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RECENT DEVELOPMENT

STATE V. WILLIAMS: A TRAFFIC STOP WILL BE CONSTITUTIONALLY PERMISSIBLE IF IT IS BASED ON OBSERVATIONS OF A POLICE OFFICER THAT GIVE REASONABLE ARTICULABLE SUSPICION THAT A TRAFFIC LAW HAS BEEN VIOLATED.

By: David Jimenez

The Court of Appeals of Maryland held that a traffic stop complies with the Fourth Amendment to the United States Constitution if the police officer making the stop has reasonable articulable suspicion that a traffic law has been violated. *State v. Williams*, 401 Md. 676, 934 A.2d 38 (2007). Specifically, the Court stated that a traffic stop based on an officer's observation that window tint on a vehicle is in violation of Maryland law is not constitutional if the officer cannot credibly articulate the difference between a properly and improperly tinted window. *Id.* at 692, 934 A.2d at 47-48.

On May 8, 2006, Harford County Deputy Sheriff Wood ("Deputy Wood"), was advised that a black Mercury Grand Marquis with dark window tint and a specific license plate number was possibly carrying a controlled dangerous substance ("CDS"). At approximately 12:40 a.m., Deputy Wood observed the vehicle and alerted a nearby K-9 unit before he initiated the stop. Deputy Wood had not observed the driver, Arvel D. Williams ("Williams"), violate any traffic laws prior to the stop. However, Deputy Wood stopped Williams because Deputy Wood observed that the window tint on Williams' vehicle was darker than "normal." At the time of the stop, Deputy Wood had neither received prior training with respect to window tinting, nor did he possess a tint meter, which can discern whether tint exceeds the statutory limit.

Deputy Wood previously issued approximately twelve repair orders for tinting violations. Based on his observations, Deputy Wood chose to issue a repair order to Williams. While preparing the repair order and running a license and warrant check on Williams, the K-9 unit arrived and alerted to CDS in Williams' car. After a subsequent search of the vehicle revealed suspected cocaine and marijuana, Deputy Wood arrested Williams. Four days after Williams' arrest, Williams took his vehicle to the State Police Automotive Safety Division, where

tests revealed that the windows of his vehicle satisfied the Maryland requirement of thirty-five percent light transmittance.

Because Williams' vehicle passed the light transmittance test, the Circuit Court for Harford County granted Williams' motion to suppress the CDS from evidence, stating that: "[w]hen you can't find anything else to stop the car for, [you should not] be able to stop him because the window tinting appears to be too dark, when, in fact, it's not too dark." The circuit court further stated that the State must establish that the police officer was correct in his or her judgment that a traffic violation had occurred or else lose the right to admit the evidence discovered pursuant to the stop. The State subsequently appealed to the Court of Special Appeals of Maryland, but the Court of Appeals of Maryland granted certiorari prior to proceedings in the Court of Special Appeals of Maryland.

Section 22-406(i)(2) of the Transportation Article of the Maryland Code provides that if a police officer observes a vehicle in operation that does not allow at least thirty-five percent light transmittance through its windows, the officer is permitted to stop the vehicle and issue a citation and repair work order. *Williams*, 401 Md. at 683, 934 A.2d at 42. Deputy Wood used the pretext of such a window tint violation to stop and search Williams' vehicle. *Id.* at 679, 934 A.2d at 40. This type of stop, commonly referred to as a *Whren* stop, occurs when a police officer pulls over a vehicle for a specific purpose, such as suspicion of drug possession, by using the guise of another traffic violation committed by the driver in question. *Williams*, 401 Md. at 685, 934 A.2d at 43-44 (citing *Whren v. United States*, 517 U.S. 806 (1996)). *Whren* stops are constitutional, provided that the officer has sufficient cause to believe that a traffic violation has actually occurred. *Williams*, 401 Md. at 685, 934 A.2d at 44.

Not only was Deputy Wood admittedly untrained in identifying illegal window tint, his visual observation of Williams' window only enabled him to describe it as "[a]ppear[ing] darker than a normal window . . . without tinting." *Id.* at 680, 934 A.2d at 41. Deputy Wood elaborated on his suppression hearing testimony by further specifying that he stopped the vehicle merely because there was tint on the window. *Id.* at 681, 934 A.2d at 41. The Court, although it affirmed the circuit court's ruling, found that a police officer need not be correct in his or her belief that a traffic violation has occurred, but rather the officer must have reasonable articulable suspicion that a violation has occurred. *Id.* at 686, 934 A.2d at 44-45. Such a finding

would be inconsistent with both pre-*Whren* and post-*Whren* jurisprudence. *Williams*, 401 Md. at 686, 934 A.2d at 44-45.

In evaluating the *Williams* case, the Court looked to clarify existing ambiguity as to what will justify a traffic stop. *Id.* at 687, 934 A.2d at 44. The *Whren* decision seemed to establish a probable cause standard for pretextual stops, whereas the *Terry v. Ohio* decision only required reasonable articulable suspicion. *Williams*, 401 Md. at 690, 934 A.2d at 45-46 (citing *Whren*, 517 U.S. 806 (1996); and *Terry*, 392 U.S. 1 (1968)). The post-*Whren* decision of *Knowles v. Iowa*, 525 U.S. 113 (1998), supports the reasonable articulable suspicion standard. *Williams*, 401 Md. at 689, 934 A.2d at 46. Most courts have chosen to follow that standard, finding that if an officer had reasonable articulable suspicion that a traffic law had been violated, the stop is valid under the Fourth Amendment. *Williams*, 401 Md. at 690, 934 A.2d at 46.

Further, the Court evaluated Deputy Wood's experience and observations in determining that he did not have reasonable articulable suspicion that the window tint violated Maryland law to justify the traffic stop. *Id.* at 691, 934 A.2d at 47. The Court feared that if it were to admit the evidence seized during Deputy Wood's stop of *Williams*, Maryland law would effectively allow police officers to pull over any vehicle with tinted windows. *Id.* at 692, 934 A.2d at 47.

Instead, the Court clarified that a police officer must have a suspicion that there has been a violation of the Maryland window tinting regulations in order to stop a vehicle for such a violation. *Id.* at 692, 934 A.2d at 47. In other words, if an officer chooses to stop a vehicle for a possible window tint violation based solely on a visual observation of the vehicle, the officer must be able to discern a properly tinted window from a window that does not allow the required thirty-five percent light transmittance. *Id.* at 692, 934 A.2d at 47. In establishing this standard, and upholding the suppression of the CDS, the Court recognized the lack of sophistication Deputy Wood possessed with regard to the degree of window tinting. *Id.* at 691, 934 A.2d at 47. To stop *Williams* merely because his windows were tinted was clearly unconstitutional without a reasonable articulable suspicion that illegal activity or a traffic violation occurred. *Id.* at 692, 934 A.2d at 47.

In concurring with the overall decision, Chief Judge Bell and Judge Greene state that they would apply an even stronger standard for *Whren* stops by requiring police officers to show probable cause as the basis of a stop. *Williams*, 401 Md. at 692-93, 934 A.2d at 48 (Bell,

C.J. and Green, J., concurring in part). The dissent felt that the traffic stop of Williams' vehicle was supported by reasonable articulable suspicion. *Id.* at 693, 934 A.2d at 48 (Battaglia, J., dissenting). Thus, the dissent supports the overall constitutional protection that this decision provides.

The Court of Appeals of Maryland defends the ever-shrinking constitutional rights of citizens with this decision. By suppressing the CDS from evidence and allowing an otherwise guilty possessor or distributor of CDS to escape punishment, the Court of Appeals of Maryland sends a harsh message. Police officers must realize that if they do not comply with the constitutional rights of individuals, potential criminals will go free. If Deputy Wood had continued tailing Williams' vehicle until Williams actually broke a traffic law, as opposed to attempting to create a premise for a traffic stop, the evidence may not have been suppressed. Conversely, if the Court would have chosen to uphold the stop and seizure as constitutional, it would have led to a great number of random stops of law abiding vehicles, merely because their owners have chosen to put tint on their windows. To impose such a standard would have conflicted with a critical aspect of the Fourth Amendment. Instead, the Court made the correct decision and protected its citizens from unreasonable searches and seizures.