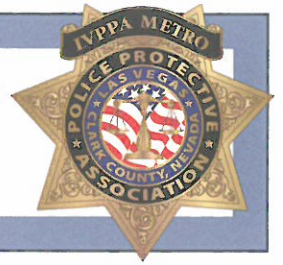


Las Vegas Police Protective Association Metro, Inc.



To: Officer Samuel Cortez
From: David Roger, General Counsel *DR*
Re: Execution of Search Warrants
Date: April 18, 2014

You have asked whether an officer, who obtains a search warrant for a vehicle to search for drugs, must ask for authorization to dismantle the car to reach hidden compartments. This memo will also address the scope of warrantless searches of automobiles.

Initially, an officer is not required to secure a warrant to search a vehicle. Both Federal and Nevada case law allows an officer to search a vehicle, based upon probable cause, without a warrant. Gone is the requirement that the officer establish that the vehicle is mobile or that there are exigent circumstances. *State v. Lloyd*, 312 P.3d 467 (Nev. 2013). You may also refer to my memo regarding warrantless automobile searches dated December 16, 2013.

As a starting point, it is important to remember that a search warrant allows officers to search any area in which items to be seized may be hidden. *U.S. v. Ross*, 456 U.S. 798, 821, 102 S.Ct. 2157, 2171 (1982). "Officers executing search warrants on occasion must damage property in order to perform their duty." *Dalia v. U.S.*, 441 U.S. 238, 258, 99 S.Ct. 1682, 1694 (1979).

In 1925, the U.S. Supreme Court recognized, as an exception to the search warrant requirement of the Fourth Amendment, the warrantless search of automobiles based upon probable cause. *Carroll v. U.S.*, 267 U.S. 132, 45 S.Ct. 280 (1925).

In that case, federal prohibition agents had probable cause to believe the defendants were transporting bootleg liquor in a roadster vehicle. When the agents conducted the search, they struck a back seat and noticed it was firmer than an ordinary seat. The agents tore open the seat cushion and discovered numerous bottles of gin and whiskey concealed inside. The court concluded the warrantless search of the vehicle was a reasonable and consistent with the Fourth Amendment.

As the U.S. Supreme Court in *Ross* explained:

The scope of the search was no greater than a magistrate could have authorized by issuing a warrant based on the probable cause that justified the search. Since such a warrant could have authorized the agents to open the rear portion of the roadster and to rip the upholstery in their search for concealed whiskey, the search was constitutionally permissible.

Id. 456 U.S. at 818, 102 S.Ct. at 2169.

Faced with the issue of whether an officer, who conducts a warrantless search a vehicle based upon probable cause, may search closed containers located in the automobile, the court recognized:

[A]n individual's expectation of privacy in a vehicle and its contents may not survive if probable cause is given to believe that the vehicle is transporting contraband. Certainly the privacy interests in a car's trunk or glove compartment may be no less than those in a movable container. An individual undoubtedly has a significant interest that the upholstery of his automobile will not be ripped or a hidden compartment within it opened. These interests must yield to the authority of a search, however, which-in light of *Carroll* -does not itself require the prior approval of a magistrate. The scope of a warrantless search based on probable cause is no narrower-and no broader-than the scope of a search authorized by a warrant supported by probable cause. Only the prior

approval of the magistrate is waived; the search otherwise is as the magistrate could authorize.

Id. 456 U.S. at 823, 102 S.Ct. at 2172.

The *Ross* court concluded that officers may search closed containers by stating:

The exception recognized in *Carroll* is unquestionably one that is “specifically established and well delineated.” We hold that the scope of the warrantless search authorized by that exception is no broader and no narrower than a magistrate could legitimately authorize by warrant. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.

Id. 456 U.S. at 825, 102 S.Ct. at 2173.

Neither the federal courts nor the Nevada Supreme Court has held that officers must seek permission to dismantle automobiles during a lawful search. Likewise, LVMPD policy 5/200.06 does not require such approval by the court.