

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY DUDLEY HIIBEL,

Petitioner,

vs.

THE SIXTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA AND THE  
COUNTY OF HUMBOLDT AND THE  
HONORABLE RICHARD A. WAGNER,  
DISTRICT JUDGE FOR THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF  
HUMBOLDT.

Respondent.

CASE NO. 38876

FILED

DEC 04 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY M. Wasada  
DEPUTY CLERK

PETITION FOR A WRIT OF CERTIORARI

TO: THE HONORABLE JUSTICE OF THE SUPREME COURT

1. Petitioner, Larry Dudley Hiibel, was the subject of proceedings instituted by the State of Nevada, charging Mr. Hiibel with Resisting a Public Officer, on May 21, 2000.

2. The respondent is the Honorable Richard A. Wagner, presiding judge in the Sixth Judicial District Court of the State of Nevada, in and for Humboldt County, State of Nevada.

3. Respondent has a duty resulting from an office trust and station to enforce and protect the due process Fourteenth, Fourth and Fifth Amendment rights of all those who come before him in his official capacity as District Court Judge.

Respondent is without jurisdiction to affirm criminal convictions obtained in violation of the United States Constitution. Specifically, Respondent has a duty to reverse criminal convictions which have been obtained in the lower court by violations of an individual's constitutional rights. A criminal defendant has the Fourth Amendment right to be free from unreasonable searches and seizures and the Fifth Amendment

DEC 04 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

1 right not to be compelled to incriminate himself and Respondent has the duty to  
2 enforce those rights through the exercise of his appellate jurisdiction.

3 4. As part of the decision in the lower court the Respondent erroneously ruled  
4 that NRS 171.123 was constitutional.

5 5. Respondent has refused to reverse Petitioner's conviction which was  
6 obtained in violation of his Fourth, Fifth and Fourteenth Amendment rights.

7 6. Petitioner has no plain, speedy and adequate remedy at law by which to  
8 challenge Respondent's refusal to reverse his conviction.

9 WHEREFORE, Petitioner respectfully prays that this court:

10 1. Issue a Writ of Certiorari and determine that NRS 171.123 is  
11 unconstitutional.

12 2. Reverse Petitioner's conviction for resisting a public officer on May 21,  
13 2000.

14 3. For such other and further relief as the Court deems proper.

15 RESPECTFULLY SUBMITTED this 4th day of December, 2001.

16 STEVEN G. McGUIRE  
17 Nevada State Public Defender

18 By: 

19 JAMES P. LOGAN  
20 Chief Appellate Deputy  
21 Bar I.D. No. 1791  
22 511 E. Robinson St.  
23 Carson City, NV 89701  
24 (775) 687-4880  
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**VERIFICATION**

STATE OF NEVADA)  
CARSON CITY } ss

LARRY DUDLEY HIIBEL, declares under penalty of perjury:

1. That he is the Petitioner in this matter and under penalties of perjury, the undersigned declares that he is the Petitioner named in the foregoing Petition for Writ of Certiorari and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matter believes it to be true.

  
LARRY DUDLEY HIIBEL  
Petitioner

SUBSCRIBED AND SWORN to before  
me this 26 day of November, 2001.

  
NOTARY PUBLIC



**POINTS AND AUTHORITIES**

**FACTS**

The Petitioner, Larry Dudley Hiibel, was originally charged with Domestic Battery and Resisting a Public Officer on May 21, 2000. Exhibit A. However, the Domestic Battery charge was later dismissed upon the motion of the State. Exhibits B, C. A trial was held in the Justice Court of Union Township, in and for the County of Humboldt, State of Nevada. Exhibits G, H. Mr. Hiibel was convicted. Exhibits D, E.

During the course of the trial it was established that on May 21, 2000, Deputy Dove was dispatched to a report of a battery that occurred on Grass Valley Road in Humboldt County. Exhibit H, pgs. 3-5. Upon arriving at Grass Valley Road, Deputy

1 Dove spoke with a citizen who informed the deputy he had observed a battery taking  
2 place. The citizen pointed out a vehicle which was pulled over along the side of the  
3 road. Upon arriving at the vehicle noticed that the vehicle "appeared to have been  
4 pulled over in a fast, aggressive manner; there were skid marks in the gravel where it  
5 stopped. It was parked -- It wasn't parked in a normal fashion." Mr. Hiibel was  
6 standing outside the vehicle. Exhibit H, pgs. 5-7. Upon approaching Mr. Hiibel, the  
7 deputy noticed that Mr. Hiibel showed signs that he had been drinking. The deputy  
8 also noticed that there was a female occupant of the vehicle. The deputy  
9 commenced to conduct an investigation. Exhibit H, pg. 8.

10 The deputy "tried to obtain his personal information and determine what had  
11 taken place in the vehicle off the side of the road, and started to conduct an  
12 investigation into the reported battery." When the deputy asked Mr. Hiibel to identify  
13 himself, Mr. Hiibel refused and kept turning around, putting his hands behind his  
14 back and telling the deputy to take him to jail. Exhibit H, pgs. 8, 9. Due to the  
15 situation, the deputy placed Mr. Hiibel in handcuffs and placed him in the police car.  
16 Exhibit H, pg. 9. After placing Mr. Hiibel in the police car, the deputy did not feel Mr.  
17 Hiibel was cooperating with him. However, Mr. Hiibel was eventually, somehow  
18 identified. Exhibit H, pg. 10.

19 A video tape of what transpired at the scene was introduced into evidence.<sup>1</sup>  
20 After viewing the tape the deputy conceded that he had asked Mr. Hiibel for  
21 identification approximately eleven times before placing him in handcuffs. The  
22 deputy also conceded that he was staying at the scene until he discovered Mr.  
23 Hiibel's identification and what happened about the battery. Exhibit H, pgs. 16-20.

24 Mr. Hiibel was eventually charged with domestic battery and resisting a public  
25 officer. Exhibit A.

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26  
27 <sup>1</sup>An inquiry to this Court disclosed that the Court does not initially accept video  
28 tapes. Therefore, a copy of the video was not attached to this petition. A copy of the  
video is available if this Court desires.

1 The Justice Court found as fact, the following:

2 Dove asked the male for personal identification and was refused.  
3 Dove asked him several more times for identification and when  
4 asked, "why"?, replied that he needed his identification because  
5 of a reported fight. The man refusing to give his name, placed  
6 his hands behind his back and told Dove to take him to jail.  
7 Dove asked the man eleven times for his identification and finally  
8 told him that if he didn't give any identification he would be  
9 arrested for delaying an officer. Dove asked him if he was going  
10 to cooperate? The man refused to identify himself and Dove  
11 arrested him for Resisting Public Officer per NRS 199.280 and  
12 took him to jail. Exhibit D, pg. 2.

13 The Justice Court went on to hold that Mr. Hiibel had an obligation to identify  
14 himself pursuant to NRS 171.123(3) and the failure to do so constituted a crime.  
15 Exhibit D, pgs. 2, 3.

16 **I. PROPRIETY OF EXTRAORDINARY RELIEF**

17 A Writ of Certiorari is available in all cases where an inferior tribunal, board or  
18 officer exercising judicial functions has exceeded its jurisdiction and there is no  
19 appeal nor plain, speedy and adequate remedy. NRS 34.020(2), Zamarripa v.  
20 District Court, 103 Nev. 638, 747 P.2d 1386 (1987); Braham v. District Court, 103  
21 Nev. 644, 747 P.2d 1390 (1987); Steele v. District Court, 108 Nev. 352, 830 P.2d  
22 1340 (1992); see also City of Las Vegas v. Carver, 92 Nev. 198, 547 P.2d 688  
23 (1976). The meaning of the term "jurisdiction" in NRS 34.020(2) which authorizes  
24 the granting of a writ of certiorari if an inferior tribunal exceeds its jurisdiction, has a  
25 broader meaning than the concept of jurisdiction over the person or subject. The  
26 term includes constitutional limitations. Watson v. Housing Authority, 97 Nev. 240,  
27 627 P.2d 405 (1981); Public Service Commission v. Eighth Judicial District Court,  
28 107 Nev. 680, 818 P.2d 396 (1991). In the present case, the lower court exceeded  
its jurisdiction by allowing Mr. Hiibel to be convicted and sentenced for resisting a  
public officer, for failing to identify himself. This violated the Fourth, Fifth and  
Fourteenth Amendments to the United States Constitution. See Zamarripa v. District  
Court, supra.

In addition, the writ of certiorari is proper to obtain review of the

1 constitutionality of an statute or ordinance. NRS 34.020(3); City of Reno v. Second  
2 Judicial District Court, 83 Nev. 201, 427 P.2d 4 (1967); Glass v. Eighth Judicial  
3 District Court, 87 Nev. 321, 486 P.2d 1180 (1971); City of Las Vegas v. Carver, 92  
4 Nev. 198, 547 P.2d 688 (1976); Dinitz v. Christensen, 94 Nev. 230, 577 P.2d 873  
5 (1978). Here the district court, found NRS 171.123, which requires an individual to  
6 identify himself is constitutional. Exhibit L.

7 Also, the extraordinary remedy of certiorari is only available when there is no  
8 appeal nor any plain, speedy and adequate remedy. NRS 34.020(2). Mr. Hiibel was  
9 convicted in the Justice Court of Union Township and then was unsuccessful in an  
10 appeal to the district court. Mr. Hiibel has no further right to appeal, nor any plain,  
11 speedy or adequate remedy. Nev. Const. Art. § 6; City of Las Vegas v. Carver,  
12 supra; Zamarripa v. District Court, supra.

13 Petitions for extraordinary relief are addressed to the sound discretion of this  
14 Court. Brewery Arts Ctr. v. State Brd. Examiners, 108 Nev. 1050, 843 P.2d 369  
15 (1992) (writ is discretionary with supreme court); Clark County Liquor v. Clark, 102  
16 Nev. 654, 730 P.2d 443 (1986) (writ denied re discovery order); State ex re. Dept.  
17 Transportation v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983) (supreme court can  
18 limit its discretion; no more review of summary judgment denials or motion to dismiss  
19 denials); Poulos v. District Court, 98 Nev. 453, 652 P.2d 1177 (1982) (supreme court  
20 limits discretion to cases involving serious issues of public policy or important  
21 precedential issues of statewide interest). However, this Court has exercised its  
22 discretion on issues of emergency or great public necessity. Ashokan v. State. Dept.  
23 of Ins., 109 Nev. 662, 856 P.2d 244 (1993) (new statute; statewide importance);  
24 Mays v. District Court, 105 Nev. 60, 768 P.2d 877 (1989) (review of NRCP 16.1  
25 issue; issue of first impression on important new rule, with statewide concerns); State  
26 v. District Court, 101 Nev. 658, 708 P.2d 1022 (1985) (constitutional issue of  
27 statewide importance); Southwest Gas Corp. v. Pub. Serv. Commission, 92 Nev. 48,  
28 546 P.2d (1976) (statewide precedent on public utility issue).

1 Here, the constitutionality of NRS 171.127 is a matter of great public necessity  
2 and of statewide importance. It is the obligation of this Court to enforce the terms of  
3 the United States constitution. A statute exists which, if enforced, violates the federal  
4 constitutional rights of the citizens of this state. It is now time for this Court to decide  
5 the constitutionality of NRS 171.123. In addition, the issue presented in this case is  
6 of national importance. The United States Supreme Court has not specifically  
7 addressed the issue. There has been litigation nationwide concerning the issue. It is  
8 time the issue was resolved.

### 9 ARGUMENT

10 This case presents the issue of the constitutionality of NRS 171.123 which  
11 requires someone to identify himself when confronted by the police during a Terry  
12 stop.

13 Both the Fourth and Fifth Amendments to the United States Constitution are  
14 applicable to state prosecutions by way of the Fourth amendment to the United  
15 States Constitution. See Mapp v. Ohio, 367 U.S. 643 (1961); Malloy v. Hogan, 378  
16 U.S. 1 (1964).

17 NRS 171.123 is Nevada's codification of the decision in Terry v. Ohio, 392  
18 U.S. 1 (1968); State v. Lisenbee, 116 Nev. \_\_\_, 13 P.3d 947, 950 (2000). In the  
19 Terry decision the United States Supreme Court held that a police officer may stop a  
20 person and conduct a brief investigation when the officer has a reasonable,  
21 articulable suspicion that criminal activity is taking place or is about to take place. In  
22 its decision, the district court correctly pointed out that NRS 171.123 expands on the  
23 Terry case by including a bright line time restriction of 60 minutes on such detentions  
24 and requiring the subject of the detention to identify himself. (The Supreme Court  
25 only spoke of reasonable detentions, reasonableness to be determined by the  
26 circumstances). Exhibit L. NRS 171.123 provides as follows:

27 1. Any peace officer may detain any person whom  
28 the officer encounters under circumstances which  
reasonably indicate that the person has committed, is

1 committing or is about to commit a crime.

2 2. Any peace officer may detain any person the  
3 officer encounters under circumstances which reasonably  
4 indicate that the person has violated or is violating the  
5 conditions of his parole or probation.

6 3. The officer may detain the person pursuant to  
7 this section only to ascertain his identity and the  
8 suspicious circumstances surrounding his presence  
9 abroad. Any person so detained shall identify himself, but  
10 may not be compelled to answer any other inquiry of any  
11 peace officer.

12 4. A person must not be detained longer than is  
13 reasonably necessary to effect the purposes of this  
14 section, and in no event longer than 60 minutes. The  
15 detention must not extend beyond the place or the  
16 immediate vicinity of the place where the detention was  
17 first effected, unless the person is arrested. (Emphasis  
18 added.)

19 In this case there is no question that the police officer had an "articulable  
20 suspicion" that a battery had taken place. In addition, upon approaching Mr. Hiibel,  
21 the officer also had an "articulable suspicion" to believe a DUI may have occurred.  
22 The officer was certainly entitled to detain Mr. Hiibel and conduct a further  
23 investigation. However, the question raised is whether Mr. Hiibel was within his  
24 rights to refuse to identify himself as required by NRS 121.123. If Mr. Hiibel was  
25 within his constitutional rights to refuse to identify himself, then his conviction for  
26 resisting a public officer must be reversed.

27 On two occasions the United States Supreme Court has been confronted with  
28 this very issue. On two occasions the United States Supreme Court has decided the  
case on other grounds.

In Brown v. Texas, 443 U.S. 47, the United States Supreme Court was faced  
with a statute which made it a crime to refuse to identify yourself to an officer. The  
Court never reached the constitutionality of the statute because it held the initial  
detention was illegal. Therefore, anything which occurred after the illegal seizure  
was suppressible.

Another case in which the United States Supreme Court avoided the issue  
was Kolender v. Lawson, 461 U.S. 352 (1983). This case involved a statute which

1 required someone to produce identification upon police request. The Court again  
2 avoided deciding the issue of compulsory identification by holding the statute void for  
3 vagueness.

4 These two cases have caused some courts to hold that the issue of whether  
5 an individual was required to identify themselves during a Terry stop, as not being a  
6 clearly established rule. See e.g. Albright v. Rodriguez, 51 F.3d 1531 (10th Cir.  
7 1995); Gainor v. Rogers, 973 F.2d 1379, 1386 (1996). However, these types of  
8 cases involve civil rights litigation and are trying to resolve the issue of whether a  
9 public official can be held liable for violating someone's civil rights when the rule has  
10 not been clearly resolved. Looking at these cases is where our district court was  
11 misled and therefore drew the wrong conclusions. In fact, although the United States  
12 Supreme Court has not directly addressed the issue, it has been spoken many times  
13 that an individual need not identify themselves to the police.

14 In Terry v. Ohio, 392 U.S. 1, 34 (1968), Justice White explained in his  
15 concurring opinion that "of course, the person stopped is not obligated to answer, . . .  
16 and refusal to answer furnishes no basis for an arrest, although it may alert the  
17 officers to the need for continued observation."

18 In Berkemer v. McCarty, 468 U.S. 420, 439 (1984), while discussing Terry  
19 stops, the Court stated:

20 [T]he stop and inquiry must be "reasonably related  
21 in scope to the justification for their initiation." Ibid.  
22 (quoting Terry v. Ohio, supra, at 29, 20 L.Ed 2d 889, 88  
23 S.Ct. 1868). Typically, this means that the officer must  
24 ask the detainee a moderate number of questions to  
25 determine his identity and to try to obtain information  
confirming or dispelling the officer's suspicions. But the  
detainee is not obligated to respond. And, unless the  
detainee's answers provide the officer with probable  
cause to arrest him, he must then be released.  
(Emphasis added.)

26 In his concurring opinion in Michigan v. DeFillippo, 443 U.S. 31, 44 (1979),  
27 Justice Blackmun stated:

1 Furthermore, while a person may be briefly  
2 detained against his will on the basis of reasonable  
3 suspicion "while pertinent questions are directed to  
4 him . . . the person stopped is not obliged to answer,  
5 answers may not be compelled, and refusal to answer  
6 furnishes no basis for an arrest . . . ." Terry v. Ohio,  
7 supra, at 34, 20 L.Ed.2d 889, 88 S.Ct. 1868, 44 Ohio Ops  
8 2d 383 (White, J., concurring). In the context of criminal  
9 investigation, the privacy interest in remaining silent  
10 simply cannot be overcome at the whim of any suspicious  
11 police officer. "[W]hile the police have the right to request  
12 citizens to answer voluntarily questions concerning  
13 unsolved crimes they have no right to compel them to  
14 answer." Davis v. Mississippi, 394 U.S. 721, 727 n.6, 22  
15 L.Ed.2d 676, 89 S.Ct. 1394 (1969).

16 In note 6 in Davis v. Mississippi, 394 U.S. 721, 727 (1969) the Court stated:

17 The State relies on various statements in our  
18 cases which approve general questioning of citizens in  
19 the course of investigating a crime. See Miranda v.  
20 Arizona, 384 U.S. 436, 477-478, 16 L.Ed.2d 694, 725,  
21 726, 86 S.Ct. 1602, 10 ALR3d 974 (1966); Culombe v.  
22 Connecticut, 367 U.S. 568, 635, 6 L.Ed.2d 1037, 1076,  
23 81 S.Ct 1860 (concurring opinion) (1961). But these  
24 statements merely reiterated the settled principle that  
25 while the police have the right to request citizens to  
26 answer voluntarily questions concerning unsolved crimes  
27 they have no right to compel them to answer.

28 Finally, Justice Brennan, in his concurring opinion in Kolender v. Lawson, 461  
U.S. 352, 364, 365 (1983), while he was discussing Terry stops, stated:

For precisely that reason, the scope of seizures of  
the person on less than probable cause that Terry permits  
is strictly circumscribed to limit the degree of intrusion  
they cause. Terry encounters must be brief; the suspect  
must not be moved or asked to move more than a short  
distance; physical searches are permitted only to the  
extent necessary to protect the police officers involved  
during the encounter; and, most importantly, the suspect  
must be free to leave after a short time and to decline to  
answer the questions put to him. (Emphasis added.)

Considering the wealth of authority contained in several of the decisions of the  
United State Supreme Court, it is very understandable that several of the federal  
circuit courts have held that there is no need to answer questions posed by the  
police during a detention. See Lawson v. Kolender, 658 F.2d 1362 (9th Cir. 1981);  
Richardson v. Bonds, 860 P.2d 1427, 1432 (7th Cir. 1988); Moya v. United States,

1 761 F.2d 322, 325 (7th Cir. 1984) (probable cause not established by failing to  
2 present identification to a police officer upon request by a law enforcement officer);  
3 United States v. Brown, 731 F.2d 1491, 1494 (11th Cir.) modified on other grounds,  
4 731 F.2d 1505 (11th Cir. 1984) (per curiam); Spring v. Caldwell, 516 F.Supp. 1223,  
5 1229-30 (S.D. Tex. 1981) rev'd on other grounds 692 F.2d 994 (5th Cir. 1982);  
6 Martinelli v. Beaumont, 820 F.2d 1491 (9th Cir. 1987).

7 At least three states are also in accord. See People v. DeFillippo, 80 Mich.  
8 App. 197, 262 N.W.2d 921 (1977); People v. Berck, 32 N.Y.2d 567, 347 N.Y.S.2d  
9 33, 300 N.E.2nd 411, 414-15, cert. denied, 414 U.S. 1093 (1973); State v. White,  
10 640 P.2d 1061 (Wash. 1982).

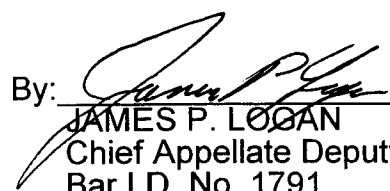
11 While the United States Supreme Court has not addressed the issue, it is very  
12 clear that the clear weight of authority is that someone is not required to identify  
13 themselves during a Terry stop. The portion of NRS 171.123 which requires the  
14 person detained to identify themselves is clearly unconstitutional.

### 15 CONCLUSION

16 The portion of NRS 121.123 which requires someone to identify themselves  
17 during a detention is unconstitutional. Because Mr. Hiibel was convicted of resisting  
18 a public officer because he refused to identify himself, the conviction must be  
19 reversed.

20 Dated this 4th December day of ~~November~~, 2001.

21 STEVEN G. McGUIRE  
22 Nevada State Public Defender

23  
24 By:   
25 JAMES P. LOGAN  
26 Chief Appellate Deputy  
27 Bar I.D. No. 1791  
28 511 E. Robinson St.  
Carson City, NV 89701  
(775) 687-4880

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Nevada State Public  
Defender and on this 4th day of ~~November~~ <sup>December</sup>, 2001, I served the foregoing PETITION FOR  
WRIT OF CERTIORARI by mailing a copy thereof to:

Attorney General  
100 N. Carson St.  
Carson City, NV 89701

Humboldt County D.A.  
P. O. Box 909  
Winnemucca, NV 89446

The Hon. Richard A. Wagner  
District Court Judge  
P. O. Box H  
Lovelock, NV 89419

Larry D. Hiibel  
P. O. Box 1323  
Winnemucca, NV 89446

Anne Bowen

LOCATION OF OFFENSE: Grass Valley Rd. Thomas Canyon COUNTY: XX CITY: XX-19056  
DATE: 08-21-00 DAY CODE: 1 TIME: 1900 BEAT: 4 MILEPOST: ---

THE STATE OF NEVADA, COUNTY OF ALHAMBRA PLAINTIFF, AGAINST  
DEFENDANT'S FULL NAME: HIBEL Larry Dudley  
RESIDENCE ADDRESS: PO BOX 1323 WINCH, NV. 89445

D.L. NO. 366060461744 NV 16-73-49  
S.S. NO. 530302308 STATE NV BIRTHDATE 11-21-70  
OCCUPATION AND ADDRESS: Unemployed SEX: M HT: 5'10" WT: 180 EYES: BRN HOME TELEPHONE: ---

VEH. 1988 MAKE Pickup BODY Regular TYPE ---  
YEAR 88 COLOR ---  
LIC. 083160 NV. 634 JRP  
REG. OWN. State FIRST State MIDDLE ---

REG. OWN. ADDRESS: State  
THE UNDERSIGNED PEACE OFFICER OF THE STATE OF NEVADA, COUNTY OF HUMBOLDT, HEREBY DECLARES UNDER PENALTY OF PERJURY THAT ON OR ABOUT THE DATE AND TIME AND AT THE LOCATION SPECIFIED HEREIN THE ABOVE NAMED DEFENDANT DID WILLFULLY AND UNLAWFULLY COMMIT THE FOLLOWING OFFENSE(S) TO WIT:  
TYPE  
STATUTE/ CODE: 33.018 DESC: Domestic Violence 1ST  
NRS 200.481 NRS. 200.485 3,000 + 105

TYPE  
STATUTE/ CODE: 199.280 DESC: Deputy Officer  
250 + 70

TYPE  
STATUTE/ CODE: --- DESC: ---

ALL OF WHICH IS CONTRARY TO THE FORM OF STATE MUNICIPAL CODE --- COUNTY ORDINANCE  
PROVIDED AGAINST THE PEACE AND DIGNITY OF THE STATE CITY --- COUNTY, SAID COMPLAINTANT  
THEREFORE PRAYS THAT A WARRANT BE ISSUED FOR THE ARREST OF SAID DEFENDANT, IF NOT ALREADY  
ARRESTED, AND THAT SAID DEFENDANT BE DEALT WITH ACCORDING TO LAW

PEACE OFFICER: A. A. Davis ID NO. 277 PRIVATE CITIZEN ---  
TO THE DEFENDANT ABOVE NAMED: Justice COURT  
YOU ARE HEREBY NOTIFIED TO APPEAR BEFORE THE JUDGE OF THE  
AT 25 W. 5TH ST. WINCH, NV. 89445  
ON THE 19 DAY OF AT AM TO ANSWER THE OFFENSE(S)  
CHARGED HEREIN. THE BAIL ESTABLISHED BY THE COURT FOR THE VIOLATION(S) CHARGED ABOVE IS:  
BAIL 3,250 STATE ADMIN. 175 TOTAL 3,425  
ASSESSMENT: --- BAIL: ---  
I HEREBY GIVE MY PROMISE TO APPEAR AT THE DATE, TIME, AND LOCATION INDICATED.  
1 DEFENDANT'S ---

SEP 29 2000

JUSTICE OF THE PEACE  
MUNICIPAL JUDGE  
BY \_\_\_\_\_ CLERK

IN THE JUSTICE'S COURT OF UNION TOWNSHIP,  
COUNTY OF HUMBOLDT, STATE OF NEVADA.

-oOo-

THE COUNTY OF HUMBOLDT,

Plaintiff,

vs.

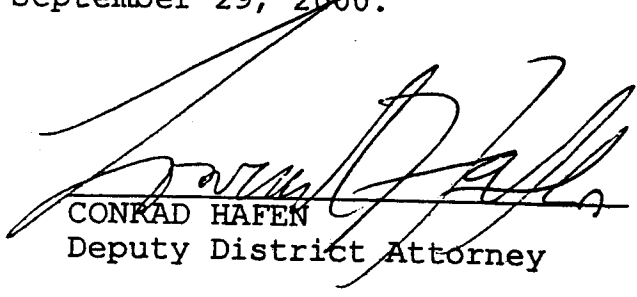
MOTION TO DISMISS

LARRY DUDLEY HIIBEL,

\_\_\_\_\_  
Defendant. /

COMES NOW, the State of Nevada, by and through its attorney, CONRAD HAFEN, Humboldt County Deputy District Attorney, and does respectfully ask leave of Court to dismiss, without prejudice, the above-entitled action charging the Defendant with the crime of DOMESTIC BATTERY, in violation of NRS 200.485, for the following reason, to-wit: eye witness can not be found.

DATED this 30 day of September 29, 2000.

  
CONRAD HAFEN  
Deputy District Attorney

No. XX-69056

IN THE JUSTICE'S COURT OF UNION TOWNSHIP  
COUNTY OF HUMBOLDT, STATE OF NEVADA

-oOo-

THE COUNTY OF HUMBOLDT,

Plaintiff,

vs.

ORDER

LARRY DUDLEY HIIBEL,

Defendant. /

Based upon the Motion to Dismiss by the State, it is hereby ordered that the above-entitled case is dismissed without prejudice.

DATED this 29 day of September 29, 2000.

*James H. Hibel*  
JUSTICE OF THE PEACE

EXHIBIT C

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Humboldt County District Attorney's Office, and that on the 3rd day of October, 2000, I deposited for mailing at Winnemucca, Nevada, a true copy of the MOTION AND ORDER TO DISMISS to:

Bob Dolan  
Public Defender  
Humboldt County Courthouse  
Winnemucca, Nevada 89445

Roger Brown

Case No. XX-69056

FILED

01 FEB 21 PM 3:58

IN THE JUSTICE COURT OF UNION TOWNSHIP  
IN AND FOR THE COUNTY OF HUMBOLDT, STATE OF NEVADA

-oOo-

THE COUNTY OF HUMBOLDT,

Plaintiff,

vs.

LARRY DUDLEY HIIBEL

Defendant.

FINDING OF FACTS

CONCLUSIONS OF LAW

RULING

On December 13<sup>th</sup>, 2001 at 9:00 a.m. in Union Township Justice Court, a trial in the criminal matter of the County of Humboldt vs. LARRY DUDLY HIIBEL on a misdemeanor complaint of DELAYING AN OFFICER was heard by UNION TOWNSHIP JUSTICE of the PEACE GENE WAMBOLT. The matter was taken under advisement after final arguments.

FINDING OF FACTS

On May 21<sup>st</sup>, 2000 at 1900 hours, Deputy Dove responded to a report from Humboldt County Dispatch, that a witness saw two people in a RED and SILVER GMC pick-up truck involved in a FIGHT or DOMESTIC BATTERY. The report further described the RED and SILVER GMC pick-up truck and it was located on Grass Valley Road just past B. J's. Market. Dove proceeded South on Grass Valley Road and stopped in his patrol car near Lynx Road and had brief conversation and received directions from a witness Mr. Riddley. Dove then continued South again on Grass Valley Road and saw a vehicle matching the description which he was advised of by

1 dispatch and noticed that the pick-up truck had pulled off the road rapidly, because of  
2 the skid marks and the position in which it was parked. As Dove stopped his vehicle, a  
3 man who was standing next to the pick-up truck started walking towards him and Dove  
4 noticed signs of his intoxication. Dove observed a female in the cab of the pick-up  
5 truck. Dove asked the male for personal identification and was refused. Dove asked him  
6 several more times for identification and when asked, "why"?, replied that he needed his  
7 identification because of a reported fight. The man refusing to give his name, placed his  
8 hands behind his back and told Dove to take him to jail. Dove asked the man 11 times  
9 for his identification and finally told him that if he didn't give any identification he would  
10 be arrested for delaying an officer. Dove asked him if he was going to cooperate? The  
11 man refused to identify himself and Dove arrested him for RESISTING PUBLIC  
12 OFFICER per NRS 199.280 and took him to jail.

#### 13 CONCLUSIONS OF LAW

14 NRS 171.123 (3) provides: "The officer may detain any person pursuant to this  
15 section only to ascertain his identity and the suspicious  
16 circumstances surrounding his presence abroad. Any  
17 person so detained shall identify himself, but may not  
18 be compelled to answer any other inquiry of any peace  
19 officer. "

20 In this instant case Dove received a report from dispatch and was responding to a  
21 fight or domestic battery. Because of potential seriousness of injury as a result of  
22 domestic battery and that the report from dispatch and the eyewitness were confirmed  
23 by Dove's observations when he arrived at the scene, it was not beyond his duty to  
24 lawfully ask for identification. Dove's conduct throughout asking for identification was  
25 not overbearing (defendant Exhibit A) or harassing. NRS 171.123 (3) states in part,  
26 "person so detained SHALL identify himself." (Underlining for emphasis.) The man who  
27 refused to identify himself was arrested (delaying an officer) and only then could he be  
28 identified as Larry Dudley Hiibel.

1 NRS 199.280 provides:

"A person who, in any case or under any circumstances not otherwise specially provided for, willfully resists, delays or obstructs a public officer in discharging or attempting to discharge any legal duty of his office shall be punished."


2  
3  
4 Dove requested identification 11 times and the individual refused each request. At the  
5 initial contact with Hiibel, he was asked only for identification and failure to provide  
6 identification obstructed and delayed Dove as a public officer in attempting to discharge  
7 his duty and was in violation to NRS 199.280.  
8

9 "[E]xtent of the governmental interests involved. One general interest is of course  
10 that of effective crime prevention and detection; it is this interest which underlies the  
11 recognition that a police officer may in an appropriate circumstances and in an  
12 appropriate manner approach a person for purpose if investigating possibly criminal  
13 behavior even though there is no probable cause to make an arrest". Terry v. Ohio, 392  
14 US 1, 20 L Ed 2d 889.  
15

#### 16 RULING

17 Based on the above FINDINGS OF FACT, CONCLUSIONS OF LAW plus the  
18 testimony and evidence received at the trial; I find that Humboldt County Deputy Dove  
19 acted properly and lawfully when he asked Larry Dudley Hiibel for identification and  
20 subsequently arrested him for refusing and therefore find Larry Dudley Hiibel GUILTY of  
21 DELAYING AN OFFICER and set 13<sup>th</sup> March 2001 at 11:00 for a Sentencing Hearing.  
22

23  
24  
25 DATED this 21 day of FEBRUARY, 2001.

26   
27 Gene Wambolt,  
28 Justice of the Peace.

COURT MEMO

# XX-69056

STATE OF NEVADA  
COUNTY OF HUMBOLDT

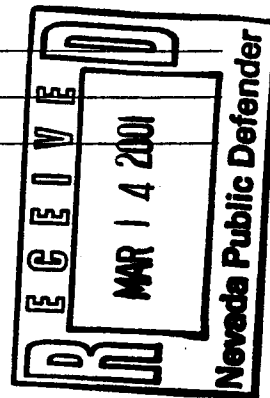
Plaintiff,

-v-

LARRY DUDLEY HIBEL

Defendant.

CHARGE: ( ~~XX~~ ) MISDE. TO-WIT: DOMESTIC VIOLENCE, DELAY OFFICER  
( ) FELONY TO-WIT: \_\_\_\_\_  
( ) GROSS MISDE. TO-WIT: \_\_\_\_\_



( ) APPEARED BEFORE MAGISTRATE ON FIRST APPEARANCE  
( ) SPANISH INTERPRETER REQUIRED  
( ) BAIL SET AT \$ \_\_\_\_\_ BAIL POSTED ( ) YES ( ) NO  
( ) RELEASED ON OWN RECOGNIZANCE  
(X) COMPLAINT READ AND DEFENDANT ADVISED OF RIGHTS  
(X) PUBLIC DEFENDER/OTHER COUNSEL APPOINTED, Public Defender  
( ) PRELIMINARY EXAMINATION SET FOR \_\_\_\_\_, AT \_\_\_\_\_ M.  
( ) WAIVED: ( ) 15 DAY RULE ( ) 60 DAY RULE ( ) PRELIMINARY EXAMINATION  
( ) PRELIMINARY EXAMINATION HELD: ( ) BOUND OVER ( ) DISCHARGED  
(X) MISDEMEANOR PLEA: ( ) GUILTY (X) NOT GUILTY ( ) NOLO CONTENDRE  
(X) TRIAL SET FOR August 9, 2000, AT 9 A.M.  
( ) TRIAL HELD, VERDICT: ( ) GUILTY ( ) NOT GUILTY ( ) DISMISSED  
( ) SENTENCING DEFERRED, HEARING SET FOR \_\_\_\_\_, AT \_\_\_\_\_ M.  
( ) SENTENCE: Domestic charge - dismissed  
00 (X) CASE RESET TO September 27, 2000 AT 8 A.M. REQUEST OF \_\_\_\_\_  
00 ( ) Case reset to October 3, 2000 at 11:00 A.M.  
00 Case reset to November 7, 2000 at 1:15 PM - delaying officer  
00 Case reset to November 30, 2000 at 3 p.m.  
00 Case reset to February 13, 2001 at 9:00  
00 Case reset to March 13<sup>th</sup> 2001 at 11 A.M.  
00 The Court found the defendant guilty - He was fined \$250 + \$70 AA -  
stayed 1 year for appeal.

DATED: 6-19-00

Jinger Taborda  
Court Clerk

(X) DISTRICT ATTORNEY  
(X) DEFENSE COUNSEL Public Defender  
(X) COURT REPORTER 623-6550  
(X) DEFENDANT PO Box 1525 - Wmcs.  
(X) HUMBOLDT SUN  
(X) KWNA  
EXHIBIT E

(X) HCSD DOVE  
( ) NHP  
( ) WPD

Case:XX-69056

FILED  
01 MAR 14 PM 3:46

GENE WAMBOLT  
JUSTICE OF THE PEACE  
MUNICIPAL JUDGE  
BY Smock CLERK

IN THE JUSTICE COURT OF UNION TOWNSHIP  
COUNTY OF HUMBOLDT STATE OF NEVADA

\*\*\*\*\*

THE STATE OF NEVADA,

Plaintiff,

vs.

**NOTICE OF APPEAL**

LARRY DUDLEY HIIBEL,

Defendant,

NOTICE is hereby given that the defendant LARRY DUDLEY HIIBEL, hereby appeals from the Judgment of Conviction filed on March 13, 2001, to the Sixth Judicial District Court of Nevada.

This appeal is to all issues of law and fact.

DATED this 14th day of March, 2001.

STEVEN G. MCGUIRE  
Nevada State Public Defender

  
ROBERT E. DOLAN  
Deputy Public Defender

**CERTIFICATE OF SERVICE**

I, ANNE BOWEN, pursuant to NRCP 5 (b), hereby certify that I am an employee of the Office of the Nevada State Public Defender and that on this 14~~th~~ day of March, 2001, I personally served a true and correct copy of the foregoing to the Humboldt County District Attorney's Office and Edward Von Ruden, court reporter.

Anne Bowen

COPY

CASE NO. XX-69056

FILED

NOV 15 PM 1:06

SEAL EDWARD  
DEPT COURT CLERK

IN THE JUSTICE COURT OF UNION TOWNSHIP, IN AND FOR  
THE COUNTY OF HUMBOLDT, STATE OF NEVADA  
HONORABLE GENE WAMBOLT, JUSTICE OF THE PEACE

---000---

LARRY DUDLEY HIIBEL,

PLAINTIFF,

COURT TRIAL

VS.

NOVEMBER 7, 2000

LARRY DUDLEY HIIBEL,

WINNEMUCCA, NEVADA

DEFENDANT.

-----/

REPORTERS TRANSCRIPT OF PROCEEDINGS

VOLUME I

REPORTED BY:

EDWARD VON RUDEN, CSR # 261  
PO BOX 2545  
WINNEMUCCA, NEVADA 89446  
(775) 623-6452

COPIES:

DA:

DEFT: (DOLAN)

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A P P E A R A N C E S

FOR THE COUNTY:

CONRAD HAFEN, ESQ.  
DEPUTY DISTRICT ATTORNEY  
COUNTY OF HUMBOLDT

FOR THE DEFENDANT:

ROBERT E. DOLAN, ESQ.  
DEPUTY PUBLIC DEFENDER  
WINNEMUCCA, NEVADA

WITNESSES	DIR.	CR.	REDIR.	RECR	VOIR DIRE
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THOMAS MERSCHER	4	14			
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EXHIBITS	IDENT.	EVID.
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1 THE COURT: COURT IS IN SESSION. THIS IS THE  
2 TIME AND PLACE SET FOR A TRIAL IN THE CRIMINAL MATTER OF  
3 THE COUNTY OF HUMBOLDT VERSUS MR. LARRY DUDLEY HIIBEL ON A  
4 MISDEMEANOR CHARGE OF DELAYING AN OFFICER, UPON WRITEN  
5 COMPLAINT SIGNED BY LEE DOVE AS COMPLAINANT UNDER JUSTICE  
6 COURT NUMBER XX-69056.

7 LET THE RECORD SHOW THAT THE DEFENDANT, MR.  
8 HIIBEL, IS PRESENT, IS REPRESENTED BY MR. ROBERT DOLAN.  
9 LET THE RECORD SHOW THAT THE COUNTY IS REPRESENTED BY MR.  
10 CONRAD HAFEN AS HUMBOLDT COUNTY DEPUTY DISTRICT ATTORNEY.  
11 LET THE RECORD FURTHER SHOW THAT THE DEFENDANT WAS DULY  
12 ARRAIGNED ON JUNE 19TH OF THE YEAR 2000. AND ARE YOU READY  
13 TO PROCEED, GENTLEMEN?

14 MR. HAFEN: YES, YOUR HONOR. YOUR HONOR, BEFORE  
15 WE BEGIN, I WOULD LIKE TO INFORM THE COURT ON THE RECORD  
16 THAT YESTERDAY MR. DOLAN AND I WERE IN COURT IN DISTRICT  
17 COURT AND DEPUTY DOVE WAS SUBPOENAED BUT WAS UNABLE TO  
18 APPEAR BECAUSE APPARENTLY HIS MOTHER WAS SENT TO THE  
19 HOSPITAL, SO HE IS UP IN IDAHO.

20 DISPATCH CALLED ME EARLIER TODAY AND CONFIRMED  
21 THAT HE WAS STILL UP THERE. HE IS A WITNESS IN THIS CASE,  
22 AND IT'S PROPOSED THAT WE HAVE TROOPER MERSCHER GIVE HIS  
23 TESTIMONY AND THEN CONTINUE THE MATTER TO ANOTHER DATE WHEN  
24 DEPUTY DOVE CAN COME BACK AND TESTIFY.

1 I HAVE TALKED TO MR. DOLAN. HE APPEARS TO BE IN  
2 AGREEMENT WITH THAT.

3 THE COURT: MR. DOLAN?

4 MR. DOLAN: THANK YOU, YOUR HONOR. I HAVEN'T  
5 TALKED TO MY CLIENT -- \_

6 THE COURT: WOULD YOU LIKE A MOMENT FOR THAT, SIR? ||

7 MR. DOLAN: YES, JUDGE. YOUR HONOR, WE WOULDN'T  
8 HAVE ANY OBJECTION TO THAT PROCEDURE.

9 THE COURT: THANK YOU, MR. DOLAN. WILL THE  
10 WITNESS PLEASE RISE TO BE SWORN.

11 THOMAS MERSCHER  
12 CALLED AS A WITNESS BY THE COUNTY HEREIN, BEING  
13 FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

14 THE COURT: PLEASE STATE YOUR NAME AND SPELLING  
15 FOR THE RECORD.

16 THE WITNESS: MY NAME IS THOMAS MERSCHER;  
17 M-E-R-S-C-H-E-R.

18 DIRECT EXAMINATION  
19 BY MR. HAFEN:

20 Q SIR, WHERE ARE YOU CURRENTLY EMPLOYED?

21 A WITH THE NEVADA HIGHWAY PATROL IN WINNEMUCCA.

22 Q HOW LONG HAVE YOU WORKED THERE?

23 A SINCE APRIL 19TH OF 1993.

24 Q DIRECTING YOUR ATTENTION TO MAY 21ST, 2000, WERE

1 YOU WORKING THAT DAY?

2 A YES, I WAS.

3 Q DID YOU HAVE OCCASION TO RESPOND TO THE 7200  
4 BLOCK ON GRASS VALLEY ROAD?

5 A YES, SIR, I DID.

6 Q WHAT WAS THE REASON FOR YOU GOING TO THAT  
7 LOCATION?

8 A I HEARD OVER MY HANDHELD RADIO -- SCANNING THE  
9 HUMBOLDT COUNTY CHANNEL, I HEARD THERE WAS A DOMESTIC  
10 BATTERY IN PROGRESS. IT WAS IN A VEHICLE THAT WAS  
11 TRAVELLING ON GRASS VALLEY ROAD. I HEARD THAT DEPUTY DOVE  
12 WAS RESPONDING AND I KNEW HE WAS RESPONDING ALONE.

13 KNOWING THOSE THINGS, AND KNOWING DOMESTIC  
14 BATTERY IS A --

15 MR. DOLAN: YOUR HONOR, I'M GOING TO MOVE TO  
16 STRIKE THIS TESTIMONY REGARDING ANY REFERENCE TO THE  
17 DOMESTIC BATTERY PORTION OF THE ANSWER ON THE BASIS THAT  
18 WE'RE TALKING ABOUT PRIOR UNCHARGED CONDUCT, WHICH IS UNDER  
19 THESE FACTS SUBSTANTIALLY MORE PREJUDICIAL THAN PROBATIVE.  
20 I DON'T BELIEVE THAT IT'S NEEDED. IT'S UNDULY PREJUDICIAL  
21 FOR MY CLIENT.

22 THE COURT: THANK YOU, MR. DOLAN.

23 MR. HAFEN: MAY I RESPOND, YOUR HONOR?

24 THE COURT: YOU MAY.

1 MR. HAFEN: TWO POINTS. FIRST OF ALL, THAT CHARGE  
2 AGAINST THE DEFENDANT HAS BEEN DISMISSED. SECOND, I DON'T  
3 BELIEVE IN HIS TESTIMONY HE'S MENTIONED THE DEFENDANT AT  
4 ALL IN THIS. I THINK WHAT HE'S DOING IS JUST EXPLAINING  
5 WHY HE WAS THERE, SO FOR WHATEVER THAT'S WORTH THE COURT  
6 CAN GIVE WHATEVER WAIT IT DEEMS, BUT THE DEFENDANT'S NAME  
7 HASN'T COME UP ONCE. HE'S JUST EXPLAINING WHY HE WENT  
8 THERE, SO I DON'T KNOW WHY THIS IS PREJUDICIAL TO THE  
9 DEFENDANT BECAUSE WE ARE NOT CONNECTING IT TO HIM AT ALL.

10 THE COURT: THE OBJECTION IS OVERRULED.

11 MR. DOLAN: THANK YOU, YOUR HONOR.

12 BY MR. HAFEN:

13 Q SO, TROOPER MERSCHER, YOU HAD OCCASION THEN AFTER  
14 GETTING THAT INFORMATION TO RESPOND TO THAT LOCATION ON  
15 GRASS VALLEY ROAD?

16 A YES, SIR.

17 Q DID YOU RESPOND TO COVER DEPUTY DOVE?

18 A YES, SIR.

19 Q WHEN YOU ARRIVED AT THAT LOCATION, CAN YOU  
20 DESCRIBE WHAT YOU FIRST SAW?

21 A I SAW DEPUTY DOVE'S CAR PARKED ON THE WEST ROAD  
22 EDGE OF GRASS VALLEY ROAD, ABOUT THE 7200 BLOCK. GRASS  
23 VALLEY ROAD IS A NORTH-SOUTH ROAD, SOUTH BEING TOWARDS  
24 PERSHING COUNTY.

1 HIS LIGHTS WERE ON. HE WAS OUTSIDE HIS TRUCK.  
2 HE WAS TALKING TO THE MAN -- THE GENTLEMAN SEATED HERE, MR.  
3 HIIBEL WITH THE GRAY JACKET ON.

4 Q LET ME ASK YOU THAT QUESTION. DO YOU SEE THAT  
5 INDIVIDUAL IN THE COURTROOM TODAY?

6 A YES, I DO.

7 Q WILL YOU POINT TO HIM, DESCRIBE WHAT HE'S  
8 WEARING?

9 A HE'S THE GENTLEMAN SEATED NEXT TO MR. DOLAN WITH  
10 THE GRAY JACKET AND THE TAN SHIRT.

11 THE COURT: LET THE RECORD SHOW THAT THE WITNESS  
12 HAS IDENTIFIED THE MR. HIIBEL, THE DEFENDANT, IN THE  
13 COURTROOM TODAY.

14 MR. HAFEN: THANK YOU, YOUR HONOR.

15 BY MR. HAFEN:

16 Q TROOPER MERSCHER, AFTER MAKING THAT OBSERVATION,  
17 DID YOU THEN APPROACH THE LOCATION OF WHERE DEPUTY DOVE AND  
18 THE DEFENDANT WERE?

19 A YES.

20 Q AS YOU WALKED UP TO DOVE AND THE DEFENDANT, DID  
21 YOU MAKE ANY OTHER OBSERVATIONS AS TO THE DEMEANOR OF THE  
22 DEFENDANT?

23 A HE APPEARED TO BE VERY AGITATED. HE AND DEPUTY  
24 DOVE WERE IN A VERBAL ARGUMENT OR DISAGREEMENT. DEPUTY

1 DOVE WAS ASKING MR. HIIBEL FOR IDENTIFICATION. MR. HIIBEL  
2 TOLD --

3 MR. DOLAN: OBJECTION, HEARSAY; WHAT DEPUTY DOVE  
4 WAS ASKING, WHAT HE WAS SAYING.

5 MR. HAFEN: THAT'S FINE, YOUR HONOR; WE'LL BRING  
6 DEPUTY DOVE IN, ASK HIM.

7 MR. DOLAN: MOVE TO STRIKE.

8 THE COURT: YOUR OBJECTION IS SUSTAINED AND MOTION  
9 TO STRIKE IS GRANTED.

10 MR. DOLAN: THANK YOU, YOUR HONOR.

11 BY MR. HAFEN:

12 Q NOW, YOU TESTIFIED THAT IT APPEARED AS THOUGH THE  
13 DEFENDANT APPEARED TO BE AGITATED, IS THAT CORRECT?

14 A YES.

15 Q DO YOU RECALL WHAT HE WAS TELLING DEPUTY DOVE?

16 A HE WAS TELLING HIM THAT HE WAS BEING COOPERATIVE,  
17 THAT HE WASN'T GOING TO GIVE HIM HIS IDENTIFICATION.

18 AT ONE POINT HE PUT HIS HANDS BEHIND HIS BACK AND  
19 TOLD DEPUTY DOVE TO ARREST HIM.

20 Q WERE YOU CLOSE ENOUGH TO THE DEFENDANT TO SMELL  
21 ANYTHING ON HIS PERSON?

22 A NOT AT THIS POINT.

23 Q AFTER YOU GOT TO THE LOCATION OF DEPUTY DOVE AND  
24 THE DEFENDANT, WHAT DID YOU DO?

1           A     MR. HIIBEL TOLD ME -- HE DIRECTED HIS DISCUSSION  
2           TOWARDS ME -- HE SAID HE WAS BEING COOPERATIVE, THAT I  
3           SHOULD TELL DEPUTY DOVE THAT HE WAS BEING COOPERATIVE.

4           I TOLD MR. HIIBEL IF HE WAS BEING COOPERATIVE  
5           THAT HE SHOULD GIVE DEPUTY DOVE HIS IDENTIFICATION.

6           HE TOLD DEPUTY DOVE THAT HE WASN'T IN THE CAR --  
7           OR IN THE TRUCK -- AND THAT HIS TRUCK WAS LEGALLY PARKED.

8           Q     AT THAT POINT WERE YOU ABLE TO NOTICE ANYTHING  
9           COMING FROM THE PERSON OF THE DEFENDANT?

10          A     NO.

11          Q     DID YOU MAKE ANY OBSERVATIONS ABOUT HIS EYES OR  
12          HIS DEemeanor?

13          A     HE WAS JUST VERY AGITATED, VERY ANGRY, VERY  
14          UNCOOPERATIVE.

15          Q     WHAT DID YOU DO NEXT?

16               MR. DOLAN: I MOVE TO STRIKE THAT LAST  
17          CHARACTERIZATION; CALLS FOR A CONCLUSION OF BEING  
18          UNCOOPERATIVE. I THINK UNDER THIS CASE THAT'S A CONCLUSION  
19          OF LAW THAT A WITNESS IS UNABLE TO PROVIDE TO THIS COURT  
20          BECAUSE THE NATURE OF THIS CASE THAT GOES TO THE HEART  
21          OF -- THE NATURE OF THE DEFENSE.

22               MR. HAFEN: I THINK BASED ON WHAT HE OBSERVED HE  
23          CAN DRAW A CONCLUSION AND RENDER AN OPINION, YOUR HONOR.

24               THE COURT: I'LL ALLOW IT UNDER THE OBSERVATION,

1 SO THE ANSWER WILL STAND.

2 BY MR. HAFEN:

3 Q WHAT DID YOU DO NEXT, TROOPER MERSCHER?

4 A WALKED TO THE SILVER AND GRAY CHEVY TRUCK THAT  
5 WAS REPORTED TO BE INVOLVED IN THE REASON WHY WE WERE AT  
6 THE DOMESTIC BATTERY CALL. THERE WAS A FEMALE SEATED IN  
7 THE TRUCK.

8 Q AFTER THIS INITIAL OBSERVATION OF THE DEFENDANT  
9 WITH DEPUTY DOVE, DID YOU HAVE ANY OTHER INVOLVEMENT? WHEN  
10 YOU LEFT DID YOU COME BACK AND HAVE ANY OTHER INVOLVEMENT  
11 WITH THE DEFENDANT?

12 A YES.

13 Q CAN YOU DESCRIBE THAT?

14 A WHEN I WAS AT THE TRUCK SPEAKING TO WHO I THOUGHT  
15 WAS THE VICTIM, THE FEMALE IN THE TRUCK --

16 MR. DOLAN: YOUR HONOR, I MOVE TO STRIKE THE  
17 TESTIMONY ABOUT THE VICTIM OF THE ALLEGED DOMESTIC BATTERY  
18 AS SUBSTANTIALLY MORE PREJUDICIAL THAN PROBATIVE.

19 IT'S NOT POSSIBLE FOR A FACTFINDER TO NOT  
20 CONNECT -- THIS DEFENDANT IS CHARGED WITH DELAYING OR  
21 OBSTRUCTING.

22 THE DOMESTIC BATTERY, THE ACKNOWLEDGED VICTIM,  
23 THIS IS ALL SUBSTANTIALLY MORE PREJUDICIAL THAN PROBATIVE.

24 MR. HAFEN: WE CAN MOVE ON; THAT'S FINE.

1 THE COURT: PLEASE DO, MR. HAFEN, AND YOUR  
2 OBJECTION IS SUSTAINED.

3 BY MR. HAFEN:

4 Q TROOPER MERSCHER, I JUST WANT YOU TO TESTIFY AS  
5 TO WHAT YOU SAW IN REGARD TO THE DEFENDANT, OKAY? SO YOU  
6 TESTIFIED PREVIOUSLY THAT YOU WENT TO THE TRUCK, IS THAT  
7 CORRECT?

8 A YES.

9 Q AT SOME POINT DID YOU THEN GO BACK TO THE  
10 DEFENDANT?

11 A YES.

12 Q CAN YOU DESCRIBE WHAT OTHER THINGS THAT YOU  
13 OBSERVED WHEN YOU WENT BACK TO THE DEFENDANT?

14 A I SAW THAT DEPUTY DOVE WAS PLACING MR. HIIBEL IN  
15 HANDCUFFS. I WALKED BACK TO BE CLOSER TO DEPUTY DOVE TO  
16 COVER HIM IN CASE THERE WAS A PHYSICAL ALTERCATION.

17 Q WHY DID YOU HAVE SOME CONCERN THERE WOULD BE A  
18 PHYSICAL ALTERCATION BETWEEN DEPUTY DOVE AND THE DEFENDANT?

19 A BECAUSE WHEN I FIRST ARRIVED, AS I TESTIFIED  
20 EARLIER, MR. HIIBEL WAS BEING UNCOOPERATIVE. HE WAS  
21 REFUSING TO GIVE HIS IDENTIFICATION. HE WAS ARGUMENTATIVE.

22 HE WAS SAYING HE HAD NO REASON TO TALK TO DEPUTY  
23 DOVE BECAUSE HE SAID HIS TRUCK WAS LEGALLY PARKED ON THE  
24 ROAD, THAT HE WASN'T DRIVING.

1 HE PUT HIS HANDS OUT; HE CHALLENGED DEPUTY DOVE  
2 TO ARREST HIM AT ONE POINT, TO JUST GO AHEAD AND ARREST  
3 HIM. THOSE ARE THE REASONS WHY.

4 Q WHILE YOU WERE AT THE TRUCK DID YOU MAKE ANY  
5 OBSERVATIONS OF THE DEFENDANT IN REGARD TO HIS RELATIONSHIP  
6 OR ENCOUNTER BETWEEN HE AND DEPUTY DOVE?

7 A YOU NEED TO REASK YOR QUESTION; I DON'T  
8 UNDERSTAND.

9 Q YOU TESTIFIED PREVIOUSLY THAT INITIALLY YOU  
10 APPROACHED DEPUTY DOVE AND THE DEFENDANT.

11 A YES.

12 Q AND YOU LEFT THAT LOCATION AND WENT TO THE TRUCK.

13 A YES.

14 Q AND THEN YOU WENT FROM THE TRUCK BACK TO THEIR  
15 LOCATION, IS THAT CORRECT?

16 A YES.

17 Q BUT WHILE YOU WERE AT THE TRUCK DID YOU HEAR  
18 ANYTHING AT THAT LOCATION, AT THAT POINT COMING FROM THE  
19 DEFENDANT? OR WAS THERE ANYTHING ELSE GOING ON BETWEEN  
20 DEPUTY DOVE AND THE DEFENDANT WHILE YOU WERE AT THE TRUCK?

21 A NO.

22 Q SO THE ONLY TWO INCIDENTS THAT YOU OBSERVED  
23 INVOLVING THE DEFENDANT'S BEHAVIOR WERE WHEN YOU WERE RIGHT  
24 BY HIM AND DEPUTY DOVE, IS THAT CORRECT?

1 A NO.

2 Q OKAY. WERE THERE ANY OTHER THINGS THAT YOU  
3 OBSERVED THEN AT SOME POINT?

4 A YES.

5 Q OKAY. WOULD YOU EXPLAIN THAT TO THE COURT?

6 A AFTER WE SECURED THE SITUATION, EVERYTHING WAS  
7 TAKEN CARE OF AND ANOTHER PERSON WAS PUT IN CUSTODY, AFTER  
8 THAT WE WERE BACK AT THE TRUCK AND WE WERE MOVING MR.  
9 HIIBEL FROM ONE VEHICLE TO ANOTHER. HE WAS VERY AGITATED  
10 WITH ME BECAUSE I HAD ARRESTED HIS DAUGHTER. HE WAS ANGRY  
11 AT ME, SAYING THAT I WAS A TOUGH GUY, THAT I LIKED TO PICK  
12 ON GIRLS.

13 HE CHALLENGED ME SEVERAL TIMES, SAYING HE WAS  
14 GOING TO GET ME LATER ON BECAUSE I ARRESTED HIS DAUGHTER.

15 AT THAT POINT I NOTICED -- I COULD SMELL A STRONG  
16 ODOR OF INTOXICANTS FROM HIS BREATH AND PERSON. HIS EYES  
17 WERE VERY BLOODSHOT. HE WAS VERY ANGRY.

18 HE WAS IN HANDCUFFS AT THE TIME, AND AS I SAID  
19 BEFORE, HE CHALLENGED ME SEVERAL TIMES. HE SAID I WAS  
20 ALWAYS PICKING ON GIRLS AND HITTING GIRLS.

21 Q WAS DEPUTY DOVE HAVING ANY DIFFICULTY IN PLACING  
22 THE DEFENDANT IN THE PATROL VEHICLE?

23 A YES.

24 Q CAN YOU DESCRIBE THAT?

1           A       HE WOULD GET VERY STIFF LEGGED. HE DIDN'T WANT  
2 TO BE MOVED. HE CONTINUOUSLY CHALLENGED ME. HE WAS ANGRY  
3 WITH ME BECAUSE I HAD PLACED HIS DAUGHTER IN CUSTODY.

4                   HE DIDN'T WANT TO BEND DOWN TO GET IN THE CAR.  
5 OFTEN TIMES WE'LL PUT ONE HAND ON TOP OF THE PERSON'S HEAD  
6 TO GET THEM IN THE CAR SO THEY DON'T HIT THEIR HEAD. HE  
7 DIDN'T WANT TO COMPLY IN ANY WAY, SHAPE OR FORM.

8                   HE CONTINUALLY CHALLENGED ME BECAUSE I HAD  
9 ARRESTED HIS DAUGHTER.

10           MR. DOLAN: YOUR HONOR, I MOVE TO -- NO  
11 OBJECTION.

12           MR. HAFEN: THAT'S ALL THE QUESTIONS I HAVE.  
13 BY MR. HAFEN:

14           Q       OH, I'M SORRY; WHAT COUNTY DID THIS ALL OCCUR IN?

15           A       HUMBOLDT COUNTY.

16           MR. HAFEN: THAT'S ALL THE QUESTIONS I HAVE, YOUR  
17 HONOR.

18           THE COURT: MR. DOLAN, YOU MAY CROSS EXAMINE.

19           MR. DOLAN: THANK YOU, YOUR HONOR.

20                   CROSS EXAMINATION

21 BY MR. DOLAN:

22           Q       WHEN YOU FIRST ARRIVED AT THE SCENE, TROOPER  
23 MERSCHER, TO THE TIME OF SEEING MR. HIIBEL BEING PLACED IN  
24 CUSTODY, WHAT PERIOD OF TIME ELAPSED?

1           A     I'D SAY FIVE MINUTES OR LESS.

2           Q     DURING THOSE FIVE MINUTES DID YOU SEE MR. HIIBEL  
3     TAKING A SWING AT DEPUTY DOVE?

4           A     NO.

5           Q     DID YOU SEE DEPUTY DOVE TAKE A SWING AT THE  
6     DEFENDANT?

7           A     NO.

8           Q     PRIOR TO BEING PLACED IN CUSTODY DID YOU HEAR MR.  
9     HIIBEL USE CURSE WORDS DIRECTED TOWARDS DEPUTY DOVE OR  
10    YOURSELF?

11          A     NO.

12          Q     DID YOU HEAR MR. HIIBEL THREATEN TO USE FORCE  
13    AGAINST DEPUTY DOVE?

14          A     NO.

15          Q     DID YOU HEAR HIM THREATEN TO USE FORCE AGAINST  
16    YOU PRIOR TO BEING PLACED IN CUSTODY?

17          A     NOT PRIOR TO, NO.

18          Q     WERE THERE OTHER MEMBERS OF LAW ENFORCEMENT ON  
19    THE SCENE OTHER THAN DEPUTY DOVE AND YOURSELF?

20          A     AT WHAT TIME?

21          Q     AT ANY TIME.

22          A     YES.

23          Q     WHO WERE THEY?

24          A     TROOPER BUELL AND FORMER TROOPER RADKE ARRIVED ON

1 THE SCENE AFTER THE ARREST.

2 Q WHO?

3 A FORMER TROOPER RADKE.

4 Q WOULD YOU KNOW HOW TO SPELL THAT IF POSSIBLE?

5 A R-A-D- -- I THINK IT'S K-E. BUELL IS B-U-E-L-L.

6 ALSO SERGEANT SMITH FROM THE HUMBOLDT COUNTY SHERIFF'S  
7 OFFICE ARRIVED AFTER THE ARREST, AFTER MR. HIIBEL'S ARREST,  
8 AND I BELIEVE TOWARD THE END, OR RIGHT AFTER MIMI HIIBEL'S  
9 ARREST, WHO WAS THE JUVENILE.

10 Q BY THE WAY, IN CONNECTION WITH YOUR INVOLVEMENT  
11 IN THIS MATTER YOU MADE A WRITTEN REPORT?

12 A YES.

13 Q DO YOU RECALL WHETHER OR NOT YOU INCLUDED IN YOUR  
14 WRITTEN REPORT ANY INFORMATION RELATIVE TO THE DEFENDANT  
15 BEING STIFF OR UNCOOPERATIVE WHEN YOU TRANSPORTED HIM IN  
16 YOUR PATROL VEHICLE -- BETWEEN PATROL VEHICLES?

17 A NO, I DID NOT ADDRESS THAT IN MY REPORT, AND HE  
18 WASN'T NECESSARILY TRANSPORTED; HE WAS MOVED FROM ONE  
19 VEHICLE TO ANOTHER.

20 WHEN I USE THE WORD TRANSPORTED IT MEANS DRIVING;  
21 I'LL JUST TELL YOU THAT, BUT NO, I DID NOT HAVE THAT IN MY  
22 REPORT.

23 Q I TAKE IT PRIOR TO TESTIFYING TODAY YOU'VE HAD  
24 THE OPPORTUNITY TO REVIEW THE REPORT THAT YOU GENERATED IN

1 CONNECTION WITH THIS CASE?

2 A YES.

3 Q IN THAT REPORT THAT YOU REVIEWED, DID YOU INCLUDE  
4 ANY REFERENCE TO THE FACT THAT HE CONSTANTLY CHALLENGED  
5 YOU?

6 A AFTER THE ARREST?

7 Q AT ANY TIME.

8 A NO, I DID NOT.

9 Q IN THE REPORT DID YOU WRITE THAT HE WAS MAD AT  
10 YOU FOR PICKING ON GIRLS OR THE LIKE?

11 A NO, I DID NOT.

12 Q IN YOUR REPORT DID YOU WRITE THAT HE THREATENED  
13 TO GET YOU LATER?

14 A NO, I DID NOT.

15 Q DID YOU WRITE THAT HE BECAME STIFF WHEN YOU WERE  
16 PLACING HIM IN THE VEHICLE?

17 A THIS IS THE SECOND TIME I HAVE ANSWERED THAT  
18 QUESTION, BUT NO, I DID NOT.

19 Q IS IT BECAUSE THOSE THINGS WERE IRRELEVANT?

20 A NO, IT'S NOT, BECAUSE THEY ARE.

21 Q SO IS IT YOUR PRACTICE TO EXCLUDE RELEVANT  
22 MATERIAL FROM YOUR REPORTS?

23 A NO, IT IS NOT.

24 Q IS THAT WHAT HAPPENED IN THIS CASE THOUGH?

1 A IS WHAT WHAT HAPPENED IN THIS CASE?

2 A YOUR EXCLUSION OF RELEVANT INFORMATION, FROM YOUR  
3 POLICE REPORT?

4 A ASK ME THE QUESTION AGAIN. IF YOU'RE ASKING ME  
5 IF I EXCLUDED FACTS FROM MY REPORTS, THAT'S CORRECT. IS IT  
6 MY PRACTICE? NO.

7 CAN I GIVE YOU A REASON WHY?

8 MR. DOLAN: NO, YOU CANNOT AT THIS TIME. I HAVE  
9 NO FURTHER QUESTIONS.

10 THE COURT: MR. HAFEN, YOU MAY REDIRECT.

11 MR. HAFEN: NOTHING FURTHER, YOUR HONOR.

12 THE COURT: YOU MAY STEP DOWN.

13 THAT'S YOUR ONLY WITNESS, MR. HAFEN?

14 MR. HAFEN: AT THIS TIME. WE'D ASK THE MATTER BE  
15 CONTINUED.

16 THE COURT: MR. DOLAN, DO YOU HAVE ANYTHING ELSE  
17 BEFORE THE COURT AT THIS TIME, SIR?

18 MR. DOLAN: NO, YOUR HONOR. I DID SPEAK WITH MY  
19 CLIENT. WE ARE NOT OBJECTING TO THE STATE MOVING FOR A  
20 CONTINUANCE OF THIS MATTER BECAUSE OF THE FAMILY EMERGENCY  
21 THAT DEPUTY DOVE HAS.

22 THE COURT: THANK YOU, MR. DOLAN.

23 NO OTHER MATTERS BEFORE THE COURT IN THIS REGARD.

24 THE COURT: DO YOU HAVE A DATE FOR CONTINUANCE?

1 IS MR. HIIBEL ON BAIL?

2 MR. DOLAN: MR. HIIBEL DOES NOT KNOW, YOUR HONOR,  
3 BUT IF HE IS OUT ON BAIL, CAN THAT BAIL BE EXONERATED?

4 THE CLERK: HOW ABOUT NOVEMBER 30TH, 2:00  
5 O'CLOCK.

6 MR. HAFEN: THAT SHOULD BE FINE.

7 MR. DOLAN: MR. HIIBEL IS ADVISING ME THAT HE DID  
8 BAIL OUT OF JAIL AND THE THERE MAY BE A BAIL BOND IN  
9 EXISTENCE.

10 A HE IS ON BAIL FOR \$3425.00.

11 MR. DOLAN: WELL, YOUR HONOR I BELIEVE THAT SINCE  
12 MR. HIIBEL APPEARS TO BE A LOCAL PERSON, HE HAS APPEARED IN  
13 COURT, THERE IS LITTLE LIKELIHOOD THAT HE'S A RISK OF  
14 FLIGHT, AND GIVEN THE FACT THAT WE ARE NOT OPPOSING A  
15 CONTINUANCE AS REQUESTED BY THE STATE, IT MIGHT BE A  
16 CIRCUMSTANCES WHERE BAIL BE EXONERATED.

17 THE COURT: THAT WAS SET FOR DOMESTIC BATTERY,  
18 WHICH WAS DISMISSED, SO IT WAS SET IN THAT AMOUNT, SO I  
19 WILL ALLOW THE BAIL TO BE RETURNED.

20 THE CLERK: EXONERATED.

21 MR. DOLAN: ON NOVEMBER 30TH, MADAM CLERK, WHAT  
22 TIME.

23 THE CLERK: NOVEMBER 30TH, 3:00 P.M.

24 THE COURT: THANK YOU, GENTLEMEN.

COPY

CASE NO. XX-69056

FILED

2011/15 11:05

CLERK OF COURT  
JANUARY 15, 2011

IN THE JUSTICES COURT OF UNION TOWNSHIP, IN AND FOR THE

STATE OF NEVADA, COUNTY OF HUMBOLDT

HONORABLE GENE WAMBOLT, JUSTICE OF THE PEACE

---000---

COUNTY OF HUMBOLDT,

COURT TRIAL

PLAINTIFF,

FEBRUARY 13, 2001

VS.

WINNEMUCCA, NEVADA

LARRY D. HIIBEL,

DEFENDANT.

-----/

VOLUME II

COPIES:

DA

DEFT (DOLAN)

REPORTED BY:

EDWARD VON RUDEN, CSR #261  
PO BOX 2545  
WINNEMUCCA, NEVADA 89446  
(775) 623-6452

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A P P E A R A N C E S

FOR THE COUNTY: CONRAD HAFEN, ESQ.  
DEPUTY DISTRICT ATTORNEY  
COUNTY OF HUMBOLDT

FOR THE DEFENDANT: ROBERT E. DOLAN, ESQ.  
DEPUTY PUBLIC DEFENDER  
WINNEMUCCA, NEVADA

WITNESSES	DIR.	CROSS	REDIR.	RECRS	VOIRDIRE
LEE DOVE	4	11			

EXHIBITS	IDENT	EVID
DEFENDANT'S A - VIDEO TAPE OF STOP	17	21

1 THE COURT: COURT IS IN SESSION. THIS IS THE  
2 TIME AND PLACE SET FOR TRIAL IN THE CRIMINAL MATTER OF THE  
3 COUNTY OF HUMBOLDT VERSUS MR. LARRY D. HIIBEL ON  
4 MISDEMEANOR CHARGE OF DELAYING AN OFFICER UPON WRITTEN  
5 COMPLAINT SIGNED BY MR. LEE DOVE AS COMPLAINANT UNDER  
6 JUSTICE COURT NUMBER XX-69056.

7 LET THE RECORD SHOW THAT THE DEFENDANT IS PRESENT  
8 WITH COUNSEL, MR. ROBERT DOLAN. LET THE RECORD SHOW THAT  
9 THE COUNTY IS REPRESENTED BY MR. CONRAD HAFEN AS HUMBOLDT  
10 COUNTY DEPUTY DISTRICT ATTORNEY. LET THE RECORD FURTHER  
11 SHOW THAT THE WAS DULY ARRAIGNED ON JUNE 19TH OF THE YEAR  
12 2000.

13 ARE YOU READY TO PROCEED, GENTLEMEN?

14 MR. HAFEN: YES, YOUR HONOR.

15 MR. DOLAN: YES, YOUR HONOR.

16 THE COURT: WILL THE WITNESSES WHO ARE TO TESTIFY  
17 IN THIS MATTER PLEASE RISE TO BE SWORN.

18 MR. HAFEN, YOU WILL CALL YOUR FIRST WITNESS.

19 MR. HAFEN: CALL DEPUTY DOVE.

20 LEE DOVE

21 CALLED AS A WITNESS BY THE COUNTY HEREIN, BEING  
22 FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

23 THE COURT: PLEASE STATE YOUR NAME AND SPELLING  
24 FOR THE RECORD.

1 THE WITNESS: FIRST IS LEE; LAST IS DOVE; SPELLING  
2 D-O-V-E.

3 DIRECT EXAMINATION

4 BY MR. HAFEN:

5 Q WHERE ARE YOU CURRENTLY EMPLOYED?

6 A I AM A PATROL DEPUTY WITH THE HUMBOLDT COUNTY  
7 SHERIFF'S OFFICE.

8 Q HOW LONG HAVE YOU WORKED THERE?

9 A TWO YEARS.

10 Q HOW LONG HAVE YOU WORKED IN LAW ENFORCEMENT?

11 A I'VE GOT I THINK IT'S AT THE EIGHT YEAR MARK  
12 TOTAL COMBINED EXPERIENCE.

13 Q DIRECTING YOUR ATTENTION TO MAY 21ST THE YEAR  
14 2000, WERE YOU WORKING THAT DAY?

15 A YES.

16 Q WERE YOU WORKING AT APPROXIMATELY -- WHAT'S 1900  
17 HOURS?

18 A 7:00 O'CLOCK IN THE EVENING.

19 Q WERE YOU WORKING AT 7:00 O'CLOCK IN THE EVENING  
20 ON THAT DAY?

21 A YES.

22 Q ON THAT DAY, AT THAT TIME, DID YOU HAVE AN  
23 OPPORTUNITY TO -- OR WERE YOU INVOLVED IN THE RESPONDING TO  
24 A REPORT OF A BATTERY THAT OCCURRED ON GRASS VALLEY ROAD?

1           A     YES.

2           Q     WOULD YOU EXPLAIN WHAT YOU DID IN THAT REGARD?

3           A     I WAS DISPATCHED TO GRASS VALLEY ROAD FROM A  
4     REPORT OF A SUBJECT WHO CALLED DISPATCH OF A SUBJECT  
5     HITTING A FEMALE SUBJECT IN A RED AND SILVER VEHICLE.

6                     I RESPONDED TO THE LOCATION, LOCATED THE  
7     REPORTING PARTY, WHO POINTED OUT THE VEHICLE TO ME AND  
8     WHERE IT WAS LOCATED OFF GRASS VALLEY ROAD, AND I RESPONDED  
9     TO THE VEHICLE.

10          Q     ON YOUR WAY TO GO TO WHERE THE INCIDENT HAD BEEN  
11     REPORTED TO HAVE OCCURRED, WHAT ROAD WERE YOU TRAVELLING  
12     NOW?

13          A     I WAS DRIVING SOUTHBOUND ON GRASS VALLEY ROAD  
14     NEAR B.J.'S MARKET IN HUMBOLDT COUNTY.

15          Q     PRIOR TO GETTING TO THE LOCATION, DID YOU STOP  
16     AND AND TALK WITH SOMEBODY?

17          A     YES, I DID.

18          Q     DO YOU RECALL WHERE ON GRASS VALLEY ROAD YOU  
19     TALKED TO THAT PERSON?

20          A     I TALKED TO THE REPORTING PARTY, WHOSE LAST NAME  
21     IS RIDLEY. I SPOKE TO HIM. I BELIEVE HE WAS STOPPED  
22     SOMEWHERE IN THE AREA OF WHERE THE ROAD LINKS, THOMAS  
23     CANYON MEETS GRASS VALLEY ROAD, SOMEWHERE IN THAT AREA.

24          Q     HOW LONG DID YOU HAVE THIS CONVERSATION WITH MR.

1 RIDLEY?

2 A REAL SHORT PERIOD OF TIME, ENOUGH THAT HE TOLD ME  
3 HE WAS THE ONE THAT CALLED. HE POINTED TO THE VEHICLE THAT  
4 HE HAD WITNESSED THE BATTERY TAKING PLACE.

5 IT WAS PARKED, PULLED OVER TO THE SIDE OF THE  
6 ROAD SOUTH OF WHERE WE WERE AT.

7 Q DID YOU THEN LEAVE THE LOCATION FROM MR. RIDLEY  
8 AND PROCEED FURTHER DOWN GRASS VALLEY ROAD?

9 A YES.

10 Q DID YOU THEN ARRIVE AND SEE THE VEHICLE THAT HE  
11 DESCRIBED TO YOU?

12 A YES.

13 Q DO YOU RECALL AGAIN WHAT COLOR, WHAT TYPE OF  
14 VEHICLE THAT WAS?

15 A YES, IT WAS A RED AND SILVER GMC PICKUP TRUCK. I  
16 NOTED THE PLATE WHEN I CALLED IN. I DON'T RECALL WHAT IT  
17 IS RIGHT NOW.

18 Q WHEN YOU GOT TO THAT LOCATION WHERE THE RED AND  
19 SILVER TRUCK WAS, WHAT DID YOU INITIALLY OBSERVE?

20 A I PULLED UP TO THE VEHICLE. THE REPORT OF THE  
21 BATTERY IS WHAT I HAD IN MY MIND.

22 WHEN I SHOWED UP I SAW THE CAR APPEARED TO HAVE  
23 BEEN PULLED OVER IN A FAST, AGGRESSIVE MANNER; THERE WERE  
24 SKIDS MARKS IN THE GRAVEL WHERE IT STOPPED. IT WAS

1 PARKED -- IT WASN'T PARKED IN A NORMAL FASHION. IT WAS  
2 PULLED OFF THE ROAD, LOOKED LIKE IT HAD BEEN PULLED OFF THE  
3 TO THE SIDE OF THE ROAD RAPIDLY.

4 Q WHEN YOU FIRST GOT THERE WAS ANYBODY OUTSIDE THE  
5 TRUCK?

6 A YES.

7 Q AND DO YOU RECALL WHO WAS OUTSIDE THE TRUCK?

8 A YES, SIR.

9 Q WHO WAS THAT?

10 A THE DEFENDANT, MR. HIIBEL.

11 Q DO YOU SEE HIM IN COURT TODAY?

12 A YES.

13 Q WILL YOU POINT TO HIM, DESCRIBE WHAT HE'S  
14 WEARING?

15 A HE'S SITTING AT THE DEFENDANT'S TABLE WEARING A  
16 LIGHT OR SKY BLUE WESTERN BUTTONED LONG SLEEVED SHIRT.

17 THE COURT: LET THE RECORD SHOW THAT THE WITNESS  
18 HAS IDENTIFIED THE DEFENDANT.

19 MR. HAFEN: THANK YOU, YOUR HONOR.

20 BY MR. HAFEN:

21 Q DID YOU MAKE CONTACT WITH THE DEFENDANT AT THAT  
22 POINT?

23 A YES.

24 Q AND WHAT OBSERVATIONS DID YOU MAKE OF HIM AT THAT

1 TIME?

2 A MY IMMEDIATE OBSERVATIONS WERE HE WAS SHOWING  
3 SIGNS OF ALCOHOL CONSUMPTION. I THOUGHT HE WAS PROBABLY  
4 INTOXICATED BASED ON HIS EYES, HIS MANNERISMS, HIS SPEECH  
5 AND THE ODOR I WAS GETTING FROM HIM.

6 Q AT THAT POINT, WHEN YOU MADE THOSE OBSERVATIONS,  
7 WERE YOU ABLE TO OBSERVE IF THERE WAS ANYBODY IN THE TRUCK?

8 A YES.

9 Q WERE YOU ABLE TO IDENTIFY THE GENDER OF THAT  
10 INDIVIDUAL?

11 A I COULD TELL IT WAS A FEMALE THAT WAS IN THE  
12 VEHICLE.

13 Q DID YOU CONTINUE TO TALK TO THE DEFENDANT AT THAT  
14 POINT?

15 A YES.

16 Q WHAT DID YOU TRY TO OBTAIN?

17 A I TRIED TO OBTAIN HIS PERSONAL INFORMATION, AND  
18 DETERMINE WHAT HAD TAKEN PLACE IN THE VEHICLE OFF TO THE  
19 SIDE OF THE ROAD, AND STARTED TO CONDUCT AN INVESTIGATION  
20 INTO THE REPORTED BATTERY.

21 Q HOW DID THE DEFENDANT RESPOND WHEN YOU ASKED HIM  
22 TO IDENTIFY HIMSELF?

23 A HE WOULD NOT IDENTIFY HIMSELF. HE KEPT TURNING  
24 AROUND AND PUTTING HIS HANDS BEHIND HIS BACK AT TIMES AND

1 TELLING ME TO TAKE HIM TO JAIL.

2 Q AT SOME POINT WHILE YOU WERE TALKING TO THE  
3 DEFENDANT DID ANOTHER OFFICER ARRIVE?

4 A YES.

5 Q WHO WAS THAT?

6 A THAT WAS TROOPER MERSCHEL.

7 Q DO YOU RECALL AFTER TROOPER MERSCHEL ARRIVED WHAT  
8 YOU AND TROOPER MERSCHEL DID WITH THE DEFENDANT?

9 A TROOPER MERSCHEL -- I'M NOT SURE IF I EXPLAINED  
10 TO HIM WHAT WAS GOING ON, BUT DURING MY CONVERSATION WITH  
11 MR. HIIBEL, THERE WAS A POINT WHERE HE BECAME SOMEWHAT  
12 AGGRESSIVE.

13 I FELT BASED ON ME NOT BEING ABLE TO FIND OUT WHO  
14 HE WAS, TO IDENTIFY HIM, I DIDN'T KNOW IF HE WAS WANTED OR  
15 WHAT IS SITUATION WAS, I HASN'T ABLE TO DETERMINE WHAT WAS  
16 GOING ON CRIMEWISE IN THE VEHICLE, BASED ON THAT I FELT HE  
17 WAS INTOXICATED, AND HOW HE WAS BECOMING AGGRESSIVE AND  
18 MOODY, I WENT AHEAD AND PUT HIM IN HANDCUFFS SO I COULD  
19 SECURE HIM FOR MY SAFETY, AND PUT HIM IN MY PATROL VEHICLE.

20 WHILE I WAS DOING THAT TROOPER MERSCHEL WAS UP AT  
21 THE CAR WITH THE FEMALE.

22 Q DID THERE COME A POINT WHERE THE FEMALE THEN LEFT  
23 THE TRUCK?

24 A SHE MADE ONE OR TWO ATTEMPTS -- I BELIEVE IT

1 WAS -- TO GET OUT OF THE CAR. TROOPER MERSCHER HELD THE  
2 DOOR SHUT, AND THERE WAS A POINT WHERE SHE ENDED UP KICKING  
3 THE DOOR OUT, AND WE HAD TO PUT HER ON THE GROUND AND  
4 SECURE HER AS WELL.

5 Q AFTER PLACING THE DEFENDANT IN HANDCUFFS AND IN  
6 YOUR PATROL CAR, DID HE PROVIDE YOU WITH ANY INFORMATION  
7 CONCERNING HIS IDENTITY AND WHAT WAS GOING ON WITH THE  
8 SITUATION?

9 A I DON'T REMEMBER HIM EVER COOPERATING WITH  
10 TELLING ME WHAT HAD TAKEN PLACE, AND I DON'T REMEMBER WHEN  
11 OR HOW I IDENTIFIED HIM. IT MAY HAVE BEEN IN THE BACK OF  
12 MY CAR, BUT I DON'T REMEMBER.

13 HE WAS EVENTUALLY IDENTIFIED; I JUST DON'T KNOW  
14 HOW THAT WAS DONE.

15 Q YOU HAD A VIDEO TAPE OF THIS INCIDENT, IS THAT  
16 CORRECT?

17 A YES.

18 Q DO YOU RECALL HOW LONG IT'S BEEN SINCE YOU'VE  
19 LAST SEEN THE VIDEO TAPE?

20 A SINCE THE DAY OF ARREST, SO ALMOST A YEAR AGO.

21 Q YOU HAVEN'T SEEN IT SINCE?

22 A NO.

23 MR. HAFEN: THAT'S ALL THE QUESTIONS --

24 BY MR. HAFEN:

1 Q I'M SORRY; WHAT COUNTY DID THIS OCCUR IN?

2 A HUMBOLDT COUNTY.

3 MR. HAFEN: THAT'S ALL THE QUESTIONS I HAVE.

4 THE COURT: MR. DOLAN, YOU MAY CROSS EXAMINE.

5 MR. DOLAN: YOUR HONOR, PRIOR TO -- THERE AS A  
6 VIDEO OF THIS ENCOUNTER WHICH WE WILL BE PLAYING DURING THE  
7 CROSS EXAMINATION. I CHECKED WITH YOUR CLERK YESTERDAY AND  
8 YOU HAVE THE FACILITIES HERE IN THE COURTROOM TO PLAY THE  
9 TAPE, AND I HAVEN'T DISCUSSED THIS PREVIOUSLY WITH THE  
10 STATE, BUT I ULTIMATELY WILL NEED TO HAVE THIS VIDEO  
11 ADMITTED INTO EVIDENCE.

12 MR. HAFEN: DO YOU'VE ANY OTHER -- DEPUTY DOVE,  
13 DO YOU HAVE ANY OTHER THINGS ON THIS VIDEO TAPE RELATING TO  
14 OTHER INVESTIGATIONS?

15 THE WITNESS: NO.

16 MR. HAFEN: THAT'S FINE WITH THE COUNTY, YOUR  
17 HONOR.

18 CROSS EXAMINATION

19 BY MR. DOLAN:

20 Q LET ME JUST COVER A FEW MATTERS.

21 DEPUTY DOVE, WHEN YOU ARRIVED ON THE SCENE, YOUR  
22 UNIT, WERE YOU BY YOURSELF?

23 A YES.

24 Q AND WAS IT DAY TIME?

1 A YES.

2 Q AND PRIOR TO SPEAKING WITH MR. HIIBEL, HAD YOU  
3 ANY PERSONAL KNOWLEDGE OF HIM? VISUALLY HAD YOU RECOGNIZED  
4 HIM?

5 A DID I KNOW HIM FROM ANYWHERE ELSE?

6 Q YES, SIR.

7 A NO.

8 Q YOU TESTIFIED THAT YOU NOTED THE PLATES WHEN YOU  
9 CALLED IT IN WHEN YOU ARRIVED AT THE SCENE?

10 A UH-HUH.

11 Q CAN YU TELL ME WHAT THAT MEANS?

12 A I WOULD HAVE PULLED UP TO THE VEHICLE AND  
13 NOTIFIED MY DISPATCH OF WHERE I WAS AT. IT'S CUSTOMARY TO  
14 CALL OUT THE PLATES TO DISPATCH.

15 Q BY CALLING OUT THE PLATES TO DISPATCH, DO YOU  
16 HAVE AN EXPECTATION OF WHAT DISPATCH WILL DO?

17 A YES.

18 Q WHAT IS IT THAT YOU EXPECT DISPATCH TO DO?

19 A THEY WILL GENERALLY RUN THE PLATES, MAKE SURE  
20 IT'S VALID, WHO IT'S REGISTERED TO, MAKE SURE IT'S NOT  
21 STOLEN, THOSE SORTS OF THINGS.

22 Q TYPICALLY HOW LONG DOES THAT TAKE?

23 A IT CAN DEPEND. IF THE SYSTEM IS DOWN THEY CAN'T  
24 GET IT DONE. ON A NORMAL TRAFFIC STOP, IF I'M MAKING A

1 TRAFFIC STOP, THREE TO FIVE MINUTES MAYBE.

2 Q AND IN THIS INSTANCE YOU PULLED UP AND THE  
3 DISTANCE BETWEEN YOUR UNIT AND THE DEFENDANT'S TRUCK WAS  
4 20, 30 FEET.

5 A YES.

6 Q AND YOU CALLED OUT THE PLATE?

7 A I BELIEVE I DID.

8 Q DID YOU WAIT FOR THE INFORMATION TO COME BACK, OR  
9 EXIT YOUR UNIT BEFORE GETTING THE INFORMATION BACK?

10 A I CALLED IN ON SCENE -- I WANT TO TESTIFY  
11 CORRECTLY HERE -- I'M PRETTY SURE I CALLED; MAYBE I DID --  
12 BUT I CALLED OUT AT THE SCENE, GOT OUT OF MY VEHICLE  
13 IMMEDIATELY AND --

14 Q BUT WE CAN AGREE -- I DID SEE THE TAPE MYSELF,  
15 AND I CAN'T RECALL WHETHER OR NOT YOU DID OR NOT.

16 A IT'S NORMAL PROCEDURE FOR ME TO DO THAT, CALL THE  
17 PLATE OUT.

18 Q BUT WHEN YOU PULLED UP AT THE SCENE, YOU WENT  
19 BACK, SAW MR. HIIBEL STANDING OUTSIDE THE TRUCK --

20 A HE WAS OUTSIDE THE VEHICLE, YES.

21 Q AND YOU HAD RECEIVED A CALL OF A POSSIBLE  
22 BATTERY, AND THAT MAY HAVE BEEN SOMETHING THAT WAS MORE  
23 IMPORTANT TO CONCERN YOURSELF WITH THAN WITH THE  
24 DEFENDANT'S IDENTIFICATION, LICENSE PLATE, IF HE WAS THE

1 REGISTERED OWNER THEREOF?

2 A I WOULD HAVE CALLED OUT -- ROUTINELY WOULD HAVE  
3 CALLED IN THE PLATE, BUT SEEING HIM OUT OF THE CAR I WOULD  
4 HAVE MADE THE CALL ON SCENE.

5 Q WHEN HE GOT OUT OF THE CAR, WHEN YOU SAW MR.  
6 HIIBEL, WAS HE ARMED? DID HE HAVE A GUN?

7 A NO.

8 Q DID HE HAVE A KNIFE?

9 A THERE MAY HAVE BEEN ONE ON HIM, BUT THERE WAS  
10 NOTHING BEING WAVED AROUND OR ANYTHING LIKE THAT.

11 Q WHEN YOU SAY THERE MAY HAVE BEEN A KNIFE ON HIM,  
12 IT MIGHT HAVE BEEN A KNIFE ON HIS BELT OR SOMETHING ALONG  
13 THOSE LINES?

14 A OR POCKET KNIFE, AND I DON'T RECALL IF THERE WAS  
15 ANYTHING LIKE THAT.

16 Q BUT IT'S FAIR TO SAY THAT YOU DIDN'T SEE THAT IN  
17 HIS HAND WHEN YOU ARRIVED ON THE SCENE?

18 A THAT'S FAIR TO SAY.

19 Q WAS MR. HIIBEL STANDING BY HIMSELF?

20 A YES.

21 Q FROM THE TIME YOU EXITED YOUR CAR TO THE TIME YOU  
22 PLACED MR. HIIBEL IN CUFFS, WHAT PERIOD OF TIME ELAPSED?

23 A YOU KNOW, I DON'T KNOW. SEVERAL MINUTES, BUT I  
24 DON'T KNOW THE DELAY.

1 Q DURING THE COURSE OF YOUR CONVERSATION WITH MR.  
2 HIIBEL, DO YOU RECALL EVER IDENTIFYING YOURSELF?

3 A OTHER THAN THE FACT THAT I WAS IN UNIFORM, IN A  
4 MARKED PATROL CAR WITH LIGHTS, THAT'S -- I MEAN I DIDN'T  
5 TELL HIM "MY NAME IS DEPUTY DOVE; I'M WITH THE HUMBOLDT  
6 COUNTY SHERIFF'S OFFICE".

7 Q BUT IT WAS OBVIOUS YOU WERE FROM LAW ENFORCEMENT?

8 A YES.

9 Q DURING YOUR ATTEMPTS TO OBTAIN PERSONAL  
10 INFORMATION, THAT INCLUDED MAKING REQUESTS TO THE  
11 DEFENDANT, DID IT NOT?

12 A YES.

13 Q THOSE REQUESTS INCLUDED STATEMENTS MADE BY YOU  
14 THAT QUOTE, "I NEED TO SEE I.D." UNQUOTE, WOULD THAT BE  
15 THE TYPE OF STATEMENTS THAT YOU WOULD HAVE MADE AT THAT  
16 MOMENT?

17 A YES.

18 Q AND IT'S FAIR TO SAY THAT DURING THE COURSE OF  
19 THE FEW MINUTES YOU MADE SIMILAR REQUESTS TO MR. HIIBEL  
20 THROUGHOUT THAT FEW MINUTES?

21 A YES.

22 Q AND DURING THOSE FEW MINUTES IN FACT HE DID NOT  
23 TELL YOU WHO HE WAS?

24 A THAT'S CORRECT.

1 THE COURT: ASK THE QUESTION AGAIN.  
2 BY MR. DOLAN:  
3 Q AND DURING THAT FEW MINUTES HE IN FACT DID NOT  
4 TELL YOU WHO HE WAS?  
5 A YES.  
6 Q IS IT ALSO TRUE THAT HE DID NOT SHOW YOU ANY  
7 IDENTIFICATION?  
8 A YES.  
9 Q ISN'T IT TRUE THAT JUST PRIOR TO PLACING MR.  
10 HIIBEL IN CUFFS, YOU ASKED HIM WHETHER OR NOT HE WAS GOING  
11 TO COOPERATE WITH YOU OR NOT?  
12 A I MAY HAVE. I HAVEN'T SEEN THE TAPE, BUT IF --  
13 Q OKAY. AND ISN'T IT TRUE THAT YOU ASKED HIM ABOUT  
14 WHETHER OR NOT HE WAS GOING TO COOPERATE WITH YOU WITH  
15 SPECIFIC REFERENCE TO WHETHER OR NOT HE WAS GOING TO  
16 PROVIDE YOU WITH IDENTIFICATION?  
17 A I THINK I DID, YES.  
18 Q AND THEN YOU PLACED HIM UNDER ARREST AT THAT TIME  
19 FOR NOT PROVIDING YOU WITH IDENTIFICATION; THAT IS WHEN HIS  
20 LIBERTY WAS TAKEN FROM HIM BECAUSE HE FAILED TO IDENTIFY  
21 HIMSELF, ISN'T THAT TRUE?  
22 A NO, I DON'T THINK MY REASON FOR -- I NEVER  
23 TOLD -- I DON'T REMEMBER EVER TELLING HIM HE WAS UNDER  
24 ARREST. THE REASON I WAS PUTTING HIM IN HANDCUFFS WAS JUST

1 FOR MY SAFETY BASED ON HIS DEMEANOR, UNTIL I COULD FIGURE  
2 OUT WHAT WAS GOING ON AND TALK WITH THE OTHER HALF AND  
3 TROOPER MERSCHEL.

4 MR. DOLAN: OKAY. NOW, IN THAT CONNECTION, I'D  
5 LIKE TO STOP MY CROSS EXAMINATION AT THIS POINT AND PLAY  
6 THE TAPE, BECAUSE I BELIEVE IT BEARS ON WHAT I WAS ASKING  
7 IN CROSS EXAMINATION. BEFORE I DO THAT, LET ME JUST  
8 AUTHENTICATE THIS TAPE.

9 BY MR. DOLAN:

10 Q DEPUTY DOVE, DO YOU RECOGNIZE THIS VIDEO TAPE?

11 A YES, I DO. THIS IS THE TAPE IN MY HANDWRITING  
12 THAT I SIGNED WITH MY SIGNATURE AND BADGE NUMBER WITH THE  
13 CASE NUMBER OF THIS CASE AND THE DATE IT TOOK PLACE.

14 Q AND ISN'T IT FAIR TO SAY THERE CAME A TIME WHEN  
15 YOU PERSONALLY DELIVERED THAT VIDEO TAPE TO MR. HAFEN?

16 A YES.

17 MR. DOLAN: YOUR HONOR, I'M GOING TO ASK THAT THIS  
18 BE PLAYED.

19 ( WHEREUPON TAPE MARKED FOR IDENTIFICATION AND  
20 PLAYED)

21 MR. DOLAN: OKAY; I'M GOING TO STOP IT RIGHT  
22 THERE, YOUR HONOR.

23 BY MR. DOLAN:

24 Q NOW, AFTER HAVING REVIEWED THAT TAPE HERE IN

1 COURT, BY MY COUNT THERE WERE APPROXIMATELY ELEVEN REQUESTS  
2 THAT YOU MADE FOR I.D, BEGINNING WHEN YOU FIRST MADE  
3 CONTACT WITH MR. HIIBEL TO THE TIME THAT YOU PLACED HIM IN  
4 CUFFS; IS THAT A FAIR ESTIMATION OF THE NUMBER OF TIMES YOU  
5 --

6 A YES, SURE.

7 Q DO YOU RECALL SAYING TO HIM BEFORE PLACING HIM  
8 UNDER ARREST -- WE WERE ABLE TO HEAR YOU SAYING TO HIM THAT  
9 YOU WOULD PLACE HIM UNDER ARREST IF HE WASN'T GOING TO  
10 COOPERATE BY SHOWING YOU IDENTIFICATION?

11 A I THINK I SAID HE COULD FACE BEING PLACED UNDER  
12 ARREST. I DON'T THINK THAT I SAID, "I WILL ARREST YOU."

13 Q WHEN YOU DID PLACE HIM IN CUFFS WERE YOU IN FACT  
14 PLACING HIM UNDER ARREST AT THE TIME FOR NOT PROVIDING YOU  
15 WITH ANY I.D.?

16 A I DID NOT REMEMBER TELLING HIM HE WAS UNDER  
17 ARREST, AND MY MAIN CONCERN FOR PUTTING HIM IN HANDCUFFS  
18 WAS FOR MY OWN SAFETY, IN OTHER WORDS SO WE COULD FIND OUT  
19 WHAT WAS GOING ON.

20 Q SO YOU ARE TAKING ISSUE WITH THE FACT WHETHER OR  
21 NOT THAT CONSTITUTED AN ARREST AT THAT TIME?

22 A I DON'T KNOW -- I DON'T KNOW IF I'M TAKING ISSUE  
23 OR YOU ARE. I KNOW THAT I EXPLAINED TO HIM WHAT BASICALLY  
24 THE RAMIFICATIONS COULD BE, AND PLACED HIM IN HANDCUFFS

1       BASED ON THE DEMEANOR THAT I WAS SEEING.

2               I DON'T REMEMBER ARRESTING HIM OR TELLING HIM HE  
3       WAS UNDER ARREST FOR THAT.

4               Q       OTHER THAN NOT PROVIDING YOU WITH IDENTIFICATION,  
5       WHAT OTHER LAWFUL OBLIGATIONS DID HE NOT MEET AT THAT  
6       SCENE?

7               A       WELL, HE'S REQUIRED TO -- AN INDIVIDUAL THAT HAS  
8       POTENTIALLY COMMITTED A CRIME, OR HAS COMMITTED A CRIME,  
9       NEEDS TO IDENTIFY HIMSELF TO ME. I WAS ACTUALLY TALKING TO  
10      AN INDIVIDUAL THAT I DIDN'T KNOW. THAT WAS MY REASON FOR  
11      TRYING TO GET HIS IDENTIFICATION AND INFORMATION TO CONDUCT  
12      AN INVESTIGATION INTO WHAT WAS GOING ON.

13              Q       DEPUTY DOVE, WHEN YOU SPEAK ABOUT AN OBLIGATION  
14      THAT A PERSON HAS TO IDENTIFY THEMSELVES, ARE YOU REFERRING  
15      TO NRS 171.123(3)?

16              A       YES.

17              Q       OKAY. FOR THE RECORD, I'M SHOWING DEPUTY DOVE A  
18      COPY OF THE STATUTE 171.123 (3).

19              A       DO YOU WANT ME TO READ IT?

20              Q       JUST TO YOURSELF.

21              A       OKAY.

22              Q       WOULD YOU CHARACTERIZE THE INVESTIGATION THAT YOU  
23      WERE CONDUCTING WITH MR. HIIBEL AS A KIND OF TERRY  
24      SITUATION?

1           A     WELL, I WAS JUST AT THE SCENE. DEFINITELY I WAS  
2     STAYING UNTIL I CAN FIGURE OUT WHAT WAS GOING ON AND  
3     OBTAINING AN IDENTIFICATION, AND WHAT THE CIRCUMSTANCES  
4     WERE SURROUNDING THE BATTERY REPORT.

5           Q     WHEN YOU ARRIVED AT THE SCENE YOU DID NOT HAVE  
6     PROBABLE CAUSE TO MAKE AN ARREST, DID YOU?

7           A     WOULD I -- YOU MEAN HAD I NOT TALKED TO ANYONE,  
8     COULD I HAVE JUST WALKED UP AND ARRESTED HIM?

9           Q     CORRECT.

10          A     NO.

11          Q     BUT YOU YOU HAD SOME TYPE OF RESOURCE FROM A  
12     REPORTING PARTY REGARDING ALLEGED CONDUCT?

13          A     YES, I HAD THAT INFORMATION.

14          Q     BY THE WAY, WAS THIS -- STRIKE THAT.  
15                 DID YOU KNOW THE REPORTING PARTY WHO YOU SPOKE TO  
16     JUST PRIOR TO MAKING CONTACT WITH THE DEFENDANT?

17          A     NO.

18          Q     SO YOU HAD NO PRIOR DEALINGS WITH THAT PERSON,  
19     DID YOU?

20          A     NO.

21          Q     AND IN FACT, YOU HAD NO WAY OF KNOWING WHETHER OR  
22     NOT HE WAS A TRUTHFUL OR RELIABLE PERSON?

23          A     I HAD NOT EVER MET THE MAN BEFORE, NO. I JUST  
24     KNOW THAT HE HAD RELAYED THE INFORMATION TO DISPATCH AND

1 DISPATCH RELAYED IT TO ME ON THE RADIO.

2 Q WHICH IS WHAT WE CALL A CITIZEN INFORMANT?

3 A HE IS A REPORTING PARTY, YES.

4 Q DID YOU KNOW HIS NAME AT THE TIME?

5 A AT THE TIME, NO.

6 Q ISN'T IT FAIR TO SAY THAT AFTER MR. HIIBEL WAS  
7 PLACED IN CUSTODY, AS SHOWN ON THIS VIDEO TAPE, HE REMAINED  
8 IN CUSTODY UNTIL ULTIMATELY BEING RELEASED FROM THE JAIL?

9 A YES

10 MR. DOLAN: YOUR HONOR, I'M GOING TO ASK THAT  
11 THIS VIDEO TAPE BE ADMITTED INTO EVIDENCE.

12 MR. HAFEN: I THINK WE HAVE ALREADY STIPULATED TO  
13 THAT.

14 THE COURT: WHAT IS IT, A?

15 MR. DOLAN: THAT WILL BE DEFENDANT'S FIRST IN  
16 ORDER, A.

17 THE COURT: A IS RECEIVED INTO EVIDENCE.

18 (WHEREUPON DEFENDANT'S EXHIBIT A RECEIVED IN  
19 EVIDENCE.)

20 MR. DOLAN: I HAVE NO FURTHER QUESTIONS.

21 THE COURT: THANK YOU; MR. HAFEN?

22 MR. HAFEN: I HAVE NOTHING FURTHER, YOUR HONOR.

23 THE COURT: YOU MAY STEP DOWN.

24 MR. DOLAN: I HAVE NO OBJECTION TO THE DEPUTY

1 REMAINING IN THE COURTROOM. WE HAVE ALREADY ALREADY HAD  
2 TESTIMONY FROM TROOPER MERSCHER.

3 THE COURT: DO YOU HAVE ANY WITNESSES TO CALL AT  
4 THIS TIME, SIR?

5 MR. DOLAN: THE DEFENSE RESTS, YOUR HONOR.

6 THE COURT: THANK YOU. FINAL ARGUMENT, MR. HAFEN.

7 MR. HAFEN: YOUR HONOR, YOU'VE HEARD THE EVIDENCE.  
8 I DON'T KNOW IF YOU'VE GOT THE TRANSCRIPT OF TROOPER  
9 MERSCHER'S TESTIMONY. IT'S BEEN A WHILE AGO.

10 I WILL SUBMIT IT ON THE EVIDENCE, SAVE ANY  
11 REBUTTAL FOR MR. DOLAN'S ARGUMENT.

12 THE COURT: THANK YOU. MR. DOLAN.

13 MR. DOLAN: JUDGE, I REMEMBER DISTINCTLY TROOPER  
14 MERSCHER'S TESTIMONY. IT INCLUDED TESTIMONY COMPLETELY  
15 UNRELATED TO ANYTHING THAT THE DEFENDANT DID PRIOR TO BEING  
16 PLACED IN CUSTODY, AND THE DEFENDANT IS NOT CHARGED WITH  
17 ANY ACTIVITY THAT TROOPER MERSCHER TALKED ABOUT THAT  
18 OCCURRED. HE IS NOT CHARGED WITH ANYTHING THAT OCCURRED  
19 AFTER HE WAS PLACED IN CUSTODY BY DEPUTY DOVE, SO IT'S  
20 COMPLETELY IRRELEVANT TO THE CHARGE HERE.

21 THE DEFENDANT WAS ARRESTED BY LAW ENFORCEMENT AT  
22 THE SCENE BECAUSE HE FAILED TO IDENTIFY HIMSELF DURING THE  
23 FEW MINUTES ENCOUNTER WITH THE DEPUTY IN QUESTION.

24 YOUR HONOR, THERE IS A CASE, BERKEMER --

1 B-E-R-K-E-M-E-R -- VERSUS MCCARTY. BERKEMER V. MACARTY IS  
2 FOUND AT 468 U.S. 420, AND 82D LAWYERS EDITION 2D, AND IN  
3 BERKEMER V. MCCARTY, 468 U.S, PAGE 334, THE UNITED STATES  
4 SUPREME COURT ADDRESSES THE ISSUES RELATIVE TO A PERSON OR  
5 DETAINEE'S RIGHTS AND RESPONSIBILITIES DURING THE COURSE OF  
6 A TERRY STOP UNDER INVESTIGATIVE CIRCUMSTANCES.

7 AND THE LANGUAGE IN BERKEMER, WHICH I'VE SHOWN TO  
8 MR. HAFEN, HAVEN'T SHOWN TO THE COURT BUT I WILL SHOW TO  
9 THE COURT IF I MAY APPROACH --

10 THE COURT: YOU MAY. I'VE READ THAT, MR. DOLAN.

11 MR. DOLAN: YOU CAN SEE CLEARLY THAT THE UNITED  
12 STATES SUPREME COURT INDICATES ON PAGE 334 THAT QUOTE "THE  
13 STOP AND INQUIRY MUST BE REASONABLY RELATED TO THE SCOPE  
14 AND JUSTIFICATION FOR THEIR INITIATION, QUOTING TERRY V.  
15 OHIO, SUPRA AT 29."

16 ARE YOU WITH ME, YOUR HONOR?

17 THE COURT: YES.

18 MR. DOLAN: THEN CONTINUING," TYPICALLY THIS  
19 MEANS THAT THE OFFICER MAY ASK THE DETAINEE A MODERATE  
20 NUMBER OF QUESTIONS TO DETERMINE **HIS** IDENTITY AND TO TRY TO  
21 OBTAIN INFORMATION CONFIRMING OR DISPELLING THE OFFICER'S  
22 SUSPICIONS."

23 AND HERE'S THE IMPORTANT ONE, "BUT THE DETAINEE  
24 IS NOT OBLIGATED TO RESPOND. AND UNLESS THE DETAINEE'S

1       ANSWERS PROVIDE THE OFFICER WITH PROBABLE CAUSE TO ARREST  
2       HIM HE MUST THEN BE RELEASED".

3               IN THIS CASE, YOUR HONOR, MR. HIIBEL DID NOT  
4       RESPOND, DID NOT PROVIDE THE OFFICER WITH IDENTIFICATION.

5               AND WE ULTIMATELY REACH THE CONCLUSION THAT NRS  
6       171.123(3), TO THE EXTENT THAT IT CREATES A CRIMINAL  
7       LIABILITY DURING TERRY STOP CIRCUMSTANCES WITH A DETAINEE'S  
8       FAILURE TO IDENTIFY HIMSELF IS UNCONSTITUTIONAL UNDER THE  
9       FOURTH AMENDMENT.

10              I WOULD ASK THE COURT TO DO ONE OF TWO THINGS:  
11       FIND THAT THE ACTIVITIES OF THE DEFENDANT AT THE SCENE DID  
12       NOT AMOUNT TO OBSTRUCTION OR DELAYING AS A MATTER OF  
13       STATUTORY CONSTRUCTION, OR HAVE THIS COURT FIND THAT IN  
14       LIGHT OF THE TERMS OF THE FOURTH AMENDMENT BY THE UNITED  
15       STATES SUPREME COURT UNDER THE CASE BERKEMER V. MCCARTY,  
16       THAT THIS STATUTE AS APPLIED IN THIS CASE IS  
17       UNCONSTITUTIONAL AND THEREFORE FIND THE DEFENDANT NOT  
18       GUILTY.

19              THE COURT: THANK YOU, MR. DOLAN.

20              MR. HAFEN.

21              MR. HAFEN: YOUR HONOR, I DON'T BELIEVE MR. DOLAN  
22       CITED ANY NEVADA CASE OR UNITED STATES SUPREME COURT CASE  
23       THAT 171.123 IS UNCONSTITUTIONAL.

24              THE STATUTE CLEARLY SAYS THAT AN INDIVIDUAL SHALL

1 IDENTIFY THEMSELVES. IT WAS CLEAR BASED ON THE VIDEO TAPE  
2 THAT DEPUTY DOVE WAS IN UNIFORM, THAT HE WAS RESPONDING IN  
3 A MARKED UNIT.

4 YOU SAW FOR YOURSELF THE EVIDENCE THAT THE  
5 DEFENDANT WAS IN FACT DELAYING AN OFFICER AS HE WAS SIMPLY  
6 ENGAGED IN AN OFFICIAL DUTY. WE'D ASK THAT YOU FIND HIM  
7 GUILTY ON THE CHARGE OF DELAYING AN OFFICER.

8 THE COURT: GENTLEMEN, I WANT TO STUDY THIS  
9 MATTER SO I AM GOING TO TAKE IT UNDER ADVISEMENT. I WILL  
10 GIVE YOU A WRITTEN OPINION.

11 MR. DOLAN: THANK YOU, YOUR HONOR.

12 ---000---

1 STATE OF NEVADA )  
2 ) SS.  
3 COUNTY OF HUMBOLDT )  
4

5 THIS IS TO CERTIFY THAT, I, EDWARD VON RUDEN, A  
6 CERTIFIED COURT REPORTER IN THE STATE OF NEVADA, WAS  
7 PERSONALLY PRESENT AT THE TIME AND PLACE THE FOREGOING  
8 PROCEEDINGS WERE HAD;

9 THAT I REPORTED SAID PROCEEDINGS IN MACHINE SHORTHAND  
10 AND HAVE THEREAFTER TRANSCRIBED THE SAME BY COMPUTER INTO  
11 TYPEWRITING AS APPEARS BY THE FOREGOING TRANSCRIPT;

12 THAT SAID TRANSCRIPT, CONSISTING OF PAGES 1 TO  
13 26, BOTH INCLUSIVE, IS A FULL, TRUE AND CORRECT RECORD  
14 OF THE PROCEEDINGS HAD IN THE ABOVE ENTITLED CASE.

15 DATED THIS 21ST DAY OF FEBRUARY 2001, WINNEMUCCA, NEVADA.  
16  
17

18 EDWARD VON RUDEN, CSR # 261  
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1 CASE NO. 01-4463

2 DEPT. NO. 1

FILED

2001 MAY -4 PM 4:44

SUSAN E. HARRER  
DIST. COURT CLERK

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5 IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF HUMBOLDT

7 \*\*\*\*\*

8 LARRY DUDDLY HIIBEL,

9 Appellant,

10 vs.

APPELLANT'S BRIEF ON APPEAL

11 THE STATE OF NEVADA,

12 Appellee.

13 \*\*\*\*\*

14 COMES NOW the appellant, Larry D. Hiibel, by and through the undersigned counsel,  
15 and submits the following brief in support of his appeal from a conviction below to the charge of  
16 Resisting Public Officer in violation of NRS 199.280 on the grounds that said conviction is in  
17 violation of the Fourth and Fifth Amendments to the U.S. Constitution and Article 1 section 8 (1)  
18 of the Nevada State Constitution.

19 Respectfully submitted this 4/18 day of May, 2001.

20  
21   
22 Robert E. Dolan

23 STATEMENT OF FACTS

24 1) The defendant was charged, via a citation, with violating NRS 199.280, Resisting  
25 Public Officer. The gravamen of the state's case was that since the defendant refused to identify  
26 himself to deputy Dove during a police-citizen encounter, he "delayed" the deputy, and thereby  
27 committed a offense.

1 A trial was had in the Justice Court of Union Township on December 13, 2000. On  
2 February 21, 2001 a Finding of Fact, Conclusion of Law was filed by the Justice of the Peace,  
3 Gene Wambolt.

4 2) A video tape was admitted in evidence at the misdemeanor trial. This revealed  
5 that Deputy Dove arrived at the right side of the road, behind the appellant's parked small truck,  
6 in response to an alleged domestic battery call. It's clear from the video tape that within a period  
7 of about two minuets and twenty seconds from the deputy's arrival the appellant was arrested and  
8 placed in custody simply because he failed to identify himself.

9 3) In the Findings of Fact below the Justice of Peace found that Deputy Dove asked  
10 the appellant about 11 times for his identification. Then the appellant was placed under arrest for  
11 delaying the officer.

#### 12 POINTS AND AUTHORITIES

13 4) It can not be disagreed that if, during the citizen-police encounter Hiibel was free  
14 to leave, then he was also free not to identify himself and no criminal liability could attach.  
15 Therefore, only if Hiibel was not free to leave (because he found himself in a Terry situation) can  
16 any possible criminal liability even remotely constitutionally attach.

17 In Florida v. Royer, 460 U.S. 491 (1983) the U.S. Supreme Court, in a plurality opinion,  
18 explained that "law enforcement officers do not violate the Fourth Amendment by merely  
19 approaching an individual on the street or in another public place, by asking him if he is willing to  
20 answer some questions, by putting questions to him if the person is willing to listen, or by offering  
21 in evidence in a criminal prosecution his voluntary answers to such question." Id at 497.

22 5) The Justice of the Peace must have concluded that in fact a Terry situation existed  
23 because he relied on NRS 171.123 (3) as the basis for finding the appellant guilty of Delaying an  
24 Officer under NRS 199.280.

25 The Nevada Supreme court has found that NRS 171.123 (1) codifies Terry. See, State v.  
26 Lisenbee, 116 Nev. \_\_\_\_ (2000).

27 In the Conclusion of Law below, the Justice of the Peace determined that NRS 171.123  
28

1 imposes an affirmative obligation on a citizen to identify himself within the context of a Terry  
2 stop. This statutorily imposed obligation is unconstitutional because:

- 3 a) It violates the Fourth Amendment to the U.S. Constitution as regards the  
obligations of a citizen has to the state once seized by an officer; and
- 4 b) It violates the Fifth Amendment to the U.S. Constitution and Article  
5 1 section 8 (1) of the Nevada State Constitution because a citizen  
6 retains the right be remain silent and the imposition of criminal sanctions  
for the invocation of said right unconstitutional.

7 The appellant maintains that NRS 171.123 (3) is unconstitutional not on its face under the  
8 Fourth and Fifths Amendments of the U.S. Constitution and Article 1 section 8 (1) of the Nevada  
9 State Constitution but, as applied, to the facts of this case. Accordingly, the conviction had below  
10 must be reversed.

11 6) The police-citizen encounter in the instant case amounts to a Terry situation.  
12 Terry stands for the proposition that an officer may, consistent with the Fourth Amendment,  
13 conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion. In  
14 fact, the tape reveals that the deputy restricted the movement of the appellant prior to being  
placed under arrest.

15 7) In Berkemer v. McCarty, 468 U.S. 420; 104 S.Ct. 3138, 3150 (1984) the U.S.  
16 Supreme Court, stated, "The stop and inquiry must be reasonably related in scope to the  
17 justification for their initiation. Terry, 392 U.S. at 29. Typically, this means that the officer may  
18 ask the detainee a moderate number of questions to determine his identity and to try to obtain  
19 information confirming or dispelling the officer's suspicions. But the detainee is not obligated to  
20 respond. And unless the detainee's answers provide the officer with probable cause to arrest him,  
21 he must then be released".

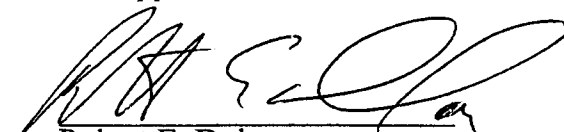
22 9) The Fifth Amendment to the U.S. Constitution provides in relevant part that, ...  
23 "(no) person shall be compelled in a criminal case to be a witness against himself...". The  
24 statutory obligation imposed on citizens by NRS 171.123 (3) violates this amendment. Certainly  
25 the deputy attempted to impose or in fact did imposed an obligation on the citizen (and attempted  
26 to compel a response) by asking the citizen if he was going to cooperate and identify himself. The  
27 U.S. Supreme Court described a similar citizen-police encounter (traffic stop) as follows:  
28

1 "To be sure, the aura of authority surrounding an armed, uniformed officer and the  
2 knowledge that the officer has some discretion in deciding whether to issue a citation, in  
3 combination, exert some pressure on the detainee to respond to questions". Berkemer v.  
4 McCarty, 468 U.S. 420, 438 (1984).

5 Then the deputy arrested the appellant simply because he remained silent. It is settled law  
6 that the Fifth Amendment governs state as well as federal criminal prosecutions. Malloy v.  
7 Hogan, 378 U.S. 1, 8 (1964).

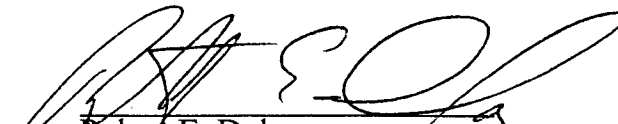
8 10) Article 1 section 8 (1) provides in relevant part that, "...No person ... shall be  
9 compelled, in any criminal case to be a witness against himself.

10 Wherefore the undersigned counsel prays that the appellant's conviction be reversed for  
11 the reasons stated herein.

12   
13 Robert E. Dolan

14 CERTIFICATE OF SERVICE

15 The undersigned counsel hereby certifies that a true and copy of the foregoing was served  
16 on the Humboldt County District Attorney's Office on May 4, 2001 by personal delivery.

17   
18 Robert E. Dolan

1 Case No. CR 01-4463

2 Dept. No. 1

FILED

2001 MAY -9 PM 2:34

SUSAN E. HARRER  
DIST. COURT CLERK

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6 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF HUMBOLDT  
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10 LARRY DUDLEY HIIBEL,

11 Appellant,

12 V.

**RESPONDENT'S ANSWERING BRIEF**

13 THE COUNTY OF HUMBOLDT,

14 Respondent,  
15 \_\_\_\_\_/

16 Comes Now the County of Humboldt by and through its attorney of record, Conrad  
17 Hafen, Chief Deputy District Attorney and submits this answer to appellant's brief on appeal.  
18

19 This answer is made and based upon the points and authorities submitted herewith, the  
20 papers and pleadings on file herein, the affidavits and exhibits attached hereto and any such oral  
21 argument as required by this court at the time this matter is presented.

22 **POINTS AND AUTHORITIES**

23 During the trial evidence was presented by the testimony of Deputy Lee Dove and the videotape  
24 that Deputy Dove was responding to a domestic violence call. The caller provided a description  
25 of a truck and that he saw a male hitting a female. The videotape shows Dove stopping to meet  
26 with the individual who called dispatch and then proceeding further down grass valley road.  
27  
28

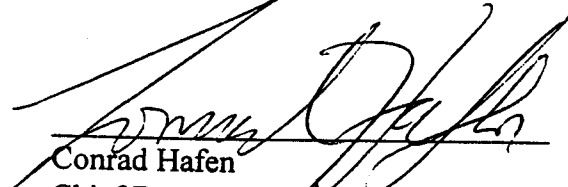
1 Dove saw a truck that matched the description pulled off the side of the road. He pulled up  
2 behind it and approached a male who was now outside of the truck. Up to this point, Dove has  
3 been given information that a domestic battery had already occurred. Therefore, pursuant to  
4 NRS 171.123 he could investigate the facts and circumstances as presented to him and detain the  
5 individuals for up to sixty (60) minutes.  
6

7 Appellant counsel claims that NRS 171.123(3) is unconstitutional but cites no Nevada or  
8 United States Supreme Court cases that have specifically ruled this language to be  
9 unconstitutional. Appellate cites Berkemer v. McCarty, 468 U.S. 420 (1984) but a review of that  
10 decision indicates that this issue was not raised on appeal. The county argues that section three  
11 (3) is not an unreasonable requirement in light of present day law enforcement activity. This  
12 requirement protects both the officer and the citizen. The citizen is protected because if the  
13 citizen's name is different than the name previously given to the officer the encounter can be  
14 concluded rather quickly. If the information provided by the citizen to the officer leads to  
15 additional information about the person's propensity for violence, the officer can take the  
16 necessary precautions to protect himself.  
17

18 Finally, appellate argues that this statute violates the Fifth Amendment because a citizen  
19 has the right to remain silent. The county submits that this right only applies once an individual  
20 is placed into custody. Further, this question does not constitute any type of interrogation  
21 because it is not a question that is designed to elicit incriminating statements. Rhode Island v.  
22 Innis, 446 U.S. 219 (1980) The same type of question can be asked after a person is taken into  
23 custody. Such questions have been ruled to be permissible during the booking process even  
24 though an individual has greater constitutional protections once they are placed into custody.  
25 Pennsylvania v. Muniz, 496 U.S. 582 (1990)  
26  
27  
28

1 The county contends that questions relating to identification are necessary for effective  
2 law enforcement. The question is asked during the detention of an individual and prior to being  
3 placed into custody. As a result, the individual has less constitutional protections. Therefore, the  
4 county asks this court to dismiss the appeal.  
5

6  
7 Dated this 9 Day of May 2001

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11 Conrad Hafen  
12 Chief Deputy District Attorney  
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CASE NO. CR 01-4463

DEPT NO. 1

FILED

2001 MAY 14 PM 1:32

SUSAN E. HARRER  
DIST. COURT CLERK

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF HUMBOLDT

\*\*\*\*\*

LARRY DUDLEY HIIBEL,

Appellant,

vs.

APPELLANT'S REPLY BRIEF TO  
APPELLEE'S OPPOSITION

THE COUNTY OF HUMBOLDT,


Appellee.

\*\*\*\*\*

Comes now the appellant by and through the undersigned counsel and Replies to the Appellee's opposition by stating the following.

In support hereof are Points and Authorities and any evidence and argument presented at the hearing hereon.

Respectfully submitted this 14th day of May, 2001.



Robert E. Dolan

POINTS AND AUTHORITIES

FIFTH AMENDMENT

1) In its answering brief, the State argues that the Fifth Amendment applies only when an individual is placed in custody. However, that position seems to be clearly at odds with the Nevada Supreme Court. For instance in Brown v. State, 113 Nev. 275, 291 (1997) the Court concluded that the district court's consideration of appellant's refusal to admit guilt and show remorse violated appellant's Fifth Amendment right to not be compelled to be a witness against himself because appellant maintained his innocence and, therefore, "was unable to express remorse without foregoing his right to not incriminate himself, and the fact that he took the stand at trial does not change this analysis because appellant maintained his innocence", Id at 291 (citing Page 1 of 3

Bushnell v. State, 97 Nev. 591 (1981). Most interesting is that the district court judge in Brown directly addressed the defendant and stated, inter alia, ... "I'm offering you an opportunity to be a man...". In the instant matter, appellant argues that a similar kind of statement was made by the deputy just prior to arresting the appellant. Recall, from the video tape (which was admitted in evidence at trial) that the deputy said (or asked) the appellant a question which was something to the effect; "are you going to cooperate (and identify yourself)"? The deputy's comments didn't produce the desired verbal response from the appellant just as the district court judge's comments in Brown didn't produce the desired verbal response from the defendant.

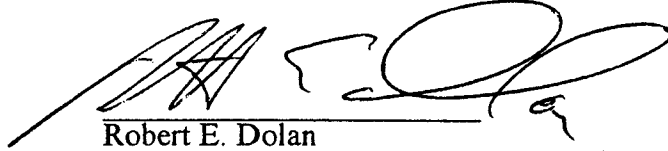
Again in Brake v. Nevada, 113 Nev. 579, 585, the Nevada Supreme Court reiterated its position that the Fifth Amendment operates to prevent a person from having a harsher sentence imposed if they maintain their silence during sentencing hearings. Appellant argues that a citizen's maintaining of silence during a Terry situation can not serve as the basis for the imposition of criminal sanctions under both the Fifth Amendment and Fourth Amendment of the U.S. Constitution.

3) Also, the United States Supreme Court has cautioned that the Constitution limits "the imposition of any sanction which makes assertion of the Fifth Amendment privilege 'costly'". Spevack v. Klein, 385 U.S. 511, 515 (1967)(quoting Griffin v. California, 380 U.S. 609, 614 (1965)). In Lefkowitz v. Cunningham, 431 U.S. 801, 807-09 (1977), the U.S. Supreme Court struck down a state statute that required an officer of a political party to either waive the Fifth Amendment or forfeit his office. The Court commented: "We have already rejected the notion that citizens may be forced to incriminate themselves because it serves a governmental need. Id. at 808. The threatened loss of a party office with its prestige and political influence was inherently coercive, Id. at 807, and therefore, the statute forcing the officer to choose between his right to participate in political associations and the privilege against self-incrimination was unconstitutional. Id. at 808.

4) So clearly the Fifth Amendment's protections are broader than the State believes it to be as stated in its opposition brief. The appellant maintains that the Fifth Amendment prevents

the silence of the defendant from serving as the basis for the criminal prosecution herein.

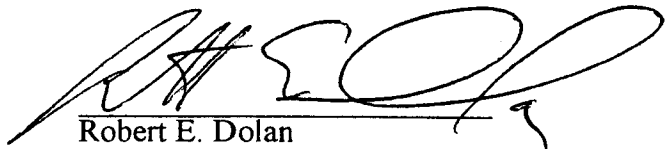
Wherefore the undersigned counsel prays that the conviction had below be reversed because same was obtained in violation of appellant's rights under both the Fourth and Fifth Amendments to the U.S. Constitution and similar provisions of the Nevada State Constitution.



Robert E. Dolan

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing was served on the Humboldt Count district Attorney by personal delivery on May 14, 2001.



Robert E. Dolan

SUSAN E. HARRER  
DIST. COURT CLERK

Dept. No. 1

\* \* \* \*

Respondent .

O R D E R

This case presents a question which does not have settled law either by the United States Supreme Court or the Nevada Supreme Court. The narrow issue of this case is the constitutionality of NRS 171.127 which is the Nevada

1 codification of the United States Supreme Court case of Terry v.  
2 Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 1889 (1968). In  
3 addition to placing a bright line time restriction of 60 minutes  
4 on such detentions, under subsection three of NRS 171.123, it  
5 provides the officer may detain such person only to ascertain  
6 the identification of such person and the suspicious  
7 circumstances surrounding his presence abroad. Any person  
8 further detained shall identify himself, but may not be  
9 compelled to answer any other inquiry of any peace officer. It  
10 is clear that this provision pertains only to those situations  
11 in which the peace officer has what is called "articulable or  
12 reasonable suspicion."

13           The United States Supreme Court in the case of  
14 Kolender v. Lawson, 461 US 352, 75 L.Ed.2d 903, 103  
15 S.Ct. 1855 (1983), ruled that a California statute which  
16 required suspects under cases of articulable suspicion to  
17 provide "credible and reliable" identification was  
18 unconditionally vague on its face because it encouraged  
19 arbitrary enforcement by failing to describe with sufficient  
20 particularity what a suspect must do in order to satisfy this  
21 statute.

22           It is equally clear in the Kolender case, supra, that  
23 the United States Supreme Court distinguished the California  
24 statutes from statutes which are known as simply "stop and  
25 identify" statutes.

26 ///

1           The Nevada Supreme Court has not ruled on the  
2     constitutionality of NRS 171.123(2) which is a simple "stop and  
3     identify" statute, however, the Ninth Circuit Court of Appeals  
4     in the case of Martinelli v. City of Beaumont, 820 F.2d 491 (9th  
5     Cir. 1987), construed the Kolender case as applying to simple  
6     "stop and identify" statutes while the Tenth Circuit Court of  
7     Appeals in the case of Albright v. Rodriguez, 51 F.3d 1531 (10th  
8     Cir. 1995), has found to the contrary. Within the Albright  
9     case, supra, it indicates that the United States Supreme Court  
10    has specifically on two occasions refused to determine when an  
11    individual can be arrested for refusing to identify himself in  
12    the context of a lawful investigatory stop. The Tenth Circuit  
13    Court of Appeals then cited the case of Brown v. Texas, 443 U.S.  
14    47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979), as well as the  
15    Kolender case, supra. Within the Albright opinion it cites  
16    various other circuits who are at odds with the Martinelli case  
17    of the Ninth Circuit. It can then be concluded that this  
18    specific issue before this Court is not settled law in either  
19    the State of Nevada or by the United States Supreme Court. It  
20    is, therefore, the duty of this Court to apply the best reasoned  
21    opinions to the facts of the particular case before the Court.

22           It is the opinion of this Court that even without  
23    determining the constitutionality issue as to whether NRS  
24    171.123(2) is valid or invalid on its face, that there was  
25    sufficient evidence under the totality of the circumstances of  
26    this case that the justice court could and did correctly

1 conclude that the Appellant resisted or delayed officer Lee  
2 Dove, a deputy sheriff of the Humboldt County Sheriff's  
3 Department on May 21, 2000 in Humboldt County, Nevada.

4         The particular facts of this case which give rise to  
5 this Court's determination in this matter are based upon the  
6 trial transcript before the justice of the peace, Honorable Gene  
7 Wambolt, on November 7, 2001 and February 13, 2001. It is also  
8 based upon the evidence consisting of a video tape of the entire  
9 incident which was also viewed by the justice of the peace. The  
10 pertinent facts of this case which relate to this Court's  
11 conclusions are as follows:

12         At approximately 7:00 p.m. on May 21, 2000 Deputy Dove  
13 was advised by his dispatcher that a reporting party had  
14 observed an individual hitting a female subject in a red and  
15 silver vehicle on the Grass Valley Road south of Winnemucca. On  
16 the way to the incident, the officer stopped briefly to talk to  
17 the reporting party whose last name was Ridley who then pointed  
18 further down the road to the vehicle in which he had seen the  
19 battery taking place. A short distance down the road the  
20 officer located the red and silver G.M.C. pickup truck which had  
21 been pointed out to him by the reporting party, and as he pulled  
22 up, he noticed the vehicle which appeared to have been pulled  
23 over in a fast, aggressive manner as there were skid marks in  
24 the gravel where it stopped. The vehicle was not parked in a  
25 normal fashion as it appeared to the officer that it had been  
26 pulled off to the side of the road rapidly. The Appellant was

1 outside the truck, and the officer immediately observed that the  
2 Appellant was showing signs of alcohol consumption, and the  
3 officer believed he was probably intoxicated based on his eyes,  
4 his mannerisms, his speech and the odor that was coming from the  
5 Appellant.

6 The officer was able to determine that there was a  
7 female person in the vehicle. As the officer approached the  
8 Appellant, he told him that he had received a report that they  
9 had been fighting and asked the Appellant to identify himself.  
10 The Appellant was in an agitated condition and was determined to  
11 tell the officer that he was parked legally off from the  
12 roadway.

13 At one point from the video tape, it is clear that the  
14 officer, in repeatedly asking the Appellant for his  
15 identification, is attempting to protect the Appellant from  
16 stepping out onto the highway into traffic; and as the officer  
17 attempts by touching the Appellant on the shoulder to move him  
18 to a safer location, the Appellant pulls away in anger and is  
19 resisting and delaying the officer in carrying out his pressing  
20 duty of determining whether a battery and possibly a domestic  
21 battery has just taken place. It is a reasonable and necessary  
22 order that the officer request the Appellant to identify himself  
23 at that time.

24 On numerous occasions the Appellant placed his hands  
25 together, telling the officer to arrest him and take him to  
26 jail. When the officer was simply trying to conduct his

1 investigation, which at such point not only included a possible  
2 battery but also a possible drunk driving offense, it is clear  
3 in addition to the facts found by the justice of the peace that  
4 the Appellant resisted and/or delayed the officer, and that  
5 there were other actions and behavior of the Appellant over and  
6 above simply failing to identify himself which constituted  
7 delaying and obstructing the officer in his lawful  
8 investigation.

9           The video tape illustrates that the Appellant resisted  
10 and obstructed the officer when he was trying to remove the  
11 Appellant from the roadway.

12           The officer directed the Appellant out of traffic for  
13 his own safety in order to safely conduct the investigation.

14           Also, the officer certainly had reason to believe that  
15 Appellant had been drinking and driving.

16           These facts, together with those specifically found by  
17 the justice of the peace, firmly establish that the officer had  
18 a right to require identification from the Appellant, and that  
19 the Appellant by his refusal to identify himself as well as his  
20 other contact at the scene, delayed and obstructed the officer  
21 in conducting his important and pressing investigation of a  
22 possibly battery and/or domestic violence.

23           It is also clear that the officer had at least  
24 articulable suspicion regarding drunk driving in this matter,  
25 which absolutely required the identification of the Appellant.

26 ///

1           This Court commends and upholds the findings of fact  
2 and conclusions of law of the justice of the peace. His order  
3 is accurate, articulate, and precise, and this Court affirms the  
4 order of the justice of the peace.

5           This Court in ultimately deciding this case believes  
6 that it must do a balancing of the right to protect the public  
7 interest as opposed to an individual's constitutional right to  
8 remain silent. Justice Stewart summarized this issue in his  
9 concurring opinion in Leary v. United States, (1969), supra, 395  
10 U.S. 6, at page 54 [23 L.Ed.2d 57, at page 92]. He stated:

11           "... I have before now expressed my  
12 conviction that the Fifth Amendment  
13 guarantee against compulsory self-  
14 incrimination was originally intended to  
15 do no more than confer a testimonial  
16 privilege in a judicial proceeding. But  
17 the Court through the years has drifted  
18 far from that mooring; the Marchetti and  
19 Grosso cases are simply the most recent  
20 in a long line of decisions marking the  
21 extent of the drift. Perhaps some day  
the Court will consider a fundamental  
re-examination of its decisions in this  
area, in the light of the original  
constitutional meaning. Until that day  
comes, it seems to me that the  
authoritative weight of precedent  
permits no escape from the conclusion  
reached by the Court in this case."  
(Fns. omitted.) (Emphasis added.)


22           In determining the issue before the Court today and  
23 applying this balancing test, the Court has to balance the  
24 public interest in requiring identify of a person who is a  
25 suspect in a battery or domestic violence case and a possible  
26 DUI suspect to be required to identify himself as opposed to  
that individual's right to remain silent. This Court must note

1 that with both domestic battery and DUI the identify of the  
2 suspect may be crucial to determine not only for the officer's  
3 safety but also for the protection of possible victims. This  
4 is particularly so if the suspect has previous convictions for  
5 domestic battery or DUI.

6 IT IS HEREBY ORDERED that this matter be remanded to  
7 the Justice Court for further proceedings in affirming the  
8 findings of the Justice Court.

9 IT IS SO ORDERED.

10 DATED this 25<sup>th</sup> day of June, 2001.

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13 RICHARD A. WAGNER, DISTRICT JUDGE  
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1 [Larry Dudley Hiibel, Appellant, vs. The County of Humboldt, Appellee.]

2 Sixth Judicial District Court of Nevada, Case No. CR 01-4463

3  
4 **DECLARATION OF SERVICE**

5  
6 I am a citizen of the United States, over the age of 18 years, and not a party to or interested  
7 in this action. I am an employee of the Humboldt County Clerk's Office, and my business address  
8 is 50 W 5<sup>th</sup> Street, Winnemucca, NV 89445. On this day I caused to be served the following  
9 document(s):

10 **ORDER**

11 \_\_\_\_\_ By placing in a sealed envelope, with postage fully prepaid, in the United States Post Office,  
12 Winnemucca, Nevada, persons addressed as set forth below. I am familiar with this office's practice  
13 whereby the mail, after being placed in a designated area, is given the appropriate postage and is  
14 deposited in the designated area for pick up by the United States Postal Service.

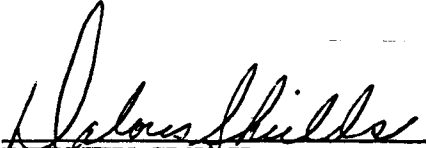
15  
16 X By personal delivery of a true copy to the person(s) set forth below by placement in the  
17 designated area in the Humboldt County Clerk's Office for pick up by the person(s) or representative  
18 of said person(s) set forth below.

19 Humboldt County District Attorney  
20 PO Box 909  
21 Winnemucca, NV 89446-0909  
(Hand-Delivery - Clerk's Office)

Nevada State Public Defender  
PO Box 309  
Winnemucca, NV 89446-0309  
Hand-Delivery - Clerk's Office)

22 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing  
23 is true and correct.

24 Executed on June 26, 2001 at Winnemucca, Nevada.

25   
26 DEPUTY CLERK  
27  
28