



LGIT'S ROLL CALL REPORTER **OCTOBER 2007**

THE POLICE COMMUNITY CARETAKING FUNCTION EXTENDS TO SEIZURES OF PERSONS

QUESTION: Is the community caretaking function limited to searches of property?

ANSWER: No. Under certain circumstances, the community caretaking function enables officers to seize persons under circumstances that otherwise would violate the Fourth Amendment.

CASE: *Wilson v. State*, Court of Special Appeals, Decided September 13, 2007

In *Wilson v. State*, the Maryland Court of Special Appeals considered the scope of the police “community caretaking function”. Police officers function in one of two roles: (1) apprehension of criminals (investigative function); and (2) protecting the public and rescuing those in distress (caretaking function). The scope of the latter was explored in the *Wilson* case.

The facts in *Wilson* 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 he attempted to handcuff Wilson, 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. In doing so, the court observed that the community caretaking function has traditionally enabled police officers to conduct searches of private property that would otherwise violate the Fourth Amendment. The rationale for such searches is that they are initiated not to investigate crime, but to aid persons in apparent need of assistance or to protect property. The court further observed that the single most important purpose behind the community caretaking function is to protect citizens from likely physical harm.

The critical issue in *Wilson* was whether the caretaking function extended beyond searches of property to seizures of persons as well. Finding that there was no basis for distinguishing between searches and seizures for purposes of the community caretaking function, the court concluded that the function did allow seizure of persons if certain criteria were met. **First, the seizure of the person must be based upon specific and articulable facts which reasonably warrant an intrusion into the individual's liberty. Second, the government's interest must outweigh the individual's interest in being free from arbitrary governmental interference. Third, the detention must last no longer than is necessary to effectuate its purpose.** Finding that Wilson's detention satisfied these requirements, the court upheld his conviction. The court stated the obvious that “[I]lying in the middle of a public street at 5:00 a.m. was clear indication that [Wilson] needed assistance, medical or otherwise, not to mention the danger his behavior posed to those driving on the road at that time.” Thus, the government's interest in protecting Wilson and the public clearly outweighed his interest in being free from arbitrary governmental interference.

NOTE: The fact that the officer attempted to handcuff Wilson did not convert the detention into an arrest. Wilson was not under arrest until he physically resisted the handcuffing. Although a display of force during a detention, including putting a person in handcuffs, generally converts the detention into an arrest, there are exceptions, including placing the suspect in handcuffs to protect the officer or when done to prevent flight. Wilson was not detained because he had committed a crime; he was detained because he presented a danger to himself and others. Since the handcuffing was designed to ensure officer safety, Wilson was not under arrest when the handcuffing began.

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