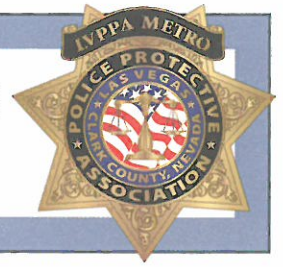



Las Vegas Police Protective Association Metro, Inc.



To: Officer Paden Weber
From: David Roger, General Counsel 
Date: August 22, 2013
Re: Interaction with passengers during traffic stops

INTRODUCTION

You have asked whether officers may require passengers to identify themselves during traffic stops. This memo will address a number of issues officers frequently face during vehicle stops involving passengers.

INITIAL STOP AND DETENTION OF PASSENGERS

It is well established that officers may stop and detain the driver of a vehicle based upon reasonable suspicion that the driver is committing or has committed a criminal offense. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968). Even though an officer may not have reason to believe a passenger is engaged in criminal activity, the officer may also detain the vehicle occupants. *Arizona v. Johnson*, 555 U.S. 323, 129 S.Ct. 781 (2009); *Brendlin v. California*, 551 U.S. 249, 127 S.Ct. 2400 (2007).

ORDERING THE DRIVER AND OCCUPANTS TO EXIT THE VEHICLE

Once a driver is legally stopped and detained, officers may direct the driver to exit the vehicle without violating the Fourth Amendment. *Pennsylvania v. Mimms*, 434 U.S. 106, 111, 98 S.Ct. 330, 333 (1977). "What is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety." *Id.*

Likewise, officers may order passengers to exit the vehicle. The Court in *Maryland v. Wilson*, 519 U.S. 408, 414, 117 S.Ct. 882, 886 (1997) explained:

"In summary, danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car. While there is not the same basis for ordering the passengers out of the car as there is

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for ordering the driver out, the additional intrusion on the passenger is minimal. We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop.”

Id.

TERRY PAT-DOWN OF PASSENGERS

While an officer does not have to establish individualized reasonable suspicion to detain a passenger of a vehicle lawfully stopped, the officer must comply with the mandate of *Terry v. Ohio*, supra, before patting down a passenger. Specifically, the officer must have reasonable suspicion that the passenger may be “armed and dangerous.” *Arizona v. Johnson*, 555 U.S. at 327, 129 S.Ct. at 784; *Cortes v. State*, 127 Nev. ___, 260 P.3d 184 (2011).ⁱ

IDENTIFICATION OF PASSENGERS

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.

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.

As the United States Supreme Court observed, in *Hiibel v. Sixth Judicial 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.”

An officer’s questions, unrelated to the justification of the stop, do not constitute an additional seizure as long as the inquiry does not “measurably extend the duration of the stop.” *Muehler v. Mena*, 544 U.S. 93, 100–01, 125 S.Ct. 1465 (2005).

The Nevada Supreme Court, in *Cortes v. State*, 260 P.3d at 190, approved of police requiring passengers to identify themselves, without requiring individualized reasonable suspicion. As the 10th Circuit Court of Appeals noted, "...because passengers present a risk to officer safety equal to the risk presented by the driver, an officer may ask for identification from passengers and run background checks on them as well"ⁱⁱ

Once an officer has stopped a driver, based upon reasonable suspicion, the officer may detain the passengers and direct them to identify themselves. The Nevada Supreme Court has not decided what form of identification complies with the statute. However, in dicta, the Court noted, "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."ⁱⁱⁱ

Most recently, in *State v. Beckman*, 129 Nev. Adv. Op. 51 (filed July 13, 2013), the Court noted, "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. Officers may also inquire about the occupants' destination, route, and purpose. And if necessary, law enforcement may conduct a brief, limited investigation for safety purposes." (citations omitted.)

Until the court provides more clarity, it is reasonable to direct a passenger to provide identification to prove his identity.

ⁱ States are free to impose higher standards on Search and Seizure issues. *Virginia v. Moore*, 553 U.S. 164, 171, 128 S.Ct. 1598 (2008). However, the Nevada Supreme Court has only interpreted the Nevada Constitution as requiring greater restrictions on two occasions. *State v. Harnisch*, 114 Nev. 241, 954 P.2d 1180 (1998) (Warrant required for vehicle searches); *State v. Bayard*, 119 Nev. 241, 71 P.3d 498 (2002) (Custodial arrests for traffic issues).

ⁱⁱ *United States v. Rice*, 483 F.3d 1079, 1084 (10th Cir. 2007).

ⁱⁱⁱ *Hiible v. State*, 118 Nev. at 876, 59 P.3d at 1206.