

TO: OFFICER JANE PINTO
FROM: DAVID ROGER, GENERAL COUNSEL
DATE: AUGUST 27, 2013
RE: INSPECTION OF MOPED VEHICLE IDENTIFICATION NUMBERS

You have asked me to provide you with a legal analysis of whether examining the Vehicle Identification Number “VIN” of a moped constitutes a search within the meaning of the Fourth Amendment. You also inquired whether removing a plastic cover to view the VIN is considered a search.

INSPECTION OF VEHICLE IDENTIFICATION NUMBER

The Fourth Amendment to the United States Constitution protects citizens from unreasonable searches and seizures.¹ However, a citizen must be able to establish that he has a reasonable expectation of privacy in the area searched. *Katz v. United States*, 389 U.S. 347, 360, 88 S.Ct. 507, 516 (1967). In order to establish a reasonable expectation of privacy, under the Nevada Constitution, a citizen must establish a subjective and objective expectation of privacy. *Osburn v. State*, 118 Nev. 323, 44 P.3d 523 (2002).

In *New York v. Class*, 475 U.S. 106, 113, 106 S.Ct. 960, 965 (1986), the U.S. Supreme Court concluded that citizens do not have a reasonable expectation of privacy in their automobile’s vehicle identification number. The Court explained:

[T]he VIN plays an important part in the pervasive regulation by the government of the automobile. A motorist must surely expect that such regulation will on occasion require the State to determine the VIN of his or her vehicle, and the individual’s reasonable expectation of privacy in the VIN is thereby diminished. This is especially true in the case of a driver who has committed a traffic violation. See *Delaware v. Prouse*, *supra*, 440 U.S., at 659, 99 S.Ct., at 1399 (“The foremost method of enforcing traffic and vehicle safety regulations ... is acting upon observed violations.

¹ See also, Article 1, Section 18 of the Nevada Constitution

Vehicle stops for traffic violations occur countless times each day; and on these occasions, licenses and registration papers are subject to inspection and drivers without them will be ascertained” (emphasis added). In addition, it is unreasonable to have an expectation of privacy in an object required by law to be located in a place ordinarily in plain view from the exterior of the automobile. The VIN’s mandated visibility makes it more similar to the exterior of the car than to the trunk or glove compartment. The exterior of a car, of course, is thrust into the public eye, and thus to examine it does not constitute a “search.” See *Cardwell v. Lewis, supra*, 417 U.S., at 588-589, 94 S.Ct., at 2468. In sum, because of the important role played by the VIN in the pervasive governmental regulation of the automobile and the efforts by the Federal Government to ensure that the VIN is placed in plain view, we hold that there was no reasonable expectation of privacy in the VIN.

Id.

Because the Court concluded that a vehicle driver does not have an expectation of privacy in a car’s VIN, an officer may examine the VIN without complying with the warrant requirement of the Fourth Amendment.

Additionally, an officer may move a cover that conceals the VIN on certain parts of the moped. The *Class* Court reasoned that incidental searches to examine VIN’s, including entering the passenger compartment of a vehicle, do not amount to unreasonable searches prohibited by the Fourth Amendment. The Court reasoned:

The VIN, which was the clear initial objective of the officer, is by law present in one of two locations-either inside the doorjamb, or atop the dashboard and thus ordinarily in plain view of someone outside the automobile. Neither of those locations is subject to a reasonable expectation of privacy. The officer here checked both those locations, and only those two locations. The officer did not

root about the interior of respondent's automobile before proceeding to examine the VIN. He did not reach into any compartments or open any containers. He did not even intrude into the interior at all until after he had checked the doorjamb for the VIN. When he did intrude, the officer simply reached directly for the unprotected space where the VIN was located to move the offending papers. We hold that this search was sufficiently unintrusive to be constitutionally permissible in light of the lack of a reasonable expectation of privacy in the VIN and the fact that the officers observed respondent commit two traffic violations. Any other conclusion would expose police officers to potentially grave risks without significantly reducing the intrusiveness of the ultimate conduct-viewing the VIN-which, as we have said, the officers were entitled to do as part of an undoubtedly justified traffic stop.

Id. 407 U.S. at 118, 106 S.Ct. at 968.

Moving a part on a moped is far less intrusive than entering into the passenger's compartment of the vehicle in *Class*. The driver of a moped does not have a reasonable expectation of privacy in the VIN of the moped. Therefore, moving parts to view a VIN does not trigger a Fourth Amendment analysis.