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United States of America, Plaintiff-Appellee, v. Charles Williams Jr., Defendant-Appellant: Reply Brief of Appellant

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No. 14-4049

IN THE

United States Court of Appeals for the Fourth Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CHARLES WILLIAMS JR.,

Defendant-Appellant.

On Appeal From the United States District Court for the Middle District of North Carolina in Case No. 1:12-cr-00264-WO-1

REPLY BRIEF OF APPELLANT

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INTRODUCTION

There is no dispute that the district court concluded there were two distinct *Terry* stops here. Without analysis, the State simply claims that any issue is foreclosed by this Court's ruling in *United States v. Foreman*, 369 F.3d 776 (4th Cir. 2004), and attempts to distinguish other precedent based solely on the amount of time between stops. Neither argument disposes of the issues in this case. In *Foreman*, the Court did not analyze the issue of a subsequent stop in light of the nature of subsequent stops, but rather treated it as a fluid situation. And distinctions based on time between stops are distinctions without a difference. Allowing law enforcement to repeatedly stop citizens without new, articulable suspicion amounts to unjust harassment regardless of the amount of time that lapses between stops, and the State cites no case that has ruled law enforcement may continue to stop citizens over and over again so long as they do not allow much time to lapse between stops.

In any event, even if the stops are merged into one, expanding the scope of the search violated William's Fourth Amendment right against unreasonable seizure. As a matter of law, the indicia relied on by the State do not raise reasonable suspicion of drug-related activity, and further detention to support a drug dog sweep was unwarranted. The Court should vacate Williams' conviction with directions to grant the motion to suppress.

ARGUMENT

I. THERE WERE TWO DISTINCT DETENTIONS WITHOUT ANY ADDITIONAL SUSPICION JUSTIFYING THE SECOND DETENTION

The State does not dispute that there were two, independent stops in this case. And it offers no analysis of the legal ramifications of stopping a citizen, letting him go, and then stopping him a second time. In the opening brief, Williams established that there is a line of authority in other circuits establishing that once a stop ends, there cannot be another stop without new, articulable basis for reasonable suspicion independent from the prior stop. AOB 12-17 (discussing *United States v. Peters*, 10 F.3d 1517 (10th Cir. 1993), *United States v. Garcia*, 23 F.3d 1331, 1333-34 (8th Cir. 1994), and *United States v. Morin*, 665 F.2d 765, 769 (5th Cir. 1982). The State did not directly address any of the analysis giving rise to this principle of search and seizure law.

The State relies exclusively on one distinguishable case that also does not directly analyze the second stop issue. The State argues that in *United States v. Foreman*, the Fourth Circuit rejected any analysis requiring new articulable suspicion to justify a new *Terry* stop following a stop that has concluded. AB 8. But in that case, the officer gained a new fact supporting reasonable suspicion as he concluded the initial *Terry* stop. *See Foreman*, 369 F.3d at 779. This Court noted "[the officer] returned [the defendant's] driver's license and registration,

after which [the defendant] thanked [the officer] for the warnings and gave him a sweaty handshake." *Id.* The Court relied on "heavy sweating," a "physical sign[] of nervousness" to support its holding that reasonable suspicion existed. *Id.* at 784.

According to the facts relayed, the officer did not make physical contact with the defendant and observe the defendant's sweaty palms until after the officer had issued the warning ticket. Thus the officer gained additional information after issuing the ticket. Here, on the other hand, the officers gained *no new information* supporting reasonable suspicion before the first stop concluded—all of the State's purported justifications for the second detention were known before the stop terminated.

Moreover, that decision did not consider precedent on the issue of sequential *Terry* stops because "[t]he district court did not cite any case law supporting the proposition that it was required to ignore all of the events which occurred before the time [the officer] ostensibly allowed [the defendant] to leave. [And the Court was] aware of none." Instead, it treated the situation as fluid and looked to *United States v. Williams*, 271 F.3d 1262, 1271 (10th Cir. 2001). But in that case, unlike here, the court never found there were two distinct stops and thus the relevant issues also were never addressed. If two stops had been found, the court would have been bound by *Peters*, 10 F.3d at 1522-23.

The State did not advance any argument supporting an officer's authority to initiate a *Terry* stop after terminating a previous stop without any new evidence. Its only argument to distinguish prior case law is that, in the cases cited by Williams, the second stops were separated from the first by greater distances and amounts of time. But the State does not explain why an individual's liberty interest is decreased immediately following a *Terry* stop or why it would replenish as the individual moves away from the stop. And not *Peters*, nor *Garcia*, nor *Morin* suggests that there was a gradually-replenishing liberty interest. To the contrary, once an individual is free to go his or her liberty interest exists in full. The State's offered distinctions are not legally significant.

II. THERE WAS INSUFFICIENT ARTICULABLE SUSPICION TO EXPAND THE SCOPE OF EVEN A SINGLE DETENTION

"[W]hen an officer seeks to expand [an] investigation of a motorist beyond the reasons for the [initial stop], the officer must have a reasonable suspicion that the particular person seized in engaged in criminal activity." *United States v. Brugal*, 209 F.3d 353, 357 (4th Cir. 2007). To support the expansion here, the State points to only four facts that, it argues, allow a routine traffic stop to transform into a drug investigation: (1) Williams was driving on Interstate 85 (2) early in the morning, (3) he provided a P.O. Box to the detaining officers rather than his home address, and (4) his vehicle's rental agreement expired before he planned to leave his stated destination. AB 12-13. Collectively, these facts are

wholly consistent with lawful activity and do not eliminate a substantial portion of innocent travelers. The State does not address the cases Williams raised in his opening brief at 17-20. Rather, it cites additional cases to argue individual facts here are similar to facts that supported reasonable suspicion to expand the scope of other detentions. AB 12-13. The State's cases are highly distinguishable, though, and the closest analogs—cited by Williams and not rebutted—plainly establish that there was not enough evidence to form reasonable suspicion to change the scope of the seizure.

In its first case, *United States v. $50,720.00 in U.S. Currency*, 589 F. Supp. 2d 582 (E.D.N.C. 2008), in addition to travel on a drug corridor, the State founded its case on an "overwhelming odor of air freshener, the presence of two cellular telephones in the center console and [defendant's] nervousness." *Id.* at 583. These unique drug-specific facts went beyond merely traveling on an interstate, and go well beyond the facts in this case to amount to reasonable suspicion. Likewise, in *United States v. Newland*, 246 F. App'x 180 (4th Cir. 2007), the State offered eleven factors leading to reasonable suspicion and especially focused on the fact that the officer could suspect defendants were making a common drug run by flying to Miami and driving to New York, the defendants apparently exited the highway to avoid a checkpoint, and defendants told an apparently false story about why they exited the highway. *Id.* at 358 n.4. Finally, the defendant in *United*

States v. Brugal, was "uncontrollably" nervous, told apparently false and/or inconsistent stories about his address and the address on his rental agreement, and he also provided an apparently fake ID. 209 F.3d at 182-83.

Each of the State's cases contains one fact similar to a fact here, but each case also contains additional facts not present here that, taken as a whole, led to articulable reasonable suspicion. The purely innocuous facts in this case, when taken as a whole, continue to be innocuous. Because the facts do not lead to reasonable suspicion, it was impermissible to expand the scope of the traffic stop and turn it into a drug investigation.

III. NO "*DE MINIMIS* INTRUSION" STANDARD APPLIES HERE

The State argues that any intrusion here was "*de minimis*" and should be excused on that ground. But the State does not and cannot address recent Fourth Circuit law—cited in Williams' AOB at 22—that rejects any time-based *de minimis* exception to the rule that "where the traffic stop has concluded . . . any subsequent detention is impermissible without the presence of reasonable suspicion." *United States v. Digiovanni*, 650 F.3d 498, 508 (4th Cir. 2011) (a rule that grants an officer a specific amount of time "to do as he pleases [must be rejected because it] reduces the duration component to a bright-line rule and eliminates the scope inquiry altogether"). And in the context of second-stop analysis, of course there is no *de minimis* exception to initiating a *Terry* stop

without any reasonable suspicion to support it. *See United States v. Garcia*, 23 F.3d at 1334 (not discussing non-consensual duration of second detention, "six or seven" minutes, and holding stop unlawful).

The State's cited authority does not establish otherwise. The State relies on dicta from a case predating this Circuits' holding in *Digiovanni* that is highly distinguishable. AB 16. The State relies on *United States v. Farrior*, 535 F.3d 210 (4th Cir. 2008), to say "[t]he Fourth Circuit has specifically held that detaining a defendant up to two minutes after the conclusion of a traffic stop to facilitate a drug-dog sniff is a *de minimis* intrusion of an individual's liberty interest." *Id*. But in *Farrior*, there was no intrusion on the individual's liberty interest because the individual had already consented to continued detention including to the search of his vehicle at the time a drug dog was deployed. 535 F.3d at 219.

Indeed, the State's own authority recognizes there is no *de minimis* exception to the scope limitation in this Court. The Court recognized in *Foreman* that "in order to perform [a drug-dog] sniff, there must be a seizure of the vehicle and, therefore, the person, requiring either consent to be detained or reasonable suspicion." 369 F.3d at 781. Thus *Farrior* cannot stand for the proposition asserted, and the Court's authority rejects any bright-line rule that would allow an investigation of unlimited scope for an allegedly "*de minimis*" period of time.

CONCLUSION

For the foregoing reasons, Appellant Charles Williams, Jr. respectfully requests that this Court vacate his conviction and sentence and reverse the district court's order denying the motion to suppress.

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I certify that this Reply Brief of Appellant is proportionately spaced and contains 1,743 words excluding parts of the document exempted by Rule 32(a)(7)(B)(iii).

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CERTIFICATE OF SERVICE

I certify that on July 7, 2014 the Reply Brief of Appellant was served on all parties or their counsel of record through the CM/ECF system.

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