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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE OTIS GARRETT,

Defendant and Appellant.

A118758

(San Mateo County
Super. Ct. No. SC063704)

Defendant, who was driving a car without license plates but with a temporary registration sticker in the rear window, was pulled over so the police officer could determine the validity of the temporary registration sticker. Because the officer did not have an articulable and reasonable suspicion of illegal activity, the stop was unlawful. We reverse the resulting conviction.

BACKGROUND

At about 1:00 p.m. on March 8, 2007, San Bruno Police Officer Joe Baker witnessed Jesse Otis Garrett driving a tan 1990 Buick Century that had no front or rear license plates. Baker was traveling in a patrol car in the next lane and behind the Buick. He noticed there was a temporary registration sticker affixed to the window of the Buick, and he made a warrantless traffic stop to determine the validity of the sticker. He understood it was a violation of the Vehicle Code to drive a vehicle either without license plates or a valid temporary registration sticker. After pulling Garrett over, Baker requested identification and was given a California identification card in lieu of a drivers

license. A records check disclosed that Garrett's license was suspended. Baker obtained Garrett's consent to search him, which produced a small plastic "twist" of cocaine from the right-front coin pocket.

Garrett was charged by information with felony possession of cocaine (Health & Saf. Code, § 11350, subd. (a); count 1); misdemeanor driving on a highway when he knew his license was suspended or revoked for driving under the influence of alcohol or drugs (Veh. Code, § 14601.2, subd. (a); count 2); and misdemeanor driving on a highway when he knew his license was suspended or revoked for excessive blood alcohol levels (Veh. Code, § 14601.5, subd. (a); count 3). The information also charged that Garrett had suffered four prior convictions within the meaning of Penal Code section 1203, subdivision (e)(4) (Prior 1); that he had served three prior prison terms within the meaning of Penal Code section 667.5, subdivision (b) (Priors 2 to 4); that he had three prior convictions within the meaning of Health and Safety Code section 11370, subdivision (a) (Priors 5 to 7); and that he had a prior conviction within the meaning of Vehicle Code section 14601.2, subdivision (g).

At the preliminary hearing, Garrett moved to suppress evidence by challenging the legality of the initial stop and detention. At an evidentiary hearing on this motion, Baker offered that he stopped Garrett because the car had no license plates and he wanted to determine if the VIN on the car matched the VIN on the temporary registration sticker. According to Baker, he regularly stopped vehicles in these circumstances to determine the validity of the temporary registration sticker since he was aware of widespread counterfeiting of temporary registration stickers. Denying Garrett's suppression motion, the magistrate cited Baker's testimony about widespread counterfeiting and observed that the officer had no way of checking the validity of the temporary registration sticker without stopping the vehicle.

Garrett subsequently renewed his suppression motion pursuant to Penal Code section 1538.5, which was again denied. He then entered no contest pleas to counts 1 and 3 and admitted four prior convictions within the meaning of section 1203, subdivision (e)(4). Count 2 was dismissed and the remaining allegations stricken. The

court suspended imposition of sentence, placed Garrett on three years' supervised probation, and ordered him to serve one year in the county jail and register as a narcotics offender (Health & Saf. Code, § 11590).

DISCUSSION

On December 11, 2008, the California Supreme Court decided the issue raised in this appeal, namely, if a police officer sees that a motor vehicle lacks a rear or both license plates, may the officer make a traffic stop to determine if the vehicle has a temporary permit or if a displayed temporary permit is a valid one. (*People v. Hernandez* (2008) 45 Cal.4th 295 (*Hernandez*).) There, the Court ruled, "An officer who sees a vehicle displaying a temporary operating permit in lieu of license plates may not stop the vehicle simply because he or she believes that such permits are often forged or otherwise invalid. To support a stop the officer must have a reasonable suspicion that the particular permit is invalid." (*Hernandez*, at p. 297.) The opinion also contained the passage, "the age of the vehicle, without additional particularized suspicion, would not have supported the stop." (*Id.* at p. 301.) In the present case, as in *Hernandez*, the officer observed that the suspect vehicle had no license plates, but it had a temporary registration sticker.

After *Hernandez* was published, we asked the parties to submit supplemental briefs on the impact of the decision. The People seek to distinguish *Hernandez* by arguing that Baker "had a more fully developed reason for taking note of the age of the car in the present case." Baker identified Garrett's vehicle as a 1990 Buick Century. Later, while testifying about the widespread use of counterfeit temporary registration stickers, he explained, "Say [the vehicle] doesn't pass smog, they'll photocopy [temporary registration stickers], put them on the rear window, and they think, well, cops can't pull me over." The People maintain that the combination of these two facts—the 18-year age of the vehicle and the officer's awareness of vehicles that cannot pass smog inspections will sometimes display counterfeit registration stickers—"suggested the specific scenario the officer had in mind of a much older vehicle that might not have been able to pass a smog inspection." The Attorney General reasons that this gives rise to a particularized suspicion justifying the stop.

We cannot agree. Baker did not testify that he formed the particularized suspicion posited by the Attorney General. The model year of the Buick was mentioned only as an identifying feature of the vehicle Garrett was driving. Baker’s testimony reveals that he did not place any particular significance in the age of the vehicle. While a vehicle’s failure to pass a smog test was certainly brought up in the context of one reason a person might use a counterfeit temporary registration sticker, Baker never expressly linked that reason to older cars. Nor did he link the age of the Buick to any particular scenario involving the use of counterfeit registration stickers. Baker’s testimony was pretty clear on this point: he pulled over Garrett as part of a general practice of stopping vehicles to investigate the validity of a temporary registration sticker.

Finally, we point out that *Hernandez* rejected the People’s argument that the officer “was entitled to rely on his experience that temporary permits are often invalid,” and that it was “significant that [the] defendant’s truck was an older model, ‘which presumably would have had already been issued license plates’” (*Hernandez, supra*, 45 Cal.4th at pp. 300-301.) Nevertheless, the People argue that the combination of these two factors gives rise to a particularized suspicion in the present case. The argument is inconsistent with *Hernandez*.

DISPOSITION

The judgment is reversed.

STEVENS, J.*

We concur.

JONES, P.J.

SIMONS, J.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.