

Recent Case Report

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People v. Hernandez

(2008) 45 Cal.4th 295

Issue

May officers stop a vehicle to inspect a temporary operating permit on the rear window on grounds that, although it appeared to be valid, temporary permits are frequently forged or attached to unregistered vehicles?

Facts

A Sacramento County sheriff's deputy made a traffic stop on a pickup truck with neither a front nor back license plate in order to inspect the temporary operating permit in the rear window. Although there was nothing about the permit that would indicate it was invalid, the deputy stopped the truck because he testified that temporary operating permits are "very often" forged or issued to different vehicles.

During the stop, the deputy asked the driver, Hernandez, if he was on probation. He said yes, but would not specify the underlying offense. When he repeatedly refused to exit the truck, the deputy and a backup officer forcibly pulled him out. Hernandez was subsequently convicted of resisting arrest, obstructing an officer in the performance of his duties, and driving under the influence of methamphetamine.

Discussion

Hernandez argued that all of the evidence (presumably the deputy's observations and drug test results) should have been suppressed because the deputy did not have sufficient grounds to make the traffic stop. The California Supreme Court agreed.

The court explained that officers may make traffic stops only if they were aware of specific facts that reasonably indicated that either the driver or the vehicle were in violation of the Vehicle Code. Although officers may consider their training and experience in making this determination, it pointed out that a stop cannot be upheld in the absence of facts that reasonably indicated that this particular driver or vehicle were citable. For example, a stop to inspect a temporary operating permit would probably be upheld if the permit appeared to be so old (e.g., faded, ratty) that the officer reasonably believed that it was not being used on a "temporary" basis.

The court in *Hernandez* pointed out that the stop would also have been permitted if the truck, instead of displaying no license plates, had only one, as this would indicate the owner had not complied with the procedure for obtaining replacement plates by surrendering or sending the remaining plate(s) to the DMV.¹ In other words, because

¹ See *People v. Saunders* (2006) 38 Cal.4th 1129; DMV, Obtain Duplicate or Substitute License Plates and Stickers <<http://www.dmv.ca.gov/pubs/brochures/howto/htvr 11.htm>> [as of June 29, 2006].

there were no plates on Hernandez's vehicle, it reasonably appeared that Hernandez had, in fact, surrendered any missing or damaged plates as required by the DMV. Summarizing its ruling, the court said, "The failure here is that, although [the deputy] knew that some people driving with a temporary permit may be violating the law, he could point to no articulable facts supporting a reasonable suspicion that Mr. Hernandez, in particular, may have been acting illegally."

Consequently, the court ruled that the stop was unlawful, and the evidence obtained as the result of the detention should have been suppressed.

Comment

In a related case, *In re Raymond C.*,² the court ruled that officers may stop a new vehicle with no plates to confirm the presence of a temporary operating permit if, (1) the officers could not see the permit because it was not displayed on the rear window; and (2), because it was nighttime, they were unable to determine whether the permit was attached to the windshield.³

In so ruling, the court rejected the argument that, before stopping the vehicle, officers should be required to pass it and get into position to see if a sticker was attached. Among other things, it pointed out that if the officer who stopped Raymond had been required to engage in such a maneuver, he "would have lost control of the situation. Raymond could have turned into a side street and driven away before the officer could turn around and follow." POV

² (2008) 45 Cal.4th 303.

³ **NOTE:** The court pointed out that "[a] temporary permit is to be placed in the lower rear window. However, if it would be obscured there, it may be placed in the lower right corner of either the windshield or a side window." Citing DMV Handbook of Registration Procedures (Oct. 2007) ch.2 § 2.020 p.7 available online at http://dmv.ca.pubs/reg_hdbk_pdf/ch02.pdf [as of Dec. 11, 2008].