is enough marijuana to be manipulated in such a manner, it is a useable amount. The officer had the defendant get out of the BMW and he conducted a pat-down search. He also ran the defendant's name with San Pablo P.D.'s communications, but did not find a match. He then searched the car's front passenger compartment to try to find any identification for the defendant or his passenger.

Officer Dugonjic later testified that he was also looking for additional marijuana in the car. Instead of identification documentation or marijuana, he found a handgun in the glove compartment and an airsoft rifle, which was visible behind the driver's seat. The defendant attempted to flee on foot but was taken into custody. A continued search of the car resulted in the recovery from the car's trunk an AR-15 firearm with no serial number.

Five days later, a wardship petition was filed pursuant to Welfare & Institutions Code § 602(a), alleging several firearms and ammunition offenses, as well as resisting arrest. The defendant's subsequent motion to suppress the firearms and ammunition — arguing insufficient probable cause to search the vehicle — was denied. He therefore admitted to various felony offenses in a plea bargain, declared a ward of the court, and was committed to juvenile hall for 274 days with credit for 55 days' time served. **The defendant appealed.**

## HELD

The First District Court of Appeals, Division 5, affirmed.

The defendant did not contest the legality of the traffic stop, acknowledging that his windows were illegally tinted. The issues he raised on appeal were (1) the juvenile court's finding that the marijuana blunt observed on his passenger's lap was an "open container" within the meaning of H&S § 11362.3(a)(4), and (2) whether the resulting warrantless search of the car was legal.

In discussing these issues, the court noted that H&S Code § 11362.1, added by Proposition 64 effective as of Nov. 8, 2016), "fundamentally changed the probable cause determination by specifying (that) lawfully possessed cannabis is 'not contraband' and (is thus) lawful conduct under the statute." As such, possession of a lawful amount of marijuana, at least by an adult, "may not 'constitute the basis for detention, search or arrest.'"

The court further noted, however, that "this applies only to activities 'deemed lawful' by Proposition 64." H&S Code § 11362.3(a)(4) "clearly states that no one is permitted to 'possess an open container or open package of cannabis or cannabis products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle.'"

In addition, section 11357 makes it unlawful for a person under the age of 21 to possess any amount of marijuana, recreational or otherwise. Although the defendant was only 17, his passenger, who actually possessed the marijuana, was 22. But even though only a passenger in the car, the companion also was forbidden under H&S Code § 11362.3(a)(4) from possessing an "open container" of marijuana.

The issue, therefore, was whether the marijuana blunt constituted a usable amount of marijuana in an open container in violation of section 11362.3(a)(4). Accepting as uncontested the officer's opinion that the marijuana in the blunt constituted a "usable amount," the court ruled that the blunt itself was an open container. Section 11362.3 does not define the phrase "open container or open package." In the absence of a specifically defined meaning, the court ruled that we must look to the plain meaning of a word or phrase as understood by the ordinary person, which would typically be a dictionary definition. Per the court: "The plain and commonsense meaning of an 'open container' is one in which there is no barrier to accessing the marijuana contained inside (Citing *People v. Johnson* (2020) 50 Cal.App.5th).

In this case, the paper wrapping enclosing the marijuana presented no barrier to accessing the marijuana itself. To the contrary, as Officer Dugonjic explained, the paper wrapping holds the marijuana so that it can be smoked, thereby facilitating its consumption. Therefore, under existing case law (Citing *People v. McGee* (2020) 53 Cal.App.5th; and *People v. Castro* (2022) 86 Cal.App.5th), the court held that Officer Dugonjic's observation of the marijuana blunt supplied the necessary probable cause to believe that the BMW possibly contained more marijuana, allowing for a warrantless search: "This open container of marijuana was contraband that, along with the smell of unburnt marijuana emanating from the vehicle, provided probable cause to believe minor or his passenger may also have possessed additional marijuana in violation of section 11357 and/or section 11362.3, subdivision (a)(4)."

As such, under the so-called "automobile exception" to the search warrant requirement, the warrantless search of the car and the recovery of the firearms was lawful.

## **AUTHOR NOTES**

Keep in mind, however, that the lawful possession of marijuana (more often nowadays referred to as cannabis) does not, by itself, allow for a search of a subject's car for more (See *People v. Hall* (2020) 57 Cal.App.5th; *People v. Johnson* (2020) 50 Cal.App.5th).

The observed marijuana either has to be possessed illegally (as in this case), or there has to be some other articulable suspicion to believe that there's more marijuana in the car (See *People v. Fews* (2018) 27 Cal.App.5th; *People v. Moore* (2021) 64 Cal.App.5th. See also *People v. Lee* (2019) 40 Cal.App.5th, where the court specifically held that, "there must be...additional evidence beyond the mere possession of a legal amount" for there to be probable cause to believe there is more marijuana in a suspect's vehicle.)

In this case, it was the illegal possession of the open container of marijuana (the blunt) that supplied that necessary evidence justifying a search of the BMW for more.