DISTRICT COURT OF AMERICAN SAMOA

JOHN L WARD II,
DISTRICT COURT JUDGE

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To: Bar Members Practicing
in District Court

Fr: John L. Ward II
District Court Judge

Re: Traffic Stops – Search and Seizure – Miranda Rights – Motions To Suppress

Counsel:

The Court routinely processes several motions to suppress evidence in traffic cases each year. Often, briefs in support of or in opposition to such motions cite only landmark, general U.S. Supreme Court case law, or general sections of the Revised Constitution of American Samoa or the U.S. Constitution as support for granting or denying the option. Precise terms of law applicable to traffic stops are also often broadly used rather than carefully applied to the particulars of the case. In an attempt to establish a common language and understanding of applicable case law that may assist counsel in evaluating such issues, I present the following for your consideration, based upon previous written decisions of the Court and those bench decisions included in case records.

It is settled law in the Territory that a traffic stop and detention, however brief, is a "seizure" within 4th Amendment terms. The defining case is not, however, Terry v. Ohio, which involved a citizen walking on the street. Rather, the beginning of counsel's inquiry into whether the seizure was unreasonable is illuminated by Delaware v. Prouse 440 U.S. 648 (1979), which specifically addresses motor vehicle stops. (An officer must have a reasonable and articulable suspicion of a violation of law or the driver is otherwise subject to seizure (an extant warrant for example), before the vehicle can be stopped). In a motion to suppress based upon a lack of reasonable suspicion, either the stop or subsequent detention may be challenged, as a matter of law.

For example, a routine stop for a seatbelt violation generally is a valid traffic stop. But, unless in the course of the officer's interaction with the driver, or based upon other observations, the officer could develop reasonable suspicion of impaired driving, the driver's continued detention for investigation of a possible D.U.I. might well be found unreasonable. (Typically, officers rely upon how the driver reacts to lights and sirens, how the vehicle is

pulled off the roadway, observations of the driver's physical condition, responses, ability to produce documentation, admissions, etc. to justify such investigative detentions). "Reasonable suspicion" is the term reserved for determining the validity of a traffic stop and detention.

Although many briefs cite Miranda generally as applying to statements made or even field tests conducted at traffic stops, the U.S. Supreme Court has provided a narrower construction. In Beckemer v McCarty 468 U.S. 420 (1984), the Court recognized Miranda's applicability to certain, (arrest), traffic stop situations, but held that preliminary investigation, (generally, routine questions and field sobriety tests), was not custodial interrogation even though the driver was temporarily detained. (Of course, once a driver is arrested at a traffic stop, a Miranda Warning would be required).

Miranda is also often cited with respect to field sobriety tests. Generally, Miranda only applies to protect verbal (testimonial) expression not physical (non-testimonial) expression observed during the performance of standardized field sobriety tests. (See Pennsylvania v Muniz, 496 U.S. 582 (1990)). A majority of the states ruling on the related issue as to whether the prosecution may utilize the driver's refusal to perform F.S.T.s at trial have held the 5th Amendment does not prohibit this practice.

Closely related to the above matters is the issue of whether evidentiary chemical tests, (i.e. BAC testing), is protected by the 5th Amendment. The U.S. Supreme Court held in Schmerber v Calif. 384 U.S. 757, (1966) the results of compulsory blood tests for alcohol content were not testimonial nor communicative and therefore not prohibited by the 5th Amendment from admission into evidence. In 1983 the Court also held in South Dakota v Neville 459 U.S. 553, the 5th Amendment privilege against compulsory self-incrimination was not implicated in a refusal by a driver to submit to a chemical test for blood alcohol levels, because the driver had a choice to take or refuse the test.

One last term which is often broadly used in briefs is "probable cause". Often misapplied as the standard used to analyze the validity of a vehicle stop or detention of the driver, this term is reserved for determining if the officer had sufficient grounds to believe the driver had committed a crime. (Technically, a motion asserting lack of probable cause for a D.U.I. arrest should be a motion to dismiss the Uniform Traffic (Citation) Complaint and Summons, rather than a motion to suppress evidence, although the Court generally construes suppression motions broadly).

I trust this memorandum will better align the Bench's and Bar's approach to such motions and their hearings in the future. As most of you know, the District Court Judge position is not afforded a law clerk, or even a chamber's clerk. This, and the heavy case-load in District Court have contributed to the Court's practice of verbally announcing its decisions on such motions on the record from the bench at the conclusion of the hearing. For the uninitiated, this necessary practice requires considerable preparation prior to the hearing, anticipating and researching issues raised or indicated in the moving papers. When all the moving papers convey are cites of Terry and Miranda and conclusions that defendant's arrest was illegal or a statement must be suppressed, the Court's preparatory work increases exponentially to include all potential factual situations that might exist. (Note: The Court is not privy to police reports and other discovery counsel have access to in preparing such motions). At a bare minimum, such motion papers and responses should at least employ

proper terms and identify acts or omissions which counsel believe either violate or conform with case law applicable to vehicular stops, and driver detention, testing, or arrest.

I trust this memorandum proves useful as a threshold checklist for both advancing and defending the most common pre-trial D.U.I. motions. Thank you for your continued consideration and professionalism in your practice before District Court.

Sincerely,

John L. Ward II
District Court Judge

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