

San Diego District Attorney

LEGAL UPDATE

(COPY -- DISTRIBUTE -- POST)

Vol. 14 May 8, 2009 No. 5

www.legalupdate.com

www.cacrimenews.com

www.sdsheiff.net/legalupdates/

Remember 9/11/01: Support Our Troops

Robert C. Phillips
Deputy District Attorney (Ret.)

(858) 395-0302 (C)
RCPhill808@AOL.com

THIS EDITION'S WORDS OF WISDOM:

"I am rather inclined to silence, and whether that be wise or not, it is at least more unusual nowadays to find a man who can hold his tongue than to find one who cannot." (Abraham Lincoln)

IN THIS ISSUE:

Page:

Administrative Notes:

Moved	1
Custodial Arrests for Non-Bookable Offenses	2

Case Law:

Traffic Stops, Detention of the Passengers	2
Searches of Vehicles Incident to Arrest	4
Vehicle Code Equipment Violations; Circumstantial Evidence of a Violation:	6
Traffic Stops; Prolonged Detentions:	6
Traffic Stops; Temporary Operating Permits, Part I	8
Traffic Stops; Temporary Operating Permits, Part II	9

ADMINISTRATIVE NOTES:

Moved: We (my wife and I) have finally moved to Rapid City, South Dakota, and are in the process of building a new home near Custer in the Black Hills. But my e-mail address and cell phone number remain the same, at least for the time being. When I update them to fit the locality, I'll let you know. Either way, I'm still

available to take your calls and e-mails just so long as you don't ask me anything that might get me sued (not having the civil liability coverage I did while employed). You're encouraged to stay in touch.

Custodial Arrests for Non-Bookable, Fine-Only Offenses: Recent U.S. and California Supreme Court case decisions have recognized that a police officer's violation of state procedural statutes that mandate the citing and release of a person in a misdemeanor or infraction situation (e.g., see P.C. §§ 853.5, 853.6, V.C. §§ 40303, 40500), does *not*, but itself, also constitute a Fourth Amendment or other constitutional violation. In other words, booking a person for a "fine-only" offense, despite being a violation of California statutes mandating the release of the person with a citation, does not violate the U.S. Constitution. With no constitutional violation, the resulting evidence, if any, is not subject to suppression. (*Atwater v. City of Lago Vista* (2001) 532 U.S. 318; *Virginia v. Moore* (2008) 170 L.Ed.2nd 559; *People v. McKay* (2002) 27 Cal.4th 601; and see also *People v. Branner* (Apr. 20, 2009) __ Cal.App.4th __ [2009 WL 1040293], briefed below. As a result, some officers are now being trained to conduct custodial arrests in cite-and-release situations, in violation of state statutes, in order to justify a custodial "search incident to arrest." This tactic, however, is *simply wrong*. Searches incident to a citation are illegal. (*Knowles v. Iowa* (1998) 525 U.S. 113.) And even if physically arresting someone who should have been cited and released does not risk the suppression of the resulting evidence, this practice ignores the fact that police officers are themselves duty-bound to follow the law. This includes state statutes requiring a person to be cited and released. Violating these statutes as a pretext for conducting a search incident to arrest is at the very least unprofessional, potentially exposing the offending officer to some very embarrassing cross-examination concerning why the defendant is being prosecuted when the arresting officer himself also purposely chose to ignore the law. It should not be necessary for the courts to threaten us with the suppression of evidence to motivate police officers to follow the law.

CASE LAW:

Traffic Stops, Detention of the Passengers:

Arizona v. Johnson (Jan. 26, 2009) __ U.S. __ [129 S.Ct. 781; 172 L.Ed.2nd 694]

Rule: Passengers in a vehicle stopped for a traffic infraction may generally be detained for the duration of the traffic stop.

Facts: Members of an Arizona gang task force, including Officer Maria Trevizo, patrolling the city of Tucson, observed a vehicle containing three individuals. The officers ran the license plate and determined that the vehicle's registration had been suspended for an insurance-related violation. Continued operation of the vehicle under these circumstances is a civil infraction warranting a citation. No other criminal violations were suspected. Stopping the vehicle, each of the officers contacted one of the

occupants, with Officer Trevizo approaching defendant who was in the back seat. In so doing, Officer Trevizo noted that defendant was carefully watching the officers. It was also noted that he was wearing clothing, including a blue bandana, consistent with membership in the Crips street gang. Officer Trevizo noticed a police scanner in defendant's jacket pocket. This "struck [her] as highly unusual and cause [for] concern" because "most people" would not carry around a scanner that way "unless they're going to be involved in some kind of criminal activity or [are] going to try to evade the police by listening to the scanner." Defendant provided his name and date of birth, but said that he didn't have any identification on him. He told Officer Trevizo that he was from Eloy, Arizona, which the officer knew was home to a Crips gang. Defendant also admitted that he'd been in prison for burglary and that he'd been out for about a year. Wanting to question defendant about his gang membership, enabling her to gain some intelligence about the Crips, Officer Trevizo asked defendant to step out of the vehicle. Defendant complied. Officer Trevizo also felt that based upon his responses to her questions already asked, she should pat him down for weapons. When she did so, she felt the butt of a gun near his waist. Defendant began to struggle at that point, requiring Officer Trevizo to handcuff him. A gun was recovered from his person. Charged in state court with "possession of a weapon by a prohibited person," defendant's motion to suppress the gun was denied by the trial court which concluded that the stop was lawful and that Officer Trevizo had cause to suspect defendant might be armed and dangerous. A divided court of appeal reversed, finding that although the initial stop was legal, the contact evolved into a consensual encounter at the point when Officer Trevizo decided to question defendant about something unrelated to the traffic stop. Per the court, she therefore lost her right to pat defendant down for weapons. The Arizona Supreme Court denied review. The United States Supreme Court, however, granted certiorari.

Held: The United States Supreme Court unanimously reversed, finding that the defendant's continued detention was lawful. The Court began its analysis of this case with its landmark case decision of *Terry v. Ohio* (1968) 392 U.S. 1. In *Terry*, it was recognized that a temporary detention for investigation is "justified by suspicion (reasonably grounded, but short of probable cause) that criminal activity is afoot." (Parenthesis in original.) *Terry* further upheld the lawfulness of the patdown for weapons of a detained person upon a reasonable suspicion to believe that the person may be armed. "(T)he police officer must be positioned to act instantly on reasonable suspicion that the persons temporarily detained are armed and dangerous." Most traffic stops "resemble, in duration and atmosphere, the kind of brief detention authorized in *Terry*." The Court further recognized that because traffic stops are "especially fraught with danger to police officers," the police must be allowed to "routinely exercise unquestionable command of the situation." Prior cases have upheld the right of a police officer to order both the driver and any other passengers out of the vehicle, should the officer determine that it is necessary to do so for his or her own safety. (*Pennsylvania v. Mimms* (1977) 434 U.S. 106; *Maryland v. Wilson* (1997) 519 U.S. 408.) Most recently, it was held that passengers, merely by virtue of being in a vehicle lawfully stopped for a traffic violation, are also detained. (*Brendlin v. California* (2007) 551 U.S. 249.) These same cases have recognized the right of police officers to pat down both the driver and any passengers for weapons whenever it is reasonably believed that the individual patted

down may be armed. With these principles in mind, the Court rejected the Arizona appellate court's portrayal of defendant's contact at the point where Officer Trevizo began questioning defendant about something unrelated to the traffic stop (i.e., his gang affiliation) as "consensual." Despite the officer's incorrect opinion as elicited in her testimony that defendant could have refused her request to exit the car and to submit to a patdown, defendant was never told that he was free to leave. "The temporary seizure of a vehicle's driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, the stop ends when the police have no further need to control the scene and inform the driver and passengers they are free to leave." That had not yet happened in this case. Questioning defendant about something other than the traffic stop itself is not illegal. And, "so long as those inquires do not measurably extend the duration of the stop," talking to defendant about his gang affiliation did not somehow convert the contact into something other than a detention. A reasonable person in defendant's position would not have felt free to leave. The contact, therefore, continued to be a detention. Assuming that Officer Trevizo had a reasonable suspicion to believe defendant was armed (an issue not decided by Arizona's appellate court), patting him down for weapons during the continued lawful detention was itself lawful. Pending new hearings on the lawfulness of the patdown under these circumstances, defendant's motion to suppress the gun was properly denied by the trial court.

Note: When *Brendlin v. California* was decided in 2007, many legal scholars read the decision as giving police officers the right to detain any passengers (in addition to the driver) for the duration of the traffic stop. I, to the contrary, didn't see in that decision any more than the Court's declaration that a vehicle passenger had the legal right (i.e., "standing") to challenge the legality of the traffic stop. Although the Court in this new cases hints that I might have been right ("A passenger therefore has standing (under *Brindlin*) to challenge a stop's constitutionality."), it also made any disagreement on this issue largely academic when it pointedly noted that; "*The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop.*" Also, at the very end of this decision, the Court noted that: "Officer Trevizo surely was not constitutionally required to give Johnson an opportunity to depart the scene after he exited the vehicle without first ensuring that, in so doing, she was not permitting a dangerous person to get behind her." So consider the issue decided: Upon making a traffic stop, the inherent danger of a traffic stop alone dictates that officer safety justifies the continued detention of the vehicle's passengers without having to further justify the need to do so, at least absent something else occurring that should have ensured to the officer that he was not exposing himself to additional dangers by letting a passenger go.

Searches of Vehicles Incident to Arrest:

Arizona v. Gant (Apr. 21, 2009) __ U.S. __ [2009 WL 1045962]

Rule: A warrantless search of a vehicle "*incident to arrest*" is lawful only when the arrestee is unsecured and within reaching distance of the vehicle's passenger compartment at the time of the search. A second legal theory justifying warrantless

searches is when there it is “*reasonable to believe*” that the vehicle contains evidence relevant to the crime of arrest.

Facts: An anonymous tip concerning drug sales at a particular residence led Tucson police officers to the house where defendant was contacted. After identifying himself, defendant told the officers that the owner of the house wasn’t there but would return later. The officers left. They later did a records check on defendant and discovered that his driver’s license was suspended and that he had an outstanding warrant for his arrest. Returning to the house later that evening, the officers found a man and woman at the rear of the house, eventually arresting them. They were both handcuffed and secured in separate patrol cars when defendant drove up. Defendant parked his car, got out, and shut the door, meeting the officers about 10 to 12 feet from his car. He was immediately arrested, handcuffed, and, put into the backseat of a patrol car. Defendant’s car was then searched incident to his arrest, resulting in the recovery of a baggie of cocaine. Charged with various narcotics-related offenses, defendant filed a motion to suppress the cocaine as the product of an illegal search. The trial court ruled that although there was no probable cause, the search was lawful because it was “*incident to (defendant’s) arrest.*” Defendant was convicted after a jury trial and sentenced to three years in prison. He appealed. After several trips up and down the Arizona appellate court system, the Arizona Supreme Court ruled that the search of defendant’s car was done in violation of the Fourth Amendment. The state petitioned to the U.S. Supreme Court.

Held: The United States Supreme Court, in a 5-to-4 decision, upheld the Arizona Supreme Court’s ruling reversing defendant’s conviction. Searches of the passenger compartment of a vehicle and containers therein, incident to a person’s arrest, have long been upheld by the Supreme Court. (*New York v. Belton* (1981) 453 U.S. 454; see also *Thornton v. United States* (2004) 541 U.S. 615; the arrestee need only be a “*recent occupant*” of the vehicle.) The lack of probable cause justifying the search has been held to be irrelevant. The lawfulness of such a search “is justified by interests in officer safety and evidence preservation;” i.e., to prevent the arrestee from “lunging” for a weapon or destroying evidence. (*Chimel v. California* (1969) 395 U.S. 752.) Neither *Belton* nor *Chimel*, however, answer the question whether the so-called “*Belton rule*” (or “*Chimel rule*”) continues to apply after the scene has been secured. The Arizona Supreme Court ruled that it did not. The U.S. Supreme Court, in this decision, agrees. In analyzing this issue, the Court noted that the rule of *Chimel* has never been extended to those situations where the purposes behind the rule (i.e., officer protection and evidence preservation) are no longer implicated. Rejecting any such extension of *Belton*, the Court ruled that the *Chimel* rationale authorizes a police officer to search a vehicle incident to a recent occupant's arrest “*only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.*” The State argued, however, that the benefits of a “*bright line rule*” (a rule everyone can easily follow without having to balance the circumstances unique to each case) outweighed a strict, limited interpretation of *Belton*. The Court rejected this argument as well, noting that it fails to consider the privacy interests at stake, not only in one’s vehicle but in containers found in the vehicle as well. Aside from the *Chimel/Belton* incident-to-arrest rule, as an alternative legal theory justifying a warrantless search of a vehicle, the police may search a vehicle at the

scene of an arrest whenever “it is ‘*reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.*’” In this case, however, neither of these legal theories applied. Defendant and the other people at the house were handcuffed and secured in separate patrol cars; not in a position where it was reasonable to assume they could reach for weapons or evidence left in the vehicle. Also, there was no “*reason to believe*” that defendant’s vehicle contained any evidence of illegal activity. The search of his vehicle, therefore, violated the Fourth Amendment.

Note: What this case *does not* do is make illegal all warrantless searches of vehicles, as feared by a lot of people who have called and e-mailed me on this already. Although the Court does note at footnote 4 that “it will be the rare case” where a police officer will be able to justify a search of a vehicle incident to arrest (standard procedure and common sense dictating that an arrestee be safely secured before the car is searched), this case is strictly limited to just that issue. Aside from again upholding warrantless searches based upon it being “*reasonable to believe*” evidence will be found in the car (see below), it does not even touch upon other ways to get into a car legally; e.g., impound searches, when the vehicle itself is evidence of a crime, checking for weapons, etc. But note that *the rule* of this case is not likely to be limited to the searches of vehicles. Anytime an officer conducts a search incident to arrest, no matter where it occurs, the courts will likely find the search to be illegal when there’s no one left unsecured who might lunge for a weapon or destroy evidence. Also note that the Court, in discussing when it is “*reasonable to believe*” that evidence will be found in a car as an alternative legal theory justifying a warrantless search, doesn’t tell us what “*reasonable to believe*” means. But they’re no doubt talking about “*probable cause.*” Cases in other contexts have so defined this same phrase. (See *United States v. Gorman* (9th Cir. 2002) 314 F.3rd 1105; *People v. Jacobs* (1987) 43 Cal.3rd 472; *United States v. Phillips* (9th Cir. 1974) 497 F.2nd 1131; (pg. 139, 151, 424) “*reasonable to believe*” means “*probable cause*” to believe the subject of an arrest warrant is home before forcing entry.) Lastly, for those of you who worry about your civil liability for all those vehicle searches you’ve done before this case was decided, the Court did specifically note (at footnote 11) that because of the broad interpretation given to the *Belton* rule for the last 28 years, qualified immunity will protect you from being sued. But that was yesterday. The searches you do for now on have to comply with the rule of this case.

***Vehicle Code Equipment Violations; Circumstantial Evidence of a Violation:
Traffic Stops; Prolonged Detentions:***

***People v. Branner* (Apr. 20, 2009) __ Cal.App.4th __ [2009 WL 1040293]**

Rule: (1) Observation of a Vehicle Code equipment violation on private property, where it is evident that the vehicle had just come from a public highway, is circumstantial evidence that the violation had also occurred on public property. (2) A prolonged detention is not in violation of the Fourth Amendment so long as officers have probable cause to believe a violation has occurred, even if the violation is for a fine-only offense.

Facts: Sgt. Kenneth Georges of the Sacramento County Sheriff's Department checked an apartment complex where there had been reports of narcotics dealing in the parking lot. In the process, he observed defendant's parked Jeep and ran the license plate. Discovering that defendant owned the Jeep, Sgt. Georges then ran a records check on him and determined that he was a registered narcotics offender (per H&S § 11590) and required to report his home address. A month later, Sgt. Georges and Detective Jeff Spackman returned to the apartment complex and saw the same Jeep pulling into the parking lot. They watched it as three people got out of the Jeep. When the people returned to the Jeep some 10 minutes later, it was noticed that defendant was driving. It was also noticed that the rear license plate light was out and one of the front headlights was misaligned. The officers followed the Jeep around the corner of the apartment building where they observed that it had stopped again and a passenger was urinating on a wall. The Jeep never left the parking lot. Defendant and the urinating passenger were contacted. They both denied that they were on probation or parole. Detective Spackman ran a records check on defendant and verified again that he was a registered narcotics offender and determined what his address was supposed to be. Defendant admitted that he had not lived at his registered address for at least eight months. He was therefore arrested for not registering his new address. The whole process leading to his arrest took about 15 minutes. The Jeep was then searched and cocaine base and a gun were recovered. Defendant's later motion to suppress this evidence as the product of an illegal detention was denied by the trial court. After pleading no contest to possession of cocaine base for purposes of sale, he appealed.

Held: The Third District Court of Appeal affirmed. First, the Court held that the officers had sufficient cause to detain defendant (assuming the contact was a detention at all) for the observed vehicle equipment violations even though they never actually saw defendant's Jeep on a public street. The fact that the violations were observed in a private parking lot under circumstances where it was apparent defendant had just driven into the lot from the street circumstantially supplied the necessary reasonable suspicion to believe the same violations had occurred moments earlier on a public street. It is also irrelevant whether or not the officers used the perceived Vehicle Code violations as a pretext for detaining him when they were really interested in whether defendant was involved in drug-related activity. Under *Whren v. United States* (1996) 517 U.S. 806, an officer's subjective reasoning is irrelevant so long as the stop is objectively lawful. However, defendant also argued that the cocaine and gun were the products of an "unlawfully prolonged detention." In *People v. McGaughran* (1979) 25 Cal.3d 577, 586, the California Supreme Court ruled that a person may only be detained long enough for an officer to investigate the observed violation. Holding onto a suspect for longer than that, when not supported by new or additional reasonable suspicion of other illegal activity, results in an unlawfully prolonged detention. Since *McGaughran*, however, the United States Supreme Court has decided *Atwater v. City of Lago Vista* (2001) 532 U.S. 318, where it was held that physically arresting a person for violating what, by state statute, is a "fine-only" offense, does *not* violate the Fourth Amendment. The California Supreme Court has held the same thing. (See *People v. McKay* (2002) 27 Cal.4th 601; riding a bicycle in the wrong direction in violation of the Vehicle Code.) Absent a violation of the U.S. Constitution, evidence that is the product of no more than a state

statutory violation is not subject to suppression. The officers in this case, therefore, could have performed a custodial arrest of defendant for the equipment violations, even though contrary to the cite-and-release dictates of P.C. § 853.5(a), without offending the Fourth Amendment. This being true, *McGaughran* is no longer controlling because an officer may now physically arrest a person with probable cause to believe he violated a traffic offense without violating the Fourth Amendment. As such, the lesser intrusion of a temporary detention, even if extended beyond the time it would have taken to merely cite and release the offender, also does not violate the fourth Amendment. It is also irrelevant whether or not the officers actually intended to conduct a custodial arrest when they contacted defendant for the Vehicle Code violations. The issue is what they could have done constitutionally; not what they intended to do. The evidence recovered from defendant's vehicle, even if the product of a prolonged detention, is therefore not subject to suppression.

Note: This case was decided one day prior to *Arizona v. Gant*, so don't start calling me asking why this "search incident to arrest" was not challenged. Just note the importance of this case: Even if a detention is illegally prolonged, as prohibited by *People v. McGaughran*, there is no constitutional violation so long as the officer had probable cause to arrest defendant for an observed violation, even if the violation is a non-bookable "fine-only" offense under state statutes. If arresting him does not offend the Fourth Amendment, a less intrusive prolonged detention cannot be a constitutional violation either. The resulting evidence, therefore, is not subject to suppression. Again, as I argue in the Administration Notes (See *Custodial Arrests for Non-Bookable Offenses*, above), this is not an endorsement of the practice of ignoring California procedural statutes by physically arresting people for vehicle equipment violations. But it is an endorsement of the idea that so long as there is probable cause to believe that a suspect committed some offense, even if only a fine-only offense, evidence recovered during what would have otherwise been a prolonged detention is not going to be suppressed. Also note that this case does not say that prolonged detentions are no longer illegal. In those cases where the person is merely detained due to a "reasonable suspicion," without probable cause justifying at the very least a citation, then holding onto the suspect longer than necessary is a violation of the Fourth Amendment and illegal.

Traffic Stops; Temporary Operating Permits, Part I:

***People v. Hernandez* (Dec. 11, 2008) 45 Cal.4th 295**

Rule: Stopping a vehicle to check its apparently valid temporary operating permit, without a "*particularized suspicion*" to believe it is forged or otherwise invalid, is illegal.

Facts: Sacramento Sheriff's Deputy Anthony Paonessa observed defendant driving a pickup truck with no license plates. However, there was a current temporary operating permit visible in the rear window. Although Deputy Paonessa didn't observe any other violations, he knew that temporary operating permits are often forged, intended for a different vehicle, or used in stolen vehicles. So he decided to stop defendant to verify the validity of the permit he was using. When defendant was asked for his driver's license,

registration and proof of insurance, defendant appeared nervous. His speech was very rapid and abrupt, and his hands shook. He admitted to the deputy that he was on probation, but refused to step out of his truck when asked to do so. After repeated attempts to have defendant get out of the truck, Deputy Paonessa eventually had to use pepper spray on him. Defendant was pulled from his truck and arrested. He was charged with obstructing an officer in the performance of his duties (P.C. § 69), resisting arrest (P.C. § 148(a)(1)), being under the influence of methamphetamine (H&S § 11550(a)), and driving while under the influence of drugs (V.C. § 23152(a)). Defendant's motion to suppress was denied by the trial court. After being convicted in a jury trial, defendant appealed. The District Court of Appeal reversed and the state appealed.

Held: The California Supreme Court affirmed the Court of Appeal, upholding the reversal of defendant's conviction. In order to lawfully make a traffic stop for driving an unregistered vehicle, an officer must have at least an articulable and reasonable suspicion to believe that the vehicle is in fact unregistered. Although an officer may draw on his own experience and training, making inferences and deductions about the cumulative information available to him or her, traffic stops may *not* be based upon an unsupported hunch. In other words, knowing that some people driving with a temporary operating permit in their vehicle's window have either forged the permit or are using it in a vehicle other than the one for which it was intended, does not establish "articulable facts supporting a reasonable suspicion that (defendant), in particular, may (also) have been acting illegally." In this case, there is absolutely no "*particularized suspicion*" to believe that defendant was using an invalid permit. The Court further rejected the Attorney General's argument that the fact that defendant's truck was an old truck contributed to the deputy's suspicions, noting that (1) this argument was not made at the trial court level and was therefore waived, and (2) it is irrelevant anyway in that even older trucks could have lost a license plate requiring the issuance of new plates and the use of a temporary permit in the mean time. The traffic stop being illegal, the resulting evidence against defendant should have been suppressed.

Note: This decision is no surprise. The courts have long since and consistently required a "*particularized suspicion*" to believe that the particular vehicle being stopped is in fact in violation of the Vehicle Code. There being nothing here to support the claim that defendant, out of everyone else on the highway with temporary registration permits, was improperly using his permit, completely negates any argument that the deputy here had the necessary "*particularized suspicion*." To hold otherwise would mean that officers could stop and check everyone using such a permit. Courts won't authorize any rule that allows everyone in a particular class of persons to be stopped and detained.

Traffic Stops; Temporary Operating Permits, Part II:

***In re Raymond C.* (Dec. 11, 2008) 45 Cal.4th 303**

Rule: Failure to display a temporary registration permit in the rear window, putting it in the front window instead, where an officer could not see it from behind the defendant's car, justifies the officer's suspicion that the defendant is driving an unregistered vehicle.

Facts: Officer Timothy Kandler observed defendant driving an Acura without license plates or a visible temporary operating permit. From behind defendant's car, the officer couldn't tell whether defendant had a permit in the front window. Officer Kandler stopped defendant for the apparent registration violation. Asked for his license, registration and proof of insurance, defendant gave the officer his license and proof of insurance. He then told the Officer Kandler that the temporary registration sticker was displayed in the front window, pointing it out to officer. By this time, however, the officer had already noted an odor of alcohol on defendant's breath. Failing a field sobriety test, defendant was arrested for driving while under the influence. His motion to suppress was denied by the trial court. After the Juvenile Court returned a true finding, declaring defendant to be a ward of the court, he appealed. The District Court of Appeal affirmed. Defendant appealed again to the California Supreme Court.

Held: The California Supreme Court affirmed. A traffic stop, such as the one that occurred in this case, requires at least an articulable and reasonable suspicion that the driver is driving in violation of the Vehicle Code. "Ordinary traffic stops are treated as investigatory detentions for which the officer must be able to articulate specific facts justifying the suspicion that a crime is being committed." In this case, as opposed to the *Hernandez* case (above), the officer was unable to see any license plates (there being none) nor a temporary registration permit. As such, the officer had at least a reasonable suspicion to believe that defendant was driving an unregistered vehicle. The Court rejected defendant's argument that Officer Kandler had a duty to drive around his vehicle, looking for a permit in other windows, before making a traffic stop. Such a procedure constitutes "potentially dangerous maneuvers" that, aside from the potential danger involved, could also have caused the officer to lose control of the situation by allowing defendant an opportunity to turn off and escape had he chosen to do so. The availability of "less intrusive investigative techniques" does not mean that an officer is required to take advantage of them. It is not legally required that an officer eliminate all possible innocent explanations in finding a reasonable suspicion that defendant was driving an unregistered vehicle. The traffic stop, therefore, was lawful, and the resulting evidence was properly admitted into evidence against him.

Note: Good case, consistent with the general proposition that all the courts require is for a police officer to act reasonably. While it is not really all that far fetched to expect a police officer to look for a temporary operating permit in other windows when it is safe to do so, expecting the officer to driver circles around the defendant's car before making a traffic stop is not reasonable. Per footnote 2 of the written case decision, by the way, DMV rules require the temporary registration permit to be displayed in the lower rear window unless it would be obscured there, in which case it is to be put in the lower right corner of either the front windshield or a side window. (DMV Handbook of Registration Procedures (Oct. 2007), ch. 2, § 2.020, p. 7.) Assuming that defendant's permit would have been obscured if placed in the rear window (which the Court does not tell us), defendant might have been in compliance with these rules. But even if he was, the stop was lawful.