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Maryland v. Wilson: The Fading Fourth Amendment

In *Maryland v. Wilson*,¹ the United States Supreme Court held that a police officer may order a passenger of a lawfully stopped car to exit the vehicle.² This “bright-line rule” allows these intrusions as a matter of course and does not require case-by-case determination.³

I. FACTUAL BACKGROUND

Maryland v. Wilson concerned an attempt to suppress evidence that arguably resulted from an unreasonable seizure in violation of the Fourth Amendment.⁴ A total of three persons, including petitioner, were riding in a car that was stopped in Maryland for exceeding the posted speed limit. The regular license tag had been replaced by a torn piece of paper that read “Enterprise Rent-A-Car.” Maryland State Trooper David Hughes pulled the car over after attempting to do so for a mile and a half.⁵

During the pursuit, the behavior of the two passengers aroused Trooper Hughes’s suspicions. The trooper noticed the passengers duck below sight level and turn to look at him several times. As Hughes approached the car after the stop was made, the driver left the car and met Hughes halfway. The driver produced a valid Connecticut driver’s license and appeared very nervous. Upon Hughes’s instruction, the driver retrieved the rental documents from the car. At this time Hughes noticed that the passenger in the front seat, Wilson, was sweating and noticeably nervous. Wilson exited the car at Hughes’s demand and dropped a quantity of crack cocaine on the ground. Wilson was then arrested and charged with intent to distribute.⁶

1. 117 S. Ct. 882 (1997).

2. *Id.* at 886.

3. *See id.*

4. U.S. CONST. amend IV.

5. 117 S. Ct. at 884.

6. *Id.*

At trial Wilson moved to suppress the evidence on the ground that Hughes's order to leave the car was an unreasonable seizure in violation of the Fourth Amendment. The Circuit Court for Baltimore County granted Wilson's motion to suppress. On appeal the Court of Special Appeals of Maryland affirmed. The Court of Appeals of Maryland denied certiorari. The United States Supreme Court granted certiorari, reversed the decisions of the courts below and held that "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop."⁷

II. LEGAL BACKGROUND

Despite general agreement that the purpose of the Fourth Amendment is to prevent unreasonable searches and seizures, the Supreme Court has splintered when attempts have been made to translate this abstract principle into workable guidelines.⁸ This uncertainty has gradually eroded the need for individual police officers to make reasoned, discretionary decisions before intruding on an individual's personal liberties.⁹ The result of this change has been the promulgation of "bright-line rules," which refer to situations in which police officers are empowered to act without discretion.¹⁰ *Maryland v. Wilson* represents the most recent step in the retreat from the discretionary probable cause requirements.¹¹

In *Terry v. Ohio*,¹² the United States Supreme Court tested the boundaries of the Fourth Amendment's proscription against unreasonable searches and seizures in instances that fell short of arrest. At issue were situations in which a police officer might feel compelled to briefly detain a person without probable cause in order to ascertain whether that person was involved in illegal activity. The Court acknowledged that there was "some force" to petitioner's argument that there is no type of police activity, short of arrest, that does not require the voluntary consent of the citizen.¹³ Nevertheless, the Court held otherwise and declined to rely on the probable cause standard necessary for an arrest.¹⁴ Favoring the balancing test set forth in *Camara v. Municipal Court*,¹⁵ the Court stated that to be in compliance with the Fourth

7. *Id.* at 884, 886.

8. *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967).

9. *Id.* at 528-29.

10. *Wilson*, 117 S. Ct. at 885 n.1.

11. *Id.*

12. 392 U.S. 1 (1968).

13. *Id.* at 11.

14. *Id.* at 20.

15. 387 U.S. 523, 528 (1967).

Amendment, the officer's actions in this type of situation must be "reasonable," which is determined by "balancing the need to search (or seize) against the invasion which the search (or seizure) entails."¹⁶ To justify the particular invasion, the "officer must be able to point to specific articulable facts which . . . reasonably warrant that intrusion."¹⁷ In this case the Court found that a protective search for weapons was valid even without probable cause because it would have been unreasonable to prevent a police officer from taking actions to protect himself when he possesses an articulable suspicion that an individual is armed and dangerous.¹⁸

The Court also stated that the Fourth Amendment was meaningless unless the officer's actions were subject to judicial review.¹⁹ A judge must find that the actions taken were appropriate and that an objectively reasonable police officer would have taken the same actions.²⁰ The Court stated that any lesser standard "would invite intrusion upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches," which the Court previously refused to sanction.²¹ Thus, an officer's good faith belief in the necessity of the action taken is not enough.²² According to the Court, under this standard the Fourth Amendment would cease to function, and people would be subject to the whim of the police.²³

The Court in *Terry* announced the proposition that a search of an individual by a police officer is justified when the officer reasonably believes that the individual is dangerous.²⁴ The Court stressed the need of police officers to protect themselves and reiterated the unreasonableness of forcing officers to take unnecessary risks while carrying out their duties.²⁵ However, the Court cautioned that the officer's assessment of a situation must be reasonable.²⁶ Action based on "unparticularized" suspicions and hunches was not warranted by the Court.²⁷ The Court in *Terry* ultimately held that when an officer is aware of unusual conduct that arouses reasonable suspicion of the existence of criminal

16. 392 U.S. at 20-21 (quoting *Camara*, 387 U.S. at 534-35).

17. *Id.*

18. *Id.* at 24.

19. *Id.* at 21.

20. *Id.* at 21-22.

21. *Id.* at 22.

22. *Id.*

23. *Id.*

24. *Id.* at 23-24.

25. *Id.* at 23.

26. *Id.* at 27.

27. *Id.*

activity or the possibility of danger, the officer may protect himself and others by intruding upon personal liberties to secure the safety of the person present.²⁸

The case most factually similar to *Maryland v. Wilson* is *Pennsylvania v. Mimms*,²⁹ a 1977 case in which the Court enacted a "bright-line rule" allowing a police intrusion onto personal liberty absent the suspicion of danger.³⁰ The Court in *Mimms* considered whether it was permissible under the Fourth Amendment for a police officer to order a driver to exit a lawfully stopped car. Two officers observed respondent *Mimms* driving with an expired license plate and stopped the car to issue a traffic ticket. One of the officers asked *Mimms* to leave the car, and when *Mimms* complied, the officer noticed a bulge in his jacket that turned out to be a gun. The State freely conceded that there was no unusual behavior to give the officer reason to be suspicious of criminal activity. The Pennsylvania Supreme Court held that the order for *Mimms* to leave the car was an impermissible seizure under the Fourth Amendment.³¹

The United States Supreme Court employed a balancing test, weighing the policeman's interest in taking the action against the intrusion onto *Mimms*'s personal liberty.³² The Court stated that it is "too plain for argument that . . . the safety of the officer . . . is both legitimate and weighty."³³ The Court reasoned that because *Mimms* was already lawfully stopped, the additional intrusion of forcing him to leave the car was "de minimis."³⁴ Thus, the Court held that mere inconvenience to a driver cannot prevent an action taken in pursuit of the legitimate concern for officer safety.³⁵

In his dissent, Justice Stevens discussed the retreat from probable cause that began with *Terry* and stated that "[t]oday, without argument, the Court adopts still another—and even lesser—standard of justification for a major category of police seizures."³⁶ Justice Stevens noted that the Court appeared to be abandoning a major protection of the Fourth Amendment—the requirement that there be independent justification on the specific facts of every police intrusion.³⁷ Justice Stevens further

28. *Id.* at 30.

29. 434 U.S. 106 (1977).

30. *Id.* at 109-11.

31. *Id.* at 107.

32. *Id.* at 109.

33. *Id.* at 110.

34. *Id.* at 111.

35. *Id.*

36. *Id.* at 115-16 (Stevens, J., dissenting).

37. *Id.* at 116.

explained that the majority replaced it with a bright-line, per se rule requiring no officer discretion whatsoever.³⁸

In *Whren v. United States*,³⁹ decided just eight months before *Maryland v. Wilson*, the Court added context to the evolution of Fourth Amendment seizure law. The Court in *Whren* held that a police officer will always be justified in making a traffic stop when probable cause exists regardless of the subjective motivations of the officer.⁴⁰ Petitioner argued that a "reasonable officer" standard should be in place, forcing the officer making the stop to justify his actions by showing that any reasonable police officer under similar circumstances would have taken the same action. However, the Court stated that the officer's subjective intentions were of no importance.⁴¹ While *Whren* does mandate the necessity of the probable cause requirement,⁴² this rule continued the shift that the Court had taken towards bright-line rules and away from discretionary police officer actions, thus paving the way for the decision in *Wilson*.

III. SUPREME COURT RATIONALE

In *Wilson* the United States Supreme Court reversed the decision of the Maryland Court of Special Appeals⁴³ and held that a police officer may order a passenger of a lawfully stopped car to exit the vehicle. Chief Justice Rehnquist wrote the opinion and began by reviewing the reasonableness standard under which the Court analyzes Fourth Amendment issues.⁴⁴ In determining reasonableness, the Court balances the particular public interest that necessitates an intrusion against the individual liberty interest involved.⁴⁵ Applying this test to the facts of *Wilson*, the question became whether the public interest in police safety outweighed the personal liberty intrusion that occurred when an officer ordered a passenger to exit a lawfully stopped car to ensure the officer's own safety.⁴⁶

Addressing the public interest consideration, the Court noted that the public interest in officer safety was "weighty."⁴⁷ Recognizing that

38. *Id.*

39. 116 S. Ct. 1769 (1996).

40. *Id.* at 1774.

41. *Id.*

42. *Id.* at 1776.

43. *Wilson*, 117 S. Ct. at 886.

44. *Id.* at 884-85.

45. *Id.* at 885.

46. *Id.*

47. *Id.*

traffic stops are potentially dangerous encounters, the Court stated that the sources of danger to an officer increase with the number of passengers.⁴⁸ The Court cited statistics in reference to the number of officer assaults and fatalities resulting from traffic pursuits and stops in 1994, which numbered 5762 assaults and 11 fatalities.⁴⁹

Regarding the personal liberty consideration, the Court acknowledged that the intrusion on a passenger is more substantial than the intrusion on the driver.⁵⁰ The Court noted that officers presumably have probable cause to believe that the driver of a stopped vehicle has committed some sort of vehicular traffic offense, but no reason exists to stop or detain the passengers of that vehicle.⁵¹ However, because the passengers are already stopped or detained as a result of the traffic stop, ordering them out of the vehicle would result only in the added inconvenience of standing outside the car rather than remaining inside.⁵²

Balancing these considerations, the Court reasoned that police officer safety is greatly enhanced when a passenger is forced to leave the car.⁵³ The Court stated "that the possibility of a violent encounter stems . . . from the fact that evidence of a . . . serious crime might be uncovered during the stop."⁵⁴ Inside the car, the passenger could have access to concealed weapons possibly hidden in a variety of places throughout the interior of the passenger compartment.⁵⁵ The Court noted that, most importantly, a passenger has just as much motivation as a driver to use violence to avoid apprehension.⁵⁶

Emphasizing that the risk of harm to both the police officer and the occupants of the vehicle is minimized if the officer takes authoritative command of the situation, the Court summarized that the increased danger to officer safety justified the minimal intrusion on passengers' personal liberty that occurs when they are forced to leave the car.⁵⁷

Justice Stevens and Justice Kennedy dissented.⁵⁸ Comparing *Wilson* to *Mimms*, Justice Stevens stated that the issue in *Mimms* was a "narrow question" concerning an "incremental intrusion' on the liberty

48. *Id.*

49. *Id.*

50. *Id.* at 886.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.* (citing *Michigan v. Summers*, 452 U.S. 692, 695 (1981)).

58. 117 S. Ct. at 886 (Stevens, J., dissenting); *id.* at 890 (Kennedy, J., dissenting).

of a person who had been lawfully seized," whereas the issue in *Wilson* was the significantly different question of whether the state had the power to seize persons who are *not* under suspicion of violating the law.⁵⁹

According to both Justices Kennedy and Stephens, a police officer should always be required to give a satisfactory explanation for seizing a person and should not order passengers to exit a stopped vehicle unless there are "objective circumstances making it reasonable for the officer" to do so.⁶⁰ Justice Stevens added that this is especially true when "there is not even a scintilla of evidence of any potential risk to the police officer."⁶¹

Justice Stevens pointed out that while "[t]here is, unquestionably, a strong public interest in minimizing [officer] assaults and fatalities," the statistical information cited by the majority failed to support the conclusion that officer safety would be enhanced as a result of the Court's decision.⁶² Justice Stevens argued that the statistics cited did not address how many of the assaults involved passengers.⁶³ Assuming that some of the assaults did involve passengers, no information was provided comparing how many assaults occurred after the passenger was ordered to leave the car and how many occurred when the passenger remained inside.⁶⁴ Most importantly, Justice Stevens argued that "there is no indication that any of the assaults occurred when there was a complete absence of articulable basis for concerns about the officer's safety In short, the statistics are as consistent with the hypothesis that ordering passengers to get out of a vehicle increases the danger of assault as with the hypothesis that it reduces the risk."⁶⁵ Thus, the statistics did not support the conclusion that a police officer is in less danger when a passenger is ordered out of a car than when a passenger remains in the car.⁶⁶

Justice Stevens claimed that most traffic stops involve "law-abiding citizens who have committed minor traffic offenses."⁶⁷ The implication is that the majority of traffic stops presents no danger to police

59. *Id.* at 886 (Stevens, J., dissenting).

60. *Id.* at 890 (Kennedy, J., dissenting) (citing and concurring with Justice Stevens's conclusion).

61. *Id.* at 887 (Stevens, J., dissenting).

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 888.

officers.⁶⁸ The reality is that the "unnecessary invasion" allowed by the majority to ensure officer safety will be "imposed on innocent citizens" in the tremendous number of daily traffic stops.⁶⁹ Justice Stevens cited statistics showing that because routine stops far outnumber those in which an officer is actually at risk, any benefit toward officer safety is marginal.⁷⁰ An officer would almost certainly have a reasonable suspicion of danger in most situations posing an actual threat, thereby justifying the order for the passenger to leave the car even in the absence of the bright-line rule.⁷¹

Justice Stevens acknowledged the majority's reasoning that the intrusion into the personal liberty of passengers ordered out of a lawfully stopped car may be minimal in individual circumstances.⁷² However, he responded that there are "countless citizens who cherish individual liberty and are offended, embarrassed, and sometimes provoked by arbitrary-official commands" and reasoned that these citizens would not consider the intrusion insignificant.⁷³ Furthermore, the aggregate of the "thousands upon thousands" of these intrusions upon innocent passengers clearly outweighed the safety concerns of the majority.⁷⁴

In summary, Justice Stevens wrote that "[t]he Constitution should not be read to permit law enforcement officers to order innocent passengers about simply because they have the misfortune to be seated in a car whose driver has committed a minor traffic offense."⁷⁵ Justice Stevens reiterated that seizures should be supported by "specific and articulable facts."⁷⁶ As Justice Kennedy proclaimed, "Liberty comes not from officials by grace but from the Constitution by right."⁷⁷

IV. IMPLICATIONS

The Supreme Court in *Wilson* noted that while the Court has "generally eschewed bright-line rules in the Fourth Amendment context," there is no absolute standard that per se rules must be avoided in the search and seizure context.⁷⁸ The decision in *Wilson* actually represented yet another step toward hard and fast bright-line rules and away

68. *Id.*

69. *Id.* at 887.

70. *Id.* at 888.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.* at 889.

76. *Id.*

77. *Id.* at 891 (Kennedy, J., dissenting).

78. 117 S. Ct. at 885 n.1.

from discretionary decision making. Reasonableness is at the very heart of the Fourth Amendment and can generally be approached by balancing tests.⁷⁹ Bright-line rules formulated by the Court in *Mimms* and *Wilson* eliminate discretion from the process and, arguably, significantly weaken the protections provided by the Fourth Amendment.⁸⁰

Wilson represented a major break from *Mimms*. In *Mimms* the driver was at least suspected of a traffic violation.⁸¹ In *Wilson* the Court extended the *Mimms* rationale to cover passengers, both in circumstances when no probable cause exists to believe that the passengers have committed a crime and in situations when there is no reason to believe that there exists any potential risk to the police officer.⁸²

The most obvious, and potentially most serious, ramification of the result in *Wilson* is the possibility that the police officers may be further authorized to intrude upon the personal liberties of persons who are under no criminal suspicion whatsoever. The question must be asked whether the impact of this decision will fall more squarely on the shoulders of some particular groups than on others. Professor James Q. Wilson, in a reference to the *Terry* decision, recommended that police increase the use of frisks in the pursuit of safety.⁸³ However, he acknowledged that "[y]oung black and Hispanic men" would probably be affected more than others.⁸⁴ Without Fourth Amendment protection in these types of situations, the individual liberties of citizens may be overwhelmed by a public interest that is less than significant in a particular situation.

It is also not clear how this bright-line rule will be implemented in a variety of cases beyond the standard private car driver and passenger situation. According to the rule, passengers of commercial taxicabs and buses, including school buses and buses transporting the elderly, are subject to being ordered from the vehicle.⁸⁵ This possibility conjures the vision of children or the elderly being forced to wander the side of a busy highway during a downpour. Justice Stevens stated that "[t]he Constitution should not be read to permit law enforcement officers to

79. *Id.* at 884-85.

80. *See id.* at 889 (Stevens, J., dissenting). In *Ohio v. Robinette*, 117 S. Ct. 417 (1996), the Supreme Court adopted yet another bright-line rule that the Fourth Amendment does not require police officers to inform lawfully detained persons that they are free to go in order for a search to be considered voluntary. *Id.* at 420-21.

81. *Mimms*, 434 U.S. at 107.

82. *Wilson*, 117 S. Ct. at 886.

83. James Q. Wilson, *Just Take Away Their Guns*, N.Y. TIMES, Mar. 20, 1994, § 6 (Magazine), at 46.

84. *Id.*

85. *See* 117 S. Ct. at 889 (Stevens, J., dissenting).

order innocent passengers about simply because they have the misfortune to be seated in a car whose driver has committed a minor offense."⁸⁶

In *Whren* the Supreme Court held that a police officer's motives are irrelevant as long as the officer can point to objective evidence that a traffic violation has occurred.⁸⁷ Even though pretextual stops were not forbidden, the Court insisted upon a reasoned explanation for the stop.⁸⁸ Nevertheless, because the complexity of the traffic codes renders most drivers guilty of some violation in most instances, the practical result of *Whren* is that the police can stop vehicles in almost any circumstance.⁸⁹ Justice Kennedy, arguing in the *Wilson* dissent, predicted that when *Wilson* is coupled with *Whren*, the net result is one that gives police the authority to arbitrarily control "millions of passengers."⁹⁰ Under *Whren* a police officer can virtually per se stop any vehicle on the road.⁹¹ With the addition of *Wilson*, the same officer can order the driver and all passengers out of the car.⁹² The serious implication is that these rulings may increase traffic stops that are made for the reason of evacuating the car in hope of discovering evidence of some illegal activity.⁹³ The combination of *Wilson* and *Whren* has potentially rendered the Fourth Amendment inapplicable in traffic stop situations.

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86. *Id.*

87. *Whren*, 116 S. Ct. at 1776.

88. *Id.*

89. *Id.* at 1777.

90. *Wilson*, 117 S. Ct. at 890 (Kennedy, J., dissenting).

91. *Whren*, 116 S. Ct. at 1774.

92. *Wilson*, 117 S. Ct. at 886.

93. *See Whren*, 116 S. Ct. at 1773.