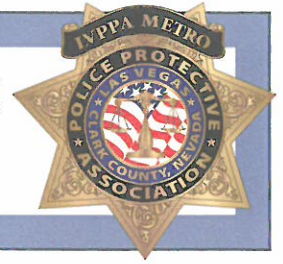




Las Vegas Police Protective Association Metro, Inc.



To: Detective David Miller
From: David Roger, General Counsel *DR*
Date: June 3, 2014
Re: Searches and Staleness of PC

You have asked for a legal opinion concerning the following scenario. As you related to me, your squad arrested several suspects for armed robbery. At the time of the arrest, officers impounded the suspect's vehicle. Although you had probable cause to believe the suspect's firearm and other evidence would be located in the vehicle, you were unable to conduct a search until the next day. The vehicle remained in the impound lot and was not disturbed.

Your vehicle search, without a warrant, is proper pursuant to *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280 (1925) and *State v. Lloyd*, 129 Nev., 312 P.3d 467 (2013). The fact that the vehicle was not mobile is of no legal significance. *Michigan v. Thomas*, 458 U.S. 259, 261, 102 S.Ct. 3079, 3080 (1982)(...the justification to conduct such a warrantless search does not vanish once the car has been immobilized.)¹

With regard to whether your probable cause was stale, the evidence must establish, "... facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at the time." *Sgro v. United States*, 287 U.S. 206, 210, 53 S.Ct. 138 (1932).

¹ For further discussion see my legal memo, *Automobile Exception to the Search Warrant Requirement* (December 16, 2013)

While the passage of time is a factor, courts will review the facts, nature of the crime and the property sought. *United States v. Lacy*, 119 F.3d 742 (9th Cir. 1997).

“Information is stale and probable cause does not exist when it is no longer reasonable to presume that a search will turn up evidence of a crime.” *Wright v. State*, 112 Nev. 391, 396, 916 P.2d 146, 150 (1996); *Garrettson v. State*, 114 Nev. 1064, 967 P.2d 428 (1998).

Stale evidence may be refreshed by recent corroborating information. *United States v. Thomas*, 605 F.3d 300 (6th Cir. 2010). Examples of such circumstances include recent convictions, related suspicious activity and other recent relevant evidence. See, *United States v. Irving*, 452 F.3d 110 (2nd Cir. 2005); *United States v. Peden*, 891 F.2d 514 (5th Cir. 1989).

Turning to the facts of your case, there is no possibility that your suspect, or anybody else, could have entered the suspect vehicle and removed evidence. Therefore, you still had probable cause to believe evidence would be found in the vehicle.