



Las Vegas Police Protective Association Metro, Inc.



To: Officer Malcom Napier
From: David Roger, General Counsel *DR*
Re: Crimes Not Exempt from Prosecution Under NV Medical
Marijuana Laws; DWI – Marijuana
Date: April 28, 2014

INTRODUCTION

You have asked for an opinion regarding automobile searches involving drivers who possess medical marijuana registry cards. As a preliminary matter, this memo will address crimes that are not exempt from prosecution pursuant to the medical marijuana laws. Additionally, the research will include a discussion of Nevada's Driving While Under the Influence of a Prohibited Substance law.

CRIMES NOT EXEMPT FROM PROSECUTION

The Nevada Legislature enacted Chapter 453A titled Medical Use of Marijuana. While people who possess a registry card may possess certain amounts of marijuana, some crimes are still prosecutable by statute.

NRS 453A.300(1) prohibits a person, who holds a registry identification card, from driving while under the influence of marijuana; possessing a firearm while under the influence of marijuana; and using or possessing marijuana in a, "public place or in any place open to the public or exposed to public view."

Additionally, the statute prohibits people from knowingly delivering marijuana to a person who does not possess a registry card. Likewise, the

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law makes it illegal for a person to deliver marijuana for money or other consideration. Obviously, these charges are more difficult to substantiate.

DRIVING WHILE UNDER THE INFLUENCE OF MARIJUANA

Pursuant to NRS 484C.110(2) it is illegal to drive or be in physical control of a motor vehicle while under the influence of marijuana. Additionally, subsection 3 prohibits a person from driving or being in physical control of a motor vehicle with certain amounts of marijuana or a “marijuana metabolite” in the person’s urine or blood.

The term “marijuana metabolite” is arguably vague as it may include the metabolite, Carboxy-Tetrahydrocannabinol (Carboxy-THC). This past month, the Supreme Court of Arizona addressed this very issue.¹ The court recognized that Carboxy-THC is an inactive metabolite of marijuana; does not cause impairment; and remains in a person’s system for up to 30 days. Although the court concluded the legislature did not intend to include non-impairing metabolites in the statute, we should recognize that the Nevada Supreme Court could strike down our statute as being unconstitutionally vague.²

That said, officers should always document thoroughly their observations of driver impairment. We should never rely solely on a driver’s admission that they ingested marijuana. Always assume you will have to prove that the person’s driving was impaired by alcohol or drugs without regard to the statute’s per se violation theory.

¹ *State ex rel. Montgomery v. Harris*, 2014 WL 1593062 (AZ April 22, 2014).

² While *Williams v. State*, 118 Nev. 536, 50 P.3d 1116 (2002) upheld the constitutionality of the statute, the Court did not address this precise issue.