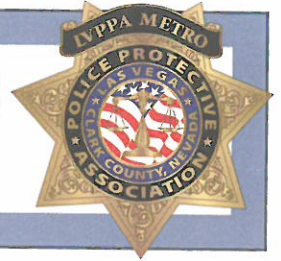


Las Vegas Police Protective Association Metro, Inc.



To: Officer Steven Skenandore
From: David Roger, General Counsel *DR*
Date: April 19, 2013
Re: Consent to Search from a Suspect In-Custody

You have asked whether a person, while in custody, may give consent to search his property.

It is well established that consent is an exception to the warrant requirement of the Fourth and Fourteenth Amendments to the U.S. Constitution. *Davis v. United States*, 382 U.S. 582, 66 S.Ct. 1256 (1946). A person's consent is valid if it is voluntarily given and not the result duress or coercion. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041 (1973).

When deciding whether a suspect has voluntarily consented to allowing police to search his property or belongings, courts will review the totality of the circumstances. *State v. Johnson*, 116 Nev. 78, 993 P.2d 44 (2000). While police are not required to inform a suspect that he has a right to refuse to give consent, such knowledge is a factor the courts consider. *McMorran v. State*, 118 Nev. 379, 46 P.3d 81 (2002).

Likewise, although a person in custody may give consent to search, the inmates status is a factor to be considered when the court decides whether the person's consent was coerced. See, *Lightford v. State*, 90 Nev. 136, 520 P.2d 955 (1974); *State v. Plas*, 80 Nev. 251, 391 P.2d 868 (1964).

While courts analyze many factors, and no one circumstance is dispositive, the Ninth Circuit Court of Appeals, in *United States v. Brown*, 563 F.3d 410, 415 (9th Cir. 2009), listed five (5) factors as guidelines:

1. Whether the suspect was in custody;
2. Whether police drew their guns during the arrest;
3. Whether officers gave the suspect *Miranda* warnings;
4. Whether police told the suspect that he/she could refuse to consent;
and
5. Whether police told the suspect that they could obtain a search
warrant.

In sum, an arrestee or inmate may give consent to search, as long as such consent is voluntarily given to police.