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Constitutional Law - Criminal Procedure - Fourth Amendment - Ordering Passengers out of Vehicle During Traffic Stop

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CONSTITUTIONAL LAW — CRIMINAL PROCEDURE — FOURTH AMENDMENT — ORDERING PASSENGERS OUT OF VEHICLE DURING TRAFFIC STOP — The Supreme Court of the United States held that a police officer who orders passengers to exit a vehicle until completion of a traffic stop does not violate the Fourth Amendment to the United States Constitution because the public interest in the safety of law enforcement personnel outweighs an individual's right to be free from arbitrary interference.

Maryland v. Wilson, 117 S. Ct. 882 (1997).

Respondent, Jerry Lee Wilson ("Wilson"), was a passenger in a southbound automobile on Interstate 95 ("I-95") in Baltimore County, Maryland.[1] The vehicle did not display a regular license plate, but only a piece of paper with the words "Enterprise Rent-A-Car" hung on the rear of the car.[2] A Maryland state trooper, Officer David Hughes ("Hughes"), observed the car traveling at 64 miles per hour in a zone posted at 55 miles per hour.[3] The state trooper turned on his sirens and lights, but the vehicle continued for another mile and a half before finally coming to a stop.[4]

When the driver got out of the car to meet the approaching trooper, he was trembling and appeared extremely nervous.[5] After instructing the driver to return to the car and retrieve the rental documents, Hughes noticed that the front-seat passenger, Wilson, was sweating and also appeared extremely nervous.[6] Hughes then ordered Wilson to exit the car while the driver sat in the driver's seat looking for the rental papers.[7]

Complying with Officer Hughes' command, Wilson began to exit the car.[8] As he was getting out of the vehicle, Hughes observed a quantity of crack cocaine fall to the ground.[9] Hughes subsequently

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1. Maryland v. Wilson, 664 A.2d 1 (1995), *rev'd*, 117 S. Ct. 882 (1997).
2. Maryland v. Wilson, 117 S. Ct. 882, 884 (1997).
3. *Id.*
4. *Id.* During this mile and a half pursuit, the trooper noticed that the two passengers in the car turned to look at him several times, repeatedly ducking below sight level and then reappearing, causing the trooper to become suspicious. *Id.*
5. *Id.* Despite his trembling and nervousness, the driver did produce a valid Connecticut driver's license. *Id.*
6. *Id.*
7. *Wilson*, 117 S. Ct. at 884.
8. *Id.*
9. *Id.*

arrested and charged Wilson with possession of cocaine with intent to distribute.[10]

In a pre-trial motion, Wilson moved to suppress the evidence, arguing that Hughes' action of ordering him out of the car constituted an unreasonable seizure under the Fourth Amendment.[11] The Circuit Court for Baltimore County granted Wilson's motion to suppress, a decision affirmed by the Court of Special Appeals of Maryland.[12] The Court of Appeals of Maryland denied certiorari.[13] The Supreme Court of the United States granted certiorari[14] to determine whether the rule of *Pennsylvania v. Mimms*,[15] that a police officer may, as a matter of course, order the driver of a lawfully stopped car to exit his vehicle, extends to passengers as well.[16]

The Court began its consideration of the case by reaffirming *Mimms*, an earlier decision regarding Fourth Amendment rights.[17] In *Mimms*, two Philadelphia police officers observed Harry Mimms ("Mimms") driving a vehicle with an expired license plate.[18] The officers stopped Mimms' automobile and asked Mimms to step out of the car and produce the vehicle's registration and his driver's license.[19] As Mimms was getting out of his car, the officers noticed a large bulge under his jacket.[20] Suspecting that the bulge was a weapon, the officers frisked Mimms and discovered a loaded

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10. *Id.*

11. *Id.* The Fourth Amendment of the U.S. Constitution states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.

12. *Wilson*, 106 Md. App. 24, 664 A.2d 1 (1995). The Court of Special Appeals of Maryland ruled that Pennsylvania v. Mimms, 434 U.S. 106 (1977), does not apply to passengers. *Id.* (citing Maryland v. Wilson, 664 A.2d 13 (1995)).

13. Maryland v. Wilson, 667 A.2d 342 (1995). "Certiorari" is a common law writ issued by a superior to an inferior court requiring the production of a certified record of a case tried in the inferior court. BLACK'S LAW DICTIONARY 228 (6th ed. 1990).

14. Maryland v. Wilson, 116 S. Ct. 2521 (1996).

15. Pennsylvania v. Mimms, 434 U.S. 106 (1977).

16. *Mimms*, 434 U.S. at 109. Police officers observed defendant driving an automobile with an expired license plate and lawfully stopped the vehicle for the purpose of issuing a traffic summons. *Id.* at 107. The officer ordered the defendant to get out of the automobile notwithstanding the fact that the officers had no reason to suspect foul play and there had been nothing unusual or suspicious about his behavior. *Id.* The U.S. Supreme Court found defendant's Fourth Amendment right was not violated. *Id.*

17. *Wilson*, 117 S. Ct. at 884.

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

19. *Id.*

20. *Id.*

.38-caliber revolver in his waistband.[21] Mimms was arrested and subsequently convicted on charges of carrying a concealed deadly weapon and carrying an unlicensed firearm.[22]

The Supreme Court of the United States reversed the Supreme Court of Pennsylvania's decision,[23] by holding that the officers could constitutionally order the driver out of the automobile without an articulable suspicion.[24] The Court explained that the touchstone of Fourth Amendment analysis is always the reasonableness in all circumstances of the particular governmental invasion into a citizen's personal security.[25] This "reasonableness" test has been found to depend on balancing the public interest against an individual's right to be free from arbitrary interference by law enforcement officers.[26]

Regarding the public interest side of the balance, the Court noted that the practice of ordering drivers out of their vehicles is a precautionary measure protecting the officer's safety that is both legitimate and weighty.[27] The intrusion into the driver's personal liberty represents the other side of the Fourth Amendment balance.[28] The Court deemed the additional intrusion of asking the driver to step out of his car to be "de minimis" because police had already legitimately stopped the driver's car for a traffic violation.[29] Thus, the public interest of officer safety outweighed the intrusion into a driver's personal liberty, leading to the holding that an officer can order a driver out of his car.[30]

Following its reaffirmance of *Mimms*, the *Wilson* Court addressed whether the rule of *Mimms* applied to passengers as well as to drivers.[31] Looking to the public interest side of the

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21. *Id.*

22. *Id.* The Supreme Court of Pennsylvania reversed Mimms' conviction, holding that the revolver was seized in violation of the Fourth Amendment. *Id.* The Court's rationale was that the officer was unable to point to any objective and observable facts to support a suspicion that criminal activity was afoot or that the occupants of the automobile posed any threat to the officers at the scene. *Id.* at 108 (citing Pennsylvania v. Mimms, 370 A.2d 1157, 1160 (1976)).

23. Pennsylvania v. Mimms, 370 A.2d 1157 (1976).

24. *Mimms*, 434 U.S. at 112.

25. *Id.* at 108-109 (citing Terry v. Ohio, 392 U.S. 1, 19 (1968)).

26. *Id.* at 109 (quoting United States v. Brignoni-Ponce, 422 U.S. 873 (1975)).

27. *Id.* at 110. In addition, the Court observed that the danger to the officer of standing by the driver's door and in the path of oncoming traffic might also be substantial. *Id.*

28. *Id.*

29. *Mimms*, 434 U.S. at 109.

30. *Id.* at 112. The Court concluded that, under these circumstances, any man of reasonable caution would have likely conducted the search. *Id.*

31. *Id.* Wilson urged, and the lower courts agreed, that the *Mimms* rule did not apply

balance, the Court held that the same legitimate and significant interest in officer safety is manifest, whether the occupant asked to step out of the stopped vehicle is a driver or passenger.[32] In analyzing the personal liberty side of the balance, the Court noted that the interest is stronger for a passenger than for a driver because although probable cause exists that the driver has committed a traffic infraction, the passenger has made no overt actions warranting suspicion.[33] However, the Court further noted that the additional intrusion on the passenger is minimal because the passengers are already stopped due to the traffic infraction.[34] The Court remarked that the only change in passenger circumstances is that they would be outside, rather than inside, the stopped car.[35]

In summary, the Court held that the public's interest in officer safety is substantial, while the additional intrusion on a passenger's personal liberty is minimal.[36] The Court reversed the judgment of the Court of Special Appeals of Maryland, concluding that an officer making a traffic stop may order passengers to exit the car, pending completion of the stop.[37]

Justices Stevens, joined by Justice Kennedy, dissented, arguing that the Fourth Amendment forbids usual and capricious seizures of indisputably innocent citizens.[38] The dissent found that statistics

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to Wilson because he was not the driver, but merely a passenger. *Id.* Maryland argued that the Court had already decided this question in *Michigan v. Long*, 463 U.S. 1032, 1047-48 (1983) (holding that police may order persons out of an automobile during a stop for a traffic violation) and *Rakas v. Illinois*, 439 U.S. 128, 155 n.4 (1978) (holding that, once a proper stop is made, passengers in automobiles have no Fourth Amendment right not to be ordered from the vehicle). In deciding *Wilson*, the Court held that neither *Michigan* nor *Rakas* constituted binding precedent, because the former statement was dictum and the latter was contained in a concurring opinion. *Wilson*, 117 S. Ct. at 885.

32. *Id.* In 1994, eleven police officers were killed and 5,762 assaulted during traffic pursuits and stops. *Id.* (citing Federal Bureau of Investigation, Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted 31, 33 (1994)). In addition to the danger posed by an officer standing in the path of oncoming traffic if a passenger occupies the left rear seat, more than one occupant of the automobile escalates the possible sources of danger to the officer. *Id.* The Court found that a passenger's motivation to engage in violence is every bit as great as that of the driver, but if a passenger is outside the car, he will not be able to access any weapons concealed in the car's interior. *Id.*

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

34. *Id.*

35. *Id.*

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

37. *Id.* The case was remanded for proceedings not inconsistent with the Court's opinion. *Id.*

38. *Id.* at 887. Justice Stevens was not concerned with the disposition of this particular case, but with its application to traffic stops in which no evidence exists for concluding that

cited by the majority did not support the conclusion that the Court's ruling will reduce assaults on officers, which sometimes result in fatalities, because the statistics do not separate incidents of assault by passengers from those by drivers.[39] The dissent expressed its concern that the Court's decision may pose a more serious threat to individual liberty than the majority realized because the Court took the unprecedented step of allowing seizures that are not accompanied by any individualized suspicion.[40]

The history of the Fourth Amendment embodies a general rule requiring that official searches and seizures be authorized by a warrant, issued upon probable cause, supported by oath or affirmation, and particularly describe the place to be searched and the persons or things to be seized.[41] The Supreme Court created an exception to this rule in the landmark case *Terry v. Ohio*, which permitted police to "stop and frisk" suspects.[42] According to Justice Stevens' dissent in *Wilson*, the majority created yet another exception to the probable cause rule; an exception that excessively intrudes on individual rights under the Fourth Amendment.[43]

Justice Kennedy added a few observations in his separate dissent.[44] He would have held that the public interest does not outweigh a passenger's personal liberty interest, finding that ordering passengers to get out of a car during the course of a traffic stop was not a de minimis intrusion.[45] Kennedy found that the Court should have followed precedent, which permits vehicle

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the police officer may be in danger. *Id.* (Stevens, J., dissenting).

39. *Id.* The dissent reasoned, "[T]he 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 that risk." *Id.*

40. *Wilson*, 117 S. Ct. at 890 (Kennedy, J., dissenting). The Court assumes "that the constitutional protection against unreasonable seizures requires nothing more than a hypothetically rational basis for intrusions on individual liberty." *Id.*

41. *Id.* at 889. (quoting Amos v. United States, 255 U.S. 313, 315 (1921); Weeks v. United States, 232 U.S. 383, 393 (1914)).

42. *Id.* (citing Terry v. Ohio, 392 U.S. 1 (1968). The *Terry* Court condoned seizures supported by specific and articulable facts that did not establish probable cause in themselves. Terry v. Ohio, 392 U.S. 1, 29 (1968).

43. *Wilson*, 117 S. Ct. at 890.

44. *Id.* at 889.

45. *Wilson*, 117 S. Ct. at 889. (Stevens, J., dissenting). It is apparent that a burden ccould be placed on thousands of innocent citizens every day. *Id.* When an officer commands passengers, innocent of any traffic infraction, to leave the vehicle and stand by the side of the road in full view of the public, the seizure is serious, not trivial. *Id.* at 890 (Kennedy, J., dissenting). The majority's rule is of some possible advantage to officers in only about one out of every twenty thousand traffic stops in which there is a passenger in the car. *Id.* at 888 (Stevens, J., dissenting).

stops only if some objective indication exists that a violation has been committed, in reaching its decision.[46] According to Kennedy, if a person is to be seized, a satisfactory explanation for the invasive action ought to be given.[47] Kennedy further suggested that the explanation for ordering passengers to exit a vehicle need be no more than officer safety or facilitation of a lawful search or investigation.[48]

In *Terry v. Ohio*,[49] the Supreme Court considered whether the search of a person based on an officer's suspicion is reasonable under the Fourth Amendment.[50] Officer McFadden observed Terry's casual and oft-repeated reconnaissance of a store window and suspected Terry planned to commit a robbery.[51] Considering it his duty as a police officer and fearing that Terry had a gun, McFadden seized Terry to search him for weapons.[52] As McFadden patted down the outside of Terry's overcoat, he felt what might be a pistol.[53] McFadden removed Terry's coat and discovered a .38-caliber revolver.[54] Terry was subsequently charged with carrying a concealed weapon.[55]

Chief Justice Warren delivered the opinion of the Court, holding that the officer did not exceed the reasonable scope of the Fourth Amendment by patting down Terry's outer clothing.[56] Without placing his hands in Terry's pockets or under the surface of Terry's garments until he felt the suspected weapon, McFadden then merely reached for and removed the gun.[57] The Court ruled that McFadden was justified in conducting a limited search for weapons after he had reasonably concluded that Terry might be armed and presently dangerous.[58] The Court determined that to assess the

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46. *Id.* at 890.

47. *Id.* Justice Kennedy found that "the distinguishing feature of our criminal justice system is its insistence on principled, accountable decision making in individual cases." *Id.*

48. *Id.*

49. 392 U.S. 1 (1968).

50. *Terry*, 392 U.S. at 6 (1968).

51. *Id.* at 6.

52. *Id.*

53. *Id.* at 7.

54. *Id.* at 7. After Officer McFadden felt the pistol while patting down of the outside of Terry's overcoat, he reached inside the overcoat pocket, but initially was unable to remove the gun. *Id.*

55. *Id.* Officer McFadden suspected three men, Terry, Chilton, and Katz, of criminal activity. *Id.* He patted down each of the suspects and found guns on both Terry and Chilton, who were formally charged with carrying concealed weapons. *Id.*

56. *Terry*, 329 U.S. at 29.

57. *Id.*

58. Pennsylvania v. Mimms, 434 U.S. 106, 110 (1977) (citing Terry v. Ohio, 392 U.S. 1)).

reasonableness of the officer's actions under the Fourth Amendment, it is first necessary to focus upon the governmental interest that allegedly justifies official intrusion into the constitutionally protected interests of a private citizen.[59]

The standard enunciated in *Terry* was whether the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief that the action taken was appropriate."[60] The Court concluded that requiring that police officers take unnecessary risks in the performance of their duties would be unreasonable, and in these circumstances, any man of reasonable caution would likely have conducted the "pat down."[61]

In *United States v. Brignoni-Ponce*,[62] the Supreme Court analyzed the United States Border Patrol's authority to stop automobiles in areas near the Mexican border.[63] Officers of the Border Patrol pursued and stopped Brignoni-Ponce's car, testifying later that their only reason for doing so was that its three occupants appeared to be of Mexican descent.[64] After questioning the respondent and his two passengers, the officers learned that the passengers had illegally entered the country.[65] The Border Patrol charged Brignoni-Ponce with two counts of knowingly transporting illegal immigrants, a violation of §274(a)(2) of the Immigration and Nationality Act.[66]

The Court held that the Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of a traditional arrest.[67] The Court found that the Fourth Amendment does not require a police officer, who lacks the precise level of information necessary for probable cause to arrest, simply to shrug his shoulders and allow a crime to occur or a

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59. *Terry*, 392 U.S. at 19. *Terry* addressed more than the general governmental interest in investigating crime; but also the more immediate interest of the police officer in taking steps to assure himself that the person with whom he was dealing was not armed with a weapon that could unexpectedly and fatally be used against him. *Id.* at 23. Though the officer was engaged in investigating crime, the governmental purpose that justified the stop and patdown was not the investigation itself, but "the neutralization of danger to the policeman in the investigative circumstance." *Id.* at 26.

60. *Id.* at 21-22.

61. *Id.* at 22.

62. 422 U.S. 873 (1975).

63. *Brignoni-Ponce*, 422 U.S. at 875.

64. *Id.* at 875.

65. *Id.*

66. *Id.* Immigration and Nationality Act, 66 Stat. 228, 8 U.S.C. § 1324(a)(2).

67. *Brignoni-Ponce*, 422 U.S. at 878. (citing Davis v. Mississippi, 394 U.S. 721 (1969)).

criminal to escape.[68] In light of the facts known to an officer at the time, conducting a brief stop of a suspicious individual to determine the suspect's identity or to keep the situation under control while obtaining more information is reasonable.[69]

The Court concluded that due to the importance of the governmental interest at stake, the minimal intrusion of a brief stop, and the absence of practical alternatives for policing the border, when an officer's observations lead him reasonably to suspect that a particular vehicle may contain illegal aliens, he may stop the car briefly and investigate the circumstances that provoked his suspicion.[70] As with other categories of police action subject to Fourth Amendment constraints, the reasonableness of such seizures depends on balancing the public interest and the individual's right to personal security free from arbitrary interference by law officers.[71]

In *Pennsylvania v. Mimms*,[72] the Supreme Court considered whether an officer was justified in conducting a limited search for weapons after he had reasonably concluded that the person whom he had legitimately stopped might be armed and dangerous.[73] The Court relied on the precedents of *Terry* and *Brignoni-Ponce* in reaching its decision.[74] Under this analysis, the Court ruled that what is at most a mere inconvenience (the driver being asked to step out of his vehicle) cannot prevail when balanced against

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68. *Id.* at 881.

69. *Id.*

70. *Id.* However, the Court also concluded that it was unwilling to let the Border Patrol dispense entirely with the requirement that officers must have a reasonable suspicion to justify roving-patrol stops. *Id.* at 882.

71. *Id.* Justice Powell held that the public interest demands effective measures to prevent the illegal entry of aliens at the Mexican border. *Id.* In 1974, the Immigration and Nationality Subcommittee of the House Judiciary Committee suggested that there may be as many as 10 or 12 million aliens illegally in the country. !Id. (citing Hearings on Illegal Aliens before Subcommittee, No. 1 of the House Committee on the Judiciary, 92nd Cong., 2d Sess., ser. 13, pt. 5, pp. 1323-1325 (1974)). However, Justice Powell concluded that although the likelihood that a person of Mexican ancestry is an illegal alien is high enough to make Mexican appearance a relevant factor, standing alone it does not justify stopping all Mexican-Americans to ask if they are illegally in the United States. *Id.* at 887.

72. Pennsylvania v. Mimms, 434 U.S. 106 (1977).

73. *Id.*

74. *Id.* at 109. In *Terry*, the touchstone of the Court's analysis under the Fourth Amendment was reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security. *Id.* (citing Terry v. Ohio, 392 U.S. 1, 19 (1968)). In *Brignoni-Ponce*, the Court held reasonableness depends on a balance between the public interest and an individual's right to personal security free from arbitrary interference by law officers. *Id.* (citing United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975)).

legitimate concerns for officer safety.[75]

In *Rakas v. Illinois*,[76] the Supreme Court examined whether an automobile passenger had any legitimate expectation of privacy in the glove compartment or the area under the seat of the vehicle sufficient to challenge a search of those areas.[77] After receiving a robbery report, the police stopped the suspected getaway car, driven by its owner and in which Rakas was a passenger.[78] Police ordered the occupants to exit the car and during the subsequent vehicle search, found a box of rifle shells in the glove compartment and a sawed-off rifle under the front passenger seat.[79] The officers took the occupants to the police station and subsequently arrested Rakas, although he was merely a passenger in the vehicle.[80]

The Court held it unnecessary to decide whether the search of the car might have violated the Fourth Amendment rights of someone other than the owner-driver because only he had a possessory interest in the allegedly private place searched.[81] A lengthy concurring opinion by Justice Powell reasoned that it was unrealistic to suggest that an automobile passenger had any reasonable expectation that police would not search the car in which he had been riding after it was lawfully stopped and the occupants ordered to get out.[82] Justice Powell concluded that passengers in automobiles have no Fourth Amendment right to remain in a vehicle, once police make a proper stop.[83] Thus,

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75. *Id.* at 110. The Court recognized the inordinate risk confronting an officer as he approaches a person seated in an automobile. *Id.* (citing Allen P. Bristow, *Police Officer Shootings—A Tactical Evaluation*, 54 J. CRIM. L. C. & P.S. 93 (1963)). The intrusion into the driver's personal liberty occasioned by an order to get out of the car was described as de minimis. *Id.* at 111. The Court reasoned, "[t]he driver is being asked to expose to view very little more of his person than is already exposed." *Id.*

76. Rakas v. Illinois, 439 U.S. 128 (1978).

77. *Id.*

78. *Id.*

79. *Id.* at 130. The occupants of the car were Rakas and two female companions. *Id.*

80. *Id.*

81. *Rakas*, 439 U.S. at 149. Justice Rehnquist held that Rakas, who did not assert a property or a possessory interest in the searched automobile or an interest in the property seized, and who failed to show that he had any legitimate expectation of privacy in the glove compartment or area under the seat of the vehicle in which he was merely a passenger, was not entitled to challenge the search of those areas. *Id.* at 128. The capacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place. *Id.* at 143 (citing Katz v. United States, 389 U.S. 347 (1967)).

82. *Id.* at 155. (Powell, J., concurring).

83. *Id.* at 155, n. 4. (Powell, J., joined by Burger, C.J., concurring). The majority opinion indicated that cars are not to be treated identically with houses or apartments for

according to Justice Powell's concurring opinion in *Rakas*, the *Mimms* rule, allowing officers to order drivers out of their vehicle, would also apply to passengers.[84]

In *Michigan v. Summers*,[85] the Court reviewed whether police officers could require a suspect to re-enter his house and to remain there while they conducted a search.[86] Detroit police officers obtained a search warrant for contraband thought to be located in Summers' residence, but when they arrived to execute the warrant, they found Summers coming down the front steps.[87] The officers requested his assistance in gaining entry and upon his refusal, Summers was detained while they searched the premises.[88] After finding narcotics and ascertaining that Summers owned the house, the police arrested him, searched his person, and found heroin in his coat pocket.[89]

The crucial issue in *Summers* was whether the initial detention of Summers violated his constitutional right to be secure against an unreasonable search and seizure of his person.[90] Although the evidence suggested no special danger to the police, the Court found that execution of a warrant to search for narcotics may lead to

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Fourth Amendment purposes. *Id.* at 148 (citing United States v. Chadwick 433 U.S. 1, 12 (1977); United States v. Martinez-Fuerte, 428 U.S. 543, 561 (1976); Cardwell v. Lewis, 417 U.S. 583, 590 (1974)). One's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence. *Martinez-Fuerte*, 428 U.S. at 561.

84. *Id.* Following Justice Powell's concurring view in *Rakas*, Wilson's Fourth Amendment right would not have been violated when Officer Hughes ordered him out of the vehicle after he was validly stopped for a traffic infraction. *Wilson*, 117 S. Ct. at 886. Thus, the *Mimms* rule would extend to passengers, in addition to drivers. *Mimms*, 434 U.S. at 112.

85. 452 U.S. 692 (1981).

86. *Summers*, 452 U.S. at 693.

87. *Id.* Upon arriving at the house, Officer Roger Lehman saw Summers go out the front door and proceed across the porch and down the steps. *Id.* (citing Justice Moody's opinion for the Michigan Supreme Court in *People v. Summers, 286 N.W.2d 226, 226-27 (Mich. 1979)).*

88. *Id.* When Summers was asked to open the door, he replied that he could not because he had left his keys inside, but he could ring someone over the intercom. *Id.* (citing People v. Summers, 286 N.W.2d 226, 226-27 (Mich. 1979)). Dwight Calhoun came to the door, but he refused to admit the officers, whereupon the officers forced open the front door. *Id.*

89. *Id.* The eight occupants of the house were detained and a search of the premises revealed two plastic bags of suspected narcotics under the bar in the basement. *Id.* (citing People v. Summers, 286 N.W.2d 226, 226-27 (Mich. 1979)). Officer Conant arrested Summers, as the owner of the house, for violation of the Controlled Substance Act of 1971, MICH. COMP. LAWS § 335.341(4)(a) (1971). (The Michigan legislature later repealed the Controlled Substances Act. 1978 MICH. PUB. ACTS, No. 368 § 25101 (Sept. 30, 1978)). Officer Conant then conducted a custodial search which revealed a plastic bag containing 8.5 grams of heroin in Summer's jacket pocket. *Id.*

90. *Summers*, 452 U.S. at 694.

sudden violence or frantic efforts to conceal or destroy evidence, and that detention of the occupants minimizes the risk of harm to both the police and the occupants during the search.[91] Under the Fourth Amendment, the Court held that a warrant to search for contraband founded on probable cause implies a limited authority for the police to detain the occupants of the premises while they conduct a proper search.[92] The Court concluded that because it was lawful to require Summers to re-enter and remain in the house until evidence establishing probable cause to arrest him was found, his arrest and the search incident thereto were constitutionally permissible.[93]

In *Michigan v. Long*,[94] the Supreme Court considered whether a police officer could protect himself by conducting a "Terry-type" search of the passenger compartment of a vehicle during a lawful investigatory stop of the occupant of the vehicle.[95] Two police officers observed a speeding car swerve into a ditch and stopped to investigate.[96] Long, the car's only occupant, met the officers at the rear of the car and appeared to be "under the influence of something."[97] As Long walked toward the open car door, officers followed and saw a hunting knife on the floorboard as well as an object protruding from beneath the armrest.[98] Upon lifting the

91. *Id.* at 702-703 (citing 2 W. LAFAVE, SEARCH AND SEIZURE § 4.9, pp. 150-51 (1978)). The Court held that some seizures significantly less intrusive than an arrest have withstood scrutiny under the reasonableness standard embodied in the Fourth Amendment. *Id.* at 697. In these cases, the intrusion on the citizen's privacy was so much less severe than that involved in a traditional arrest that the opposing interests in crime prevention and detection and in the police officer's safety could support the seizure as reasonable. *Id.* at 697-98. The Court found exceptions to the general rule that every arrest, and every seizure having the essential attributes of a formal arrest, is unreasonable unless supported by probable cause, the key principle of the Fourth Amendment is reasonableness — the balancing of competing interests. *Id.* at 701, n.12.

92. *Id.* at 705. The Court speculated that special circumstances, or possibly a prolonged detention, might lead to a different conclusion in an unusual case. *Id.* Justice Stewart's dissenting opinion found that the rules of *Terry v. Ohio* and *United States v. Brignoni-Ponce* do not represent some sort of exemplary balancing test for Fourth Amendment cases; rather, they represent two isolated exceptions to the general rule that the Fourth Amendment itself has already performed the constitutional balance between police objectives and personal privacy. *Id.* at 706. (Stewart, J., dissenting).

93. *Id.*

94. 463 U.S. 1032 (1983).

95. *Id.*

96. *Id.* The two police officers were conducting a routine patrol of a rural area when they observed the suspect vehicle traveling at excessive speed in an erratic manner. *Id.*

97. *Id.* Long did not respond to initial requests to produce his license and registration. *Id.*

98. *Id.* After the officers observed the knife, they stopped Long and subjected him to a patdown search, which revealed no weapons. *Id.*

armrest, the officers found marihuana.[99] Police subsequently impounded the vehicle and more marihuana was found in the trunk.[100]

The Court stated that the protection of police and third parties can justify protective searches when police have a reasonable belief that the suspect poses a danger, that roadside encounters between police and suspects are especially hazardous, and that danger may arise from the possible presence of weapons in the area surrounding a suspect.[101] The Court concluded that a search of the passenger compartment of an automobile is permissible if the officer possesses a reasonable belief, based on specific and articulable facts that, combined with rational inferences arising from those facts, reasonably warrant the officer's belief that the suspect is dangerous and may gain immediate control of weapons.[102] The Court's rationale in *Long* was similar to that in *Terry* and *Mimms*, balancing the public interest in officer safety and the individual's right to personal security free from arbitrary interference by officers.[103] Thus, the Court opined that a protective search of a vehicle's passenger compartment during a lawful investigatory stop is both reasonable and constitutional if the investigating officer reasonably believes that the suspect is potentially dangerous.[104]

The personal liberty rights which the Fourth Amendment protects should not be arbitrarily disregarded. The Court in *Wilson* did just that — Justice Rehnquist extended the rule of *Mimms* to passengers, blatantly violating passengers' Fourth Amendment rights. A passenger's right to be free of arbitrary interference by police is firmly rooted in precedent holding that a police officer

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99. *Long*, 463 U.S. at 1032.

100. *Id.*

101. *Id.* at 1049. The Court's decision rested in part on its view of the danger presented to police officers in "traffic stop" and automobile situations. *Id.* at 1048. According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile (citing Allen P. Bristow, *Police Officer Shootings -- A Tactical Evaluation*, 54 J. CRIM. L.C. & P.S. 93 (1963)).

The Court also recognized that suspects may injure police officers and others by gaining access to weapons, even though they may not themselves be armed. *Long*, 463 U.S. at 1048. The Court reasoned that a gun on a table or in the passenger compartment of an automobile can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. *Id.* (citing Chimel v. California, 395 U.S. 752 (1969)).

102. *Id.*

103. *Id.* at 1051. "The balance clearly weighs in favor of allowing the police to conduct an area search of the passenger compartment to uncover weapons, as long as they possess an articulable and objectively reasonable belief that the suspect is potentially dangerous." *Id.*

104. *Long*, 463 U.S. at 1053.

may order both drivers and passengers to exit the vehicle only if he has an articulable suspicion of danger to himself or third parties.[105] The *Mimms* rule eliminated the suspicion of foul play requirement by justifying the ordering of a driver out of his vehicle, regardless of whether police have any individualized basis to fear the driver.[106] *Wilson* goes a step further by authorizing an officer to order passengers out of an automobile when not even a scintilla of evidence exists of any potential risk to the police officer.[107]

The *Wilson* Court rationalized its decision by using a balancing test, finding that the need to ensure officer safety outweighs the personal liberty interest at stake.[108] However, this decision probably will not diminish the number of assaults and fatalities suffered by officers during traffic stops.[109] Officer safety is very important, but so is the personal liberty interest of innocent citizens. The Court improperly de-emphasized an innocent passenger's right to personal security free from arbitrary interference by law officers.

An officer can justify ordering the driver out of his automobile due his being the subject of the traffic violation for which he or she was legitimately stopped. Although probable cause may exist to believe that this driver has committed a minor traffic infraction, no such reason to stop or detain the passengers is so apparent.[110] Perhaps an officer may be justified in ordering a driver out of the vehicle without any individualized suspicion, as the Court held in *Mimms*; however, this rule should not be extended universally to innocent passengers.

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105. *Terry*, 392 U.S. at 29.

106. *Mimms*, 434 U.S. at 106. The dissent would have found that the officer's action must be reasonably related in scope to the circumstances which justified the interference in the first place, but found no relation between the expired license plate and the order to step out of the car. *Id.* at 113-114.

107. *Wilson*, 117 S. Ct. at 887. (Stevens, J., dissenting).

108. *Id.* at 885.

109. *Id.* at 887 (Stevens, J., dissenting). Traffic stops may be dangerous encounters; in 1994, eleven officers were killed and 5,762 officers assaulted during traffic pursuits and stops. *Id.* However, these statistics do not indicate how many of the incidents were attributable to passengers. *Id.* In Maryland, this decision will be of some possible advantage to police in only about one out of every twenty thousand traffic stops in which there is a passenger in the car. *Id.* at 888 (Stevens, J., dissenting).

110. *Id.* at 889. (Stevens, J., dissenting). "The 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." *Id.*