



El Segundo Police Department

Training Section

348 Main Street, El Segundo, CA 90245

Phone (310) 524-2253

TRAINING BULLETIN

January 28, 2022

California Cannabis Laws and Vehicle Searches

The purpose of this lesson is to help clarify what constitutes probable cause to conduct a vehicle search when cannabis is present. Since the passage of Prop. 64, the appellate courts have been providing case law guidance. Some of these cases illustrate what you always have been able to do and can continue to do. Other cases have provided a new interpretation of when a cannabis container is “closed or sealed” in a motor vehicle. Lastly, the need to articulate your experience and training and your ability to detect “freshly burned” cannabis becomes important.

Prop. 64 (effective 11/16/16) permits legal possession of up to one ounce of cannabis by persons 21 years or older. Possession of this amount of cannabis is lawful conduct and cannot be the basis for detention, search or arrest (11362.1(c) H&S). Thus, a probable cause vehicle search must be based on the “substantial likelihood” of criminal possession of cannabis, not just the observation of a legal amount or “odor” of cannabis in the vehicle.

Statutory Examples of Illegal Use:

After a vehicle stop, there is the detectable odor of “recently smoked” cannabis inside a vehicle and a cannabis-related DUI detention will be conducted (23152(f) (V.C.); When an “open” package of cannabis or loose cannabis is possessed by a driver or passenger while a vehicle is being operated on the roadway (23222(b)(1) V.C.) When cannabis is being smoked or used in a vehicle being operated on the roadway (11362.3(a)(4) H&S); When an officer’s experience and training gives rise to probable cause that more than one ounce of cannabis is being transported in a vehicle (bulk packaging/fresh harvest) (11362(a)(7) H&S); Persons under 21 cannot possess any amount of cannabis (11362.1(a)(1) H&S).

Here are some case decisions where illegal cannabis use was present and a subsequent probable cause search was lawful to determine compliance with applicable statutes:

* San Francisco PD Case – Plain view observation of a half-burned cannabis “blunt” and the “fresh odor” of recently smoked cannabis emitting from the vehicle interior. An “Auto Exception” search for more cannabis was justified. An illegal

firearm was found. Persons may not ingest cannabis while operating a vehicle or drive under the influence of cannabis (People v. Fews (2018) 27 Cal. App.5th 553).

* East Palo Alto PD case – The odor of “freshly burnt” cannabis coming from the interior of the defendant’s car. A further search for cannabis located a handgun, hydrocodone, concentrated cannabis and sales paraphernalia. Probable cause to search existed because cannabis was being used in a vehicle being operated on the roadway, (U.S. v. Johnson (2019) 9th Circuit 913 F3d 793).

* Del Norte SO case – Vehicle parked behind a Safeway Store in Crescent City. The fresh odor of burned cannabis was coming from the vehicle interior and the plain view observation of a pipe with a small amount of cannabis residue. A further search of the vehicle was justified. Methamphetamine was discovered (People v. Waxler (2014) 224 Cal. App. 4th 712

* Sacramento PD case - The “strong odor of fresh, unburned cannabis” coming from the vehicle interior was present. A search was conducted and inside a backpack was a ¼ pound of cannabis, indicia of sales, and a handgun. It is illegal for an adult to possess more than one ounce of cannabis. The officer’s detailed explanation of his experience and training to detect the odor of “fresh, unburned cannabis” formed probable cause to search for an unlawful quantity of cannabis (People v. Moore (2021) 64 Cal. App. 3rd 291).

* Stockton PD case – The smell of cannabis and observation of an open plastic bag of cannabis (not sealed at top) in the defendant’s cleavage justified a further search of the vehicle. A concealed gun was found in the defendant’s purse (People V. McGee (2020) 53 Cal. App.5th 796).

However, a probable cause search cannot be based upon the legal possession of cannabis. Examples:

* Finding a legal possession amount of cannabis and \$100-\$200 cash in the pocket of a detained driver didn’t constitute probable cause to search the vehicle for more cannabis. There must be additional evidence of unlawful use (People v. Lee (2019) 40 Cal. App. 5th 853).

* The finding of “dried flower” cannabis in a closed tube where the tube could be easily opened by squeezing the sides causing the top to “pop off” did not constitute probable cause to search for more cannabis. Defendant possessed a legal amount of cannabis and the tube was closed within the meaning of the statute. Sealed and closed are synonymous (People v. Shumake (2019) 45 Cal. App. 5th Supp.1).

* A 2-gram plastic bag of cannabis “knotted at the top” in defendant’s vehicle was not an “open container”. Unlike alcohol containers where the manufacturer’s seal is broken for consumption, persons who possess legal cannabis do not carry re-sealing equipment after the container is opened. The knot presented a barrier (however temporary) in accessing the cannabis inside even if the bag appeared to have been opened earlier (People v. Johnson (2020) 50 Cal. App. 5th 620).

* A clear Zip-Loc plastic bag (less than an ounce - zipped shut) containing suspected cannabis was closed. Although the bag could have been “opened at some time prior”, there was no evidence presented that the amount of marijuana observed exceeded one ounce or that smoking was taking place while operating the vehicle. There is no requirement that a legal amount of cannabis in a vehicle must be vacuum “sealed” (People v. Hall (2020) 57 Cal. App.4th 712),

* A clear plastic container about the size of a prescription bottle with a closed, removable plastic cap filled with suspected cannabis was closed under the definition of the H&S Code. The fact the bottle could have been opened earlier, then reclosed, is without distinction (U.S. v. Tally (2020) Dist. Ct. N.D. 467 FSupp.3, 832).

A recent case stresses the need for officers/deputies to be specific in their investigative report and courtroom testimony and include one’s experience and training in detecting the smell of “freshly burned” cannabis indicating smoking took place while a vehicle was being operated (Blakes v. Superior Court, 3DCA, #C093856, 11/21).

Deputies made a vehicle stop for illegal tinted windows and after having run the vehicle license plate and learned that the R/O had a suspended driver’s license. The deputy testified in court that he smelled the “odor of cannabis” and he believed that gave him probable cause to search the car.

Here’s the rub – No evidence was presented to show the smell of the cannabis was “freshly burned” indicating smoking while driving, that the driver was impaired (no erratic driving before the stop and no FST conducted), no admission by the defendant that he had been smoking while operating the vehicle, and no open cannabis container observed – just “odor”. Not enough for the DCA – The smell of burnt cannabis in a car where there is no indication it had been recently smoked within cannot by itself provide probable cause to search the car

The defendant was likely smoking while driving. In fact, a partially consumed “joint” and remnants of other “joints” were found in a trash receptacle during the car search. But the lack of “specificity” in the deputy’s report and testimony did not establish recent consumption while driving. Regretfully, a convicted felon “skates” on a gun charge.

You know it when you smell it! Your field experience and training is important in forming an opinion concerning the “fresh smell” of recently consumed cannabis”. You are allowed to testify to this opinion to support your probable cause to search (Opinion Evidence Rule - 800 E.C.). These facts should be contained in your police report. You can use your police report to refresh your recollection during courtroom testimony when there is a motion to suppress evidence (1237 E.C.).

Note: According to the California Office of Traffic Safety, the effect of marijuana is strongest during the first 30 minutes after consumption. People who drive immediately after using marijuana may increase their risk of getting into a crash by 25 to 35 percent. The impairing effect rises rapidly and remains for some time. When combined with alcohol the effects are even more dangerous.