



SAN JOSE POLICE DEPARTMENT

TRAINING BULLETIN

TO: ALL DEPARTMENT PERSONNEL

FROM: Paul Joseph
Chief of Police

**SUBJECT: CANNABIS OPEN CONTAINER
LAW**

DATE: February 15, 2026

Bulletin #2026-003

Under [11362.3\(a\)\(4\) HS](#), it is unlawful 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” [Sellers v. Superior Court](#) (2026) ___ Cal.5th ___, S287164, is a recent California Supreme Court decision that significantly affects enforcement of this provision.

In a unanimous 7-0 decision, the Court held that a violation of 11362.3(a)(4) HS requires the presence of cannabis that is (1) a usable quantity, (2) in an imminently usable condition, and (3) readily accessible to an occupant of the vehicle. Loose “crumbs” and scattered fragments do not meet this standard. Likewise, a lawful amount of useable marijuana – even if loose – that is not readily accessible to an occupant does not violate the statute.

BACKGROUND

The case arose from a vehicle stop by the Sacramento Police Department for a traffic violation. During the stop, the driver and the front-seat passenger were cooperative and a records check revealed no concerns. The officers had no suspicion of driving under the influence.

During the stop, the officers observed a “rolling tray” on the vehicle’s backseat and marijuana fragments scattered on the rear floorboard behind the passenger seat. The officers ordered the driver and passenger from the vehicle and conducted a warrantless search without consent. During the search, officers located an unregistered firearm near the front passenger seat and collected approximately 0.36 grams of material – believed to be marijuana, though it was never tested – from the floorboard. The passenger was arrested and charged with illegal possession of the firearm.

The Court reversed the appellate court, which had upheld the search. Because the Court held that a violation of 11362.3(a)(4) HS requires a usable quantity of cannabis in an imminently usable condition and readily accessible to an occupant, the officers lacked probable cause to search the vehicle based on an “open container” violation.

In its legal opinion, the Court also discussed [23222\(b\)\(1\) VC](#), which provides that “a person who has in their possession *on their person* (emphasis added), while driving a motor vehicle

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..., a receptacle containing cannabis or cannabis products ... which has been opened or has a seal broken, or loose cannabis flower not in a container, is guilty of an infraction" The Court agreed with the California Attorney General that 23222(b)(1) VC applies only to a driver who has the cannabis or cannabis products "on their person." Accordingly, 23222(b) VC had no applicability because the marijuana fragments were located on the vehicle's rear floorboard.

The Court further rejected the argument that 11362.3(a)(4) HS requires the presence of an actual "container." Requiring a physical container, the Court reasoned, would contradict the statute's purpose and lead to absurd results. For example, a driver holding a marijuana cigarette and a lighter – with no container – could not be found in violation of the statute under such an interpretation.

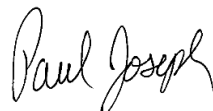
CONCLUSION

The rule announced in *Sellers* is comparable to laws governing open containers of alcohol in vehicles. For example, possession by an adult of no more than 28.5 grams of loose marijuana within a vehicle – but not readily accessible to an occupant – does not violate 11362.3(a)(4) HS.

Whether a violation of 11362.3(a)(4) HS exists is fact dependent. In assessing whether marijuana is in an imminently usable condition and readily accessible, relevant factors include:

- The state of the marijuana (e.g., fresh, dried, ground, rolled into a cigarette, etc.);
- The amount of marijuana (e.g., fragments versus usable flower);
- The presence of paraphernalia (e.g., vaporizers, lighters, rolling papers, etc.); and
- The physical location of the marijuana within the vehicle in relation to the occupants.

Finally, it is important to remember that under [11362.1 HS](#), a person 21 years of age or older may lawfully possess or transport up to 28.5 grams of marijuana. Such possession or transportation of a lawful amount of marijuana, standing alone, cannot serve as the basis for a detention, search, or arrest.



Paul Joseph
Chief of Police

PJ:NB:NY