

# Case o' the Week

*A little memo on a big case.*

From: Steven Kalar, Federal Public Defender, N.D. Cal. FPD      Date: Monday, September 26, 2016  
Re: *United States v. Williams*, 2016 WL 5030343 (9th Cir. Sept. 20, 2016): **Fourth Amendment**:  
Second bite of apple saves search for government

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**Players:** Decision by Judge Wallace, joined by Judge Kozinski and DJ Whaley. Hard fought appeal by D. Nev. AFPD Amy B. Cleary.

**Facts:** A named tipster called a police hotline and reported a suspected drug dealer, sleeping in a specific type of Ford in a particular area. *Id.* at \*1. At around 4:40 a.m., the cops blocked the parked Ford and shined a light inside. Williams sat up, looked around, started the car, then put the car in reverse and then parked. *Id.* at \*2. At the officers' command, Williams got out of the car – and then ran. *Id.* He was caught and arrested: a pat search revealed crack and cash. *Id.* A search of the car revealed a gun. *Id.* Williams was charged with gun and drug offenses. *Id.* He filed – and won – a suppression motion, and the government appealed.



“Actually, we prefer to be unannounced.”  
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**Issue(s):** “The government . . . argues that the district court erred in concluding that the officers lacked reasonable suspicion to conduct an investigatory stop.” *Id.* at \*3.

**Held:** “Applying the principles articulated in *White* and *Navarette*, we hold that [the] officers . . . had reasonable suspicion to stop Williams based on the information they possessed and the tip’s reliability.” *Id.* at \*3. “[T]he officers acted reasonably when they blocked in the driver with their police car, turned on their police lights, and one of the officers drew his gun.” *Id.* at \*4.

**Of Note:** The heart of this case is tipsters, and their role in creating reasonable suspicion. *Id.* at \*3. Judge Wallace employs two Supreme Court decisions to find reasonable suspicion here: *Navarette v. California*, 134 S.Ct. 1683 (2014) (reliability of tips and reasonable suspicion), and *Alabama v. White*, 496 U.S. 325 (1990) (tips creating reasonable suspicion.) *Id.* at \*3. As with most things Fourth, *Williams* is a fact-bound inquiry. In this case, the call was from an *identified* tipster, the caller described the car’s make and location, the tipster made specific criminal allegations, Williams reacted suspiciously when the cops arrived, and it was a high-crime area. *Id.* at \*4. The Ninth decision upholding this stop rests on layers of supporting facts for the government. Don’t let an AUSA cite *Williams* as a blank check for tipster stops – the facts of the case are ripe for distinction.

**How to Use:** Reasonable suspicion for the initial stop was the first issue in the case: PC for the arrest, the second. Williams also argued that the cops lacked probable cause to arrest (and thus, search) him. *Id.* at \*4. *For the first time, on appeal*, the government argued that a Nevada “obstruction” statute created probable cause when Williams ran. *Id.* at \*5. There is, of course, “a ‘general rule’ against entertaining arguments on appeal that were not presented or developed before the district court.” *Id.* at \*5. Judge Wallace, however, notes that the government resisted the probable cause challenge in the district court. The government’s new “Nevada statute” theory before the Ninth was, the Court assures us, just “a more precise argument on appeal.” *Id.* at \*6. (A “more precise” argument that salvaged the search for the government). This is an aggravating second bite of the apple for the government in this case, but store the decision away. It is a useful “sauce for the goose” citation for our own “more precise [defense] arguments” before the Ninth.

**For Further Reading:** At least the *Williams* tipster identified himself. In the 5-4 *Navarette* case, Justice Thomas tolerated reasonable suspicion developed from an *anonymous* call. 134 S.Ct. at 1688-89 (“Even assuming for present purposes that the 911 call was anonymous . . . we conclude that the call bore adequate indicia of reliability for the officer to credit the caller’s account.”) For a vigorous critique of *Navarette*, see *Whither Reasonable Suspicion: The Supreme Court’s Function Abandonment of the Reasonableness Requirement for Fourth Amendment Seizures* (2016), available here: [http://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1928&context=all\\_fac](http://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1928&context=all_fac)