

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**PEOPLE OF THE STATE OF CALIFORNIA,**

Plaintiff and Respondent,

v.

**GEORGE LEE HERNANDEZ,**

Defendant and Appellant.

S150038

**SUPREME COURT  
FILED**

APR 18 2007

Third Appellate District, Nos. C051224, C051602  
Sacramento County Superior Court Nos. 05F00765, 03F04161  
The Honorable Michael A. Savage, Judge

Frederick K. Ohlrich Clerk  
Deputy

**RESPONDENT'S OPENING BRIEF ON THE MERITS**

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**PEOPLE OF THE STATE OF CALIFORNIA,**

Plaintiff and Respondent,

S150038

v.

**GEORGE LEE HERNANDEZ,**

Defendant and Appellant.

**ISSUES 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?

**INTRODUCTION**

The Third District Court of Appeal has essentially held that a peace officer may never stop a vehicle that lacks license plates, on the basis of the missing plates, if the vehicle displays a facially valid temporary operating permit.<sup>1/</sup> (Exh. A, at p. 4.) The court reached this holding despite the fact appellant was driving an older model pickup truck which bore no plates, and there was no manner in which the officer could determine if the permit was valid or belonged to appellant's vehicle short of actually stopping him.<sup>2/</sup>

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1. Although the court stated it "was unwilling to conclude it is always reasonable to stop a car that does not have any license plates but has a temporary operating permit," it did not allow for any situation where such a stop would be reasonable. (Exhibit A, at p. 4.)

2. These facts were omitted from the court's opinion, but raised as distinguishing factors in respondent's reply brief and petition for rehearing.

the traffic stop was invalid and thus the trial court erred in denying the motion to suppress.

(Exh. A, at p. 4.) The judgment was affirmed in all other respects. (*Ibid.*)

On January 25, 2005, Sacramento County Sheriff's Deputy Anthony Paonessa, assigned to the Elk Grove Police Department, was on patrol in the City of Elk Grove. (1 RT 37-38, 94-95, 102.<sup>5/</sup>) At approximately 4:40 p.m., Paonessa and his partner, David Feldman, observed an older model brown pickup truck waiting to enter their lane of travel onto Laguna Boulevard from a Chevron gas station. (1 RT 39, 103-104.) Paonessa yielded the right-of-way to the pickup truck, which then entered on Laguna Boulevard in front of the patrol vehicle. (1 RT 39, 104-105.) Paonessa and his partner noticed that the pickup truck was missing its rear license plate. (1 RT 39, 105.) Paonessa also observed a red temporary Department of Motor Vehicle ("DMV") registration sticker in the rear window of the pickup, but he could not tell if it was valid. (1 RT 51, 106.) Paonessa then initiated a vehicle stop. (1 RT 39, 107.) Paonessa told appellant he had stopped him because he did not have a rear license plate, and he requested his license, registration and proof of insurance. (1 RT 40-41, 118-119.) Appellant responded by telling Paonessa that he had a temporary DMV registration sticker in the rear window. (1 RT 56-57, 119.) Paonessa explained to appellant that without a rear license plate, there is no way to confirm that the temporary DMV registration sticker applies to his particular vehicle without stopping him. (*Ibid.*) Appellant provided Paonessa with his license and proof of insurance. (1 RT 41, 119-120.) Paonessa noted that appellant appeared very nervous; his speech was rapid and his hands were shaking. (1 RT 41-42, 120, 122.) Based on appellant's behavior, Paonessa believed he might be under the influence of a controlled substance and asked appellant if he was on parole or probation. (1 RT 43, 126.) Appellant did not

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5. The cites to the RT are to the RT in case No. 05F00765.

## ARGUMENT

### THE COURT OF APPEAL ERRED IN HOLDING THE OFFICER LACKED REASONABLE CAUSE TO STOP APPELLANT'S VEHICLE

#### A. The Vehicle Code Violations Justified The Traffic Stop

To justify an investigative stop or detention, a police officer must have specific and articulable facts causing him or her to entertain a reasonably objective suspicion that some activity relating to crime has occurred or is about to occur and the person to be detained is involved in that activity. (*People v. Aldridge* (1984) 35 Cal.3d 473, 478.) Mere curiosity or hunch will not support a detention. (*People v. Conway* (1994) 25 Cal.App.4th 385, 389.) Driving with expired registration is a Vehicle Code violation which justifies a traffic stop. (Veh. Code, § 40001, subd. (b)(1); *People v. Aldridge, supra*, 35 Cal.3d at p. 478.) An officer may stop a motorist if the stop is based on an objectively reasonable suspicion that the driver has violated the Vehicle Code or some other law. (*Whren v. U.S.* (1996) 517 U.S. 806; *People v. Miranda* (1993) 17 Cal.App.4th 917, 926.)

Appellant's vehicle was missing both license plates, a violation of Vehicle Code sections 5200 and 5201.<sup>6/</sup> Similar to the present case, the

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6. Vehicle Code section 5200 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."

Vehicle Code section 5201 provides in part: "License plates shall at all times be securely fastened to the vehicle for which they are issued so as to prevent the plates from swinging, shall be mounted in a position so as to be clearly visible, and shall be maintained in a condition so as to be clearly legible.

Courts in foreign jurisdictions have routinely viewed missing plates as unusual enough to warrant attention. (See *United States v. Sowers* (1st Cir. 1998) 136 F.3d 24 [missing front plate and troubled exhaust system led officer to stop car found to contain cocaine]; *United States v. Murray* (7th Cir. 1996) 89 F.3d 459 [missing rear license plate led police to stop driver found to have crack cocaine and handgun within car]; *United States v. Mitchell* (7th Cir. 1996) 82 F.3d 146 [missing front plate led officer to investigate driver found to have a loaded semi-automatic pistol inside vehicle within easy reach]; *United States v. Faulkner* (5th Cir. 1974) 488 F.2d 328 [sufficient nexus found between stop for missing front plate and police discovery of counterfeit bills in vehicle]; *United States v. Scott* (E.D.Texas 1995) 878 F.Supp. 968 [stop based on lack of visible license plate reasonable]; *United States v. \$64,765,000 in United States Currency* (D.Or. 1991) 786 F.Supp. 906 [missing plate on parked vehicle constituted reasonable suspicion for *Terry* stop]; *People v. Ryan* (Ill.Ct.App. 1996) 284 Ill.App.3d 318, 219 Ill.Dec. 732, 672 N.E.2d 47 [missing front plate prompted stop in which driver was found to be transporting marijuana]; *People v. Williams* (Ill.Ct.App. 1994) 267 Ill.App.3d 82, 203 Ill.Dec. 831, 640 N.E.2d 981 [missing front plate led to legal stop]; *People v. Ramirez* (Ill.Ct.App.1993) 248 Ill.App.3d 938, 188 Ill.Dec. 68, 618 N.E.2d 638 [search following stop based on missing license plates led to arrest and weapons search]; *State v. Griffin* (Wis.Ct.App. 1994) 183 Wis.2d 327, 329, 515 N.W.2d 535, review den., 520 N.W.2d 88 (Wis. 1994), cert. den., 513 U.S. 950, 115 S.Ct. 363, 130 L.Ed.2d 316 (1994) the absence of license plates, and reasonable inferences that can be drawn from that fact, provide reasonable suspicion sufficient to justify an investigatory stop of a motor vehicle].)

Here, appellant's violation of Vehicle Code sections 5200 and 5201 justified the officer's conduct in stopping appellant's vehicle. Moreover, there can be no legitimate dispute that the officer could not verify the validity of the

the missing plate. [Citation].” (Ex. A, at p. 3.) The Court of Appeal opinion fails to address why, when faced with a similar situation, i.e., a facially valid temporary operating permit and the lack of any license plates, the decision in *Saunders* is not controlling. While the temporary operating permit *may* explain the lack of a license plate in some circumstances, i.e., vanity plates taken off of a used vehicle when sold, the Vehicle Code requires vehicles in the process of registration to display plates that have already been issued.

Vehicle Code section 4606 provides:

Notwithstanding any provision of subdivision (a) of Section 5204 to the contrary, when an application for the registration of a vehicle has been made as required in Sections 4152.5 and 4602, the vehicle may be operated on the highways until the new indicia of current registration have been received from the department, *upon condition that there be displayed on the vehicle the license plates and validating devices, if any, issued to the vehicle for the previous registration year.*

(Italics added.)

Thus, where the owners of older model vehicles that have been issued license plates apply for a temporary operating permit, the absence or removal of those plates would constitute a violation of the Vehicle Code. As such, when both license plates are missing, an officer may entertain a reasonable suspicion of a Vehicle Code violation sufficient to justify an investigative stop.

### **C. The Court Of Appeal Ignored Critical Facts Demonstrating The Reasonableness Of The Officer’s Conduct**

The Third District Court of Appeal held, in part, that “[w]e are unwilling to conclude it is *always* reasonable to stop a car that does not have any license plates but has a temporary operating permit. . . .” (Exh. A, at p. 4, italics added.) Respondent respectfully contends that issue was not before the Court of Appeal. While it is true appellant’s vehicle did not display any license plates (1 RT 39), the decision did not address the import of the fact appellant was driving an older pickup truck, which presumably would have had already been issued



## CONCLUSION

For the reasons stated above, respondent respectfully requests that this Court reverse the Court of Appeal's decision.

Dated: April 17, 2007

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I certify that the attached RESPONDENT'S OPENING BRIEF ON THE MERTIS uses a 13 point Times New Roman font and contains 2894 words.

Dated: April 17, 2007

Respectfully submitted,

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# **EXHIBIT A**



►  
People v. Hernandez  
Cal.App. 3 Dist.,2006.

Court of Appeal, Third District, California.  
The PEOPLE, Plaintiff and Respondent,  
v.  
George Lee HERNANDEZ, Defendant and  
Appellant.  
Nos. C051224, C051602.

Dec. 18, 2006.

**Background:** Following denial of his motion to suppress evidence found in his possession after a traffic stop, defendant was convicted by a jury in the Superior Court, Sacramento County, Nos. 05F00765, 03F04161, Michael A. Savage, J., of felony and misdemeanor resisting arrest, being under the influence of methamphetamine, and driving while under the influence of alcohol or drugs. Defendant appealed.

**Holding:** The Court of Appeal, Robie, J., held that officer's stop for possible license plate violation was not based on reasonable suspicion.

Reversed and remanded.  
West Headnotes

[1] Automobiles 48A ↔ 349(4)

48A Automobiles  
48AVII Offenses  
48AVII(B) Prosecution  
48Ak349 Arrest, Stop, or Inquiry; Bail or  
Deposit  
48Ak349(2) Grounds  
48Ak349(4) k. License or  
Registration Offenses. Most Cited Cases  
Sheriff deputy's personal experience that temporary  
operating permits on cars that lacked license plates

were "very often forged," without more, did not constitute reasonable suspicion so as to justify stop of defendant's vehicle that displayed temporary operating permit in rear window that appeared valid on its face. U.S.C.A. Const.Amend. 4.  
*See 4 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Illegally Obtained Evidence, § 240 et seq.*  
[2] Arrest 35 ↔ 63.5(4)

35 Arrest  
35II On Criminal Charges  
35k63.5 Investigatory Stop or Stop-And-Frisk  
35k63.5(3) Grounds for Stop or  
Investigation  
35k63.5(4) k. Reasonableness;  
Reasonable or Founded Suspicion, Etc. Most Cited  
Cases

A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity. U.S.C.A. Const.Amend. 4.

[3] Automobiles 48A ↔ 349(2.1)

48A Automobiles  
48AVII Offenses  
48AVII(B) Prosecution  
48Ak349 Arrest, Stop, or Inquiry; Bail or  
Deposit  
48Ak349(2) Grounds  
48Ak349(2.1) k. In General. Most  
Cited Cases  
Traffic stops are treated as investigatory detentions for which the officer must be able to point to specific and articulable facts justifying the suspicion that a crime is being committed. U.S.C.A. Const.Amend. 4.

\*66 Bill Lockyer, Attorney General, Mary Jo Graves  
, Chief Assistant Attorney General, Stan A. Cross,

146 Cal.App.4th 773, 53 Cal.Rptr.3d 66, 2007 Daily Journal D.A.R. 554  
(Cite as: 146 Cal.App.4th 773)

Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231, 36 Cal.Rptr.2d 569, 885 P.2d 982.) Traffic stops are treated as investigatory detentions for which the officer must be able to point to specific and articulable facts justifying the suspicion that a crime is being committed. (*Terry*, at p. 21, 88 S.Ct. at p. 1880, 20 L.Ed.2d at p. 906.)

Here, defendant was driving a truck without license plates, but properly displayed a temporary operating permit. Deputy Paonessa testified that in his experience (14 months on patrol) temporary operating permits are “very often” forged. The People cite our California Supreme Court’s decision in *People v. Saunders* (2006) 38 Cal.4th 1129, 45 Cal.Rptr.3d 66, 136 P.3d 859 for the proposition that there was reasonable suspicion to stop defendant because Deputy Paonessa could not verify that the temporary operating permit displayed in the rear window applied to defendant’s car without pulling the vehicle over.

In deciding *Saunders*, the California Supreme Court specifically did not decide “whether an officer may stop a vehicle that has an expired registration tab but also displays a temporary operating permit.” (*People v. Saunders*, *supra*, 38 Cal.4th at p. 1135, 45 Cal.Rptr.3d 66, 136 P.3d 859.) The court did not have to decide that issue because the officer also noted the car did not have a front license plate. (*Id.* at p. 1136, 45 Cal.Rptr.3d 66, 136 P.3d 859.)

In *Saunders*, the temporary operating permit explained the expired registration tab but not the missing front license plate, so the officer was justified in pulling the car over to investigate the missing plate. (*Id.* at p. 1137, 45 Cal.Rptr.3d 66, 136 P.3d 859.)

Here, the facts are more analogous to the case the *Saunders* court specifically did not decide because defendant did not have any license plates but had a temporary operating permit. Therefore, the *Saunders* decision is of little assistance here because this case presents a different question.

The first question presented here is whether an officer’s personal experience can be taken into account in determining whether reasonable suspicion exists. In this case, the deputy saw the temporary operating permit and it appeared valid on its face. Therefore, for the stop to be reasonable, it had to be based on Deputy Paonessa’s personal experience that temporary operating permits are “very often” forged.

A similar question was presented in *People v. Nabong* (2004) 115 Cal.App.4th Supp. 1, 9 Cal.Rptr.3d 854. In *Nabong*, 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 valid. (*Id.* at pp. 2-3, 9 Cal.Rptr.3d 854.) 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, 9 Cal.Rptr.3d 854, *citing Terry v. Ohio*, *supra*, 392 U.S. at p. 27, 88 S.Ct. at p. 1883, 20 L.Ed.2d at p. 909.) 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 that this particular temporary \*69 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, 9 Cal.Rptr.3d 854.)

Here, the question is whether Deputy Paonessa’s experience should lead to a different result. Deputy Paonessa testified that in his experience temporary operating permits are “very often” forged. We have no way of discerning the meaning of the statement, “very often,” because Deputy Paonessa did not say how many times he had stopped a car with a temporary operating permit or how many times the permit was valid or invalid. Absent either additional facts justifying a reasonable suspicion of criminal activity, or specific experience Deputy Paonessa had to justify a suspicion that the particular operating permit

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **People v. George Lee Hernandez**

No.: **S150038**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On April 18, 2007, I served the attached **RESPONDENT'S OPENING BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 18, 2007, at Sacramento, California.

---

DECLARANT