San Diego District Attorney

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9/11/01: Five Years Ago Our Country Was Attacked: Have You Forgotten? Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"*Live so that when your children think of fairness and integrity, they think of you.*" (H. Jackson Brown, Jr.)

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ADMINISTRATIVE NOTES:

Legal Update Webpage: Note the updated Legal Update webpage at the Web site listed above. My thanks to San Diego Sheriff's Commander Ken Culver for doing the work and making the Webpage more user-friendly. You'll find the Updates dating back to 2001 there.

Miranda and Implied Waivers: In that I'm still getting reports of San Diego cops being trained by various state and local trainers that there is no legal reason why you need to ask that "*second question*" following a *Miranda* admonishment (i.e., "*Having in mind and understanding your rights, are you willing to answer some questions*?", or some simpler version), let me repeat for the umpteenth time: *Failing to get an express wavier of an in-custody suspect's Miranda rights only creates an issue that we shouldn't have had to litigate, and which might very likely result in your suspect's statements being suppressed by the trial judge*!!!! Yes, we will win that issue on appeal, but *only* if we can first get it past the trial court. We win it on appeal because allowing into evidence a defendant's statements despite the lack of an express waiver is a discretionary call that will not be reversed absent an "*abuse of the discretion*;" something that is extremely tough for the defendant to prove. But the issue is never tested on appeal in those cases where a trial judge suppressed the statements for want of an express waiver. (Where he's convicted, he won't complain about an issue he won. Where he's acquitted, double jeopardy precludes an appeal.) Without an express waiver, a trial judge is forced to look to all the other surrounding circumstances and then ask him/herself: "*Did this guy really, under these circumstances, intend to waive*?" Many times, the answer to that question is going to be a resounding "*no*." So in such a case, you will have unnecessarily thrown away an important part of the prosecution's case.

CASE LAW:

***Detentions; Pedestrians in the Roadway and V.C. § 21954(a)*:**

People v. Ramirez **(Jun. 21, 2006) 140 Cal.App.4th 849**

Rule: Crossing diagonally across an intersection without interfering with any traffic is not justification for a detention.

Facts: Defendant was observed by a police officer crossing diagonally across the street at a four-way stop intersection. The officer was in his patrol vehicle driving up to the intersection when he observed defendant. There were no other vehicles on the road. Defendant had walked three-quarters of the way across the street, up to within a few feet of the officer's patrol vehicle, when he suddenly noticed the officer. He then turned and started to walk back in the direction from where he had come. Recognizing defendant as a local gang-banger, and believing him to be in violation of V.C. § 21954(a), the officer called to him by name; "*Oscar*. *Hey, hold on*. *I want to talk to you*." When told to put his hands on his head, defendant decided to run instead. He was caught within a few feet, however. When asked if he had anything on him, defendant admitted to carrying a gun in his pocket. Defendant was later charged with carrying a loaded, concealed pistol (P.C. §§12025(a)(2), 12031(a)(1)) with a gang enhancement (P.C. § 186.22(b)(1)(A)). After his motion to suppress was denied, defendant pled "no contest" and appealed.

Held: The Second District Court of Appeal (Div. 1) reversed. The legal basis claimed for stopping and detaining defendant was that he had violated V.C. § 21954(a). Section 21954(a) makes it illegal for a "pedestrian upon a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection (to fail to) yield the right-of-way to all vehicles upon the roadway so near as to constitute an immediate hazard." While defendant was certainly in a roadway other than in a crosswalk, there was no evidence that he in a position where he constituted an "immediate hazard" to any vehicles. The only other car in the area was the police car with the officer coming up to a stop sign where he was required to come to a stop. Defendant was not failing to yield the right-of-way to anyone under these circumstances. Also, defendant was not guilty of P.C. § 148 (delaying or obstructing an officer in the performance of his duties) by attempting to run in that an element of this offense is that the officer be acting in the "*performance of his duties*." The officer does not have a *legal duty* to detain anyone without at least a reasonable suspicion that the person was engaged in some illegal activity. Defendant was not doing anything illegal. Also, the officer's "*good faith*" belief that he had cause to stop defendant does not apply in that "*good faith*" cannot be based upon a "*mistake of law*." Therefore, since defendant was unlawfully detained, the illegal pistol in his pocket should have been suppressed.

Note: It's hard to argue with the reasoning in this case. If you're going to base a stop on an alleged violation of some traffic infraction, you need to know all the elements of that offense. It would have been a better idea to attempt a "*consensual encounter*" (e.g., "*Hey Oscar*; *do you mind talking to me for a moment*?" as opposed to a detention ("*Oscar*. *Hey, hold on*. *I want to talk to you*.") Setting up the contact as a consensual encounter would have given the prosecutor *two* arguments in court; i.e., that the officer had cause to lawfully detain him, and, failing that, he was only consensually encountered anyway. We only need to win on one of these arguments to avoid losing the seized evidence.

***Anonymous Information and Vehicle Stops*:**

People v. Wells **(Jun. 26, 2006) 38 Cal.4th 1078**

Rule: Anonymous information about a DUI in progress, under sufficiently reliable circumstances, will likely justify a traffic stop on the suspect vehicle despite the lack of other corroboration.

Facts: A California Highway Patrol Officer received a radio call at 1:43 a.m. concerning a possible under-the-influence driver ("DUI") "*weaving all over the roadway*." A reasonably unique vehicle description was included; an 80's model blue van. According to the dispatcher, the van was northbound on Highway 99 at a particular cross street, north of Bakersfield. The person reporting this information to the CHP dispatcher did so anonymously. The officer positioned himself about 2 to 3 miles north of that location. Two to three minutes later, the van was observed heading northbound, as predicted, traveling at about 50 mph. Although the van did not weave, speed or otherwise violate any traffic rules ("perhaps because (the officer) stopped the van so soon after spotting it"), the officer stopped it anyway to check the driver's condition. Upon contacting the

driver (i.e., the defendant), the officer noted indications that she was under the influence of drugs. Defendant was subsequently arrested. (Her urine later tested positive for THC, cocaine, and opiates, and an inventory search of her car resulted in recovery of heroin in addition to some paraphernalia.) Her motion to suppress the evidence was denied by the trial court. Defendant pled "no contest" and appealed. After the Fifth District Court of Appeal affirmed, she petitioned to the California Supreme Court.

Held: The California Supreme Court, in a split, 4-to-3 decision, affirmed. After discussing the need for a "*reasonable suspicion*," supported by an officer's "specific, articulable facts that are 'reasonably consistent with criminal activity,'" the Court asked itself: "*Is an anonymous citizen's tip of a possibly intoxicated highway driver 'weaving all over the roadway' sufficient to raise a reasonable suspicion that would justify an investigatory stop and detention under these circumstances*?" In answering this in the affirmative, and finding this type of case to be an exception to the general rule that anonymous information alone does not constitute reasonable suspicion (per *Florida v. J.L.* (2000) 529 U.S. 266.), the Court noted four factors that must be considered: (1) The exigency of a DUI driver loose on the road, with all the damage DUI drivers do, justifies an immediate law enforcement response. "(A) report of a possibly intoxicated highway driver, 'weaving all over the roadway,' poses a far more grave and immediate risk to the public than a report of mere passive gun possession (as occurred in *Florida v. J.L.*)." (2) A report from a citizen describing a contemporaneous event of reckless driving, presumably viewed by the caller, adds to the reliability of the information and reduces the likelihood that the caller is merely harassing someone. (3) The level of intrusion upon one's personal privacy (in a public place where there is a reduced expectation of privacy) and the inconvenience involved in a brief vehicle stop is considerably less than an "embarrassing police search" on a public street (as occurred in *Florida v. J.L.*). (4) Reliability is added by the relatively precise and accurate description given by the tipster regarding the vehicle type, color, location and direction of travel. Noting that with the above, the officer's inability to detect any erratic driving himself is not really relevant. The stop in this case, therefore, was done with the necessary reasonable suspicion, and lawful.

Note: I'm always surprised by the various courts' reoccurring conclusion that DUI drivers (as in this case) are more dangerous than some gang-banger standing on a corner armed with a gun, as occurred in *Florida v. J.L.*, but that's what a number of courts have held. The three dissenting justices questioned this conclusion as well, arguing that although no one can dispute how dangerous drunk drivers are, it's a bit of an exaggeration to suggest that they are more dangerous than a criminal with a gun. But whatever the justification, allowing officers to detain potentially dangerous persons on no more than an anonymous report of criminal activity is important. A good cop just isn't comfortable with letting a possible DUI suspect drive away, or a person reported to be carrying an illegal gun walk away, despite the fact that the officer's sole justification for stopping him is information from an anonymous source. The public's right to be safe from UI drivers and gun-toting gang-bangers needs to be factored into the formula somewhere. This case is but one more such situation where the courts have bent over backwards to find an exception to the rule of *Florida v. J.L.*

***Fourth Waivers and Revocation of Parole*:**

People v. Hunter **(Jun. 27, 2006) 140 Cal.App.4th 1147**

Rule: A parolee remains subject to the search and seizure conditions of his parole, even if in custody, until parole is formally revoked at a parole revocation hearing.

Facts: Defendant, a parolee, committed a residential burglary in June, 2003, taking some $8,000 in jewelry and the victim's Lexus automobile. In July, a deputy sheriff spotted the stolen Lexus at a local casino and attempted to make contact with its driver. The driver (presumably, our defendant) fled on foot and escaped. However, he left in the car some of the stolen jewelry, a receipt for a U-Haul storage unit, and the phone number for defendant's parole agent. A warrant for defendant's arrest had already been issued earlier in July, based upon allegations that he was using drugs and for failing to report to his parole agent. He was subsequently arrested on August 1st on the warrant and returned to prison with a "parole hold" to await a parole revocation hearing. Two weeks after defendant's arrest, but before his parole hearing, his parole agent and local police officers conducted a warrantless Fourth Waiver search on defendant's U-Haul storage unit, recovering more of the stolen jewelry. The police investigator then visited defendant in prison, extracting from him some admissions. It wasn't until over a month later that defendant finally had his parole revocation hearing where his parole was formally revoked. Charged with residential burglary and auto theft, defendant made a motion to suppress the evidence found in the storage unit and his later admissions, arguing that his Fourth wavier was no longer valid after his arrest. The trial court disagreed, denying his motion. Convicted after a jury trial, defendant appealed.

Held: The Fourth District Court of Appeal (Div. 1) affirmed defendant's conviction. Defendant's argument was that upon being taken into custody and returned to prison, he was no longer subject to the conditions of his parole, including the waiver of his search and seizure rights. The Court disagreed, noting that the Fourteenth Amendment "due process" clause guarantees him the right to a hearing on whether his parole should be revoked or not. This hearing, by statute (Cal. Code of Regs., title 15, § 2640(e)), is to be held within 45 days of the parolee being taken into custody. His parole cannot be revoked until he has had his parole hearing. At this hearing, it is decided whether to formally revoke his parole or release him back into the community. Until then, he is still a parolee, subject to all the terms and conditions of his parole. In this case, defendant had not yet had his parole hearing when the warrantless search of the storage unit took place. The search, authorized by the terms of defendant's Fourth wavier, was lawful. His later admissions, therefore, were also lawfully obtained.

Note: This is consistent with what I have been telling cops for some time, although I really had no idea that there was such a large window of time (i.e., 45 days) between the parolee's arrest and his eventual parole revocation hearing. And, as noted by the Court in this case, the same rule holds true for a *probationer* who is on a Fourth Waiver, even if a court has already "*summarily revoked*" probation; a common practice before the probationer is brought to court. Until the state provides a probationer with his "due

process" right to a formal probation revocation hearing, a probationer is still subject to the conditions of his probation including, if he's on a Fourth waiver, warrantless searches and seizures. (*People v. Barkins* (1978) 81 Cal.App.3rd 30.) It's irrelevant that he may be sitting in jail while awaiting that hearing.

***The Vienna Convention and Suppression of Evidence*:**

Sanchez-Llamas v. Oregon **(Jun. 28, 2006) ___ U.S. ___ [165 L.Ed.2nd 557]**

Rule: Violating the Vienna Convention by not advising an arrested foreign national of his right to contact his consulate does *not* require the suppression of any evidence.

Facts: Two cases: (1) Moises Sanchez-Llamas, a Mexican national, got into a shootout with Oregon police in December, 1999, wounding one officer in the leg. He was subsequently arrested and interrogated, waiving his *Miranda* rights. At no time was he told that he could ask to have the Mexican Consulate notified of his arrest, as required by the Vienna Convention on Consular Relations. Incriminating statements he made during his interrogation were used against him at trial after his motion to suppress the statements was denied. He was convicted of aggravated attempted murder and sentenced to 20½ years in prison. He appealed, arguing that because his rights under the Vienna Convention had been violated, his statements should have been suppressed. The Oregon Supreme Court affirmed his conviction. (2) Mario Bustillo, a Honduran national, was at a Springfield, Virginia, restaurant on an evening in December, 1997. Outside the restaurant, another individual was assaulted by someone with a baseball bat, and died. Witnesses identified defendant as the assailant. He was arrested by police the next day. At defendant's murder trial, the defense presented third-party culpability evidence, arguing that the witnesses identified the wrong person and that the real killer had fled to Honduras. The jury didn't believe this story and convicted him. Bustillo appealed from his 30-year sentence. After his conviction was affirmed, Bustillo argued for the first time in a state-filed writ of habeas corpus that if he had been advised of his right to contact the Honduran Consulate, as required by the Vienna Convention, Honduran officials would have located and produced the real killer from Honduras. The appellate court ruled that Bustillo had waived his right to make such an argument by not raising it at trial and in his direct appeal. Both Sanchez-Llamas and Bustillo petitioned the U.S. Supreme Court.

Held: The United States Supreme Court, in a 6-to-3 decision, affirmed the convictions in both cases. The Vienna Convention on Consular Relations is a treaty drafted in 1969 and signed by some 170 countries, including the United States. Mexico and Honduras are both signatories to this treaty. Article 36 of the Convention protects the right of an arrested or detained foreign national to contact and communicate with his or her country's consulate. Under the terms of Article 36, law enforcement officials are required to notify an arrested or detained foreign national of his or her right to contact his or her country's consulate. In these two cases, neither the Oregon (for Sanchez-Llamas) nor Virginia (for Bustillo) law enforcement agencies complied with this requirement. The primary issue here is whether failing to comply with the notification requirements of the Vienna Convention requires sanctions to be imposed on the prosecution. The treaty

itself does not provide any remedy, let along require the suppression of evidence, for violating its terms, which is not surprising in that the Untied States is the only country in the world that has an Exclusionary Rule. The only thing the treaty says on the topic of remedies is that the individual countries should apply sanctions which are appropriate under their own procedures. Even in the United States, the Exclusionary Rule is not something that is applied lightly. "Because the (exclusionary) rule's social costs are considerable, suppression is warranted only where the rule's remedial objectives are thought most efficaciously served." The Exclusionary Rule is applied primarily to deter constitutional violations. Violations of Article 36 of the Vienna Convention only provide for one's consulate to be *informed* of the person's detention or arrest, *not* to allow the consulate to intervene or impede a law enforcement agency's investigation. Also, violations of the Vienna Convention do not affect the reliability of a confession. A criminal suspect is sufficiently protected by the exclusion of evidence which is the direct product of a violation of the *Fourth* (search and seizure), *Fifth* (compelled incrimination), *Sixth* (legal representation) and/or *Fourteenth* (due process) Amendments to the U.S. Constitution. It serves no additional judicial purpose in having evidence suppressed to redress a violation of the Vienna Convention. If "*voluntariness*" of a defendant's statements is an issue, a trial court can consider a Vienna Convention violation as it might have affected, if at all, that problem. But otherwise, the exclusion of evidence is not called for under the circumstances of these cases. Also, for defendant Bustillo, he waived his right to argue an Article 36 violation by not raising the issue in the trial court. Despite a ruling from the International Court of Justice (ICJ) to the effect that such a procedural default does not prevent a criminal defendant from raising the issue for the first time in a post-conviction, habeas corpus proceeding, the ICJ's opinion on this issue is not binding on U.S. courts, and the Supreme Court declined to follow it.

Note: *At last*, the U.S. Supreme Court speaks up on this important issue. While there are a number of lower appellate court cases that have consistently declined to suppress evidence for an Article 36 violation, it's nice to have the U.S. Supreme Court's input. California's statutory enactment of the Vienna Convention requirements is in P.C. § 834c, and is pretty much self-explanatory (although I have, on disk, a short summary of the section and the applicable case law, if you want it). Despite the lack of any suppression remedy for violating this section or the Vienna Convention, however, the requirements of P.C. § 834c should still be followed. It's the law.

***Traffic Stops and the Detention of a Passenger*:**

People v. Brendlin **(Jun. 29, 2006) 38 Cal.4th 1107**

Rule: The passenger in a vehicle stopped for a traffic infraction (whether the stop is legal or not), is *not* detained by virtue of the traffic stop alone.

Facts: On November 27, 2001, Sutter County Sheriff's Deputy Robert Brokenbrough observed a 1993 Buick Regal with an expired registration tab driving through Yuba City. Doing a radio registration check, the deputy determined that although the car's registration had expired two months earlier, application for a renewed registration was

"in process." The deputy could also see taped in the vehicle's rear window a temporary operating permit on which was printed the number "11," indicating that the permit was good for another 3 days (i.e., to the end of November). From his vantage point, the deputy could not determine, however, whether the permit was actually for that vehicle. He therefore decided to stop the car to investigate further. While asking the driver for her license, the Deputy recognized the passenger as one of the Brendlin brothers; Scott or Bruce. He knew that one of the brothers was a parolee-at-large ("PAL") with an outstanding warrant for his arrest. When asked to identify himself, defendant replied that his name was Bruce Brown. During this exchange, the deputy could see in plain sight in the car containers of substances commonly used in the production of methamphetamine. Verifying that a no-bail PAL warrant was outstanding for Bruce Brendlin, Deputy Brokenbrough arrested defendant at gunpoint. Methamphetamine, marijuana, syringes and other narcotics paraphernalia were recovered from both defendant and the driver of the car. Defendant's motion to suppress all this evidence, arguing that the traffic stop and his subsequent detention were illegal, was denied. Upon Appeal from his conviction, the Appellate Court reversed, finding both the traffic stop and defendant's detention to be illegal. The State petitioned to the California Supreme Court.

Held: The California Supreme Court, in a split 4-to-3 decision, reversed, reinstating defendant's conviction. As to the legality of the vehicle stop (i.e., to check the validity of the temporary operating permit), the Court declined to discuss that issue because the Attorney General, on appeal, abandoned any attempt to justify it. Instead, the AG argued that defendant, as a mere passenger in the vehicle, was never "*detained*" irrespective of the legality of the traffic stop, at least until the officer had probable cause to arrest him on the outstanding warrant. In discussing this issue, the Court noted a number of lower appellate court cases dealing with the legal status of a passenger in a vehicle when the driver is being stopped as a result of a traffic-related offense. Despite the majority of courts holding that a passenger is necessarily "*seized*" (i.e., "*detained*") just by being in the car, the Court here held to the contrary. Citing the U.S. Supreme Court, this Court noted that; "a Fourth Amendment seizure does not occur (just because) there is a governmentally caused termination of an individual's freedom of movement . . . , nor even whenever there is a governmentally caused and *desired* termination of an individual's freedom of movement . . . , but only when there is a governmental termination of freedom of movement *through means intentionally applied.*" (Italics in original.) In other words, even though the officer in this case interrupted defendant's freedom of movement by stopping the car in which he was a passenger, the interruption was not intentional. Had defendant chosen to walk away (absent safety concerns—see Note, below—and up until probable cause to arrest him was developed), he would have been free to do so. A detention does not occur until the person is actually taken into custody "whether by the application of physical force or by submission to the assertion of authority." Defendant in this case, as a mere passenger in the vehicle, was not subjected to any such "assertion of authority." "(T)he passenger is free to disregard the police and go about his or her business . . . (T)he incidental restriction of the passenger's freedom of movement is therefore not a seizure." The legality of the traffic stop, therefore, is irrelevant. When the officer later recognized him as a possible fugitive—a fact verified by radio—defendant could be, and in fact was, lawfully arrested at that point. Any

evidence subsequently seized as a product of that lawful arrest was properly admitted into evidence.

Note: Those of us with no life but to read this stuff were anxiously awaiting this decision to tell us whether you can base a traffic stop on no more than a police officer's curiosity about the validity of that red temporary operating permit in a car's window. But the Court declined to decide this issue. That's because the AG conceded that such a stop is illegal. (But see *Saunders*, below.) There is still left one Appellate Department of the Superior Court decision (i.e., *People v. Nabong* (2004) 115 Cal.App.4th Supp. 1.) telling us that such a stop is illegal; a conclusion with which I have to agree. The fact that that little red slip of paper is so easily moved from one vehicle to another *does not*, by itself, constitute a "*reasonable suspicion*" to believe that that is what was done in any particular case. Also note, by the way, that despite this case, there is still good authority for the proposition that an officer may order a passenger to remain in the vehicle, at least when the officer can cite safety concerns for making such an order. (See (*United States v. Williams* (9th Cir. 2005) 419 F.3rd 1029; and *People v. Castellon* (1999) 76 Cal.App.4th 1369.) This would likely be held to be a detention, however, so you need to be able to articulate why, in your particular case, you believed the passenger might be a danger to you if allowed to walk away or otherwise remain outside the car.

***Traffic Stops and Temporary Operating Permits*:**

People v. Saunders **(Jun. 29, 2006) 38 Cal.4th 1129**

Rule: A motor vehicle with an ostensibly valid temporary operating permit, but with an expired registration tab and a missing front license plate, may be lawfully stopped to investigate its current registration status.

Fact: San Jose Police Officers observed a Chevy pickup truck following 15 to 20 riders from the "Soul Brothers" motorcycle club. The officers knew the Soul Brothers to be associated with the Hell's Angels motorcycle club, and that the Hell's Angels had an on-going dispute with the rival Mongols motorcycle club. These clubs were engaged in an annual ritual called a "blessing" (which the Court never explains), and that such an event in the past has involved the carrying of automatic firearms. The officers further knew that a vehicle closely following a group of motorcycle club members is often a "load" or "tail" car, and could be expected to be carrying other club members or their girlfriends, weapons, and drugs. This particular Chevy pickup was missing a front license plate and had an expired license tap affixed to the rear plate. It also apparently (although not noticed by the officers) had a temporary operating permit taped to the inside of the rear window with the number "3" (i.e., representing the month of "March") displayed, allowing for the vehicle's lawful operation for the rest of that day (March 31st). The officers stopped the Chevy and contacted its driver, Roosevelt Ingram, who was determined to be driving on a suspended driver's license. As such, the officers, per their department policy, prepared to impound the vehicle. Defendant, the sole passenger, was also contacted and asked for I.D. Both Ingram and defendant were wearing leather jackets with "Soul Brothers" patches. Both Ingram and defendant were ordered out of

the pickup. Defendant appeared to be very nervous, "shaking and trembling." Noting that his heavy "large and bulky" jacket covered his waistband where weapons are often concealed, the officer decided to pat defendant down for weapons. He first asked him, however, if he had anything illegal on him. Defendant responded that he had a gun in his pocket. A loaded .25-caliber semiautomatic pistol was in fact recovered from an inner pocket of his jacket. Ammunition was subsequently found under the seat. Charged with various offenses related to the firearm possession, including being a felon in possession of a firearm and ammunition, defendant's motion to suppress the gun and ammunition was denied. After the District Court of Appeal upheld his conviction in an unpublished decision, defendant petitioned to the California Supreme Court.

Held: The California Supreme Court affirmed defendant's conviction, unanimously agreeing that the stop was legal. Based upon the Court's decision in *People v. Brendlin* (above) four of the justices (with three disagreeing) held that defendant was not even detained up until that point when he was ordered out of the truck. But because he was detained prior to discovery of the illegal firearm, the legality of the initial traffic stop was relevant. A reasonable suspicion to believe that a vehicle is unregistered is sufficient cause to stop the vehicle and investigate that possibility. Citing out-of-state cases, the Court noted that there is a split of authority on whether there is that necessary reasonable suspicion that a car is unregistered when the vehicle has an expired registration tab *and* an ostensibly current temporary operating permit. The Court then determined, however, that that issue need not be decided here in that the vehicle in which defendant was riding was also missing a front license plate. California law requires that when two license plates are issued, both must be displayed on the vehicle. (V.C. § 5200) California issues two license plates. While a temporary operating permit allows for the lawful operation of an otherwise unregistered motor vehicle, it does not excuse the lack of one plate where, as evidenced by the presence of a rear plate, plates had been issued to that vehicle. Department of Motor Vehicles rules require that where one plate is lost, the other must be surrendered pending the issuance of new plates. At the very least, the missing front plate gave the officer sufficient reasonable suspicion of a V.C. § 5200 violation to justify a traffic stop to investigate the validity of the temporary operating permit. The stop of the vehicle in which defendant was a passenger, therefore, was lawful. As such, his detention and subsequent pat down for weapons was also lawful.

Note: Here, again, we don't get an answer from the Supreme Court to the question whether a motor vehicle with an apparently valid temporary operating permit can be stopped to check the validity of that permit in those circumstances where the car either has both license plates, or no plates at all. The only remaining authority is still *People v. Nabong* (2004) 115 Cal.App.4th Supp. 1, which says that such a stop is illegal. I have to admit, however, that I have been telling officers for some years now that missing one of two plates is not sufficient cause to justify an exception to *Nabong* when the car otherwise has an apparently valid temporary operating permit. Not recognizing that DMV rules require that a vehicle must either display both plates, or, if one has been lost, no plates, I was wrong. Missing one plate is sufficient cause to stop and check the validity of that red temporary operating permit.