



## **LGIT'S ROLL CALL REPORTER NOVEMBER 2007**

**When a traffic stop for illegal tinting is based solely on an officer's observations, the officer must be able to articulate his or her observations by comparing the appearance of the defectively tinted window to one that is properly tinted (one satisfying the 35% requirement).**

**QUESTION: If an officer makes a traffic stop solely because of illegal tinting, can the officer justify the stop merely on the basis that the window appeared darker than a normal window?**

**ANSWER: No. Reasonable articulable suspicion to support such a stop will only be found if the officer articulates the difference between the appearance of the defectively tinted window and one that complies with State law.**

**CASE: *State v. Williams*, Court of Appeals of Maryland, decided October 19, 2007**

In *State v. Williams*, the Court of Appeals considered important issues related to traffic stops, including the sufficiency of an officer's observations to support a stop for illegal tinting, as well as the minimum legal standard that supports routine traffic stops, including pretextual *Whren* stops.

The facts in *Williams* established that while at the precinct station prior to coming on duty, Harford County Deputy Sheriff Wood was advised to be on the lookout for a black Mercury Grand Marquis with a specific license number because the vehicle was "possibly carrying CDS". He was also told to stop the car if he observed a traffic violation. While driving south on I-95 at 12:40 a.m., Deputy Wood noticed the car so described in front of him. The driver of the car was not violating any traffic laws. The deputy followed the car for a half mile, and, when it exited the highway, he stayed behind it. Just prior to exiting the highway, Deputy Wood radioed his dispatcher that he had the suspect car in sight. He received a response from a K-9 officer who was monitoring the communication. After leaving the highway, the Grand Marquis stopped for a red light at an intersection, at which point the deputy's car was about 12 feet behind. The intersection was well lit, and according to the deputy, the rear window of the car appeared darker than "normal". Deputy Wood informed the K-9 officer that he intended to stop the car, and shortly after the car turned, he did so. Upon stopping the car, Deputy Wood advised the driver, Arvel Williams, that he had been stopped for a tint violation and that he would be issued a repair order. The deputy returned to his car to do a license and warrant check. When the check revealed a valid license and no warrant, Deputy Wood prepared an equipment repair order. While Woods was preparing the repair order,

the K-9 officer arrived, and, when the dog alerted for CDS, the vehicle was searched. Suspected cocaine and marijuana were found and Williams was arrested.

Four days later, Williams took his car to the State Police automotive Safety Enforcement Division, which found that the windows did allow 35% light transmittance and were therefore legal and would pass Maryland inspection laws. Prior to his trial, Williams challenged the validity of the repair order and the seizure of the CDS. Based upon the fact that the windows were not illegally tinted, the trial court granted Williams' motion and the State appealed.

On appeal, the Court of Appeals observed that the post-manufacture tinting of motor vehicle windows, which is normally done through a plastic film or metallic laminate applied to the interior side of the window, is regulated largely at the State level. In Maryland, statutes found in titles 22 and 23 of the Transportation Article of the Maryland Code allow post-manufacture tinting provided that it allows at least 35% light transmittance. These statutes also require that a label stating the percentage of light transmittance be permanently attached to the window between the glass and the tinting material. These statutes further enable a police officer who observes a vehicle being driven on a highway that is not in compliance with these requirements to stop the vehicle and issue both a citation for the traffic offense and a vehicle equipment repair order.

Based on the evidence presented at the suppression hearing, the Court of Appeals then concluded that the evidence in the case did *not* suffice to give Deputy Wood the level of reasonable articulable suspicion necessary to justify the *Whren* stop. It did so, in part, because the deputy testified that he relied solely on his visual observations, without the use of a tint meter field test. *In fact, he testified that he had received no specific training with respect to tinting.* Instead, he testified that “if the officer feels it’s too dark, they can stop the car and issue a repair order.” More importantly to the court, the deputy repeatedly testified at the suppression hearing only that the window appeared to be “darker than normal windows”. By testifying in this manner, the court emphasized that he had merely compared the darkness of the rear window to a window without *any* tinting. Obviously, a tinted window is going to appear darker than a window without any tinting, especially at night. Because the law permits a substantial tinting-substantial enough to block out 65% of the light striking the window, the court held that Deputy Wood simply lacked a reasonable suspicion to stop the car. To hold otherwise would allow police officers to stop any car with any tinted window, simply because it appears darker than an untinted window. That, the court concluded, is impermissible under the Fourth Amendment.

**NOTE:** In light of this case, if an officer chooses to stop a car for a tinting violation based solely on visual observation, that observation must be in the context of comparing the appearance of the supposedly defective window with one that is in compliance with Maryland law. If the officer can credibly articulate the difference, a court should find reasonable articulable suspicion. This case also recognized that a reasonable articulable suspicion, and not probable cause, is all that is necessary to justify a routine traffic stop, including a pretextual *Whren* stop.

*By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust*

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