CONTINUED MINIMALIZATION OF FOURTH AND FIFTH AMENDMENT RIGHTS: WILL HIIBEL V. NEVADA CREATE A LOOPHOLE FOR STATES TO FURTHER INTRUDE ON THE RIGHTS OF THEIR CITIZENS?

I. INTRODUCTION

There is nothing wrong with giving a law enforcement agent the power to stop a citizen for the purpose of conducting an investigation. Under proper circumstances, a law enforcement agent may detain someone against his will in order to ask questions and further investigate a situation. However, “the person stopped is not obliged to answer, answers may not be compelled, and [the] refusal to answer furnishes no basis for an arrest, although it may alert the officer to the need for continued observation.” The idea is that if law enforcement agents are able to engage in conversations with citizens while employing interrogation tactics designed to waive one’s right to remain silent and/or reject a consensual encounter or search, then citizens “must also retain the option of declining to engage in such conversations . . . .”

Criminalizing the right to remain silent, the protection against self-incrimination, false statements, and government intrusion is significantly detrimental to an individual’s right to privacy, as citizens will begin to rely solely on “members of the legal profession to defend and vindicate their legal rights.” Furthermore, the possibility that states will begin to enact legislation overriding the Fourth and Fifth Amendments would drastically abridge the constitutional rights of all citizens.

The Nevada “ ‘stop and identify’ statute” permits police officers to “detain [a] person . . . to ascertain his identity and the suspicious circumstances surrounding his presence abroad.” If an individual fails to identify himself, he will be criminally charged with “willfully resist[ing], delay[ing] or obstruct[ing] a public officer in discharging or attempting to discharge any legal duty of his office . . . .” Therefore, section 199.280 of the Nevada Revised Statutes Annotated requires that an individual comply with an officer’s request for identification. This and other states’ “stop and identify” statutes are modeled after the Uniform Arrest Act, which “permits an officer to stop a person reasonably suspected of committing a crime and ‘demand of him his name, address, business abroad and whither he is going.’”

This casenote examines the United States Supreme Court’s analysis in Hiibel v. Nevada, which set new precedent with regard to an individual’s Fourth and Fifth Amendment rights during a Terry stop. Section II discusses the facts and procedural history of the case. Sections III and IV describe and analyze the issues and holdings of the majority opinion, while section V analyzes the issues and holdings of the dissenting opinions. Section VI makes a historical and policy analysis of whether an arrest without probable cause is constitutionally sound under the Fourth and Fifth Amendments when the arrest is based solely on the failure to abide by the Nevada “stop and identify” statute.

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2. Id. (indicating that previous Supreme Court decisions have held that the Terry stop was constitutional).
4. Id.
7. Id. at § 199.280.
8. Id.