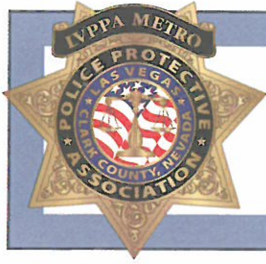
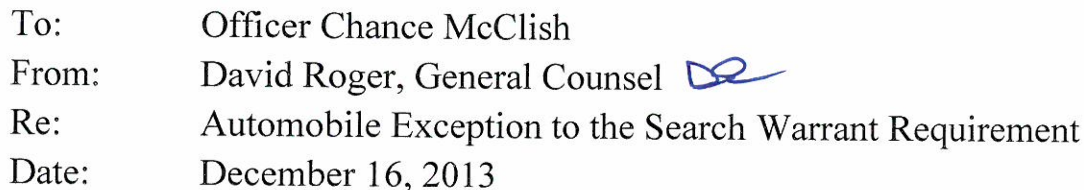


Las Vegas Police Protective Association Metro, Inc.



To:	Officer Chance McClish
From:	David Roger, General Counsel
Re:	Automobile Exception to the Search Warrant Requirement
Date:	December 16, 2013

INTRODUCTION

You have asked me to elaborate on my recent video concerning Nevada's decisions on automobile searches and the latest case of *State v. Lloyd,* 129 Nev. Adv. Op 79 (filed October 31, 2013).

FEDERAL CONSTITUTIONAL LAW- AUTOMOBILE EXCEPTION

In 1925, the United States Supreme Court decided the case of *Carroll v. United States,* 267 U.S. 132, 45 S.Ct. 280 (1925). The *Carroll* court upheld the warrantless search of an automobile based upon probable cause. The court explained that the exception to the warrant requirement is justified because automobiles are mobile, and suspects may drive away the vehicles while officers secure a search warrant.

Subsequently, the court stated that mobility is not an element of the automobile exception, but merely a rationale for departing from the warrant requirement. Later decisions explained that because vehicle owners operate their cars on the open highway, and in plain view, they are afforded a lesser expectation

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of privacy, which is the cornerstone of Fourth Amendment jurisprudence. *See, California v. Carney,* 471 U.S. 386, 105 S.Ct. 2066 (1985).

In *Michigan v. Thomas,* 458 U.S. 259, 261, 102 S.Ct. 3079, 3080, the court explained succinctly:

> " In *Chambers v. Maroney*, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970), we held that when police officers have probable cause to believe there is contraband inside an automobile that has been stopped on the road, the officers may conduct a warrantless search of the vehicle, even after it has been impounded and is in police custody. We firmly reiterated this holding in *Texas v. White*, 423 U.S. 67, 96 S.Ct. 304, 46 L.Ed.2d 209 (1975). See also *United States v. Ross*, 456 U.S. 798, 807, n.9, 102 S.Ct. 2157, 2163, n.9, 72 L.Ed.2d 572 (1982). It is thus clear that the justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant."

Id.

NEVADA DECISIONS POST *CARROLL V. UNITED STATES*

It is well established that States may impose greater constitutional restrictions when interpreting state constitutions. However, Nevada has traditionally followed U.S. Supreme Court decisions in the area of the Fourth Amendment.

In fact, the Nevada Supreme Court adopted the *Carroll* decision in *Wright v. State,* 88 Nev. 460, 472, 499 P.2d 1216, 1224 (1972). For well over 25 years, Nevada law enforcement officers conducted warrantless searches, based upon probable cause, of automobiles.

However, in a series of three decisions, the Nevada Supreme Court wreaked havoc in the law enforcement community. *See, State v. Harnisch* (*Harnisch I*), 113 Nev. 214, 931 P.2d 1359 (1997); *Barrios–Lomeli v. State,* 113 Nev. 952, 944 P.2d 791 (1997); and *State v. Harnisch* (*Harnisch II*), 114 Nev. 225, 954 P.2d 1180 (1998). Because these decisions are no longer controlling, their holdings will not be discussed in this memo.

Finally, this year the Nevada Supreme Court made a 180 degree turn and reverted to the holding in *Carroll v. United States, supra* and *Wright v. State, supra.* The Court in *State v. Lloyd,* 129 Nev. Adv. Op 79 (filed October 31, 2013) explained:

> Nevada's automobile-exception caselaw has been criticized as "produc [ing] confusion, while doing little to enhance the protection of individual privacy interests." (Citation omitted). The criticism is fair. The constitutional protection in the federal automobile-exception caselaw lies in the requirement of probable cause to believe the vehicle contains contraband or evidence of a crime and the car's inherent mobility, not the peripheral factors identified in the *Harnisch* cases and their progeny. And the confusion in our caselaw not only makes it difficult for district courts to apply the law, it also makes it difficult for police to comply with the law in the field.
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> *****
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> In the 80 years since *Carroll* articulated the automobile exception, the Supreme Court "has slowly and cautiously developed this narrow exception to the warrant requirement into a balanced doctrine that protects

> privacy concerns while providing clear guidelines for effective law enforcement." (Citation omitted.) Given that the Fourth Amendment and Article 1, Section 18 of the Nevada Constitution use virtually identical language, independently deriving a different formulation to protect the same liberty that the United States Constitution secures—and paying for that difference with confusing rules and unpredictable, oft-litigated results—cannot be justified. (Citation omitted). We now conclude, as a number of sister states have, that our state constitution compels no different automobile exception to its warrant requirement than the Fourth Amendment does.

Id.

Today, pursuant to *Carroll v. United States, supra,* and *State v. Lloyd,* officers may search an automobile, without a search warrant, based upon probable cause. It is irrelevant whether the vehicle is stopped by police officers or parked on the side of the road. It is immaterial that the vehicle is parked in an impound lot or on the curtilage of a residence. Likewise, it makes no difference whether the vehicle is occupied, or not. The sole issue is whether the officer has probable cause to believe that contraband or evidence is located in the automobile.

LVMPD should amend its policy immediately to conform with this new case law.