

Monday, October 29, 2007

### **Window-tinting stops: Ripe for challenges in Maryland.**

Â Bill of RightsÂ (From public domain.)Â Praised be the Maryland Court of Appeals for prohibiting traffic stops premised on car window tinting unless the stopping police officer's observation is in the context ofÂ "what a properly tinted window, compliant with the 35% requirement, would look like. If the officer can credibly articulate that difference, a court could find reasonable articulable suspicion, but not otherwise." Maryland v. Arvel D. Williams, \_\_ Md. \_\_ (October 19, 2007). Â In thisÂ Maryland v. Arvel D. WilliamsÂ case, try as he might have while following the defendant, the arresting officer was unable to find any reason to stop the defendant's car other than for a suspected window tinting violation. The cop was making a pretextual stop -- intending on investigating for drugs and callingÂ a drug sniffing dog to sniff the defendant's car during any processing of a ticket to be handedÂ to the defendant -- and found no basis for alleging any violations of the law other than the positive result from the drug dog. Â A four-to-threeÂ Maryland Court of AppealsÂ majority determined that whether one applies the reasonable articulable suspicion standard (which two in the majority and all three in the dissent used) or probable cause standard (which two in the majority insist upon)Â for making a pretextual Whren stop, the stop and any subsequent search of the vehicle will be suppressed unless the police officer's observation is in the context ofÂ "what a properly tinted window, compliant with the 35% requirement, would look like. If the officer can credibly articulate that difference, a court could find reasonable articulable suspicion, but not otherwise." Maryland v. Arvel D. Williams. In a footnote, the majority continued: Â "There are two other aspects not argued in this case but which may be relevant toÂ stops for tinting violations. First, the issue here is only the validity of the pretextual stop, not the equipment repair order or the indictment for the CDS violations. As presented in both the Circuit Court and this Court, the validity of the stop depends on the application of Fourth Amendment jurisprudence, and, as to that, we have concluded that the proper standard is reasonable articulable suspicion. Appellee has not argued that some higher standard is required under Maryland law. We do note, however, that, to justify actually charging a person with a motor vehicle violation, Maryland law requires that the officer have probable cause to believe that the person has committed the violation. See Maryland Code, Â§ 26-201(a) o f the Transp. Article."Second, as noted, COMAR 11.14.02.14 requires, for post-manufacture tinting, that a label, Â½ x 1-Â½ inches, denoting, among other things, the percentage of light transmittable, be permanently attached to the window, between the glass and the tinting film or laminate. If an officer stops a car based solely on a conclusion, derived from his or her visual observations of the darkness of the window, that a tinted window is noncompliant with the 35% light transmission requirement, one easy preliminary step, before proceeding further, is to check the window to see if such a label is present, for if it is and (1) it shows that the window is compliant with the 35% requirement, and (2) there is no reason to suspect that the label is not genuine, any suspicion that arose from the visual observation would likely disappear . In that event, the officer would be obliged to apologize to the motorist and allow him or her to leave without further detention. On the other hand, if there is no label or the label appears not to be genuine, that alone may justify a citation under Â§ 22-101 or Â§ 23-105(a), a repair order, and some further investigation."Â Curious about this case is that the majority and dissenting opinions each have a retired judge on board. Will a majority be mustered to uphold the current majority's conclusion when and if the issue is revisited by the Court of Appeals judges with only the full-time Court of Appeals judges participating? Â Also interesting about this case is that the trial judge below ordered the suppression of the drugs found subsequent to the stop for the alleged tinting violation, which is a nice change of pace from the cases where defendants wait over a year to get appellate relief where the trial court erroneously denies a suppression motion. Â Finally, this case should put trial judges on notice that a big gap exists betweenÂ reasonable suspicion for stopping cars and people on the one hand, and accepting a police officer's views hook, line and sinker on this other hand. This Maryland v. Arvel D. WilliamsÂ case provides further support for requiring suppression motion hearing judges to permit extensive inquiry by defense lawyersÂ into cops' credibility and motivations not only for stopping a car, but also for detaining a driver long enough for a drug dog to arrive and start sniffing, for believing that the stopped car or its license tags are stolen, and for believing that probable cause existed for searching on the basis of a marijuana odor in the car (what if the odor is faint or if the odor is allegedly of unburnt marijuana?) Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00