

One Minute Brief

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TOPIC: Auto Searches Based on Marijuana

ISSUE: When does marijuana in a vehicle constitute an “open container” under Health & Safety Code section 11362.3(a)(4), and when can marijuana-related observations provide probable cause to conduct a warrantless vehicle search?

In *Sellers v. Superior Court* (2026) 19 Cal.5th 75, the California Supreme Court held:

1. Loose marijuana scattered in a vehicle does not automatically constitute an “open container.”
2. To violate Health & Safety Code section 11362.3(a)(4), marijuana in a vehicle must be:
 - of a usable quantity,
 - in imminently usable condition, and
 - readily accessible to an occupant.
3. Lawful marijuana-related conduct cannot provide probable cause for a warrantless auto search.

Legal background — Under Proposition 64, adults 21 and older may lawfully possess and transport up to 28.5 grams of cannabis. (Health & Saf. Code, § 11362.1.) Cannabis involved in lawful conduct “is not contraband” and cannot justify detention, search, or arrest. (§ 11362.1(c).) Proposition 64 preserved restrictions on marijuana use in vehicles, including possession of an “open container.” (§ 11362.3(a)(4).)

The *Sellers* decision — In *Sellers*, officers observed a rolling tray on the back seat and approximately 0.36 grams of marijuana debris on the rear floorboard. Officers did not suspect impaired driving and found no additional marijuana or paraphernalia. A firearm discovered during the search led to charges.

The Supreme Court reversed, holding:

- Loose marijuana is not per se contraband.
- The statute does not require marijuana in a vehicle to be stored in a sealed container.
- The open-container prohibition applies only when marijuana has a realistic nexus to impaired driving.

In order to violate Health & Safety Code section 11362.3(a)(4), marijuana in a vehicle must be:

- usable (not residue),
- imminently consumable (prepared or ready for use with minimal effort and supported by paraphernalia), and
- readily accessible to an occupant.

Scattered crumbs on a rear floorboard without evidence of accessibility, preparation, or paraphernalia do not satisfy this standard.

Probable cause analysis after *Sellers* — Because the observed marijuana-related conduct was lawful, it could not justify a warrantless search under the automobile exception. The Court emphasized:

- Lawful marijuana possession cannot justify a search for more unlawful marijuana.
- Nervousness during a traffic stop carries little weight.
- A rolling tray and marijuana debris, without evidence of recent use or impairment, do not suggest criminal activity.

Practical Application — After *Sellers*, officers and prosecutors should focus on function, not form. Relevant factors include:

- Marijuana ready for immediate consumption (e.g., rolled blunt, lit pipe, edible removed from package).
- Physical reachability by an occupant.
- Paraphernalia facilitating immediate use.
- Evidence of recent consumption or impairment.

Insufficient factors include:

- Loose marijuana debris or residue.
- Lawful quantities of marijuana without evidence of accessibility or imminent use.
- Speculation that lawful marijuana implies additional contraband.

Sellers abrogated *People v. McGee* (2020) 53 Cal.App.5th 796 (see OMB 2025-01), which had held that a lawful amount of marijuana in an unsealed bag inside a vehicle provided probable cause to search the car. *Sellers* rejected the requirement that marijuana in a vehicle be kept in a “sealed” container.

BOTTOM LINE: Not all marijuana in a vehicle is an “open container.” An open-container violation requires marijuana that is of a usable quantity, in an imminently usable condition, and readily accessible. Lawful marijuana possession or transport cannot establish probable cause for a vehicle search. Officers must articulate specific facts linking marijuana to impaired driving or unlawful activity.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.