

“THE FEDERAL CORNER”

And What Is An LPR System?

Buck Files

On August 7, 2015, the United States Court of Appeals for the Eighth Circuit affirmed the defendant’s conviction and held that, as a matter of apparent first impression, an alert registered by a license plate recognition (LPR) system which a police officer used to scan license plates of nearby cars provided reasonable suspicion of criminal activity of a kind supporting an investigatory stop of a vehicle. *United States v. Williams*, ___F.3d___, 2015 WL 4666312 (8th Cir. 2015) [Panel: Circuit Judges Gruender, Beam and Benton (opinion by Gruender)].

A Brief Synopsis of the Facts

Law enforcement officers use a license plate recognition (LPR) system to scan the license plates of cars that are within the range of cameras mounted on their patrol cars. If a scanned plate is connected to a wanted person, the system can generate an alert.

That is what happened when Officer Jennifer Hendricks of the St. Louis Metropolitan Police Department drove a patrol car that was equipped with the LPR system and scanned a license plate. An alert showed that Otis Hicks was wanted by a law enforcement agency in another county for the offense of first degree domestic assault. The alert also warned that Hicks might be armed and dangerous; however, it did not explain how or when Hicks was associated with the car.

Hendricks pulled the car over and saw that there were two men inside. She approached the car and asked the driver for his license. When he produced it, she realized that she had stopped Otis Hicks. Hendricks called for back-up and Officer David Christensen came to the scene. He approached the car and directed the passenger to step out and present identification. When he did, Christensen learned that the passenger’s name was Lawrence Williams. Christensen noted that Williams placed his hand on his waistband twice and that his hands were “shaking uncontrollably” as he furnished his identification. A pat down search of Williams produced a handgun from his waistband and a bag in Williams’ pocket that contained heroin.

Williams was indicted for possessing a firearm as a felon. His lawyer filed a motion to suppress the handgun and the heroin seized by Officer Christensen. An evidentiary hearing was conducted by Magistrate Judge Terry I. Adelman, who recommended the denial of Williams’ motion to suppress. United States District Judge Audrey G. Fleissing of the Eastern District of Missouri adopted this recommendation. After a jury trial, the defendant was convicted and, thereafter, gave timely notice of appeal.

Judge Gruender’s opinion reads, in part, as follows:

[Williams’s Lack of Reasonable Suspicion Argument]

Williams first argues that Officer Hendricks lacked reasonable suspicion to stop

the car. *See Delaware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979); *Brendlin v. California*, 551 U.S. 249, 255–57, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007). According to Williams, because Officer Hendricks lacked reasonable suspicion to stop the car, the handgun and heroin were fruits of an illegal stop and should have been suppressed. *See generally Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

[The Fourth Amendment and Reasonable Suspicion]

We review the district court’s factual findings for clear error and its legal conclusions *de novo*. *United States v. Farnell*, 701 F.3d 256, 260 (8th Cir.2012). “The Fourth Amendment permits an investigative stop of a vehicle if officers have a reasonable suspicion the vehicle or its occupants are involved in criminal activity.” *United States v. Bell*, 480 F.3d 860, 863 (8th Cir.2007). If police have reasonable suspicion, they “may briefly stop an individual and make reasonable inquiries aimed at confirming or dispelling the suspicion.” *United States v. Hughes*, 517 F.3d 1013, 1016 (8th Cir.2008). “Reasonable suspicion must be supported by more than a mere hunch, but the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying the preponderance of the evidence standard.” *United States v. Roberts*, 787 F.3d 1204, 1209 (8th Cir.2015) (internal quotation marks and citation omitted). “We consider the totality of the circumstances when determining whether an officer has a particularized and objective basis to suspect wrongdoing.” *United States v. Robinson*, 670 F.3d 874, 876 (8th Cir.2012).

[The Fourth Amendment Issue with the LPR System]

Officer Hendricks relied upon the notice from the LPR system that: (1) Hicks was associated with a nearby car, (2) Hicks was wanted by the St. Louis County Police Department for first-degree domestic assault, and (3) Hicks may have been armed and dangerous. Williams nonetheless argues that Officer Hendricks did not have reasonable suspicion to conduct the traffic stop because a “police officer who receives an alert from the LPR system has no way of knowing the extent of the person’s relationship to the vehicle.” Williams and the Government seem to agree that there are no reported federal decisions that have specifically dealt with the use of an LPR system in the Fourth Amendment context. However, as we have held, “if a flyer or bulletin has been issued on the basis of articulable facts supporting a reasonable suspicion that the wanted person has committed an offense, then reliance on that flyer or bulletin justifies a stop to check identification, to pose questions to the person, or to detain the person briefly while attempting to obtain further information.” *Farnell*, 701 F.3d at 262 (internal alteration omitted) (quoting *United States v. Smith*, 648 F.3d 654, 659 (8th Cir.2011)). “Police officers may rely upon notice from another police department that a person or vehicle is wanted in connection with the investigation of a felony ‘when making a *Terry* stop, even if the notice omits the specific articulable facts supporting reasonable suspicion.’ “ *Smith*, 648 F.3d at 659 (internal alteration omitted) (quoting *United States v. Jacobsen*, 391 F.3d 904, 906 (8th Cir.2004)).

[The LPR System Automates Other Means of Receiving Information]

We fail to see how the use of the LPR system makes any difference in this case. Williams does not cite any precedent holding that the mechanism through which an officer receives notice from another department matters for Fourth Amendment purposes. Indeed, the LPR system merely automates what could otherwise be accomplished by checking the license-plate number against a “hot sheet” of numbers, inputting a given number into a patrol car’s computer, or “calling in” the number to the police station. Thus, we conclude that Officer Hendricks was entitled to “rely upon notice from another police department,” she obtained by using a more automated process: the LPR system. *See id.* at 656–60 (upholding a police officer’s reliance on a wanted notice he discovered by performing a search on a license-plate number).

[Officer Hendricks’ Decision to Stop the Car Did Not
Constitute a Fourth Amendment Violation]

Williams argues further that Officer Hendricks’s stop violated the Fourth Amendment “because she could not tell who was driving the car until after she stopped it.” Williams asserts, without citation, that Officer Hendricks must “have [had] some idea at least that there [was] a black male driving the car” before making the traffic stop. Officer Hendricks testified that she was unable to see who was inside the car until after she stopped it. Common sense dictates that police officers will often be unable to confirm the race or gender of a driver before initiating a traffic stop. Accordingly, we fail to see how Officer Hendricks’s decision to briefly stop the car and check the driver’s identification was an unreasonable seizure in violation of the Fourth Amendment merely because she initially could not identify the driver’s race or gender. *See Farnell*, 701 F.3d at 262.

[Hendricks’ Stopping of the Car Without Information of When Hicks had Been Associated with
the Car did not Constitute a Fourth Amendment Violation]

Williams concedes that Hicks was “perhaps associated with the car” but nonetheless argues that the stop violated the Fourth Amendment because Officer Hendricks “had no information of the time frame of when Hicks had been associated with the car.” But our precedent makes clear that “officers may rely upon notice from another police department that a person or vehicle is wanted in connection with the investigation of a felony ‘when making a *Terry* stop, even if the notice omits the specific articulable facts supporting reasonable suspicion.” *Smith*, 648 F.3d at 659 (internal alteration omitted) (quoting *United States v. Jacobsen*, 391 F.3d at 906). Accordingly, this argument is without merit.

My Thoughts

- When I read *Williams*, I felt like a complete goose because I had never heard of a license plate recognition system. I talked with a Tyler Police officer who had a

background in working both narcotic and traffic cases. He told me that the Tyler police officers and Tyler city marshals all have LPR systems in their vehicles. He went on to say that the city marshals spend a great deal of time driving around and scanning license plates. This puzzled me because I was unaware of any cases coming out of these LPR scans.

- I went into WestLaw's allfeds database, ran the query "LPR" & "license plate recognition" and came up with over 1,000 cases. Almost all of them, however, were immigration cases concerned with lawful permanent residents. If you simply run the query "license plate recognition," you will find only 13 cases. The only circuit case was *Williams*. There were two other *Williams* cases heard by Judge Fleissing in the district court. There are two additional district cases from Pennsylvania and Tennessee. The other eight cases are civil in nature. The only case out of the Fifth Circuit is a 42 U.S.C. § 1983 case from the Northern District of Texas.
- I am amazed that law enforcement officers are not taking advantage of the LPR system. Clearly, an alert would provide the basis for an investigatory stop -- and we all know what that can lead to. When law enforcement officers wake up to the possibilities of using the LPR system, it will result in our having even more cases with a Fourth Amendment issue that we can raise -- with probably little chance of success.