

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

10-31-2013

Summary of State v. Lloyd, 129 Nev. Adv. Op. 79

Jim Hoffman
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Criminal Law Commons](#), and the [Criminal Procedure Commons](#)

Recommended Citation

Hoffman, Jim, "Summary of State v. Lloyd, 129 Nev. Adv. Op. 79" (2013). *Nevada Supreme Court Summaries*. 50.

<https://scholars.law.unlv.edu/nvscs/50>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

State v. Lloyd, 129 Nev. Adv. Op. 79 (October 31, 2013)¹
CRIMINAL LAW AND PROCEDURE

Summary

The Court considers an appeal from a district court order granting the defendant's motion to suppress evidence based on a warrantless automobile search. The Court considers one issue: whether Article I, Section 18 of the Nevada Constitution imposes an exigency requirement on officers conducting warrantless vehicle searches, or whether officers need only have probable cause.

Disposition/Outcome

Article I, Section 18 of the Nevada Constitution imposes the same exigency requirement on warrantless automobile searches as the Fourth Amendment to the U.S. Constitution. Therefore, "exigency is not a separate requirement of the automobile exception to the constitutional warrant requirement." Accordingly, the Court disapproves of the additional amount of exigency required by *Harnisch II*² and its progeny, and reverses and remands the case back to the district court.

Factual and Procedural History

A Nevada Highway Patrol Trooper stopped the defendant for a traffic violation. When the Trooper called dispatch to report the stop, he requested the presence of a drug detection dog. The dog arrived quickly and alerted to the presence of drugs, which prompted the Trooper to search the defendant's car without obtaining a warrant. The Trooper found psilocybin mushrooms and seven pounds of marijuana. After being arrested and charged with various drug offenses, the defendant moved to suppress this evidence. The district court granted the motion, finding that the Trooper had the requisite probable cause to conduct a warrantless search, but that the Trooper lacked the requisite exigency to search the car. The state appealed the grant of motion to the Supreme Court.

Discussion

A.

Under the Fourth Amendment to the U.S. Constitution, an automobile may be searched without a warrant if the officer has probable cause to suspect a crime.³ This "automobile exception" is rooted in the idea of "exigency," the idea that an automobile is inherently mobile and thus easy to remove from a warrant-issuing jurisdiction if not

¹ By Jim Hoffman.

² *State v. Harnisch (Harnisch II)*, 114 Nev. 225, 954 P.2d 1180 (1998).

³ *Carroll v. United States*, 267 U.S. 132, 149 (1925).

immediately searched.⁴ However, exigency is not a separate requirement, and as long as the automobile is actually mobile, no additional standard need be met.⁵

B.

Beginning in *Harnisch I*, the Nevada Supreme Court required two separate requirements to invoke the automobile exception: (1) probable cause and (2) exigency.⁶ Even though the automobile in that case was mobile, because the defendant had been arrested, the Court held that “the car was not readily movable by the defendant” and therefore the exigency requirement was not met.⁷ In *Harnisch II*, the Court rooted this separate exigency requirement in the Nevada Constitution.⁸ However, the Court notes that *Harnisch II* and its progeny draw “perplexing distinctions that do not square with the reasons for them.”

C.

Harnisch II and Nevada’s other automobile-exception caselaw “produce confusion, while doing little to enhance the protection of individual privacy interests.”⁹ The Court therefore concludes that the language of Article I, Section 18 of the Nevada Constitution¹⁰ should be interpreted identically with the cognate language in the Fourth Amendment.¹¹

Conclusion

Under the Nevada Constitution, “exigency is not a separate requirement of the automobile exception to the constitutional warrant requirement.” Since the Trooper in the present case was found to have probable cause, he satisfied the only requirement necessary to conduct a warrantless search of an automobile. Therefore, the Court reversed the district court’s grant of the defendant’s motion to suppress, and remanded the case for further proceedings.¹²

⁴ *Id.* at 153.

⁵ *Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (quoting *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996)).

⁶ *State v. Harnisch (Harnisch I)*, 113 Nev. 214, 931 P.2d 1359 (1997).

⁷ *Id.* at 223, 931 P.2d at 1365.

⁸ *Harnisch II*, 114 Nev. at 228-29, 954 P.2d at 1183 (1998).

⁹ Thomas B. McAfee, John P. Lukens & Thaddeus J. Yurek III, *The Automobile Exception in Nevada: A Critique of the Harnisch Cases*, 8 Nev. L.J. 622, 624 (2008).

¹⁰ “[T]he right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause. . . .”

¹¹ “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause[.]”

¹² Justices Cherry and Saitta dissented.