

# SUPREME COURT COPY

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

JUL 13 2007

Frederick K. Olinson, Clerk

Deputy

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

## RESPONDENT'S REPLY BRIEF

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**INTRODUCTION**

The Court of Appeal erred in holding that the officer lacked a reasonable suspicion to stop appellant's vehicle. A suspected violation of the Vehicle Code has long been recognized as a reasonable basis for a traffic stop. Appellant's older model pickup truck was missing both front and rear license plates, a potential violation of Vehicle Code sections 4606, 5200 and 5201. Respondent asserts that even though appellant's vehicle displayed a temporary operating permit, the officer could not determine, short of a traffic stop, whether it was valid and applied to appellant's vehicle. Respondent further asserts that the Court of Appeal ignored critical facts demonstrating the officer entertained reasonable suspicion of wrongdoing.

## ARGUMENT

### **APPELLANT'S ANSWER BRIEF FAILS TO ADEQUATELY ADDRESS WHY THE OFFICERS LACKED REASONABLE SUSPICION TO EFFECT A TRAFFIC STOP**

Appellant contends that the officers lacked reasonable suspicion to stop his unlicensed vehicle because he was displaying a temporary operating permit. (ABM 14.)<sup>1/</sup>

#### **A. The Officer Entertained A Reasonable Suspicion That Appellant Had Violated The Vehicle Code By Failing To Display License Plates**

Appellant claims that the officer's sole reason for stopping appellant was because the officer believed the truck may have been stolen and that appellant had not committed any Vehicle Code violation. (ABM 4, 9.) The record indicates otherwise.

Deputy Paonessa testified that he stopped appellant's vehicle because it lacked license plates, a potential violation of Vehicle Code section 5200. (1 RT 39, 41, 51, 56-57, 75.) Appellant's own testimony affirms this as fact. (2 RT 428, 469.) Moreover, Deputy Paonessa's actions were consistent with his stated reason for stopping appellant's vehicle. Appellant testified that after Paonessa told him he had been stopped because his vehicle lacked license plates, Paonessa's first action after securing appellant's license, registration,<sup>2/</sup> and proof of insurance was to move to the front of his vehicle to check its

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1. "ABM" denotes appellants Answer Brief on the Merits.

2. Deputy Paonessa testified that appellant provided only his license and proof of insurance. (1 RT 41, 58.) Appellant apparently concedes this point. (ABM 5.)

Vehicle Identification Number. (2 RT 430.)<sup>3/</sup> These facts are entirely consistent with Paonessa attempting to verify that appellant had not violated the Vehicle Code, that the temporary operating permit was *actually* valid, and that the permit applied to appellant’s vehicle.<sup>4/</sup>

The Fourth Amendment requires only a “minimal level of objective justification” for making a vehicle stop. (*INS v. Delgado* (1984) 466 U.S. 210, 217.) “That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence.” (*United States v. Sokolow* (1989) 490 U.S. 1, 7.) In *Sokolow*, the United States Supreme Court held that the fact there may be an innocent explanation for a suspected violation of law which leads to an investigative traffic stop does not invalidate the validity of the stop. (*Id.* at pp. 9-10; see also *Illinois v. Wardlow* (2000) 528 U.S. 119, 125 [a determination that reasonable suspicion exists need not rule out the possibility of innocent conduct].) Thus, appellant’s alleged innocent explanation that he was displaying a “temporary permit” in lieu of license plates because they had been stolen (ABM 20)<sup>5/</sup> has no legal bearing on the validity of the traffic stop.

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3. Appellant’s own testimony refutes his claim before this Court that “Deputy Paonessa did not use this information to determine if Mr. Hernandez was the rightful owner of the truck.” (ABM 5.)

4. Appellant places great emphasis on the fact the temporary operating permit was “facially valid” (ABM 14), i.e., looked real, yet recognizes that an officer must stop a vehicle to determine its actual validity in the absence of license plates. (ABM 21.)

5. Appellant’s claim that his license plates had been stolen from his old truck and that he was properly issued a temporary permit in lieu of the missing plates finds no support in the record (see 2 RT 421 et seq.), nor does appellant offer any citation in support of this contention. (ABM 20.) Appellant further treats the “special permit” issued in lieu of license plates (Veh. Code, § 5202) as synonymous with the term “temporary permit” utilized in Vehicle Code section 4156. (ABM 16-17.) It is a general rule of statutory construction where the Legislature uses different terms, different meanings are intended (*People v. Trevino* (2001) 26 Cal.4th 237, 242; *Las Virgenes Mun. Wat. Dist. v. Dorgelo*

The issue is simply whether the display of a temporary operating permit negated the reasonable inference that appellant may have been violating the Vehicle Code by failing to display license plates on his vehicle. The temporary operating permit did not display any identifying information or expiration date that was visible to the officer. (1 RT 74.) The absence of license plates prevented the officer from being able to call dispatch to verify whether registration was in process. (*Ibid.*) Without stopping the vehicle, the officer had no way of determining if appellant had been operating his vehicle without license plates, or permanent registration, for six days or a year. Without stopping the vehicle, there was no method by which the officer could determine the temporary permit was valid and applied to appellant's vehicle.<sup>6/</sup> Under these circumstances, to hold that an officer lacked reasonable suspicion to make a brief investigative stop would permit persons to drive unregistered or stolen vehicles with impunity.

**B. Appellant Ignores The Totality Of The Circumstances Giving Rise To Reasonable Suspicion**

In determining whether an officer entertained a reasonable suspicion of criminal activity, a court must look at the totality of the circumstances known to the officer and the reasonable inferences that can be drawn from those facts. (*United States v. Arvizu* (2002) 534 U.S. 266, 273.) "This process allows officers to draw on their own experience and specialized training to make

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(1984) 154 Cal.App.3d 481, 486.) Appellant further fails to address why the Legislature would use the technical term "special permit" if had just meant "temporary permit."

6. Appellant concedes these points, yet contends that the solution is to require the DMV to issue more informative permits. (ABM 21.) While respondent agrees this proposed solution seems reasonable, it has no bearing on an officer's reasonable suspicion that a Vehicle Code violation may have occurred in absence of such additional information.

inferences and deductions about the cumulative information available to them . . . .” (*Ibid.*)

Appellant and the Court of Appeal focus solely on the officer’s testimony that temporary permits are “very often” forged in determining whether there was a reasonable suspicion of wrongdoing, finding such justification lacking. (ABM 8; Exhibit A at pp. 3-4.) Treating factors in isolation from one another finds no support in a Fourth Amendment analysis of reasonable suspicion. (*United States v. Arvizu, supra*, 534 U.S. at p. 274, hn 7.) The record establishes that this was but one factor the officer considered in deciding to stop appellant’s vehicle for possible wrongdoing. (See 1 RT 39, 41, 51, 56-57, 74-75.) Moreover, neither appellant nor the Court of Appeal address why an older vehicle lacking license plates, as distinguished from a new car, would not objectively contribute to an officer’s reasonable suspicion that a violation of law has occurred. On the facts of this case, it cannot be said that, when utilizing a standard falling considerably below a preponderance of the evidence, the officer lacked a reasonable suspicion appellant was violating the Vehicle Code by failing to display any license plates on his older model pick-up truck. The presence of a temporary permit which was virtually devoid of any information that would confirm to the officer it either applied to appellant’s vehicle, or had not expired, or that registration was currently in progress, or that it was not forged or placed on a stolen vehicle, should be accorded minimal, if any, weight in determining whether the officer entertained a reasonable suspicion that appellant may have been violating the Vehicle Code by failing to display any license plates on his vehicle.

## CONCLUSION

For the reasons stated above and in respondent's Opening Brief on the Merits, respondent respectfully requests that this Court reverse the Court of Appeal's decision.

Dated: July 13, 2007

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I certify that the attached RESPONDENT'S REPLY BRIEF uses a  
13 point Times New Roman font and contains 1330 words.

Dated: July 13, 2007

Respectfully submitted,

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**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 July 13, 2007, I served the attached **RESPONDENT'S REPLY BRIEF** 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 July 13, 2007, at Sacramento, California.

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DECLARANT