

DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 283

July 23, 2004

STOP AND IDENTIFY STATUTE DOES NOT VIOLATE FOURTH OR FIFTH AMENDMENTS

Reference: Larry D. Hiibel v. Sixth District Court of Nevada United States Supreme Court No. 03-5554 June 21, 2004

FACTS:

Police responded to a telephone call regarding an assault in progress. The caller said that a man was assaulting a woman in a red and silver GMC truck. When the officer arrived, he observed the truck parked on the side of the road. A man was standing by the truck and a young woman was sitting inside it. The officer approached the man, who appeared to be intoxicated, and told him he was investigating a report of a fight. The officer asked the man if he had identification on him. The man refused to furnish his name or any identification and asked the officer why he wanted to see identification. The officer responded that he was conducting an investigation and needed to see some identification. The man became agitated and said that he had done nothing wrong. The officer asked for some identification eleven (11) times and was refused each time. The officer informed the man that he would be arrested if he refused to identify himself.

Nevada's Statute 171.123 provides, in part, that: (1) a peace officer may detain any person whom the officer reasonably believes has committed, is committing, or is about to commit, a crime; and (2) a person detained is required to identify himself, <u>but may not be compelled to</u> answer any other inquiry. (emphasis added)

The man, later identified as Hiibel, was arrested, charged and convicted. Hiibel was fined \$250.00 and he appealed.

July 23, 2004

Page 2

ISSUE:

Does Nevada's stop-and-identify statute violate the defendant's <u>Fourth Amendment</u> rights or the <u>Fifth</u> Amendment's prohibition on self-incrimination?

HELD: No--questions concerning a suspect's identity are a routine and accepted part of many Terry stops.

REASONING:

1. The initial stop was based on reasonable suspicion.

2. Beginning with <u>Terry</u>, the Court has recognized that an officer's reasonable suspicion of a person perhaps being involved in criminal activity permits that officer to stop the person for a brief time and take additional steps to further investigate.

<u>3.</u> The Court is now of the view that <u>Terry</u> principles permit a State to require a suspect to disclose his name in the course of a Terry stop.

4. The <u>Fifth Amendment</u> prohibits only compelled testimony that is incriminating and protects only against disclosures that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used.

5. In this case, Hiibel's refusal to disclose his name was not based on any articulated real and appreciable fear that his name would be used to incriminate him, or that it would furnish a link in the chain of evidence needed to prosecute him. It would appear that the only reason he refused to identify himself was because he thought his name was none of the officer's business.

NOTES:

Compare/contrast this case with <u>Kolender v. Lawson</u>, <u>Legal</u> <u>Bulletin No. 70</u>, where the U.S. Supreme Court ruled that a San Diego, California, loitering statute was unconstitutional because it required a suspect to give an officer "credible and reliable" identification when so asked. The Court ruled in Kolender that the statute was vague and

LEGAL BULLETIN NO. 283

July 23, 2004

Page 3

would result in "virtually unrestrained power to arrest and charge a person with a violation."

Unlike <u>Kolender</u>, the police in this case were responding to a reported crime and had a right to identify Hiibel during their investigative seizure of him.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section I, "Investigatory Seizure of Persons and Things," of your Contents and Text. File Legal Bulletin No. 283 numerically under Section R of the manual.