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Supreme Court No. _____

SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re RAYMOND C., a person coming under the Juvenile Court law.	
PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. RAYMOND C., a minor, Defendant, Appellant, and Petitioner.	Court of Appeal No. G035822 Orange County Juvenile Court No. DL020274

SUPREME COURT
FILED

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PETITION FOR REVIEW

After Published Decision of the Court of Appeal,
Fourth Appellate District, Division Three

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

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re RAYMOND C., a person coming under the Juvenile Court law,	)	
PEOPLE OF THE STATE OF CALIFORNIA,	)	Court of Appeal No. G035822
Plaintiff and Respondent,	)	Orange County Juvenile Court No. DL020274
vs.	)	
RAYMOND C., a minor,	)	
Defendant, Appellant, and Petitioner.	)	

PETITION FOR REVIEW

After Published Decision of the Court of Appeal,
Fourth Appellate District, Division Three

To the Honorable Ronald M. George, Chief Justice, and to the Honorable Associate Justices of the California Supreme Court:

This case is about stopping a brand-new vehicle to find out if it might be in violation of registration laws. The appellate court's published opinion creates a suspicionless standard for traffic stops of new vehicles which are in complete compliance with Vehicle Code requirements for affixing temporary

registration, but have not yet been issued license plates, and which do not affirmatively appear to be violating any traffic, registration, or licensing laws. Moreover, the opinion creates a new objective standard for stopping new cars that do not yet have license plates, determining that having "*nothing*," i.e., no paper dealer advertising or dealer logo, in the rear license plate holder of a new car is a sufficiently "unusual circumstance" to justify an investigatory stop. (Opinion, pp. 6-7, emphasis the court's).

The opinion's suspicionless standard for detaining new vehicles which have not yet been issued license plates, and which are operated legally and in full compliance with Vehicle Code requirements, and its creation of a new objective standard for stopping new cars with no dealer advertising in the rear license plate holder, run afoul of the Fourth Amendment. The opinion is in conflict with a well-established body of case law, including authority from the United States Supreme Court (*Delaware v. Prouse* (1979) 440 U.S. 648 [99 S.Ct. 1391, 59 L.Ed.2d 660]), the California Supreme Court (*In re Tony C.* (1978) 21 Cal.3d 888), and at least three published California appellate decisions (*People v. Hernandez* (2006) C051224/C051602 [2006 WL 3707831]; *People v. Butler* (1988) 202 Cal.App.3d 602, 607; and *People v. Nabong* (2004) 115 Cal.App.4th Supp. 1, 4-5), all of which hold that police officers cannot stop cars, or detain people, to see "if" the law is being

violated.

Defendant-appellant Raymond C., a minor ("petitioner") requests this Court grant review of the published opinion here, pursuant to Rule 8.500, California Rules of Court, to correct its erroneous reasoning and conclusions, to resolve the conflict between the present opinion and the body of law holding that random stops of automobiles in order to check the status of vehicle registration violate the Fourth Amendment, to secure uniformity of decision, and to settle this important question of Fourth Amendment jurisprudence. Review is necessary because the published opinion effectively holds that law enforcement officers are always authorized to suspect that new cars on California's streets and highways are in violation of the law.

The original unpublished opinion in this case was filed November 20, 2006; the appellate court's order modifying the opinion with no change in the judgment and ordering publication was filed December 20, 2006; the modified, published opinion, filed December 20, 2006, is attached hereto as Appendix A. References herein to the "opinion" are to the modified opinion, ordered to be published on December 20, 2006. (Appendix A).

ISSUES PRESENTED FOR REVIEW
(RULES 8.500 and 8.504)

1. Whether it is an unreasonable seizure under the Fourth and Fourteenth Amendments to stop an automobile which does not affirmatively appear to be violating any traffic, licensing, or registration laws, solely for the purpose of checking to see if its might be in violation of registration laws.

2. Whether the lack of dealer advertising or a dealer logo in the rear license plate holder of a new car which does not yet have license plates, in and of itself presents an unusual circumstance from which it is objectively reasonable to suspect that the vehicle is in violation of registration laws.

STATEMENT PURSUANT TO RULE 8.504(b) REGARDING WHY THIS CASE IS APPROPRIATE FOR REVIEW

1. The published Court of Appeal opinion creates a suspicionless stop standard for new vehicles which do not yet have license plates but are in complete compliance with Vehicle Code registration requirements. The opinion also creates a new objective standard of reasonableness for stopping a new vehicle with no license plates, because having "nothing" in the rear license plate holder (i.e., no paper dealer advertising or logo) is an "unusual circumstance" justifying an investigatory stop and inquiry of the driver to determine *if* there is registration violation. Such investigatory stops rest on speculation and violate the Fourth Amendment and well-established law requiring that officers cannot detain vehicles to find out *if* there is a violation of law. The opinion is contrary to established law.

2. The published opinion improperly invades the province of the legislature, which has determined the manner in which new car owners may display temporary registration. The judiciary has no authority to interfere with this exercise of legislative judgment by creating contrary law. Review should be granted to correct the opinion's error in deciding that law enforcement officers may stop and investigate new cars which display their temporary registration papers in the front windshield, which is in full compliance with temporary registration requirements.

3. The issues presented are of great importance to law enforcement, to criminal prosecutors and defense counsel, and to the motoring public, who should not be subject to a suspicionless stop standard when in full compliance with the Vehicle Code. The published opinion, in practical effect, allows any law enforcement officer at any time to stop any new vehicle on California's streets and highways, to determine *if* the vehicle might possibly be in violation of registration laws, without the necessity of an objectively reasonable suspicion of illegality.

STATEMENT OF THE CASE

An original juvenile wardship petition filed January 27, 2005 under Welfare and Institutions Code section 602 alleged in two counts that petitioner Raymond C., a minor, petitioner violated Vehicle Code section 23152, subdivisions (a) and (b), driving under the influence of alcohol, and with a blood alcohol level of .08% or more. (CT 1) Petitioner denied the allegations and moved to suppress evidence on grounds he was illegally detained. (CT 7, 13-26, 33-36) The juvenile court denied the motion and found the allegations true. (CT 44-45; RT 33) Petitioner then waived his rights and admitted the petition's allegations. (CT 42-45; RT 33-36) He was declared a ward of the court and placed on formal probation. (CT 45-46; RT

36-38) Notice of appeal was filed July 21, 2005. (CT 96)

In an unpublished opinion filed November 20, 2006, the Court of Appeal held that the investigatory stop of petitioner's new vehicle, which was in complete compliance with Vehicle Code registration requirements, was justified because there was "nothing" (i.e., no paper dealer advertisement) in the rear license plate holder. By order dated December 20, 2006, petitioner's Petition for Rehearing was denied and the unpublished opinion was modified with no change in the judgment and ordered published. (Appendix A)

STATEMENT OF FACTS

At around 1:00 a.m. October 24, 2004, Fullerton police officer Timothy Kandler saw petitioner drive past in a shiny, brand-new black Acura with no rear license plate. (RT 8, 13-14) The car was being driven lawfully. (RT 17) The officer could not see if it had registration papers attached to the windshield, and stopped the car for "possible violation" of Vehicle Code section 5200, failure to display license plates. (RT 20-21) When he stopped the car, the officer did not notice whether there was any dealer's paper advertisement in the rear license plate holder, and he did not stop the car for that reason, but he did recite that there was no dealer paper plate in the rear license plate holder in the police report which he subsequently prepared. (RT

15-17)

The officer contacted the driver to determine if he had a driver's license, registration, and proof of insurance. (RT 21) Petitioner handed him his license and insurance papers, and stated the registration was in the front window of the car. (RT 21) During this conversation, the officer detected an odor of alcohol on petitioner's breath and person. (RT 19, 21-22) He administered field sobriety tests and a breath test. (RT 19)

The vehicle which petitioner was driving was purchased new by his father on October 2, 2004. (RT 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. (RT 3-6) The papers remained affixed to the front windshield until petitioner's father received the license plates in December 2004. (RT 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. (RT 10)

ARGUMENT

I

THE COURT OF APPEAL OPINION, HOLDING THAT NEW VEHICLES WHICH DO NOT YET HAVE LICENSE PLATES BUT ARE IN FULL COMPLIANCE WITH VEHICLE CODE REGISTRATION REQUIREMENTS, ARE SUBJECT TO INVESTIGATORY STOPS TO DETERMINE IF THEY *MIGHT* BE IN VIOLATION OF SOME LAW, IS INCONSISTENT WITH STATE AND FEDERAL LAW

A. Vehicle Code Requirements for Displaying Registration on New Cars.

Vehicle Code section 4456 provides that a newly purchased vehicle may be operated with the "report of sale" form "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. (Veh. Code, §4456, subds. (a)(1) and (c).) Section 4456 does not specify that 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 Vehicle Code 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.) Nor does any statute require that the purchaser of a new vehicle leave on the car the paper advertisement frequently placed in the front and/or rear license plate holders by the dealer. Petitioner was driving the vehicle in

full compliance with the Vehicle Code requirements for displaying the registration on his new vehicle.

B. The Fourth Amendment Requires Objective Facts Raising a Reasonable, Articulable Suspicion of Criminal Activity, to Justify an Investigative Stop.

The Fourth Amendment applies to seizures of the person, including, as here, the investigatory stop of a vehicle, and requires that such seizures be objectively "reasonable." (*United States v. Cortez* (1981) 449 U.S. 411, 417 [101 S.Ct. 690, 66 L.Ed.2d 621]; *United States v. Brignoni-Ponce* (1975) 422 U.S. 873, 878 [95 S.Ct. 2574, 45 L.Ed.2d 607]; see *Terry v. Ohio* (1968) 392 U.S. 1, 16-19 [88 S.Ct. 1868, 20 L.Ed.2d 889]; *People v. Butler* (1988) 202 Cal.App.3d 602, 606.) Consistent with the Fourth Amendment, police may briefly stop a moving vehicle to investigate a "reasonable suspicion" that its occupants have been, are, or are about to be engaged in criminal activity. (*United States v. Hensley* (1985) 469 U.S. 221, 227-229 [105 S.Ct. 675, 83 L.Ed.2d 604]; *United States v. Place* (1983) 462 U.S. 696, 702 [103 S.Ct. 2637, 77 L.Ed.2d 110]; *United States v. Cortez, supra,* 449 U.S. at p. 417, fn. 2; *Terry v. Ohio, supra,* 392 U.S. at pp. 16-19; *People v. Butler, supra*, 202 Cal.App.3d at pp. 606-607.)

Not only must the investigating officer subjectively entertain a reasonable suspicion that the law is being violated, but also, it must be

objectively reasonable for him to do so: 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 an investigative stop or detention predicated on mere curiosity or hunch is unlawful, even though the officer may be acting in complete good faith. (*Terry v. Ohio, supra*, 392 U.S. 1, 22; *In re Tony C., supra*, 21 Cal.3d 888, 893.)

The present opinion decides that new cars which have not yet had their license plates issued can be stopped at random to determine if they *might* be violating registration laws, particularly when they have "nothing", i.e., no dealer paper advertisement, in the rear license plate holder. (Opinion, pp. 6-7.) The opinion creates a new objective standard of reasonableness for stopping a new vehicle: the absence of a dealer logo or advertisement in the rear license plate holder.

A new car without license plates or dealer advertising in the rear license plate holder does not objectively suggest illegality. Nor was lack of dealer advertising a circumstance which subjectively caused the officer to entertain a suspicion of illegality. The published opinion creates this new objective standard from whole cloth. (See, RT 15-16: although the prosecution in this case tried to get the police officer to testify that he noticed the lack of dealer advertising in the rear license plate holder when he made

the stop, he would not. He specifically testified that he noticed the car had no rear license plate, but *did not notice* anything else about the rear license plate holder, including that he did not notice that it didn't have *anything* in it. (RT 15:18-16:2; see also, Petition for Rehearing at pp. 3-4.)

C. The Opinion Conflicts with Existing Federal and State Law.

Delaware v. Prouse, supra, 440 U.S. 648, 650, holds that it is an unreasonable seizure under the Fourth and Fourteenth Amendments to randomly stop an automobile, being driven on a public highway, for the sole purpose of checking the operator's driver's license and the car's registration, where there is neither probable cause to believe nor reasonable suspicion that the car is being driven in violation of traffic or registration laws. The present opinion fails to consider the holding in *Delaware v. Prouse* and creates a conflict in law requiring review.

In the context of an investigative stop of a minor on the street, *In re Tony C.* (1978) 21 Cal.3d 888, 893, held that an investigate stop of a black minor on the speculative *possibility* that he might be involved in criminal activity was unwarranted, absent specific articulable facts linking the minor to specific criminal behavior. To hold otherwise, held the Court, 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 constitutionally impermissible." (*Id.* at 898.)

Of like effect, the present opinion subjects every new car driver in California to a constitutionally impermissible investigatory stop by virtue of the fortuities that he or she does not yet have license plates issued, that the new car dealer affixed the temporary registration to the front windshield rather than the rear, and that there is no paper dealer advertisement or logo in the rear license plate holder. The opinion's inconsistency with the rules of law stated in *Tony C.* requires review.

People v. Butler (1988) 202 Cal.App.3d 602, 606, 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 Court of Appeal held that federal constitutional law controlled, and that without additional articulable facts suggesting that the tinted glass *was illegal*, the detention 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, 51-52 [99 S.Ct. 2637, 61 L.Ed.2d 357]; *United States v. Brignoni-Ponce* (1975) 422 U.S. 873 884-886 [95 S.Ct. 2574, 45 L.Ed.2d 607]; and *Terry v. Ohio* (1968) 392 U.S. 1, 27 [88 S.Ct. 1868, 20 L.Ed.2d 889].)

Butler and the federal authorities cited therein establish that the Fourth Amendment requires specific, objective facts raising a reasonable, articulable suspicion that the individual is involved in criminal activity. The illegal detention to check out the *possibility* that Butler's tinted windows *might* violate the Vehicle Code, is the same as the illegal detention in the instant case, ostensibly made in this case to check out the *possibility* of a registration violation. The present opinion fails to consider the holding in *Butler* and creates a conflict in law requiring review.

The present opinion is also inconsistent with *People v. Nabong* (2004) 115 Cal.App.4th Supp.1 and *People v. Hernandez* (opn. filed 12/18/2006, pub. order 1/11/2007, C051224/C015602) ___ Cal.App.4th ___ [2006 WL 370783], both of which determined that lack of a rear license plate does not in and of itself create a reasonable suspicion justifying a traffic stop and investigation, because that would effectively mean that it is always reasonable to suspect that such a car does not have a valid temporary permit.

CONCLUSION

The Vehicle Code states the requirements for new cars which have not yet been issued license plates to display temporary registration. The present opinion creates a suspicionless standard for stopping new vehicles which are

in full compliance with the Vehicle Code. If the Vehicle Code requirements are insufficient, it is for the legislature and the Department of Motor Vehicles to address the laws concerning display of temporary registration for new cars.

Review here is necessary to correct the suspicionless standard created by the present opinion, which effectively allows police officers to stop any new car on California's streets and highways for an investigatory stop, regardless that the operator is not driving erratically or in any unlawful manner and is in full compliance with Vehicle Code temporary registration requirements. Moreover, review is necessary to correct the opinion's error in creating a new objective standard justifying an investigative stop where a new vehicle does not display a dealer's logo or advertising in the rear license plate, a standard which cannot pass constitutional muster.

Dated: January 19, 2007

Respectfully submitted,

By: 

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

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 **3,282** words, excluding tables and indices, which is within the authorized maximum of 25,500 words.

DATED: January 22, 2007

Respectfully submitted,

Jean Ballantine

Jean Ballantine
Attorney for Appellant-Petitioner.

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, Plaintiff and Respondent, v. RAYMOND C., Defendant and Appellant.	G035822 (Super. Ct. No. DL020274) 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.

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 January 23, 2007 I served the foregoing document described as PETITION FOR REVIEW 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

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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 January 23, 2007 at Los Angeles, California.

Jean Ballantine

Jean Ballantine