



SAN JOSE POLICE DEPARTMENT

TRAINING BULLETIN

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

**SUBJECT: MARIJUANA LAWS AND
SEARCHING VEHICLES**

DATE: March 4, 2022

Bulletin# 2022-005

In 2016, Proposition 64 legalized the recreational use of marijuana for adults aged 21 years or older, permitting smoking in a private home or at a business licensed for on-site marijuana consumption. Smoking was to remain illegal while driving a vehicle, anywhere smoking tobacco is illegal, and in all public places. Up to 28.5 grams of marijuana and 8 grams of concentrated cannabis are legal to possess under this measure. Under [Health and Safety Code section 11362.1\(c\) \(link\)](#), marijuana and its products involved in any way with conduct deemed lawful by this section are not contraband and not subject to seizure. Conduct deemed lawful by this section cannot constitute a basis for detention, search, or arrest.

Proposition 64 did not amend any Health and Safety Code sections pertaining to the sales of marijuana. Furthermore, Proposition 64 does not permit a driver to possess an open container or open package of cannabis or cannabis products. This means while a person at least 21-years old may possess and transport marijuana, just like alcohol, the container/package may not be open during transport.

Consider Recent Case Law Before Conducting a Vehicle Search for Marijuana

1. [PEOPLE v. HALL \(2020\) \(link\)](#)

A San Francisco police officer stopped a vehicle driven by D. Hall because the license plate light was out. The officer observed “a clear plastic baggie” containing suspected marijuana. Although the officer did not detect an odor of fresh or burnt marijuana, the officer concluded he had probable cause to search the vehicle “due to the fact that having an open container of marijuana is a violation of the law.” During the search, the officer found a loaded firearm inside Hall’s backpack. As a result, Hall was charged with two felony weapons charges.

A motion to suppress the gun was denied and the DA allowed Hall to plead guilty to one misdemeanor count of carrying a loaded firearm. Hall then appealed the denial of his suppression motion.

Hall argued his motion to suppress should have been granted because the officer did not have probable cause to believe that the marijuana in the baggie was possessed illegally. Under California law, it is legal to possess one ounce or less of marijuana in a vehicle if the marijuana was in a “closed” container. Thus, the search of Hall’s vehicle would have been lawful if the officer reasonably believed that the amount of marijuana in the baggie exceeded one ounce, or if the baggie was “open.”

How much marijuana was in the baggie? The amount of marijuana in the baggie may or may not have exceeded one ounce. But it doesn't matter because the officer, while testifying at the suppression hearing, was not asked to explain why he believed it did. As the court pointed out, "There was no testimony about the weight of the baggie and no description of the baggie from which one could reasonably infer that it contained over 28.5 grams of marijuana. Thus, there was no evidence to support a belief that Hall had an unlawful amount of marijuana in his vehicle."

Was the baggie "open" or "closed?" At the suppression hearing, the officer testified, "I observed a clear plastic baggie, inside of which was green leafy substance. Based on my training and experience, I believed it to be marijuana." The officer's belief the substance was marijuana was not challenged. Instead, Hall argued prosecutors failed to prove the baggie was "open." And, again, the court agreed because "there simply was no evidence about the condition of the plastic baggie" and "for all we know, the baggie was purchased from a dispensary and had never been opened, or it may have been vacuum sealed."

For these reasons, the court ruled the officer did not have probable cause to believe the marijuana in Hall's vehicle was possessed illegally and, therefore, the search was unlawful.

2. [PEOPLE v. JOHNSON \(2020\) \(link\)](#)

A Stockton police officer noticed a man sitting in a parked vehicle by the side of a road. When the officer noticed the vehicle did not have a registration tag, he pulled behind it and activated his emergency lights. The driver, D. Johnson, immediately stepped outside, and the officer ordered him to get back inside. Johnson refused and became "agitated," so the officer "grabbed [his] arm to maintain control," at which point Johnson "tensed and pulled away." After "some resistance," Johnson was placed in the patrol vehicle.

The officer testified, while standing outside the vehicle, he could smell the odor of marijuana. The officer entered and, on the center console, found a small plastic bag containing about two grams of suspected marijuana. Although the bag was not sealed shut, it was "knotted at the top." While searching the vehicle for more marijuana, the officer found a loaded handgun in the rear cargo area.

Johnson filed a motion to suppress the marijuana and handgun on grounds the officer's entry and search of the vehicle was illegal because he did not have probable cause to believe that Johnson possessed marijuana in violation of California law. When his motion was denied, Johnson pled no contest to possession of a firearm by a felon. He appealed the ruling.

Because California law generally permits adults to possess one ounce or less of marijuana, probable cause to search a place or thing for marijuana can exist only if an officer has probable cause to believe the marijuana is possessed in violation of one or both of the California statutes that still criminalize possession which are possession for sale and more than 28.5 grams. Consequently, Johnson argued the officer's entry and search of his vehicle was unlawful because the officer had insufficient reason to believe the marijuana was possessed illegally. The court agreed.

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Refer to the following case law examples for further information:

- [PEOPLE v. LEE \(2019\) \(link\)](#)
- [PEOPLE v. SHUMAKE \(2019\) \(link\)](#)

As a reminder, officers should consider all factors when conducting investigative stops related to possession, use, and sales of marijuana. Officers should have more than just the mere “smell of marijuana” in a vehicle or observation of marijuana in plain view to develop probable cause to conduct a vehicle search.



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