

To: Detective Rory Neslund
From: David Roger, General Counsel
Re: Requesting Identification from Lawfully Detained Citizens
Date: April 14, 2014

You have asked for an opinion whether an officer may require a person, lawfully detained, to provide identification documents.

NRS 171.123 provides in part:

1. Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.

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3. The officer may detain the person pursuant to this section only to *ascertain the person's identity* and the suspicious circumstances surrounding the person's presence abroad. Any person so detained shall identify himself or herself, but may not be compelled to answer any other inquiry of any peace officer.

(Emphasis added).

In *Hiibel v. Sixth Judicial District Court*, 118 Nev. 868,875, 59 P.3d 120, 1206 (2002), the Nevada Supreme Court went to great length to explain the dangers officers face, “To deny officers the ability to *request identification* from suspicious persons creates a situation where an officer could approach a wanted terrorist or sniper but be unable to identify him or her if the person's behavior does not rise to the level of probable cause necessary for an arrest.” (Emphasis added.)¹

¹ The Nevada Supreme Court dicta is the source of the apparent confusion, “The suspect is not required to provide private details about his background, but merely to state his name to an officer when reasonable suspicion exists. The Supreme Court held it reasonable for officers to pat down and frisk a person during an investigative stop.(Citation omitted). As the Court recognized in *Terry v. Ohio*, “it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties.” Requiring identification is far less intrusive than conducting a pat down search of one's physical person.” 118 Nev. at 876.

As the United States Supreme Court observed, in *Hiibel v. Sixth Judicial District Court of NV*, 542 U.S.177, 185, 124 S.Ct. 2451, 2458 (2004), “Asking questions is an essential part of police investigations. In the ordinary course a police officer is free to *ask a person for identification* without implicating the Fourth Amendment. [I]nterrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure.” (Emphasis added).

NRS 171.123(3) would be a nullity if an officer could only ask for a person's name, without requesting corroborating documents. A suspect could merely identify himself as John Smith to satisfy the statute. Such a scenario would lead to an absurd interpretation of the identity law.

The Nevada Supreme Court, in *State v. Beckman*, 305 P.3d 912, 916 (Nev. 2013), recognized, “During the course of a lawful traffic stop, officers may complete a number of routine tasks. For example, they may ask for a driver's license and vehicle registration, run a computer check, and issue a ticket.”

Additionally, NRS 484A.730(1) allows an officer to arrest a suspect for traffic violations, “When the person does not furnish satisfactory evidence of identity...” See also, *Morgan v. State*, 120 Nev. 219, 88 P.3d 837 (2004).

In sum, neither the Fourth Amendment nor NRS 171.123 prohibits officers from asking suspects for identification. Good police work dictates that an officer accurately identify the person he has detained. Requesting the individual to provide identification serves to protect the officer from dangerous criminals and minimizes the length of detention for the law-abiding citizen.