15-30 - Written Resistance During a Traffic Stop

Los Angeles County Sheriff's Department

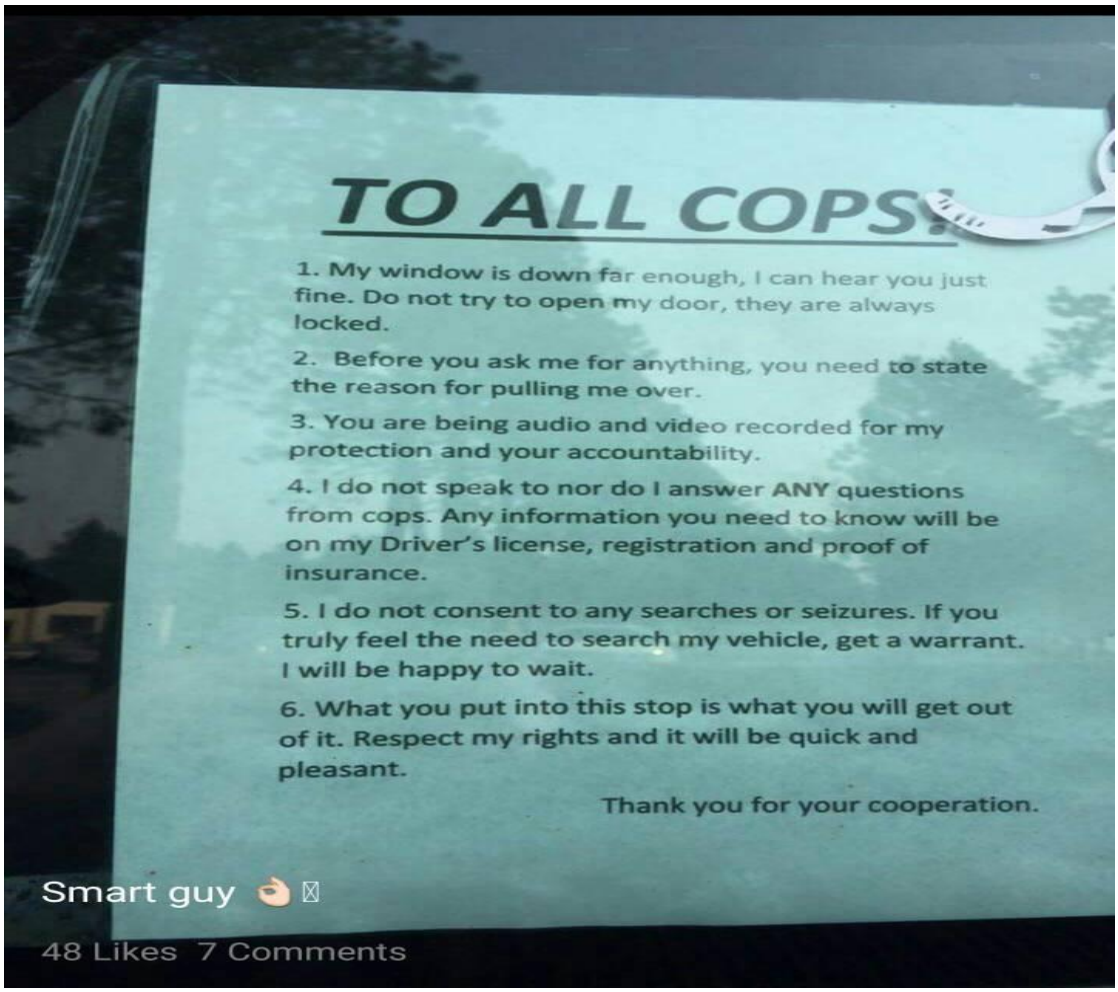
NEWSLETTER

Field Operations Support Services, (323) 890-5411



WRITTEN RESISTANCE DURING A TRAFFIC STOP

Scenario: You approach a vehicle after conducting a traffic stop, and the driver is holding up this sheet of paper to the window. What would you do?



The above scenario could present some problems, because the driver has made it clear he or she will not make this a positive encounter, and is challenging your authority. The deputy should be prepared to justify their actions.

Safety is paramount. A sheet of paper held up to a rolled-up window obstructs a deputy's visual assessment (plain view and plain smell) of the interior view of the inside of the vehicle, and distracts the deputy from looking at the driver's hands. Keep in mind the driver is required to physically surrender the relevant documents (driver's license, registration, and proof of insurance) to the deputy, upon demand during a lawful traffic stop. The driver may not exhibit them through rolled-up glass. The law requires identification must be presented (given) for physical examination rather than merely exhibited, per California Vehicle Codes (CVC)

§ 12951(b), § 4462(a), and § 16020(a).

If a deputy is going to cite an individual for a vehicle code violation, misdemeanor, or infraction, the deputy has the right to ascertain and verify their identity *(Valencia (1993) 20 Cal.App.4th 906, 918)*. This means the detainee must produce either a driver's license or its functional equivalent for examination, or the deputy has the discretion to take the detainee into custody per 12951(b) CVC. If the detainee does not or cannot produce identification, or if other suspicious or difficult circumstances arise, deputies are entitled, but not required, to take additional steps to ensure the accuracy of the suspect's identity. Some of those steps would include a check of the driver's personal information through the Mobile Digital Computer (MDC); conducting a pat-down of the person for identification; or, conducting a limited search of the vehicle in areas where such documentation may reasonably be found to enable the deputy to pursue his/her investigation.

If the driver refuses to provide the requested documentation, consider requesting additional units for backup, and a field supervisor response. Deputies should also take steps to audio/video such encounters as soon as practically possible in order to protect themselves. If the driver continues to refuse, this violation is a misdemeanor, and should be handled accordingly. Additionally, at the deputy's discretion, the driver can be arrested for 2800(a) CVC, Obedience to Traffic Officers. Another option is Penal Code § 148(a)(1), Resistance, Delaying and Obstruction Arrest; however, be mindful of the parameters when arresting for this penal code section, as noted in Field Operations Directive (FOD) 12-001.

The courts acknowledge the risks associated with traffic stops and have recognized law enforcement's need to control the movement of all occupants in the vehicle. In all cases, the deputy has the right to order the driver and any passengers out of the vehicle. The deputy does not need any particular reason, such as danger, or suspicion of a crime. This is because the courts believe that all traffic stops involve enough inherent risk to justify the minimal additional intrusion of ordering a validly detained driver out of the vehicle. The deputy is in control of the traffic stop. *(Mimms (1977) 434 U.S. 106; Maxwell (1988) 206 Cal.App.3d 1004.)*

If the driver provides the documentation the deputy asks for, the deputy can continue with the traffic stop. The driver has the prerogative to record the traffic stop, to ask for the reason for the stop, and to refuse consent to a search of the vehicle. The driver does not, however, have the right to refuse to follow a deputy's lawful orders (2800(a) CVC.)

As always, the primary goal of these incidents should be to ensure your safety, the safety of your partners, and public safety.

This Newsletter was created in part with information from One Minute Brief 2015-15, written by Devallis Rutledge of the Los Angeles County District Attorney's office.

Information regarding the content of this newsletter may be directed to Field Operations Support Services at (323) 890-5411.

References

Case Law: *Pennsylvania v. Mimms (1977) 434 U.S. 106*

People v. Maxwell (1988) 206 Cal.App.3d 1004

People v. Valencia (1993) 20 Cal.App.4th 906, 918

Penal Code: PC § 148(a)(1)

Vehicle Codes: CVC § 2800(a)

CVC § 16028(a)

CVC § 12951(b)

CVC § 40000.11(i)

CVC § 4462(a)

CVC § 16020(a)

CVC § 40302(a)

CVC § 40305

Field Operations Directive (FOD) Section: 12-001