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COURT OF APPEALS DEFINES SCOPE OF POLICE "COMMUNITY CARETAKING" FUNCTION

QUESTION: In Maryland, what categories of police activities fall within the "community caretaking" function?

ANSWER: The Court of Appeals recognizes the "community caretaking function", which is an exception to the warrant requirement of the Fourth Amendment, in two areas: (1) the automobile impoundment/inventory doctrine, and (2) the emergency aid (public welfare) doctrine.

CASE: *Wilson v. State*, Court of Appeals of Maryland, Decided July 20, 2009

In *Wilson v. State*, the Court of Appeals of Maryland revisited, and reversed, a case decided by the Court of Special Appeals in 2007 (*See Roll Call Reporter*, October 2007 ("The Police Community Caretaking Function Extends to Seizures of Persons")). The facts in the case established that on February 13, 2005, Officer Wayne Zimmerer of the Hagerstown Police Department was on routine patrol in an unmarked police car. Around 5:00 a.m., he saw an object lying in the roadway about two hundred feet in front of him. The officer activated his emergency lights to get a better look at the object. When he did, the object jumped up, revealing for the first time that what the officer thought was an object was actually a man, later identified as Francis Eugene Wilson, Jr. After Wilson jumped up, he crossed in front of a van and began to walk away. Leaving his emergency lights on, Officer Zimmerer pulled over to the curb as Wilson walked past and got out of his car. The officer called to the man to see if he was okay. Wilson did not respond and picked up his pace. Officer Zimmerer caught up and observed that Wilson had abrasions on his face and knuckles. He grabbed Wilson by his coat sleeve and told him to have a seat on the curb. Officer Zimmerer asked Wilson his name, what was wrong, where he lived, and similar questions. Wilson failed to respond and just sat there, staring blankly. This continued for several minutes. Although he was unsure, Officer Zimmerer thought Wilson was possibly under the influence of a controlled dangerous substance.

Out of concern over Wilson's behavior, Officer Zimmerer told him that he was going to take him to the hospital and that he would have to be handcuffed before getting into the police car. He told Wilson that this was required by departmental policy and that he was not under arrest. When the officer attempted to handcuff him, Wilson began to struggle. He kicked and bit the officer, despite being pepper sprayed. Other officers arrived and one of them fired his Taser at Wilson. Wilson was then handcuffed and, because he was

bleeding from a head injury sustained in the struggle, he was taken to a nearby hospital. Wilson continued to struggle and had to be restrained at the hospital with leather straps. After being treated in the emergency room, Wilson was transported to the police station for booking. During booking, an officer saw Wilson try to discard a clear plastic baggie containing marijuana in the bathroom. Wilson was charged with numerous offenses, including second degree assault, resisting arrest, possession of marijuana, and disorderly conduct. Wilson's motion to suppress was denied, and he was found guilty and sentenced to a term of four years. He then appealed.

On appeal, Wilson contended that Officer Zimmerer did not detain him in accordance with his caretaking function, but instead arrested him, and, because the arrest was without probable cause, its fruits should be suppressed. The Court of Special Appeals rejected Wilson's position and upheld his convictions. The Court of Appeals, however, agreed to hear the case and reversed. In doing so, Maryland's highest court acknowledged that the "community caretaking" exception to the Fourth Amendment's warrant requirement applies in two areas: the automobile impoundment/inventory doctrine, and the emergency aid doctrine. The common denominator in exercising the "community caretaking" function is the non-criminal, non-investigatory police purpose. Since only the emergency aid doctrine was implicated by the facts of the case, the court focused on it. The court observed that law enforcement contact in the noncriminal context arises most often when: police approach parked cars where the driver appears to be sick or when the car appears to be functioning improperly, and when officers approach a pedestrian who appears to need assistance because he/she appears sick, in danger, or in need of some emergency assistance. These encounters remain outside of the Fourth Amendment as long as the police purpose remains unrelated to a criminal investigation. To ensure that the public welfare component of the community caretaking function is performed reasonably, the court adopted the following test: **First, the officer must have objective facts to support his or her concern that the person is in apparent peril, distress or in need of aid. Second, if the citizen is in need of aid, the officer may take reasonable steps to provide assistance. Third, once the officer is assured that the citizen is no longer in need of assistance, the caretaking function is complete and over. Fourth, any further contact with the citizen after he or she is no longer in need of assistance must be supported by warrant, reasonable articulable suspicion, probable cause, or another exception to the warrant requirement.**

Applying this test, the court concluded that when Officer Zimmerer grabbed Wilson's coat and sat him down on the curb, a reasonable person in Wilson's place would have believed he was no longer free to leave. Since the court viewed these actions, and the subsequent handcuffing of Wilson as a seizure, it concluded under the Fourth Amendment that the absence of a reasonable suspicion or probable cause compelled the reversal of the convictions.

NOTE: This case provides fair warning to officers who seek to justify their actions based on the public welfare component of the community caretaking function. The warning is as follows: In assessing the reasonableness of an officer's actions, reviewing courts will consider the "availability, feasibility and effectiveness of alternatives to the

type of intrusion effected by the officer.” This is legal speak meaning reviewing courts, and by implication, criminal defense counsel, will second guess your actions. For example, in *Wilson*, the Court of Appeals wondered, “If medical treatment was necessary, the record does not indicate any reason why an ambulance was not called.” This second-guessing led the dissenting judges to say that “to call Officer Zimmerer’s exercise of judgment here unreasonable and unconstitutional is wrong.”

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