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Recent Developments: Maryland v. Wilson: No Articulate Suspicion Required for Police Officers to Order Passengers out of a Vehicle during a Lawful Traffic Stop

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Maryland v. Wilson

W eighing public interest against personal liberty interests, the risk to officer safety outweighs the minimal intrusion of asking a passenger of a lawfully stopped vehicle to step outside of that vehicle. This was the holding in the recent decision of the United States Supreme Court in *Maryland v. Wilson*, 117 S. Ct. 882 (1997).

The Fourth Amendment to the United States Constitution guarantees freedom from "unreasonable" seizures. In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court held that an officer may stop and frisk a person for weapons, as long as that officer could articulate some reasonable suspicion of possible danger. In *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), the Court determined that asking a driver of a lawfully stopped vehicle to exit that vehicle, even with no articulable suspicion of danger, was not an unreasonable seizure. In *Wilson*, the Court was asked to consider whether extending *Mimms* to include the passenger of a lawfully stopped vehicle constituted an unreasonable seizure.

In June 1994, a Maryland State Trooper stopped a vehicle with two passengers whose behavior was unusually nervous and furtive. Although the driver exited the vehicle and approached the trooper without being asked to do so, the trooper also asked the passenger in the front seat of the vehicle, Jerry Lee Wilson ("Wilson"), to exit. As he was exiting the vehicle,

**No Articulable
Suspicion Required
For Police Officers
To Order Passengers
Out Of A Vehicle
During A Lawful
Traffic Stop**

By Cynthia L. Maskol

Wilson dropped what the trooper suspected was crack cocaine. *Wilson* was arrested and charged with possession of a controlled dangerous substance with the intent to distribute.

At trial, the Circuit Court for Baltimore County granted *Wilson*'s motion to suppress the cocaine as the fruit of an unreasonable seizure, violative of his Fourth Amendment rights. The Court of Special Appeals of Maryland affirmed, adding that *Mimms* would not be extended to apply to passengers. The Court of Appeals of Maryland denied certiorari.

Wilson's victory, however, was short-lived. On appeal to the United States Supreme Court, the Court found persuasive the officer safety arguments of the government, reversed the decision of the court of special appeals, and remanded the case for retrial.

In a four-page opinion, the Court adopted as precedent what it had previously hinted at in dicta. *Wilson*, 117 S. Ct. at 885 (citing *Rakas v. Illinois*, 439 U.S. 128

(1978)). The Fourth Amendment guarantee against unreasonable seizure does not apply to passengers of vehicles once a proper stop has been made. *Wilson*, 117 S. Ct. at 885. The Court applied its longstanding analysis of the reasonableness of a seizure by balancing public interest against an individual's right to freedom from arbitrary interference by the government. *Id.* In the case of a lawful traffic stop, officer safety is given great deference. *Id.* The risk to officer safety is increased when there are passengers in addition to a driver in a stopped vehicle. Likewise, any violent reaction from a driver of a stopped vehicle, aimed at preventing the discovery of evidence of some other crime, is similarly motivated from a passenger of that vehicle. *Id.* By ordering passengers to exit a vehicle, law enforcement officers deny the passengers access to concealed weapons. *Id.* The risk inherent in vehicle stops, therefore, outweighs the minimal intrusion of asking a passenger in a vehicle that is already stopped to move to the outside of that vehicle. *Id.*

Dissenting from the majority, Justices Stevens and Kennedy expressed concern that *Wilson* gives the government carte blanche authority. Officers are now empowered to command drivers and passengers from their vehicles without "even a scintilla of evidence of any potential risk to the police officer." *Id.* at 887. Thus, according to the dissent,

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dispensing with the element of probable cause, or even some objective standard, is too heavy an imposition on the innocent citizens involved in the large number of routine stops that occur each day. *Id.*

The number of stops where an officer is ever at risk is, in fact, far overshadowed by the actual number of routine stops. *Id.* at 888. While the imposition on passengers ordered to exit their vehicles may be insignificant, the aggregate effect of passengers who

are unnecessarily offended, embarrassed, and exposed to inclement weather is great. *Id.*

While the hypotheticals posed by both the majority and dissent are compelling, it might be argued that the Court seized the opportunity, via *Wilson*, to tip the scales in favor of public interest. The Court seemed to disregard the fact that the trooper who asked *Wilson* to exit the vehicle did articulate an objective suspicion for making that request. Instead, the Court chose to rely on policy in rendering its

decision. In effect, the Court determined that police officers may be relied upon to use their knowledge, experience, and training to protect themselves and the general public.

Editor's Note: Professor Byron L. Warnken argued the respondent's case before the United States Supreme Court against United States Attorney General Janet Reno and Maryland Attorney General J. Joseph Curran, Jr.

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