IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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| In re RAYMOND C., a person coming under the Juvenile Court law, | S149728 |
| PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. RAYMOND C., a minor, Defendant, Appellant, and Petitioner. | |



Fourth Appellate District No. G035822
Orange County Superior Court No. DL020274
The Hon. Caryl A. Lee, Judge

# APPELLANT'S OPENING BRIEF ON THE MERITS

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By Appointment of the Court of Appeal
Under the Appellate Defenders, Inc.
Independent Case System

## Table of Contents

## Table of Contents (cont.)

## Table of Authorities

## Table of Authorities (cont.)

## Table of Authorities (cont.)

## Table of Authorities (cont.)

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## INTRODUCTION

New cars in California can legally be operated with a "report of sale" form attached to the rear, front, or side window for at least six months pending issuance and receipt of front and rear license plates. The Court of Appeal in this case nevertheless held that a police officer's observation of a new vehicle which lacked a rear license plate supported a particularized suspicion that the vehicle was in violation of registration laws, where the officer viewed the car from behind and could not see the registration paperwork which was properly attached to the front window. That decision subjects every new car driver in California who is in complete compliance with the registration laws to detention for police to investigate a *potential*

Vehicle Code violation when there is no objective demonstration of illegality.

The Court of Appeal reached its conclusion based on *People v. Saunders* (2006) 38 Cal.4th 1129. *Saunders* involved the detention of a pickup truck acquired from a wrecking yard which was operating as a tail vehicle following 15 to 20 motorcycle club members riding on the street at an annual biker ritual where tensions were high between rival clubs and violence and weapons possession offenses had been involved on previous occasions. The officer who stopped the *Saunders* truck believed it was carrying weapons and drugs, and stopped the truck because it had expired registration tabs on the rear license plate and no front license plate. (*Id.* at pp. 1131-1132.) The *Saunders* vehicle was objectively out of compliance with the Vehicle Code. Petitioner's vehicle was not.

Stopping a new car which is not objectively out of compliance with the Vehicle Code to investigate the *possibility* of a violation violates the Fourth Amendment to the United States Constitution. If police need a more readily discernable means to determine if new cars are out of compliance with registration laws, the solution is not the dragnet approach sanctioned by the Court of Appeal in this case, but lies with amendment of the laws and regulations relating to the display of temporary registration for new cars.

## ISSUE PRESENTED

If a police officer sees that a motor vehicle lacks a rear or both license plates, may the officer make a traffic stop to determine if the vehicle has a temporary operating permit or if a displayed temporary permit is a valid one?

## STATEMENT OF THE CASE

Petitioner Raymond C., a minor, was charged in juvenile court with violating Vehicle Code[1] section 23152, subdivisions (a) and (b), driving under the influence of alcohol, and with a blood alcohol level of .08% or more. (C.T. p. 1)[2] He denied the allegations and moved to suppress evidence under Penal Code section 1538.5, on grounds he was illegally detained. (C.T., pp. 7, 13-26, 33-36) The juvenile court denied the motion and found the allegations true. (C.T. pp. 44-45; R.T. p. 33) Petitioner then admitted the petition's allegations and was declared a ward of the court and placed on formal probation. (C.T. pp. 42-46; R.T. pp.33-38)

On appeal, petitioner asserted the trial court erred in denying his motion to suppress evidence obtained as the result of an illegal traffic stop with no particularized, objective suspicion that he was in violation of the Vehicle Code or some other law. The appellate court ordered the cause submitted on May 22, 2006, and vacated submission of the cause on July 3, 2006, inviting the parties to file additional briefing addressing the application, if any, of *People v. Saunders* (2006) 38 Cal.4th 1129.

In an unpublished opinion filed November 20, 2006, the Court of

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[1]Further unspecified statutory references are to the Vehicle Code.

[2]"C.T." and "R.T." refer to the Clerk's and Reporter's Transcripts in appeal no. G035822.

Appeal held the investigatory stop of petitioner's new vehicle, which was in complete compliance with Vehicle Code registration requirements, was justified because the officer's "observation that minor's vehicle lacked a rear license plate supported a particularized suspicion minor violated section 5200." (Opinion, Appendix A, p. 9.)[3] The Opinion further held that "driving with *nothing* [i.e., no paper dealer advertisement or logo] in the license plate slot at the rear of a car is an unusual circumstance" warranting a traffic stop. (Appendix A, pp. 6-7.) Petitioner moved for rehearing on grounds that this factual conclusion was not supported by the record. By order dated December 20, 2006, the petition for rehearing was denied and the unpublished opinion was modified in numerous respects with no change in the judgment, and was ordered published. (Appendix B.)

This Court granted review on March 21, 2007.

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[3]The opinion filed November 20, 2006 is attached as Appendix A; the appellate court's December 20, 2006 order modifying the opinion in numerous respects is attached as Appendix B.

## STATEMENT OF FACTS

At around 1:00 a.m. October 24, 2004, petitioner drove past Fullerton police officer Timothy Kandler in a shiny, brand-new black Acura. The new car did not have a rear license plate. Officer Kandler believed petitioner was in violation of Vehicle Code section 5200, failure to display license plates, and fell in behind the new car and activated his lights and siren. (R.T. pp. 8, 13-14, 17, 20) Kandler could see that there were no registration or DMV papers displayed in the rear window, but from his position behind petitioner's car, he could not see the front window to determine if registration papers were properly displayed there. Based on these facts, Kandler detained petitioner for a "possible violation" of section 5200. (R.T., pp. 20-21) When he stopped the car, the officer did not notice whether there was a dealer's paper advertisement in the rear license plate holder, and he did not stop the car for that reason. He recited that there was no dealer paper plate in the rear license plate holder in the police report which he subsequently prepared. (R.T., pp. 15-17)

Petitioner was driving lawfully at all times and he pulled over in response to the officer's lights and siren. (R.T. p. 17) Kandler exited his vehicle, contacted petitioner and asked for his driver's license, registration, and proof of insurance. (R.T. p. 21) Petitioner handed him his license and

insurance papers, and stated the registration was in the front window of the car. (R.T. p. 21) During this conversation, the officer detected an odor of alcohol on petitioner's breath and person. (R.T. pp. 19, 21-22) He administered field sobriety tests and a breath test and booked the results into evidence. (R.T. pp.19-20)

The vehicle which petitioner was driving was purchased new by his father on October 2, 2004. (R.T. p. 3) The registration papers were affixed to the lower right corner of the front windshield when the car was purchased, and were there on October 24, 2004. (R.T. pp. 3-6) The registration papers remained affixed to the front windshield until petitioner's father received the license plates in December 2004. (R.T., pp. 4, 7-8) Petitioner's father recalled that when he purchased the vehicle, there was a paper dealer advertisement from "Downey Acura" in the front license plate holder, which he removed. (R.T., p. 10)

## ARGUMENT

## I

## THE FOURTH AMENDMENT PROHIBITS INVESTIGATIVE STOPS TO DETERMINE IF NEW VEHICLES MIGHT POSSIBLY BE IN VIOLATION OF REGISTRATION REQUIREMENTS

### A. State's Burden and Standard of Review.

If police act without a search warrant, the State has the burden to prove that the seizure was justified. (*People v. Williams* (1999) 20 Cal.4th 119, 281.) On review of the denial of a motion to suppress evidence, the reviewing court examines the record in the light most favorable to the lower court's ruling, deferring to those express and implied findings of fact which are supported by substantial evidence. However, the reviewing court independently applies the requisite legal principles to the facts presented to determine whether, as a matter of law, the search and/or seizure was unreasonable. (*People v. Celis* (2004) 33 Cal.4th 667, 679; *People v. Miranda* (1993) 17 Cal.App.4th 917, 922.)

### B. Constitutional Guarantee Against Unreasonable Search and Seizure.

Both the Fourth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, and the California Constitution, article I, section 13, guarantee the right of people to be free

from unreasonable searches and seizures. (*People v. Camacho* (2000) 23 Cal.4th 824, 829.) Under article I, section 28, subdivision (d), of the California Constitution, federal constitutional standards govern review of claims seeking exclusion of evidence on grounds of unreasonable search and seizure. (*People v. Camacho, supra,* at p. 830.) Thus, the question in this case is whether the traffic stop violated the Fourth Amendment.

In *Terry v. Ohio* (1968) 392 U.S. 1 [88 S.Ct. 1868, 20 L.Ed.2d 889], the United States Supreme Court considered the right to privacy of a person who, while walking on a public street, was stopped and searched by police. The Court observed:

> The Fourth Amendment provides that 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....' This inestimable right of personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs. For, as this Court has always recognized, 'No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.' *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 [11 S.Ct. 1000, 1001, 35 L.Ed. 734] (1891). ... Unquestionably [Terry] was entitled to the protection of the Fourth Amendment as he walked down the street in Cleveland.

(392 U.S. at pp. 8-9.)

Just as a citizen walking down the street has an expectation of privacy,

so also, a motorist on a public roadway has a legitimate expectation of privacy within a motor vehicle. As stated in *Delaware v. Prouse* (1979) 440 U.S. 648, 662 [99 S.Ct. 1391, 59 L.Ed.2d 660]: "An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation."

In *Delaware v. Prouse, supra*, a case involving a police officer's completely random and discretionary spot check for a driver's license and vehicle registration, the United States Supreme Court also stated:

> The Fourth and Fourteenth Amendments are implicated in this case because stopping an automobile and detaining its occupant constitute a "seizure" within the meaning of those Amendments. The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of "reasonableness" upon the exercise of discretion by government officials, including law enforcement agents, in order " 'to safeguard the privacy and security of individuals against arbitrary invasions....'" (*Marshall v. Barlow's, Inc.* (1978) 436 U.S. 307, 312 [98 S.Ct. 1816, 56 L.Ed.2d 305], quoting *Camara v. Municipal Court* (1967) 387 U.S. 523, 528 [87 S.Ct. 1727, 18 L.Ed.2d 930] (1967).

(*Delaware v. Prouse, supra,* 440 U.S. at pp. 653-54.)

### C. There was no Objective Showing that Petitioner's Vehicle was in Violation of California's Requirements for Displaying Temporary Registration on New Cars.

Police Officer Kandler testified that after he saw petitioner's vehicle with no rear license plate and no registration papers or DMV paperwork in the rear window, he decided to stop the car for a violation of Vehicle Code section 5200. (R.T., pp. 14, 20) That section provides:

> (a) When two license plates are issued by the department for use upon a vehicle, they shall be attached to the vehicle for which they were issued, one in the front and the other in the rear.
>
> (b) When only one license plate is issued for use upon a vehicle, it shall be attached to the rear thereof, unless the license plate is issued for use upon a truck tractor, in which case the license plate shall be displayed in accordance with Section 4850.5.

However, newly purchased vehicles which have not yet been issued license plates may be legally operated under the provisions of Vehicle Code section 4456, which requires a "report of sale" form be "attach[ed] for display ... on the vehicle" until the buyer receives the license plates and registration card, or for six months from the date of purchase, whichever occurs first. (§4456, subds. (a)(1) and (c).) Section 4456 does not specify the report of sale form must be attached to the rear window of the vehicle. Display in *either* the front windshield or the rear window meets the requirements of section 26708, subdivision (b)(3) which provides for

placement of temporary stickers in specified areas of the front or rear windshield. (See, *People v. Nabong* (2004) 115 Cal.App.4th Supp. 1, 3, and fn. 8.)

The trial court record contained little information about the procedures for new vehicle registrations, but the Court of Appeal judicially noticed the DMV Handbook of Registration procedures ("Handbook") published at http://www.dmv.ca.gov/pubs/ reg_hdbk_pdf/ch02.pdf. (Appendix A, p. 4.)[4] The DMV Handbook directs new car dealers to display the temporary registration in the vehicle's lower rear window, but if this placement obscures the information, the Handbook directs the dealer to place the temporary registration "in the lower right corner of the windshield or on the lower right side of a side window." (Handbook, §2.020; Appendix A, p. 4.)

No statute or regulation requires the purchaser of a new vehicle to leave a dealer's paper advertisement or dealer logo in the vehicle's license plate holders. Petitioner was driving the vehicle in full compliance with Vehicle Code and DMV requirements, with his new car registration on the vehicle's front windshield where it was placed by the dealer. (Veh. Code, §4456; Handbook, §2.020.)

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[4]Petitioner requests the Court take judicial notice of the DMV Handbook pursuant to Evidence Code sections 452, subdivisions (b), (c), and (h), and 453.

### D. The Fourth Amendment and Controlling Federal and State Law Require Objective Facts Raising an Articulable Suspicion that a Vehicle is not Registered to Justify an Investigatory Stop to Check the Registration.

Consistent with the Fourth Amendment, a police officer must have specific and articulable facts causing him to entertain a reasonably objective suspicion that a motorist is unlicensed, that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for some illegal activity, in order to stop the vehicle and detain the driver to check his driver's license and the vehicle's registration. (*Delaware v. Prouse* (1979) 440 U.S. 648, 663 [99 S.Ct. 1391, 59 L.Ed.2d 660]; *People v. Saunders, supra,* 38 Cal.4th at p. 1135.)

The police officer's suspicion must be objectively reasonable: the facts must be such as would cause any reasonable police officer in a like position to suspect the same violation of law. The corollary to this rule is that a random investigative stop or a detention predicated on mere *potential* that some violation of law may be discovered is prohibited, even though the officer may be acting in complete good faith. (*Delaware v. Prouse, supra,* 440 U.S. at p. 650; *Terry v. Ohio, supra*, 392 U.S. at p. 22; *In re Tony C.* (1978) 21 Cal.3d 888, 893.)

Objectively verifiable reasonable suspicion, as a prerequisite for a constitutional investigatory stop, cannot be based only on a police officer's

desire to verify compliance with motor vehicle registration statutes. In *Delaware v. Prouse, supra,* the officer who randomly stopped the defendant to spot check his driver's license and registration testified that prior to stopping the vehicle he had observed neither traffic or equipment violations nor any suspicious activity, and that he made the stop only in order to check the driver's license and registration. The patrolman was not acting pursuant to any standards, guidelines, or procedures pertaining to document spot checks, promulgated by either his department or the State Attorney General. Characterizing the stop as "routine," the patrolman explained, "I saw the car in the area and wasn't answering any complaints, so I decided to pull them off." (*Id.* at pp. 650-651.)

The high court emphatically rejected the arbitrary stop as unreasonable under the Fourth Amendment, stating that it could not "conceive of any legitimate basis upon which a patrolman could decide that stopping a particular driver for a spot check would be more productive than stopping any other driver. [Moreover,] [t]his kind of standardless and unconstrained discretion is the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some extent." (*Id.* at p. 661.) The high court concluded:

> [W]e hold that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is

> unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.

(*Id.* at p. 663.)

If police, for an investigatory purpose, unconstitutionally stop a person, evidence obtained as a result thereof, whether directly or indirectly, is constitutionally inadmissible as the "fruit of the poisonous tree." (*Wong Sun v. United States* (1963) 371 U.S. 471, 488 [83 S.Ct. 407, 9 L.Ed.2d 441].)

The touchstone for determining the constitutionality of a search and seizure is reasonableness. The Fourth Amendment proscribes those which are unreasonable. (*People v. Jenkins* (2000) 22 Cal.4th 900, 971.) Determining whether a search is reasonable "depends on all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." (*Skinner v. Railway Labor Executives' Assn.* (1989) 489 U.S. 602, 616 [109 S.Ct. 1402, 103 L.Ed.2d 639]; *People v. Travis* (2006) 139 Cal.App.4th 1271, 1281.)

"Under the Fourth Amendment and the parallel search and seizure clause of the California Constitution (art. I, § 13), the reasonableness of particular searches and seizures is determined by a general balancing test 'weighing the gravity of the governmental interest or public concern served

and the degree to which the [challenged government conduct] advances that concern against the intrusiveness of the interference with individual liberty.' (Citation.)" (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 29-30; see also *Delaware v. Prouse, supra,* 440 U.S. 648, 654; *People v. Ledesma* (2003) 106 Cal.App.4th 857, 863.)

### E. The Mere *Possibility* of a Registration Violation, Without More, Does not Meet the Constitutional Standard of a Particularized Reasonable Suspicion of Illegal Activity.

Where, as here, the officer's sole reason for stopping a vehicle is his observation that the car *might* be in violation of registration requirements, the speculative possibility does not meet the standard of particularized, reasonable suspicion of illegal activity which is a constitutional prerequisite for an investigative detention.

*In re Tony C., supra,* 21 Cal.3d 888, examined an investigative stop of a black minor on the street, on the speculative *possibility* that he might be involved in criminal activity. This Court held the stop was unwarranted absent specific articulable facts linking the minor to specific criminal behavior. To hold otherwise would "authorize the police to stop and question every black male, young or old, in an area in which a few black suspects were being sought. Such wholesale intrusion into the privacy of a significant portion of our citizenry would be both socially intolerable and constitutional-

ly impermissible." (*Id.* at p. 898.)

By the same token, stopping any and all new vehicles which are legally operating on California's streets and highways during the period between purchase and receipt of permanent license plates, on the mere possibility that their vehicles *might* not be in compliance with new car registration requirements, would constitute a similar unwarranted wholesale intrusion into the privacy of a significant number of California citizens.

Such a wholesale intrusion into motorists' privacy was addressed in *People v. Nabong* (2004) 115 Cal.App.4th Supp. 1, where a police officer saw Nabong driving a car with expired registration tags but also saw a temporary registration permit in the rear window. On its face, the temporary registration permit was valid, yet according to the police officer, about half of the approximately 30 to 40 vehicles he had stopped displaying apparently valid temporary registration permits turned out to be invalid. (*Id.* at pp. 2-3.) The court noted, "Generally, of course, special training and experience of a police officer may be taken into account in determining whether there is a reasonable suspicion a crime has taken place." (*Id.* at p. 4, citing *Terry v. Ohio, supra*, 392 U.S. at p. 27.) In *Nabong*, the court ruled the police officer's experience was not enough to justify the stop. The police officer did not have reasonable suspicion this particular temporary registration

permit was invalid and according to his experience, about 50 percent of the time temporary registration permits are in fact valid. (*Nabong, supra*, at p. 4.) The *Nabong* court concluded that where defendant "did everything required of him to operate his vehicle lawfully on the highway," the stop to check the validity of his registration was an unlawful detention. "Otherwise, every motorist on the road who has attempted to comply with the Vehicle Code regarding registration matters would be subject to a stop without more." (*Id.* at pp. 4-5.)

In *People v. Franklin* (1968) 261 Cal.App.2d 703, the Court of Appeal held that police officers' action in stopping the defendant's car "[o]n the *speculation* that the registration had expired" in order to ascertain that fact, was not only an unreasonable invasion of defendant's rights, requiring suppression of all evidence found as a result of the stop, but also was activity not countenanced by the Vehicle Code. (*Id.* at pp. 705-707, original italics.) In *Franklin*, police on routine patrol in February 1966 stopped a vehicle solely to investigate whether its 1965 Illinois license plate was a registration violation, without any other suspicious circumstance. (*Id.* at pp. 704, 706.) The Court of Appeal pointed out at length that one of the arresting officers had recently worked in law enforcement in Illinois, and knew that the period for 1966 registration extended into February under both Illinois and

California law; and in fact the registration was not expired. (*Id.*, p. 705.)

The *Franklin* court then addressed the question whether the police officers had the *right* to stop the vehicle solely to check the validity of its registration "*without any other 'suspicious circumstance'*, i.e., leading to a belief of car theft or unsafe mechanical condition, or similar belief." (*Id.* at p. 706, emphasis added.) According to the Vehicle Code, they did not. Section 2805 allowed highway patrol officers, but not city police officers, to stop vehicles for the sole purpose of investigating title and registration.[5] Section 2806 allowed police officers to investigate equipment violations, but: "Such right does not include stopping a vehicle solely to *investigate* proper registration." (*Id.* at p. 707, original italics.) The *Franklin* court also pointed out what was *not* at issue in that case: "the right of a police officer or deputy sheriff, as distinguished from a California Highway Patrol officer, to stop a vehicle and investigate where the *license exhibited discloses what is in fact* the misdemeanor of failure to display a valid license [plate] in accordance with ... the Vehicle Code." (*Ibid.*, emphasis added.)

The *Franklin* court concluded: "The stopping of the Illinois car was an

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[5]Section 2805 was amended in 1979 to also allow police officers "whose primary responsibility is to conduct vehicle theft investigations" to stop vehicles to ascertain compliance with registration requirements. There was no showing in this case that Officer Kandler was such an officer.

indiscriminate stopping of an out of state vehicle to permit the officers to conduct a 'fishing expedition.' The stop having been illegal, the search, though by consent of the vehicle owner, does not breathe legality into the resultant find by the officers." (*Ibid.*)

Thus, *Franklin* makes clear that in California, police officers on ordinary patrol (who do not have the primary responsibility to conduct vehicle theft investigations, §2805), are not empowered to stop vehicles *solely* to check the validity of the car registration without any other suspicious circumstances. Second, *Franklin* establishes that the officer's *knowledge of the law* is a factor in determining the validity of the stop.

Here, the law specifies that new automobiles are legally operated when the "report of sale" form is attached to either the rear, front, or side window pending issuance and receipt of front and rear license plates. (§4456, subd. (c); Handbook, §2.020.) Petitioner's vehicle was in full compliance with the law. Officer Kandler detained petitioner based on a *possible* violation where the circumstances did not disclose any operation, equipment, or registration offense. Thus, the stopping of petitioner's vehicle solely to investigate a *possible* registration violation violated petitioner's constitutional right to be free from arbitrary search and seizure, requiring suppression of all evidence obtained as a result thereof.

The Court of Appeal in *Franklin, supra*, 261 Cal.App.2d at p. 707, noted that there was "no distinction in principle" between the facts before it and *People v. Gale* (1956) 46 Cal.2d 253. In *Gale*, sheriff's officers stopped and searched cars at a roadblock near the Mexican border, explicitly for the purpose of "'curb[ing] the juvenile problem and also check for, well, anything that we might find, anything that looked suspicious.'" (*People v. Gale, supra,* 46 Cal.2d 253, 255.) This Court held that such generalized dragnet searches, explicitly undertaken for the purpose of uncovering evidence of crime but without any reason to believe any criminal activity has taken place, are unreasonable. (*Id.* at p. 256.) Moreover, the United States Supreme Court's opinion in *United States v. Brignoni-Ponce* (1975) 422 U.S. 873, 880 [95 S.Ct. 2574, 45 L.Ed.2d 607] specifically precludes roving, random stops based only on border proximity. Roving border patrol stops can be made on an individual basis only where law enforcement agents have an individualized reasonable suspicion, based on articulable facts, of unlawful activity within their jurisdictional authority. (*Id.* at p. 881; *People v. Hokit* (1998) 66 Cal.App.4th 1013, 1018.)

The Supreme Court has upheld momentary suspicionless detentions at checkpoints only where there is a strong public policy reason for doing so. The difference between *checkpoint stops* set up to check for specific

violations such as drunk driving or immigration violations, where all drivers are stopped momentarily and which do not require individualized suspicion, and *random, roving patrols* which pick out particular drivers for generalized criminal investigation and which do require particularized suspicion, was pointed out in *City of Indianapolis v. Edmond* (2000) 531 U.S. 32 [121 S.Ct. 447, 148 L.Ed.2d 333]. In *Edmond,* the Supreme Court upheld brief, suspicionless seizures at highway checkpoints for the purposes of combating drunk driving and intercepting illegal immigrants. The court then considered the constitutionality of a highway checkpoint program whose primary purpose was the discovery and interdiction of illegal narcotics. (*Edmond, supra,* 531 U.S. at p. 34.) The Supreme Court emphasized that, in the border checkpoint case, the considerations specifically related to the need to police the border were a significant factor in its decision. Similarly, the drunk driving checkpoints were aimed at reducing the immediate hazard posed by the presence of drunk drivers on the highways, and there was a clear connection between highway safety and the checkpoint practice at issue. (*Id.* at pp. 38-39.) The court stated:

> We have never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing. Rather, our checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion. We suggested ... that we would not credit the 'general interest

> in crime control' as justification for a regime of suspicionless stops. [Citation.] Consistent with this suggestion, each of the checkpoint programs that we have approved was designed primarily to serve purposes closely related to the problems of policing the border or the necessity of ensuring roadway safety. Because the primary purpose of the Indianapolis narcotics checkpoint program is to uncover evidence of ordinary criminal wrongdoing, the program contravenes the Fourth Amendment.

*Id.* at pp. 41-42.)

The *Edmond* court concluded that despite the "daunting and complex" problems created by the drug trade (*id.* at p. 42), "[w]e are particularly reluctant to recognize exceptions to the generalized rule of individualized suspicion where governmental authorities primarily pursue their general crime control ends." (*Id.* at pp. 42-43.) The court declined "to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes [or to] sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime." (*Id.* at p. 44.)

Here, similarly, the mere *possibility* of a registration violation does not warrant an investigatory stop absent individualized suspicion of illegality. In *People v. Butler* (1988) 202 Cal.App.3d 602, 607, the Court of Appeal held that a police officer who noticed a car with tinted windows cruising the

vicinity of a liquor store which was a prime location for a robbery, could not stop the vehicle to investigate the *possibility* that the windows were illegally tinted. The People conceded the tinted windows were not necessarily unlawful and that if defendant's windows met Vehicle Code requirements for tinted windows there would have been no basis for stopping the car. (*Id.* at p. 606.) The Court of Appeal found federal constitutional law controlled, and that without additional articulable facts suggesting the tinted glass *was in fact illegal*, the investigatory stop was not reasonable because it rested "upon the type of speculation which may not properly support an investigative stop." (*Id.* at 607, citing *Brown v. Texas* (1979) 443 U.S. 47 at pp. 51-52 [99 S.Ct. 2637, 61 L.Ed.2d 357], *United States v. Brignoni-Ponce, supra*, 422 U.S. 873 at pp. 884-886, and *Terry v. Ohio, supra,* 392 U.S. 1 at p. 27.)

A long line of California authority thus establishes investigatory stops without additional suspicious circumstances to determine the mere *possibility* of a registration or other legal violation, are unconstitutional. In addition, *United States v. Wilson* (4th Cir. 2000) 205 F.3d 720, found a car stop violated the Fourth Amendment where a police officer following defendant's car stopped the vehicle solely because he could not read the expiration date which was handwritten on the vehicle's temporary license tag. (*Id.* at pp. 723-724.) The *Wilson* court noted there was no evidence the car was being

operated illegally "*and that nothing appeared illegal about the temporary tag*" which was not smudged, faded, improperly displayed, or concealed in any way. (*Id.* at p. 723, emphasis added.) The government in *Wilson* argued South Carolina law authorized the police to stop any car with temporary tags to determine whether the owner was in compliance with the state's requirement that permanent tags be obtained within thirty days of purchase. But the government could not point to any South Carolina statute, regulation, or court decision authorizing such an investigatory stop, and the South Carolina court, upon an independent investigation, could find none. (*Id.* at p. 724.) Similarly here, there was no statute, regulation, or court decision that authorized Officer Kandler to stop petitioner's vehicle solely to investigate the possibility that the vehicle's registration *might* be out of compliance with the law. (See, *People v. Franklin, supra*, 261 Cal.App.2d 703, 707.)

Cases from at least five other states have held that reasonable suspicion, as a prerequisite for a constitutional investigatory car stop, *cannot* be based solely on a police officer's desire to verify compliance with motor vehicle registration statutes.[6] In *State v. Childs* (1993) 242 Neb. 426, 495

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[6]A sixth state, Florida, reluctantly upheld an initial car stop to check the validity of a temporary license tag, noting that it was "premised upon the very slimmest of rationales ... [and] asserted to be valid based upon the officer's inability to read the expiration date on [defendant's] temporary license plate," but that the officer's personal contact with the driver, once he found the tag to be proper, was an unconstitutional detention. (*State v. Diaz* (Fla. 2003) 850 So.2d 435, 437.)

N.W.2d 475, an Omaha police officer on routine cruise patrol noticed a vehicle bearing "In Transit" stickers (Nebraska's version of a new car temporary tag). There was nothing suspicious about the car or its operation or equipment; the officer stopped the car solely to check the validity of the stickers. After stopping the car, the officer walked past the stickers, saw that they were valid, and then approached the driver and asked for a bill of sale and registration papers. In the ensuing exchange, he noticed that the driver exhibited signs of intoxication, and after administering field sobriety tests, arrested him for drunk driving. (495 N.W.2d 475 at p. 477.)

Affirming Childs' conviction, the Nebraska Court of Appeals concluded that the only way to determine if registration is current in a newly purchased automobile is to stop it, and held that random stops directed at vehicles carrying "In Transit" stickers were constitutionally valid. (495 N.W. 2d at p. 478.) The Nebraska Supreme Court reversed, rejecting the State's argument that "the officer who sees a car being driven on a street without plates should suspect a violation is occurring in his presence." (*Id.* at p. 481.) Such a rule of law, held the Nebraska high court, would result in a "constitutionally suspect presumption that every motorist who uses In Transit decals is presumed to be a lawbreaker involved in criminal activity," contrary to the presumption of innocence which is a basic component of the right to due pro-

cess and a fair trial. (*Ibid.*, citing *Estelle v. Williams* (1976) 425 U.S. 501, 503 [96 S.Ct. 1691, 48 L.Ed.2d 126].) Moreover, under applicable Nebraska law, Childs was legally operating his vehicle as authorized. (*Ibid.*) The Nebraska court posited the following "inescapable questions" which are equally relevant to new car owners in California who display temporary tags properly attached to their vehicles by the dealer in full compliance with the law:

> ... For a stop to check the validity of In Transit decals, what is the standard for a police officer's stopping a particular vehicle but not another? On what basis does an officer stop an In Transit motorist from among all other In Transit motorists who, for all appearances and purposes, are lawfully traveling on a public highway or street? None of the Nebraska statutes implicated in Childs' case supplies a reasonable standard for stopping a motorist whose vehicle displays In Transit decals. Moreover, whatever might be statutorily prescribed or authorized for stopping In Transit motorists is subject to the constitutional safeguard against an unreasonable search and seizure. Without a reasonable standard for stopping motorists to check the validity of In Transit decals, a distinct and perhaps substantial segment of the motoring public is left to random and roving stops by police in the " 'unfettered discretion of officers in the field.' " *State v. Crom*, 222 Neb. 273, 277, 383 N.W.2d 461, 463 (1986) (quoting from *Brown v. Texas*, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979)).

(*Id.*, 495 N.W. 2d 475 at p. 481.)

Courts in South Carolina, New Mexico, Georgia, and Wisconsin, when faced with questions similar to that in *State v. Childs, supra,* 495 N.W. 2d 475, have similarly held that police exceed their authority for an investigatory stop of a vehicle when the basis for the stop is solely to

investigate the validity of temporary registration. In *State v. Butler* (2000) 343 S.C. 198 [539 S.E.2d 414], a police officer saw defendant legally operating his vehicle with a temporary paper tag on the back and stopped him to make sure the car was properly registered and had insurance, because in his experience, cars bearing these tags could be unregistered, uninsured, or stolen. Upon contacting the driver, the officer saw an overturned cup on the floorboard and upon further investigation, arrested him for having an open alcohol container. (539 S.E.2d at p. 415.) The South Carolina appellate court reversed the conviction, pointing out the "potential for abuse" if random stops of "any and every car bearing a temporary tag" were sanctioned. Like the Nebraska court, the South Carolina court in *Butler* refused to create a presumption that a motorist driving with a temporary tag was guilty of violating registration laws unless he or she could prove otherwise. (539 S.E.2d at p. 417.)

In *State v. Aguilar* (2007) 141 N.M. 364, 155 P.3d 769, the New Mexico Court of Appeal examined a case in which defendant's vehicle was traveling at 2:00 a.m. with temporary dealer plates, which under New Mexico law were for use only when demonstrating a vehicle to a prospective buyer. Based on the officer's knowledge that these types of plates are often misused or stolen, the officer decided to "check it out" in order to determine whether

the vehicle was operating legally. These facts were not sufficient to support the type of "particularized reasonable suspicion, regarding the specific individual detained, that is required to justify a traffic stop." (155 P.2d at p. 773.) Because the officer did not testify to any specific facts regarding the temporary plate, the vehicle, or the driver that would create reasonable suspicion about that particular plate, vehicle, or driver, and because the temporary plate was valid on its face, the circumstances amounted to "nothing more than a generalized suspicion that there was a possibility that defendant might have been engaged in misuse of the temporary demonstration plate." (*Ibid.*) On these facts, the New Mexico court concluded the State's interest in preventing the misuse of temporary demonstration plates did not outweigh the intrusion into defendant's privacy. (*Ibid.*)

The Georgia Court of Appeal, in *Berry v. State* (2001) 248 Ga.App. 874, 547 S.E.2d 664, 668, ruled that an officer's stopping a vehicle with a "drive-out tag" in order to investigate whether the car was stolen was impermissible, despite the officer's testimony that " 'we get a lot of stolen vehicles this way.'" The court concluded that without more, the officer had a "mere inclination or hunch that any car with a drive-out tag might be stolen." (547 S.E.2d at pp. 668-69.) The Georgia court reasoned if an officer

could stop a car on this basis, this rationale would permit a stop of any or all motor vehicles on the interstate highway because drugs are often transported on interstate highways. (*Id.* at p. 668.) The court ruled that a particularized and objective basis for suspicion of criminal activity by the specific driver was required to ensure that the stop was not arbitrary. (*Ibid.*)

Finally, in *State v. Lord* (2006) 723 N.W.2d 425, the Wisconsin Supreme Court held a temporary plate on an automobile, without more, does not create a reasonable suspicion under *Terry v. Ohio, supra*, and *Delaware v. Prouse, supra*, to justify law enforcement's stop of that vehicle. The Wisconsin court succinctly held that under *Prouse*:

> Law enforcement officers cannot stop an automobile to determine whether it is properly registered unless the officers have reasonable suspicion or probable cause to believe that either the automobile is being driven contrary to the laws governing its operation or that any occupant is subject to seizure in connection with the violation of an applicable law.

(*Id.* at p. 426.)

The reasonableness of an officer's stop of a vehicle is judged against an objective standard: would the facts available to the officer at the moment of the stop "warrant a man of reasonable caution in the belief that the action taken was appropriate[?]" (*Terry v. Ohio, supra*, 392 U.S. at p. 22.) Subjective good faith on the part of the officer is not enough. (*Ibid.*)

Petitioner recognizes that in the foregoing cases, law enforcement

officers actually observed temporary tags or plates and stopped the vehicles to determine their validity, whereas in the instant case, the officer observed the lack of a rear license plate and that no registration papers were displayed in the *rear* window, but failed to confirm any suspicion of illegality by the minimal step of looking at petitioner's front windshield.

Just as an officer's observation of a temporary tag on which he could not read the expiration date because it was too small or was smudged does not, by itself, justify a suspicion of illegality, so too, the circumstances in this case do not justify a suspicion of illegality. New cars in California may be operated without license plates and with the temporary registration affixed to the front or side window. Here, the officer's observation of petitioner's new vehicle without license plates and with no temporary registration in the rear window, without more, did not create a reasonable suspicion of illegality.

### F. There was no Substantial Evidence that Lack of Dealer Advertising or a Dealer Logo in the Rear License Plate Holder was a Suspicious Circumstance on Which the Officer Relied in Making the Car Stop.

In the present case, the Court of Appeal intimated that lack of a paper dealer advertisement or logo in the rear license plate holder of petitioner's new car was an "unusual enough occurrence" to justify the car stop. (Appendix A, pp. 6-7; Appendix B, p. 13, ¶4.)

There is no substantial evidence to support a finding that Officer

Kandler deemed the lack of a paper advertisement or dealer logo in petitioner's rear license plate holder an "unusual circumstance" or that he stopped the car for that reason. Indeed, the officer's testimony shows that the lack of a dealer's paper advertisement or logo in the rear license plate holder was *not* something unusual which he noticed. Kandler testified as follows:

> Q. Did you notice that the license plate holder didn't – real license plate holder didn't have anything in it?
>
> A. No.
>
> Q. Did you notice it didn't have a license plate in it?
>
> A. It did not have a license plate in it.
>
> Q. Now, after you fell in behind the vehicle, did you notice something else about the license plate holder?
>
> A. No.

(R.T. 15:18 - 16:2)

Officer Kandler thus made clear he did not notice the lack of a paper advertisement in the rear license plate holder at the time he initiated the stop. There is nothing in his testimony to support a finding that having *nothing at all* in the rear license plate holder was an unusual or suspicious circumstance which aroused a reasonable suspicion of illegality and rendered the stop reasonable. The Court of Appeal's factual finding that it was an unusual circumstance is not supported by the record. (See, Appendix A, pp. 6-7;

Appendix B, p. 13, ¶4; R.T. 15-16) There were no other suspicious circumstances which rendered the car stop reasonable. (R.T. 20-21)

### G. *People v. Saunders* (2006) 38 Cal.4th 1129, Does Not Condone an Investigatory Stop to Check the *Possibility* of a Registration Violation Where the Objective Facts do not Show a Violation.

The Court of Appeal relied upon *People v. Saunders, supra*, 38 Cal.4th 1129, 1136, to uphold its finding that the vehicle stop to investigate a *potential* registration violation was constitutionally permissible. (Appendix A, p. 6.) That reliance was misplaced. *Saunders* does not address or condone a traffic stop under the circumstances presented here.

In *Saunders*, police officers stopped a truck in which defendant was a passenger because the registration tab on the rear license plate was expired and there was no front license plate. The driver of the truck testified at the suppression hearing that there was a temporary operating permit sticker displayed in the rear window of the truck. The officer did not recall if he saw the temporary registration, and this Court specifically declined to decide the case on that issue. (38 Cal.4th at pp. 1135-1136.) Rather, this Court upheld the stop based on the lack of a front license plate, for three reasons. First, the lack of a front license plate (where two plates have been issued) has long been recognized as a legitimate basis for a traffic stop. (*Id.* at p. 1136.) Second, there was nothing about the truck which indicated it would have

been issued only one, rear, license plate. (*Ibid.*) Finally, the presence of the rear license plate demonstrated the temporary operating permit sticker was not issued in lieu of *new* license plates, thus reasonably demonstrating that the missing front plate was in violation of the Vehicle Code. (*Id.* at 1136-1137.) For these reasons, this Court found the officer had ample objective justification for stopping the truck to investigate the missing license plate.

*Saunders* is entirely distinguishable from the instant case. First, while a missing front license plate in violation of Vehicle Code sections 5200 and 5201 has long been recognized as a legitimate basis for a traffic stop (*People v. Superior Court (Simon)* (1972) 7 Cal.3d 186, 196), the same is not true for a *new* car such as in the instant case, which has not yet been issued license plates. Second, in *Saunders*, the Court noted there was nothing about the "seemingly ordinary" truck, which had been acquired at a wrecking yard, to indicate it was only issued one license plate. (*People v. Saunders, supra*, 38 Cal.4th at pp. 1132, 1136.) By contrast, a new car such as in the instant case is not *immediately* issued plates at all at the time of purchase, but rather, may be legally operated without license plates for up to six months when displaying the "report of sale" on either the rear, front, or side window. (Veh. Code, §4456, subd. (a)(1) and (c); Handbook, §2.020.) Third, in *Saunders*, the presence of the rear license plate provided objective evidence

that the temporary operating permit sticker was not issued in lieu of new license plates. (*Id.* at pp. 1136-1137.) Here, in contrast, there was nothing which objectively demonstrated a violation of registration requirements. Neither the lack of a license plate nor the lack of the "report of sale" document on the rear window of petitioner's new car constituted violations of the Vehicle Code or other registration requirements. The stop was illegal.

Because the stop, at its inception, was illegal, Officer Kandler was not "entitled to continue his investigation" by approaching petitioner and asking for his driver's license and registration. (See, Appendix A, p. 9.) Where the initial detention is illegal, an ensuing investigation is also illegal, and any evidence obtained as a result must be suppressed. (See, *In re Tony C., supra*, 21 Cal.3d at p. 899 [where initial stop improper and police detained defendant and his companion for several minutes of questioning, whereupon they learned of an outstanding arrest warrant, contraband discovered in subsequent booking search suppressed as the direct product of the initial, unlawful detention]; *Wong Sun v. United States, supra*, 371 U.S. at p. 488 [evidence which derives immediately from unlawful police action must be suppressed as "fruit of the poisonous tree."]) Just as the evidence against Tony C. was the direct product of exploitation of the unlawful investigative stop, requiring suppression, here also, any "continuing investigation"

following the initial, unlawful stop of petitioner's car was a result of the illegal stop and not constitutionally allowed. An officer is allowed to continue his investigation only where the detention was reasonable *from its inception*, and here, clearly, it was not. The subsequent discovery of lawful grounds to arrest the defendant does not dissipate the taint of an initial, unconstitutional detention, and failing to invoke the remedy of suppressing all evidence obtained as a result thereof would have the effect of legitimizing random, roving stops for any reason or no reason at all in contravention of leading United States and California Supreme Court opinions. (See, *Terry v. Ohio, supra*, 392 U.S. at pp. 32-33; *In re Tony C., supra*, 21 Cal.3d at p. 899.)

Petitioner was operating his vehicle in full compliance with registration requirements when Officer Kandler decided to detain him. Because Officer Kandler lacked a reasonable and articulable suspicion or basis for stopping petitioner's vehicle, the stop was illegal and the officer's resulting continued investigation by approaching petitioner and asking for his license and registration violated petitioner's Fourth Amendment rights to be free from unreasonable search and seizure.

### H. Policy Reasons Require That the Stop of Petitioner's Car Be Found Illegal.

If this Court were to find this fishing expedition legal, every new car driver in California would be subject to a constitutionally impermissible investigatory if (1) he or she does not yet have license plates issued, (2) the new car dealer affixed the temporary registration to the front windshield rather than the rear, or (3) the arresting officer is unable to read the information on the temporary registration even if placed on the rear window.

The Fourth Amendment mandates that citizens remain free from unlawful searches and seizures by law enforcement officers. The touchstone for determining the constitutionality of a search and seizure is reasonableness, and controlling law requires that for a car stop to be reasonable, a police officer must have specific and articulable facts supporting a reasonably objective suspicion that a motorist is unlicensed, that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for some illegal activity. (*Delaware v. Prouse, supra,* 440 U.S. 648, 663; *People v. Saunders, supra,* 38 Cal.4th 1129, 1135.)

The car stop in this case, to investigate the *possibility* of a registration violation, violates both the Fourth Amendment's protection against unreasonable search and seizure and the Fourteenth Amendment's guarantee of due process and a fair trial, which includes the basic component of the

presumption of innocence. (*Coffin v. United States* (1895) 156 U.S. 432, 453 [15 S.Ct. 394, 39 L.Ed. 481]; *Estelle v. Williams, supra,* 425 U.S. 501, 503.)

The stop conducted in this case, on the mere possibility of a registration violation, must be found illegal. It would be dangerous precedent to allow overzealous law enforcement officers unbridled authority to conduct dragnet detentions, speculative stops, and random, roving stops of whatever new vehicles they should choose, which fortuitously have not yet had their license plates delivered. Such precedent would place in peril the principles of a free society by disregarding the protections afforded by the Fourth and Fourteenth Amendments.

Where, as here, there was no probable cause to stop petitioner's vehicle, a balancing analysis is required. "[T]he permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against it promotion of legitimate governmental interests." (*Delaware v. Prouse, supra*, 440 U.S. 648, 654.) Here, while the government has a legitimate interest in regulating the registration and operation of motor vehicle traffic (*id.* at p. 658), that interest is only marginally served by a system of random registration spot checks. (*Id.* at p. 661.) Balanced against the marginal usefulness of random spot checks is the Fourth Amendment mandate that citizens remain free from

unlawful searches and seizures by law enforcement officers, and the Fourteenth Amendment guarantee of due process, including a presumption of innocence. Every California motorist who operates a new vehicle before its license plates are issued doe not waive those protections. Surrender of those protections is too costly and excessive a price to pay for driving a new vehicle on California's streets and highways.

The California legislature and Department of Motor Vehicles have determined the manner in which new car owners may display temporary registration. If different requirements are necessary so that law enforcement officers can more readily determine whether a vehicle is in violation of registration laws, it is for them to change registration requirements, not for law enforcement to make random and roving stops with complete and absolutely standardless discretion, to determine compliance.

## CONCLUSION

This Court should not condone illegal detentions to check out the *possibility* that new cars *might* be in violation of registration requirements. The Vehicle Code and Department of Motor Vehicle regulations state the requirements for new cars which have not yet been issued license plates to display temporary registration. Here, petitioner's vehicle was in complete compliance with the law and there were no objective facts demonstrating an

articulable suspicion of a legal violation. A suspicionless standard for stopping new vehicles to determine if they are in compliance with registration requirements does not pass constitutional muster. If the requirements for displaying new car registration are insufficient, it is for the legislature and the Department of Motor Vehicles to address the applicable laws and regulations, not for law enforcement to conduct random, roving stops for that purpose.

Dated: June 13, 2007

Respectfully submitted,

By: Jean Ballantine

Jean Ballantine, SBN 93675
Attorney for Petitioner
Raymond C., a minor
By appointment of the Supreme Court
Under the Appellate Defenders, Inc.
Independent Case System.

Filed 11/20/06; pub. & mod. order 12/20/06 (see end of opn.)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

| | |
|---|---|
| In re RAYMOND C., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>RAYMOND C.,<br>Defendant and Appellant. | G035822<br>(Super. Ct. No. DL020274)<br>OPINION |

Appeal from a judgment of the Superior Court of Orange County, Caryl A. Lee, Judge. Affirmed.

Jean Ballantine, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Barry Carlton and Jeffrey J. Koch, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court found true the allegation minor Raymond C. drove a vehicle while under the influence of alcohol (Veh. Code, § 23152, subd. (a); all further statutory citations to this code unless otherwise noted) and with a blood alcohol level of

APPENDIX A

0.08 percent or more (§ 23152, subd. (b)). Minor argues the juvenile court erred when it denied his motion to suppress evidence of his intoxication obtained when the detaining officer stopped his vehicle for failure to display a rear license plate. (§ 5200.) For the reasons stated below, we affirm.

I

Around 1:00 a.m. on Sunday morning, October 24, 2004, Fullerton Police Officer Timothy Kandler observed a black Acura drive past his parked patrol car. Kandler noticed the Acura did not have a rear license plate or any automobile dealer designation or advertising in its place. As he pulled behind the car he saw no registration papers or Department of Motor Vehicles (DMV) paperwork displayed in the rear window. From his vantage point behind the Acura, Kandler could not see if there were any registration papers attached to the windshield. He activated his lights and siren and pulled the car over for a "possible violation" of section 5200.[1]

He approached the driver, minor Raymond C., and asked for his license, registration, and proof of insurance. Raymond provided his license and told Kandler the temporary registration was attached to the front window of the car. Kandler detected the odor of alcohol on minor's breath and, after giving minor several field sobriety tests, arrested him for driving under the influence of alcohol.

Minor's father testified he purchased the new 2005 Acura on October 2, 2004. He removed the dealer's advertising plates but left undisturbed the temporary registration affixed to the lower right side of the windshield. The registration was in the

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[1] The section provides, "(a) When two license plates are issued by the department for use upon a vehicle, they shall be attached to the vehicle for which they were issued, one in the front and the other in the rear. [¶] (b) When only one license plate is issued for use upon a vehicle, it shall be attached to the rear thereof, unless the license plate is issued for use upon a truck tractor, in which case the license plate shall be displayed in accordance with Section 4850.5."

same place on the windshield at the time of the stop. The car still looked new on October 24. He received permanent plates from DMV in December 2004.

The juvenile court denied minor's suppression motion, finding there was a reasonable basis to detain minor and investigate a potential violation of section 5200. Minor subsequently admitted driving under the influence of alcohol and over the legal limit. (§ 23152, subds. (a) & (b).) The court declared him a ward of the court and placed him on probation subject to various terms and conditions, including a 10-day court work program.

II

Minor argues Officer Kandler unlawfully detained him and therefore the juvenile court should have suppressed evidence derived from the stop. We disagree.

"In ruling on a motion to suppress, the trial court must find the historical facts, select the rule of law, and apply it to the facts in order to determine whether the law as applied has been violated. [Citation.] We review the court's resolution of the factual inquiry under the deferential substantial evidence standard. The ruling on whether the applicable law applies to the facts is a mixed question of law and fact that is subject to independent review." (*People v. Ramos* (2004) 34 Cal.4th 494, 505.)

"[P]ersons in automobiles on public roadways may not for that reason alone have their travel and privacy interfered with at the unbridled discretion of police officers." (*Delaware v. Prouse* (1979) 440 U.S. 648, 663.) In contrast, officers having an articulable and reasonable suspicion that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, may detain the driver to check his or her driver's license and the vehicle's registration. (*Ibid.*; see *Pennsylvania v. Mimms* (1977) 434 U.S. 106, 109 [expired registration tags justified traffic stop].)

The facts here are few and undisputed. Minor's vehicle lacked a rear license plate, and Kandler looked for but did not see any temporary registration. Thus,

the officer suspected a violation of section 5200, subdivision (a), which provides: "When two license plates are issued by the department [of motor vehicles (DMV)] for use upon a vehicle, they shall be attached to the vehicle for which they were issued, one in the front and the other in the rear."

The parties developed scant evidence at the hearing concerning the new vehicle registration process. We judicially notice (Evid. Code, § 452, subd. (h)) DMV's Handbook of Registration Procedures (see http://www.dmv.ca.gov/pubs/reg_hdbk_pdf/ch02.pdf (handbook). Pursuant to the handbook, a new car dealer generally affixes the perforated bottom portion of DMV's Application for Registration of New Vehicle (REG 397), called a "New Vehicle Dealer Notice Temporary Identification" (temporary tag), to a window of the new car. The temporary tag includes a preprinted sequential number, the vehicle's unique identification number, the dealer and salesperson identification numbers, the make and body type of the car, the date first sold as a new vehicle, the name and address of the purchaser, and the odometer reading.

For privacy purposes, DMV's handbook directs the dealer to fold the temporary tag so that only the preprinted number and vehicle descriptive information are displayed. Preferred placement is in the lower *rear* window. If this placement obscures the information, the dealer should relocate the temporary tag to the lower right corner of the windshield or the lower right portion of a side window.

A statement on the face of the temporary tag authorizes operation of the vehicle until the buyer receives the license plates and registration card. The tag further advises the purchaser to allow 90 days for the dealer and DMV to process the application and to contact DMV if the registration card and license plates have not been received. Thus, the temporary tag serves as a "report-of-sale form" pursuant to section 4456. This section provides that a vehicle dealer using a numbered report-of-sale form issued by DMV "shall attach for display a copy of the report of sale on the vehicle before the vehicle is delivered to the purchaser." (§ 4456, subd. (a)(1).) A "vehicle displaying a

copy of the report of sale may be operated without license plates or registration card until either of the following, whichever occurs first: [¶] (1) The license plates and registration card are received by the purchaser. [¶] (2) A six-month period, commencing with the date of sale of the vehicle, has expired." (§ 4456, subd. (c).)

Traffic officers usually approach vehicles from the rear, but section 4456 does not require placement of temporary registration papers on the rear window or in some other location visible from the back. Minor states the "registration papers were fastened in conformity with . . . section 26708, subdivision (b)(3)." Section 26708 does not specifically concern registration papers.[2] While a motorist may display a temporary tag on the windshield without violating section 26708, that section does specify this is where the tag must or should be displayed.

Minor correctly observes that "[l]ack of the dealer's paper advertising plate on the rear of a brand-new automobile is not a Vehicle Code violation . . . ." And, as noted above, placing the temporary tag in the windshield is authorized by DMV's handbook and not prohibited by the Vehicle Code. We are sympathetic to minor's argument that police officers should not be permitted to "pull over new car purchasers who properly display their new car registration papers in the front windshield, in full compliance with the Vehicle Code." But this is not the focus of our inquiry. As the Supreme Court recently observed in a similar setting, "[t]he question for us, though, is not whether [the] vehicle was in fact in full compliance with the law at the time of the stop, but whether [the officer] had '"articulable suspicion"' it was not." (*People v.*

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[2] Section 26708 prohibits driving a "motor vehicle with any object or material placed, displayed, installed, affixed, or applied upon the windshield or side or rear windows" (subd. (a)(2)), but exempts "[s]igns, stickers, or other materials which are displayed in a 7-inch square in the lower corner of the windshield farthest removed from the driver, signs, stickers, or other materials which are displayed in a 7-inch square in the lower corner of the rear window farthest removed from the driver, or signs, stickers, or other materials which are displayed in a 5-inch square in the lower corner of the windshield nearest the driver." (§ 26708, subd. (b)(3).)

*Saunders* (2006) 38 Cal.4th 1129, 1136 (*Saunders*); citing *Illinois v. Rodriguez* (1990) 497 U.S. 177, 184 ["'reasonableness,' with respect to this necessary element, does not demand that the government be factually correct in its assessment"].) The possibility of an innocent explanation for a missing rear license plate would not preclude an officer from detaining the motorist to investigate the potential Vehicle Code violation. (*Ibid.*; see *Illinois v. Wardlow* (2000) 528 U.S. 119, 125-126; accord, *People v. Leyba* (1981) 29 Cal.3d 591, 599.)

Here, the juvenile court found the officer entertained a reasonable suspicion minor had not complied with section 5200, and substantial evidence supports this conclusion. The officer testified that as he drove behind the minor he could not see whether a temporary tag had been placed on the windshield, but observed the car did not have a rear license plate. True, there may have been an innocent explanation for the absence of the license plate, but as *Saunders* emphasized, an officer does not act unreasonably in making a stop for the limited purpose of determining whether there was in fact a legitimate reason for driving without a rear license plate. (*Saunders, supra,* 38 Cal.4th at p. 1136; see also *People v. Nebbitt* (1960) 183 Cal.App.2d 452, 457-458, disapproved on another point in *Mozzetti v. Superior Court* (1971) 4 Cal.3d 699, 710-712 [failure to display rear license plate as required by section 5200 furnishes justification to stop the vehicle and raises a reasonable suspicion the car had been stolen].) There are other illicit reasons why someone might operate a vehicle without plates. For example, one might remove plates, or delay installing them, to avoid red light cameras or an automated toll booth. A person might remove plates to avoid detection during or after committing a crime. Driving with *nothing* in the license plate slot at the rear of a car is an unusual circumstance. While there is no *legal requirement* for new car owners to maintain the dealer advertising in the space reserved for license plates, the absence of a dealer logo or anything else on the license space was unusual enough for the officer to

note it in his report. Thus, the absence of a rear plate or, from the officer's vantage point, a temporary tag substituting for the plate, justified the stop.

Minor complains Officer Kandler "made no attempt to perform the slight investigation required to determine if in fact there were temporary registration papers affixed to the front windshield, either by pulling up next to [minor's] vehicle to look, or by checking with dispatch." As a practical matter, neither of minor's specific procedural suggestions was feasible at roadway speeds. The police dispatcher could not check the vehicle's registration without a license plate number, information the officer obviously did not have. And, as the Attorney General points out, it is "safer, for the officer to stop appellant's car than to attempt to maneuver around it and try to spot a small piece of paper in the lower right corner [of] the car's windshield." We construe minor's argument to require that an officer, after stopping a motorist for failure to display a rear license plate, must first check for a temporary tag on the windshield before conversing with the driver. In other words, the officer's failure to utilize less intrusive means at the outset of the investigation required suppression of any subsequent evidence demonstrating that minor drove while under the influence.

There is no requirement police officers use the least intrusive means in executing a search or seizure if their actions are otherwise reasonable under the Fourth Amendment. As the Supreme Court has observed, "A creative judge engaged in *post hoc* evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished. But '[t]he fact that the protection of the public might, in the abstract, have been accomplished by "less intrusive" means does not, itself, render the search unreasonable.' [Citations.] The question is not simply whether some alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it." (*United States v. Sharpe* (1985) 470 U.S. 675, 686-687 (*Sharpe*); see also *Vernonia v. Acton* (1995) 515 U.S. 646, 663 (*Vernonia*) ["We have repeatedly refused to declare that only the 'least intrusive' search

practicable can be reasonable under the Fourth Amendment"]; *United States v. Sokolow* (1989) 490 U.S. 1, 11 (*Sokolow*) ["The reasonableness of the officer's decision to stop a suspect does not turn on the availability of less intrusive investigatory techniques"].) With these principles in mind, we conclude Kandler acted reasonably in contacting the minor to explain the reason for the stop.

*State v. Lloyd* (Iowa 2005) 701 N.W.2d 678 (*Lloyd*) bolsters our conclusion. There, the deputy stopped a car that had no permanent license plates. When he approached the car he noticed the driver appeared intoxicated. At a suppression motion, the defendant presented uncontroverted evidence he had a valid temporary plate taped to his car's rear window. The prosecution argued the deputy simply missed the temporary plate and that the mistake did not require suppression. The court agreed that the officer's mistake of fact did not automatically negate the validity of the stop and the question was whether he had an objectively reasonable basis for believing the car was not in conformity with the state's traffic laws. (*Id.* at p. 681; see also *United States v. Flores-Sandoval* (8th Cir. 2004) 366 F.3d 961, 962.) The court noted the deputy observed no license plate on the rear bumper, a potential violation of law, and "did not see the temporary plate. Had the facts been as [the deputy] believed them to be, he undoubtedly would have had probable cause to stop [the defendant's] car. . . . [¶] The only remaining question is whether [the deputy's] mistake was an objectively reasonable one. We believe it was. It was dark at the time of the stop (2:20 a.m.), and it is certainly understandable how the deputy could have missed the temporary plate. We conclude that [he] reasonably believed [the defendant] was operating his car without license plates. His decision to stop [the] car was justified and reasonable and therefore did not violate [the defendant's] Fourth Amendment rights." (*Lloyd*, at pp. 681-682.)

Minor relies on *People v. Nabong* (2004) 115 Cal.App.4th Supp. 1 (*Nabong*), but it is distinguishable. There a traffic officer stopped the defendant's vehicle because the registration sticker on the license plate had expired. The officer observed a

temporary registration sticker for the current month on the rear window but continued the detention based on his experience almost half of the previous registration tags he had investigated were invalid. The *Nabong* court concluded no reasonable basis supported the detention because the officer "did not have any particularized belief that appellant's car was not validly registered; he only assumed based upon his experience that approximately 50 percent of the time the temporary registrations are not valid for the car on which they are placed." (*Id.* at p. 4.)

*Nabong* lends no support to minor's argument. In contrast to the officer's decision to detain the motorist in *Nabong*, Kandler's observation that minor's vehicle lacked a rear license plate supported a particularized suspicion minor violated section 5200. Unlike the officer in *Nabong,* Kandler did not deliberately reject the significance of a temporary register sticker on the vehicle's window. Rather, he simply did not (accord, *Lloyd, supra,* 701 N.W.2d 678), or could not, see whether minor's vehicle had a temporary tag on the windshield from his vantage point.

Having observed nothing on his approach from the rear of the vehicle showing it was registered, Kandler was entitled to continue his investigation. During a lawful stop for a potential traffic violation, a motorist must produce a driver's license and registration upon demand. (§ 4462, subd. (a).) True, the officer could have first checked to see if there was a temporary tag on the windshield before contacting the driver. As discussed, however, the Fourth Amendment imposes no requirement that officers ascertain and execute the least intrusive search practicable. (*Sharpe*, *supra*, 470 U.S. at pp. 686-687; *Veronia*, *supra*, 515 U.S. at p. 663; *Sokolow*, *supra*, 490 U.S. at p. 11.) The circumstances presented Kandler with the choice of pursuing the information he sought verbally or visually. He could ask the driver for proof of registration or look for it on the windshield; one option was less intrusive, but neither was more or less reasonable than the other. We simply cannot say that requesting information the driver is required to provide during a lawful stop is unreasonable. In the midst of this legitimate inquiry,

Kandler observed signs of intoxication that furnished probable cause for turning his investigation in a new direction.

True, had Kandler observed a valid temporary tag on the windshield before conversing with the driver, a further detention would have been unwarranted. (*United States v. Meswain* (10th Cir. 1994) 29 F.3d 558, 561 [purpose of stop satisfied when officer observed valid temporary tag; any further investigation goes beyond the initial justification for the stop and therefore exceeds scope of detention].) But even if Kandler had opted to first check the windshield for temporary tags, minor still would have no basis to complain if the officer then approached to explain the reason for the stop. A brief conversation with the driver explaining the reason for the detention without asking for a driver's license or registration does no violence to the Fourth Amendment. (*Id.* at p. 562.)

In sum, once the officer lawfully stopped the vehicle, it was not unreasonable for him to contact the driver to request his license and registration (§ 4462, subd. (a)) and explain the reason for the stop.[3] The officer's observations concerning minor's intoxication thus occurred during a lawful detention of the youth. Consequently, the juvenile court did not err in denying minor's motion to suppress.

Judgment affirmed.

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[3] Although we are not faced with the issue, a different conclusion may result where the officer sees the temporary tags on the windshield before stopping the vehicle. An officer lacks the requisite particularized suspicion to support a detention where temporary tags are affixed in an authorized spot on the vehicle and no other suspicious circumstances are present. (*United States v. Wilson* (4th Cir. 2000) 205 F.3d 720, 724 [detention of motorist because officer could not read expiration date on temporary tag violated Fourth Amendment; "[u]pholding a stop on these facts would permit the police to make a random, suspicionless stop of any car with a temporary tag"].) But the legality of any temporary intrusion depends on the specific facts. Thus, an officer may detain a motorist, even if temporary tags are properly displayed, if there are other facts known to the officer raising a reasonable suspicion the car is not registered.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

| | |
|---|---|
| In re RAYMOND C., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>RAYMOND C.,<br><br>Defendant and Appellant. | G035822<br><br>(Super. Ct. No. DL020274)<br><br>ORDER MODIFYING OPINION, GRANTING REQUEST FOR PUBLICATION, AND DENYING REHEARING; NO CHANGE IN JUDGMENT |

It is ordered that the opinion filed on November 20, 2006, be modified as follows:

1. On page 3, in the second sentence of the second paragraph, delete the words "over the legal limit" and change it to "with a blood alcohol level of .08 percent or more" so the sentence now reads:

> Minor subsequently admitted driving under the influence of alcohol and with a blood alcohol level of .08 percent or more.



**Appendix B**

2. On page 4, second paragraph, lines 2 and 4, the word "see" is inserted before "Evid." and ")" is inserted after "handbook)."

3. On page 6, in the second line of the page, replace "[t]" with "T."

4. On page 6, line 5 of the first full paragraph, the following sentence is added immediately following the words "rear license plate."

> Indeed, the officer noticed the license plate holder contained nothing at all, an unusual enough occurrence for the officer to note it in his report.

5. Delete the two sentences commencing at the bottom of page 6 with "Driving with *nothing* in the license plate" and ending on page 7, line 4, with "note it in his report."

6. On page 7, fourth sentence of the first full paragraph, delete the "," after the word "safer," and add ". . ." so that it will read: "safer . . . for the officer to stop appellant's car . . . ."

7. On page 7, last sentence of the first full paragraph, is modified to read as follows:

> In other words, the officer's failure to utilize less intrusive means at the outset of the investigation required suppression of any subsequently discovered evidence demonstrating minor drove while under the influence.

8. Second line of the top of page 8, the words "*School Dist. 47J*" is to be inserted between "*Vernonia*" and "*v.*" so it will read "*Vernonia School Dist. 47J v. Acton.*"

9. On page 8, sixth sentence, line 8, of the first full paragraph, the word "he" is changed to "the officer" so it will read "question was whether the officer had an objectively reasonable basis . . . ."

10. On page 9, second sentence of the first paragraph, a "," is to be inserted after the word "There" so the sentence reads "There, a traffic officer stopped . . . ."

11. On page 9, third paragraph, line 8, replace "*Veronia*" with "*Vernonia.*"

12. On page 10, the first sentence of the first full paragraph, beginning "True, had Kandler observed a valid" is deleted and the following sentence is inserted in its place:

> We agree a further detention would have been unwarranted had Kandler observed a valid temporary tag on the windshield before conversing with the driver.

13. On page 10, line 3 of the first full paragraph, replace "*Meswain*" with "*McSwain.*"

Pursuant to California Rules of Court, rule 978, the Orange County District Attorney's request that the unpublished opinion filed November 20, 2006, be ordered published is GRANTED.

These modifications do not change the judgment. The petition for rehearing is DENIED.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.

## CERTIFICATE OF WORD COUNT

Pursuant to rule 8.360, California Rules of Court, the undersigned certifies that the word processing software "word count function" shows that this document contains 9,143 words, excluding tables and indices, which is within the authorized maximum of 25,500 words.

DATED: June 13, 2007

Respectfully submitted,

Jean Ballantine

Jean Ballantine
Attorney for Appellant-Petitioner.

PROOF OF SERVICE

I, Jean Ballantine, declare and say that:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 12228 Venice Boulevard, PMB 152, Los Angeles, CA 90066-3814.

On June 14, 2007 I served the foregoing document described as APPELLANT'S OPENING BRIEF ON THE MERITS on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, postage prepaid, first class mail, with the U.S. Postal Service, addressed as follows:

OFFICE OF THE ATTORNEY GENERAL, PO BOX 85266, San Diego, CA 92186-5266

APPELLATE DEFENDERS, INC., Attn: Michelle Rogers, Esq., 555 West Beech Street, Suite 300, San Diego, CA 92101

APPELLANT Raymond C., a minor

ORANGE COUNTY JUVENILE COURT CLERK, For: Hon. Caryl A. Lee, Judge Pro Tem, 341 The City Drive, P.O. Box 14170, Orange, CA 92863-1569

COURT OF APPEAL, 4TH APPELLATE DIST., DIV. 3, P.O. Box 22055, Santa Ana, CA 92702-2702

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed June 14, 2007 at Los Angeles, California.

Jean Ballantine

Jean Ballantine