06-4265-cr

To Be Argued By:
ERIC J. GLOVER

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 06-4265-cr

UNITED STATES OF AMERICA,
Appellee,

-vs-

JEROME K. BALDWIN, also known as
Jerome Baldwin, also known as Brucey B,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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BRIEF FOR THE UNITED STATES OF AMERICA

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STATEMENT OF JURISDICTION

The district court (Dorsey, J.) had subject matter jurisdiction under 18 U.S.C. § 3231. The defendant filed a timely notice of appeal pursuant to Fed. R. App. P. 4(b), and this Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Did the district court correctly deny the defendant's motion to suppress on the grounds that he failed to submit to a police officer's show of authority, and hence was not "seized" under the Fourth Amendment, where he momentarily stopped his car in response to police emergency lights, but sped away after the officers got out of their car?

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Preliminary Statement

On September 4, 2005, Jerome Baldwin and another individual were in Baldwin's car in the area of a New Haven public housing complex with a cache of firearms and narcotics. After receiving an anonymous tip, the police drove to the area and attempted to pull over Baldwin's car. After the police activated the overhead lights on the patrol car, Baldwin briefly stopped his car. But after the police exited their vehicle and approached

Baldwin's, Baldwin sped off and led the police on a dangerous, high-speed chase, which ended only after Baldwin's car crashed and the police caught him on foot as he tried to flee. The police found firearms and distribution quantities of crack cocaine in Baldwin's car.

Baldwin argues that the police "seized" him within the meaning of the Fourth Amendment when he briefly stopped his vehicle after the police pulled up behind him and activated their overhead lights. But this is simply not correct under Supreme Court and this Court's case law. Baldwin did not submit to the assertion of authority by the police, as the case law requires, and thus the attempted stop by the police was not a "seizure," regardless whether the police had reasonable suspicion to pull his vehicle over at that time. The district court's denial of the motion to suppress should be affirmed.

Statement of the Case

On November 16, 2005, a grand jury in Connecticut returned a two-count indictment against Jerome Baldwin charging him with: (1) being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1); and (2) using and possessing a firearm during, in relation to, and in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1). Joint Appendix ("JA") 8. On January 18, 2006, the grand jury returned a superseding indictment adding a charge of possession with intent to distribute 5 grams or more of cocaine base, in violation of 21 U.S.C. § 841(a)(1) and § 841(b)(1)(B). JA 12.

On February 7, 2006, the defendant filed a motion to suppress the firearms and narcotics. JA 19. On April 7, 2006, the district court denied the defendant's motion in a written ruling. JA 48-54.

On April 24, 2006, the defendant entered a conditional plea of guilty to counts two and three of the superseding indictment pursuant to Rule 11(a)(2) of the Federal Rules of Criminal Procedure. Baldwin reserved his right to appeal the district court's denial of his motion to suppress. JA 55.

On September 11, 2006, the district court sentenced Baldwin to 120 months of imprisonment on count two of the superseding indictment (the narcotics charge) and to a consecutive term of 60 months of imprisonment on the charge of possessing a firearm in connection with a drug distribution offense. JA 65.

STATEMENT OF FACTS AND PROCEEDINGS RELEVANT TO THIS APPEAL

A. The Offense Conduct

On the afternoon of September 4, 2005, the New Haven Police Department (NHPD) received an anonymous tip that two black males, one of whom was wearing a white T-shirt, were both in possession of firearms and were standing next to a grey or silver Chevrolet Impala bearing Virginia license plates at the area of Downing and Bailey Streets in New Haven. JA 27. This location is near the Quinnipiac Terrace Housing complex, which has been

plagued by the sale of illegal narcotics and violent criminal activities, many of which involved firearms. JA 27. According to a recording of the call, the informant told the dispatcher, among other things, that the men had "big guns, real real big guns, serious." Supplemental Appendix ("SA") 3.

The responding officers, Donnelly and Plowman, arrived at the location at approximately 2:37 p.m. JA 27. They saw no one at the corner of Downing and Bailey, but after proceeding southbound on Downing they were passed by an oncoming vehicle matching the description provided by dispatch bearing Virginia plates and being driven by a black male wearing a black T-shirt later identified as Jerome Baldwin. JA 27. The officers were unable to determine at that time whether anyone was in the passenger seat but did get a clear look at the driver. JA 27. The officers turned around, activated their overhead lights and siren, and attempted to pull the vehicle over. JA 27.

As the officers exited their vehicle and approached the stopped car, Baldwin leaned out of the driver's side window and looked back at them "oddly." JA 27. The officers ordered Baldwin three times to show his hands, but he refused to comply. JA 27-28. The officers drew their service weapons, and Baldwin sped off in his car. JA 28. A high-speed chase ensued, during which Baldwin drove in excess of 80 miles per hour southbound on I-91 and nearly caused a major motor vehicle collision. JA 28.

While pursuing Baldwin's vehicle, the officers advised dispatch that the vehicle had fled. JA 28. After leading

the officers on a chase that included life-endangering maneuvers on southbound I-91 between exits 8 and 7, Baldwin crashed his vehicle at the bottom of the exit ramp for exit 7. JA 28. The officers saw an individual who was sitting in the passenger side (and wearing a white T-shirt) jump out of the window and over a nearby fence. JA 28. (He was not apprehended. JA 32.) Then, as the officers approached the vehicle, they noticed that Baldwin had already somehow exited the vehicle and fled, which they had been unable to see due to the heavy brush cover on the driver's side. JA 29. Once the officers realized that Baldwin had fled, they radioed dispatch indicating that there were at least two individuals involved in the chase. JA 29.

Fortuitously, an off-duty patrol officer, Edwin Rivera, was driving southbound on I-91 when Baldwin almost hit him from behind in the course of the high-speed chase. JA 40. Rivera then followed the chase at a safe distance, and pulled over on the road when he saw Baldwin's vehicle crash. JA 40. He saw Baldwin exit an area of heavy brush directly above where the vehicle had crashed. JA 40. Baldwin then headed on foot southbound on I-91 directly toward Rivera, who was standing in the breakdown lane between exits 6 and 7. JA 40. When Baldwin saw that Rivera planned to attempt to apprehend him, Baldwin jumped off the bridge/overpass on to the railroad tracks below and fled on foot. JA 40. Given the height of the fall, Rivera was amazed that Baldwin was able to continue his flight on foot after his fall. JA 41.

While this pursuit was going on, Detectives Dadio and Wutchek had responded to provide support. JA 43. They heard dispatch state that an off-duty officer (Rivera) was in pursuit of the suspect, and that the suspect had just jumped onto the railroad tracks. JA 43. They then headed toward the area of the railroad tracks near the Blatchley Street bridge in anticipation of where Baldwin would be headed. JA 43. They saw Baldwin running toward a brushy area in the rear of a warehouse at 315 Peck Street. JA 43. After a brief search, Detectives Dadio and Wutcheck apprehended Baldwin as he was crouching down and attempting to hide from the detectives. JA 43.

Baldwin provided his name to the officers and had identification on his person. JA 43. Detective Dadio knew Baldwin and had known him for 12 years as having been a member of the Island Brothers gang, which was based out of Quinnipiac Terrace Housing complex. After Detectives Dadio and Wutchek apprehended Baldwin, they brought him to Officers Donnelly and Plowman. Officers Donnelly and Plowman positively identified him as the individual who was operating the vehicle they attempted to pull over and that they pursued in the high-speed chase until it crashed. JA 29. A search of Baldwin incident to arrest revealed that he was carrying a black mask which covered his head and part of his face. JA 31. In his wallet, Baldwin had numerous credit cards and a Virginia state driver's license in the name of Jerome Baldwin. JA 31. He also had a note in his wallet which read, "Hi-Point Mansfield-Ohio, Model C, 9MM, 9MM Ammunition too" (a Hi-Point 9MM was seized in Baldwin's vehicle). JA 31.

A Masterpiece Arms .45 caliber automatic firearm was found in plain view on the front passenger area of Baldwin's abandoned car. JA 29, 45. The firearm had a round in the chamber and a magazine with 30 rounds of .45 caliber ammunition in it. JA 45. The officers then searched the rest of the vehicle. JA 29, 45.

In the glove box, the officers found a clear plastic bag containing 67 small white clear ziplock bags, which appeared to contain crack cocaine, and which later tested positively for the presence of cocaine. JA 29-30, 45. In the trunk, the officers located and seized a Savage 20 gauge pump action shotgun. JA 30, 45-46. They also found two backpacks. JA 30, 46. The first (an "East Sport" backpack) contained (among other things) a black neoprene face mask, a camouflage scarf, a pair of black gloves, a roll of grey duct tape, a box of .45 caliber ammunition and a speed loader for the .45 caliber pistol. JA 30, 46. The second backpack (a "No Boundaries" backpack) contained a HiPoint Model C 9mm semi-automatic handgun, various personal papers in the name of Jerome Baldwin, ziplock bags identical to the ones found in the glove box containing crack, a balance mini pocket scale, a digital pocket scale, and a cutting agent. JA 30, 46. A check of DMV records showed that the 2001 Chevrolet Impala, VA registration JCG-8214, was registered to Jerome Baldwin. JA 31.

B. The Motion to Suppress

The gravamen of the defendant's motion to dismiss was that the police did not have reasonable suspicion to

stop Baldwin's vehicle; that the fact that Baldwin stopped his car, even if only momentarily, constituted an unlawful seizure; and that the subsequent search of Baldwin's vehicle after the chase and the seizure of the firearms and narcotics constituted fruits of an unlawful seizure. JA 19-21. The government opposed the motion, arguing that there was no "seizure" under the Fourth Amendment of the defendant by virtue of the initial attempted stop of Baldwin's car because Baldwin did not stop long enough to actually submit to the officer's show of authority, but rather sped off after the officers exited their vehicle. SA 7-10. Notably, in his reply memorandum, the defendant correctly argued that the material facts at issue in the motion were not in dispute. SA 18, 23.[1]

The district court denied the defendant's motion to suppress. Because there were no issues of disputed fact, the district court ruled on the basis of the parties' memoranda and supporting exhibits, including the police reports. JA 48 n.1. In denying the motion, the district court relied upon this Court's application of *California v. Hodari D.*, 499 U.S. 621, 624 (1991), and *County of Sacremento v. Lewis*, 523 U.S. 833, 844 (1998), for the

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[1] "In this case, the undisputable facts, as stated by the defendant and confirmed by the Government's Memorandum and Government's Exhibit A, show that the New Haven police lacked reasonable suspicion to support an investigative stop of the defendant's vehicle, and that the temporary detention of defendant Baldwin when the officers continued to assert multiple means of authority, was a seizure under the Fourth Amendment." SA 23.

rule that "an order to stop must be obeyed or enforced physically to constitute a seizure." *United States v. Swindle*, 407 F.3d 562, 572 (2d Cir.), *cert. denied*, 126 S. Ct. 279 (2005). Applying that rule, the court found that no "seizure" occurred during the initial "stop" of Baldwin's car, regardless of whether the police had reasonable suspicion to make the stop:

> [I]t appears that there was no seizure in this case until the officers physically apprehended Defendant after he crashed his car at the bottom of the exit ramp for exit 7 off I-91. The offices who attempted to stop Defendant clearly made a show of authority when they activated their patrol lights and were initially able to pull Defendant's vehicle over. What was missing at that point, however, was Defendant's *submission* to the officers' show of authority. Shortly after the officers emerged from the patrol car on foot, Defendant drove away, forcing the officers into a high-speed chase down I-91. Without physical force or at least clear submission to a show of authority, the Court cannot find that there was any seizure at that point.

JA 51-52. The court determined that it did not need to decide whether the officers initially had reasonable suspicion to order Baldwin to pull over because even "[a]ssuming that the officers issued an unreasonable order to stop, the only question for Fourth Amendment purposes is whether reasonable suspicion existed at the moment

Baldwin was finally apprehended." JA 53.[2] And it was clear to the district court (which the defendant does not challenge in this appeal) that "Baldwin's pre-seizure behavior – including fleeing from police, the operation of his vehicle, crashing his vehicle and running away on foot – generated reasonable suspicion for his ultimate apprehension." JA 53.

C. The Guilty Plea and Sentencing

Following denial of his motion to suppress, Baldwin entered into a plea agreement with the government on April 24, 2006, pursuant to which he entered a conditional plea of guilty to counts two and three of the superseding indictment. JA 55. On September 11, 2006, the district court sentenced Baldwin to 120 months of imprisonment on count two of the superseding indictment (the narcotics charge) and to a consecutive term of 60 months of imprisonment on the charge of possessing a firearm in connection with a drug distribution offense. JA 65. The sentence was the mandatory minimum under the statutes of conviction. JA 56.

SUMMARY OF ARGUMENT

The fact that Baldwin momentarily stopped his car in response to a police car activating its overhead lights did not result in his "seizure" by the police. The Supreme

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[2] The government does not argue in this Court that the police had reasonable suspicion to stop Baldwin's vehicle prior to the high-speed chase and abandonment of his vehicle.

Court has made clear that in order to constitute a seizure under the Fourth Amendment, "[a]n arrest requires *either* physical force . . . *or*, where that is absent, *submission* to the assertion of authority." *California v. Hodari D.*, 499 U.S. 621, 626 (1991). In *United States v. Swindle*, 407 F.3d 562, 572 (2d Cir.), *cert. denied*, 126 S. Ct. 279 (2005), this Court recognized that under *Hodari D.* "an order to stop must be obeyed or enforced physically to constitute a seizure." Here, while the activation of overhead lights by the police was an assertion of authority, Baldwin did not submit to it. Indeed, one can reasonably infer that Baldwin simply lured the officers out of their car to approach his vehicle so that he could get a head start on the high-speed chase on which he led them. At best, Baldwin had a fleeting thought about submitting to the assertion of authority but quickly changed his mind. In any event, under both the case law and plain usage, the fact that he briefly stopped his car did not constitute a "seizure," and the police did not "seize" Baldwin until they physically seized him after the conclusion of the high-speed chase.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY CONCLUDED THAT THE INITIAL "STOP" OF DEFENDANT'S VEHICLE BY THE POLICE DID NOT CONSTITUTE A "SEIZURE" UNDER THE FOURTH AMENDMENT.

A. Governing Law and Standard of Review

In *California v. Hodari D.*, 499 U.S. 621, 623-24 (1991), the Supreme Court addressed the issue of whether a seizure had occurred during police pursuit of a fleeing suspect simply by virtue of a show of authority. The Court framed the issue as "whether, with respect to a show of authority as with respect to application of physical force, a seizure occurs even though the subject does not yield." *Id.* at 626. The Supreme Court held that no seizure occurs where the subject does not yield. *Id.* at 625. The Court reasoned that the "word 'seizure' readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful." *Id.* "It does not remotely apply, however, to the prospect of a policeman yelling 'Stop, in the name of the law!' at a fleeing form that continues to flee. That is no seizure." *Id.* The *Hodari D.* Court added the requirement that the defendant actually submit to the assertion of authority: "An arrest requires *either* physical force . . . *or*, where that is absent, *submission* to the assertion of authority." *Id.*; *see also County of Sacramento v. Lewis*, 523 U.S. 833, 844 (1998) (finding no Fourth Amendment seizure when a police car flashed

its lights and pursued a fleeing motorcycle, but the driver's poor driving and consequent crash – and not the police's show of authority – actually stopped the motorcycle); *Brower v. County of Inyo*, 489 U.S. 593, 597 (1989) ("The pursuing police car sought to stop the suspect only by the show of authority represented by flashing lights and continuing pursuit; and though he was in fact stopped, he was stopped by a different means – his loss of control of his vehicle and the subsequent crash.").

In *United States v. Swindle*, 407 F.3d 562, 572 (2d Cir.), *cert. denied*, 126 S. Ct. 279 (2005), this Court recognized that under *Hodari D.* "an order to stop must be obeyed or enforced physically to constitute a seizure." The defendant in that case had argued that "he was seized when the officers activated their police light because no reasonable driver would have felt free to ignore that order to stop." *Id.* at 571. The defendant, however, did feel free to ignore the order to stop: he kept driving, threw a bag containing drugs out of the vehicle, and eventually stopped the vehicle and fled on foot. *See id.* at 564. The police apprehended him in a nearby yard and charged him with possession of drugs. *See id.* This Court recognized that under Supreme Court case law, no seizure had occurred. *See id.* at 572. The Court held that the defendant

> was not seized until the police physically apprehended him, and therefore that the drugs did not have to be suppressed . . . . Regardless of how unreasonable it was for the officers to *order* him to pull over, and regardless of how reasonable it was for Swindle to have felt restrained in the face of the

> flashing police strobe light, there was no immediate "physical force" applied or "submission to the assertion of authority."

Id. at 572-73 (quoting *Hodari D.*, 499 U.S. at 626) (citations omitted); *see also United States v. Muhammad*, 463 F.3d 115, 123 (2d Cir. 2006) (holding that although there may have been an "unreasonable order to stop since reasonable suspicion was lacking" at the time of the order, the defendant fled instead of submitting to the order, and therefore under *Swindle* he "was not seized until he was physically restrained"); *United States v. Vargas*, 369 F.3d 98, 102 (2d Cir. 2004) ("[The defendant's] freedom clearly was not restrained, considering the fact that he fled after the officers asked to speak to him.").

This Court reviews *de novo* the decision of a district court that no seizure has occurred in light of the facts. *See Swindle*, 407 F.3d at 566 ("Since the court's ruling on the suppression motion turned on the legal question of when Swindle was seized, we review the decision de novo."); *United States v. Peterson*, 100 F.3d 7, 11 (2d Cir. 1996) ("Whether, in light of the facts, a seizure occurred is a question of law to be reviewed *de novo*.").

B. Discussion

The Supreme Court's decision in *Hodari D.* and this Court's decision in *Swindle* make clear that the NHPD officers' attempt to stop Baldwin was not a seizure under the Fourth Amendment. The NHPD officers who attempted to pull Baldwin over made an assertion of

authority by activating their patrol car lights and attempting to pull Baldwin's vehicle over. However, what is missing here – and what the Supreme Court's decision in *Hodari D.* requires as essential for a seizure – is Baldwin's *submission* to that show of authority. Baldwin argues that the mere act of pulling his car over was submission, notwithstanding the fact that he did not obey the officers' commands to show his hands and the fact that just moments later that he sped off. As the district court correctly concluded, the fact that Baldwin briefly stopped his car was not submission to the police's authority. JA 52. Indeed, given the fact that Baldwin had a firearm with a round in the chamber in the front seat and distribution quantities of crack cocaine in his trunk, it was more likely a ruse to give his attempted getaway a better chance of succeeding.[3] At best, it was the manifestation of a fleeting thought by Baldwin to submit to the assertion of authority. Either way, it was *not* submission itself under any common sense meaning of the word, and thus was not a "seizure" under *Hodari D.*

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[3] *See United States v. Lender*, 985 F.2d 151, 155 (4th Cir. 1993) (holding that defendant's "momentary halt on the sidewalk with his back to the officers" after an order to stop was given did not constitute yielding to the officers' authority, and refusing to "characterize as capitulation conduct that is fully consistent with preparation to whirl and shoot the officers" where the defendant had been fumbling in the area of his waist while walking awaying and a gun fell to the ground after he stopped).

Baldwin attempts to avoid the obvious implications of *Swindle*'s holding by arguing that in *Swindle* "the defendant never complied to any extent with the order to stop . . . [while] Baldwin did pull over in compliance with the command." Def.'s Mem. at 8. But the "command" by the police when they activate overhead lights in an attempt to pull a vehicle over is not merely a command for the driver to stop his car from moving for a moment; it is a command to stop the car so that a brief investigation can be made, including speaking with the driver. Baldwin did not comply with or obey this command. Thus, far from constituting a submission to the authority of the NHPD officers, Baldwin's actions were essentially the same as those taken by the defendant in *Swindle*: both defendants failed to comply with the officers' orders to stop and submit to questioning, thereby thwarting the objectives of the police in requesting the stop, and fled from the police. Thus, here, as in *Swindle*, no seizure occurred.

There is simply no principled distinction between disobeying an order to stop, as in *Swindle*, and momentarily pausing before disobeying an order to stop, as Baldwin did here. Indeed, making any such distinction would "encourage suspects to flee after the slightest contact with an officer in order to discard evidence, and yet still maintain Fourth Amendment protections." *United States v. Hernandez*, 27 F.3d 1403, 1407 (9th Cir. 1994) (holding that defendant was not "seized" when approaching officer instructed him to stop, defendant "hesitated for a moment," and then turned and ran: "We decline to adopt a rule whereby momentary hesitation and

direct eye contact prior to flight constitute submission to a show of authority.").

The D.C. Circuit held as much in *United States v. Washington*, 12 F.3d 1128 (D.C. Cir. 1994), a case involving a nearly identical situation to the facts presented here. There, a police officer who had heard a lookout announcement for "three black men in a burgundy four-door car" attempted to stop "three black men in a red two-door Mazda." *Id.* at 1131. The officer, driving in a marked police vehicle, activated the siren and ordered the Mazda to stop. *Id.* The driver of the Mazda stopped his vehicle momentarily, but sped off when the officer stepped out of his car and approached the Mazda on foot. *Id.* The driver of the Mazda crashed and the three occupants fled. *Id.* Shortly thereafter, two of the occupants were arrested. *Id.* In affirming the denial of a motion to suppress, the court held that no seizure had occurred even though the driver of the Mazda had "initially stopped" in response to a show of authority by the police:

> Although a reasonable person would not have believed that she was free to continue driving once [the officer] activated his sirens and ordered the Mazda's driver to stop, [the driver] did not in fact submit to the officer's order. [The driver] initially stopped, but he drove off quickly before [the officer] even reached the car. Because [the driver] did not submit to [the officer's] order, he was not seized within the meaning of the Fourth Amendment.

Id. at 1132. Likewise here, Baldwin did not submit to the police order. Baldwin thus was not seized within the meaning of the Fourth Amendment until his vehicle crashed and he was apprehended after his flight on foot from the police, by which time even Baldwin does not dispute that there was reasonable suspicion to stop him, and indeed probable cause to arrest him. *See Swindle*, 407 F.3d at 568 ("*Hodari D.* . . . implicitly authorized a defendant's seizure based on events occurring after issuance of an unreasonable order to stop.").

Baldwin does not discuss the D.C. Circuit's decision in *Washington*, and instead relies upon *United States v. Coggins*, 986 F.2d 651 (3d Cir. 1993), in which the court found that a suspect who fled after being stopped in an airport by a DEA agent had been seized under the Fourth Amendment. But *Coggins* is distinguishable in that, unlike Baldwin, Coggins actually submitted to questioning and the inspection of travel documents after being approached by a DEA agent. *Id.* at 652. After having been questioned by the DEA agent and having responded to those questions, Coggins then remained seated for a period of time upon order of the agent after Coggins had expressed a desire to leave. *Id.* at 652-53. *Coggins* thus merely stands for the proposition that at some point an attempt by law enforcement to make an investigative stop becomes a seizure, and that that point is when a suspect actually submits to the assertion of authority, even if that suspect ultimately attempts to flee after having done so. As the Third Circuit said in distinguishing *Coggins*, the "lengthy detention in *Coggins*" is a "far cry" from cases involving mere "momentary 'compliance.'" *United States*

v. Valentine, 232 F.3d 350, 359 (3d Cir. 2000) (holding that even if defendant "paused for a few moments and gave his name" in response to police instructions to stop, and then ran, "he did not submit in any realistic sense to the officers' show of authority"). Here, Baldwin never actually submitted to the NHPD's assertion of authority in the first place, and thus the NHPD's attempted investigatory stop did not become a seizure.[4]

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[4] *United States v. Morgan*, 936 F.2d 1561, 1566 (10th Cir. 1991), which Baldwin cites (Def. Br. at 11), is also distinguishable by the fact that, among other things, the suspect exited his vehicle after stopping it and responded verbally to an officer's command. *See Hernandez*, 27 F.3d at 1407 (distinguishing *Morgan*). And, in any event, the Tenth Circuit's conclusion that the suspect in that case actually "yielded" to the officer's show of authority – when the suspect in fact ran from the officer after exiting his vehicle – is questionable under *Hodari D. See, e.g.*, *Valentine*, 232 F.3d at 359 (finding no seizure in similar circumstances). Moreover, as in *Coggins*, the court in *Morgan* found that the police had reasonable suspicion to make the investigatory stop, thus making it unnecessary for both courts to have reached the issue of whether the facts in those cases gave rise to seizures under the Fourth Amendment.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Dated: January 5, 2007

Respectfully submitted,

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ANTI-VIRUS CERTIFICATION

Case Name: U.S. v. Baldwin

Docket Number: 06-4265-cr

I, Natasha R. Monell, hereby certify that the Appellee's Brief submitted in PDF form as an e-mail attachment to **briefs@ca2.uscourts.gov** in the above referenced case, was scanned using Norton Antivirus Professional Edition 2003 (with updated virus definition file as of 1/5/2007) and found to be VIRUS FREE.

_____

Natasha R. Monell, Esq.
Staff Counsel
Record Press, Inc.

Dated: January 5, 2007