

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 27, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2005AP1485-CR**

**Cir. Ct. No. 2003CM4635**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RAYMOND LORD, JR.,**

**DEFENDANT-APPELLANT-PETITIONER.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: MICHAEL B. BRENNAN, Judge. *Reversed and cause remanded.*

¶1 WEDEMEYER, P.J.<sup>1</sup> We reassess the matter of Raymond Lord's ineffective assistance of counsel claim in light of the Wisconsin Supreme Court's

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

summary reversal and remand to this court for relief. On remand, we are bound by the supreme court's declaration that a vehicle cannot legally be stopped to verify its registration solely on the basis that the vehicle displays a temporary license plate. *State v. Lord*, 2006 WI 122, ¶¶7-8, \_\_\_ Wis. 2d. \_\_\_, 723 N.W.2d 425. Therefore, our decision affirming the denial of the ineffective assistance of counsel claim must be reevaluated. Based on our reevaluation, we remand this matter to the circuit court for an evidentiary hearing pursuant to *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979) and any other proceedings deemed necessary by the trial court.

### BACKGROUND

¶2 In a complaint issued June 6, 2003, Raymond Lord, Jr., was charged with two counts of carrying a concealed weapon in violation of WIS. STAT. § 941.23 (2003-04).<sup>2</sup> The probable cause portion of the complaint alleged that at approximately 11:30 p.m. on May 21, 2003, two Milwaukee County sheriff's deputies stopped Lord's car and, as they approached Lord, they observed a revolver on the floor of his car. A search of the car revealed a second revolver.

¶3 Lord filed a motion to suppress the evidence seized from his car and an evidentiary hearing was held on November 12, 2003. At the hearing, Milwaukee County Sheriff's Department Detective Keith Thrower testified that at about 11:30 p.m. on May 21, 2003, he and his partner, Detective Guzniczak, saw

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

Lord's vehicle with a temporary license plate going east on West North Avenue.

Describing a temporary license plate, Thrower said:

Temporary Wisconsin tags are basically a paper plate which is white with red lettering. It also has a small box for box letters at the bottom and a number of larger numbers where you're suppose[d] to put -- I believe it's either the last five or six VIN numbers from the vehicle in the box.

Thrower stated that defense Exhibit B appeared to be the same plate that was on Lord's car. Describing Exhibit B, Thrower said: "It says temporary Wisconsin plate across the top. It has five numbers or letters below that. It has an expiration date and a larger box and a smaller box to the left of the expiration date with six numbers with a partial VIN listed in it."

¶4 Thrower indicated that the plate had the temporary license number of T98549, but there was no database he could access that would tell him whether the registration was valid. Thrower testified: "We [we]ren't able to use what's commonly known as M.D.T., mobile data terminal, where we can actually get behind the defendant and run a plate and verify if the plates are suspended, valid, or if the vehicle's stolen while we're following the individual."

¶5 Thrower explained that, in his experience, the license plate numbers are not called into the Department of Transportation when the car dealership provides the temporary license plates to the purchaser of the car; and, as a result, there is no database Thrower can access that will provide relevant information

about the status of the vehicle. Thrower indicated that it was his understanding that the dealership wrote the last six numbers of the vehicle identification number (VIN) on the temporary license plate; but, Thrower could not use the VIN to obtain information from the Department of Transportation unless he had the entire number. Thrower said the paper temporary plate is used for the time between when the car owner applies for a metal plate and the owner's receipt of the metal plate. A driver can use the temporary plate for ninety days.

¶6 Thrower advised that he has experience pursuing persons who have placed stolen temporary license plates onto stolen cars hoping the police would think the car was a recent purchase. Thrower said that, because the temporary plates were paper, they could be removed easily from one car and put on another.

¶7 He testified that it appeared that the expiration date written on Exhibit B might have been modified, but it would not have been possible for him to have made that determination as he was passing Lord's car.

¶8 According to Thrower, when he stops someone for a temporary license plate, he (Thrower) can ask the driver whether he or she has a current registration form and Thrower can obtain the VIN. He would then use his computer or call dispatch with the VIN to determine whether the car is properly registered or whether it is a stolen vehicle.

¶9 In this case, after Lord stopped his car in response to Thrower activating his emergency lights, Thrower and Guzniczak approached Lord's car and Guzniczak yelled that there was a gun in the car. Two revolvers were found in the car.

¶10 On cross-examination, Thrower said he stopped Lord's car to check his registration. When asked if it was his understanding that he was authorized to stop vehicles strictly to ask for their registration, Thrower responded: "Ever since I've been in law enforcement, yes." Thrower explained: "It's been my experience and my training that if a plate doesn't have a regular Wisconsin metal issued tag, no tags at all or handwritten, I can stop it to verify the registration." It was Thrower's opinion that he could stop any vehicle that did not have a regular, metal license plate with the affixed correct sticker.

¶11 Thrower agreed with the defense attorney that regular, metal license plates could be altered in terms of people stealing stickers; but, Thrower said he could run a metal plate on his computer to verify registration. In response to a question from the court, Thrower explained why he was unable to run a computer check on a temporary license plate:

Because these numbers are not entered into Wisconsin DOT, and the six letter block here with the last six numbers of the VIN, the Wisconsin DOT system will not take a partial VIN. You have to have a full and complete VIN otherwise the system will kick it back and tell you it's not valid due to the length of [the] VIN.

¶12 When the court asked whether there was a way Thrower could use the computer to determine whether the expiration date on the temporary plate was valid or had been modified, Thrower responded: “No. No way whatsoever unless you do a traffic stop, and you have to have the actual, full VIN from the paper work.” Thrower said that once he obtained the VIN from the car or from the paperwork in the driver’s possession, he could get information about the car using the computer.

¶13 In denying the suppression motion, the circuit court said the temporary plates are paper and there is “no way for the police to identify the vehicle or the person to whom the vehicle plates are issued unless they have an opportunity to check the VIN number because the number on these temporary plates is not recorded with the Department of Transportation.” The court believed that under the circumstances of this case, the temporary detention of the motor vehicle to verify that it had a proper temporary license plate that was listed to the correct vehicle was a reasonable stop.

¶14 On February 6, 2004, Lord pleaded guilty to the two counts in the complaint, was convicted and sentenced.

¶15 On December 17, 2004, Lord filed a postconviction motion asking the court to vacate the judgment of conviction on the ground that his trial attorney had been ineffective for failing to present evidence that the temporary license plate

in question was issued by the Department of Transportation and evidence concerning the process or procedure by which temporary plates are issued.

¶16 In denying the postconviction motion, the circuit court said that a temporary brief intrusion has to be allowed so that a police officer may verify that the six numbers of the VIN that appear on the temporary license plate are actually the last six numbers of the VIN of the car. The court noted that the temporary license plates cannot be checked on a computer database and that the result of the case might be different if there were a database for the plates. The court said that the only way for the officer to verify that the car is in fact registered, is to stop the car to determine if the VIN matches the temporary plate. The court said a stop for that purpose would not violate *Delaware v. Prouse*, 440 U.S. 648 (1979), because the stop would not be random and would not be unreasonably invasive. The court concluded that the stop of Lord's car was not in violation of his Fourth Amendment rights and that trial counsel was not ineffective.

¶17 Lord appealed to the court of appeals from the judgment of conviction and the order denying the postconviction motion. In a decision issued January 31, 2006, this court affirmed the judgment and the order. *State v. Lord*, No. 2005AP1485-CR, unpublished slip op. (WI App Jan. 31, 2006).

¶18 Lord filed a petition with the Wisconsin Supreme Court seeking review of this court's decision. The supreme court granted Lord's petition, but

before any additional proceedings could occur, the State filed a motion requesting that the supreme court summarily reverse and remand the court of appeals' decision. The State conceded that Thrower could not detain Lord based solely on his use of a temporary license plate. The supreme court granted this motion, and reversed and remanded the matter to this court for reconsideration.

## DISCUSSION

¶19 An officer may not make a traffic stop solely because an automobile has a temporary license plate. *Prouse*, 440 U.S. at 663. Temporary license plates are sometimes associated with criminal activity and non-licensed vehicles. However, the mere presence of these plates, without further cause, does not create the reasonable suspicion required to make a stop under *Terry v. Ohio*, 392 U.S. 1 (1968); see also *Prouse*, 440 U.S. at 655.

¶20 *Prouse* dealt directly with the issue of when law enforcement personnel could stop a car to verify its registration. *Id.* The *Prouse* Court found that it was unreasonable for a police officer to conduct “spot checks” to verify that a car was registered properly without further cause for suspicion. *Id.* at 655. To allow these stops would effectively give police unfettered discretion to stop any car they subjectively deemed to be suspicious. *Id.* at 663. The court explained that:

[E]xcept in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.



*Id.* at 663.

¶21 A police officer conducting a traffic stop because the car has a valid temporary license plate conflicts with the rationale of *Prouse*. Although temporary tags can be indicative of certain kinds of criminal activity, tags alone are not probative enough to constitute evidence of a crime so that a traffic stop may be conducted. A car with a temporary license plate is still outwardly conforming with all applicable laws, and police officers should not be given discretion to pull over any one of these vehicles. A car cannot be held to be reasonably suspicious by virtue of its compliance with state laws regarding temporary plates.

¶22 Numerous other courts have reached the conclusion that bearing a valid temporary license plate does not justify being detained by law enforcement. In *People v. Nabong*, 9 Cal. Rptr. 3d 854 (Cal. Ct. App. 2004), an officer pulled over a car displaying temporary tags. According to the officer, during his experience, about half of the cars he pulled over in order to check their temporary plates turned out to be invalid. *Id.* at 855. Despite this number, the court found that temporary registrations alone still did not afford any particularized belief that the car was not validly registered or otherwise involved in criminal activity. *Id.* at 856.

¶23 Similarly, *United States v. Wilson*, 205 F.3d 720, 724 (4th Cir. 2000), *State v. Butler*, 539 S.E.2d 414, 416 (S.C. Ct. App. 2000), and *Bius v. State*, 563 S.E.2d 527, 529 (Ga. Ct. App. 2002) are all examples of courts declining to find that a police officer has reasonable suspicion to stop a vehicle solely due to temporary license plates or registrations.

¶24 The Wisconsin Supreme Court's reversal on this issue prompts reconsideration of Lord's ineffective assistance of counsel claim. The circuit court held that the traffic stop to check the temporary tags was valid. Because of this, Lord could not prove the prejudice prong of the *Strickland v. Washington* ineffective assistance test. 466 U.S. 668 (1984). Due to the change in circumstances of this matter, the circuit court must reassess its holding.

¶25 Consistent with the Wisconsin Supreme Court's ruling of November 9, 2006, our January 31, 2006 decision affirming the denial of Lord's postconviction motion, has been reversed and remanded to this court for reconsideration. We accept the supreme court's directive and reconsider our initial opinion. By accepting the supreme court's ruling that based on *Prouse*, the officers here did not have reasonable suspicion to stop Lord based solely on the display of a temporary license plate, we must also conclude that it is necessary to remand this case to the circuit court for an evidentiary hearing pursuant to *Machner*, on Lord's claim that his trial attorney was ineffective and for any other further proceedings deemed necessary by the trial court.

*By the Court.*—Judgment and order reversed and cause remanded.

This opinion will not be published. See WIS. STAT. Rule 809.23(1)(b)(5).

