



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA V. BRADLEY HAROLD WILSON
CR-14-0308-PR**

PARTIES:

Petitioner: State of Arizona

Respondent: Bradley Harold Wilson

FACTS:

A police officer in Taylor, Arizona, conducted a welfare check on Wilson after receiving a call from a neighbor that Wilson was acting strangely. The officer questioned Wilson at his home and he told the officer he was fine. The officer left.

Later that afternoon, the police received another call from neighbors who reported that Wilson was acting strangely. When two police officers arrived at Wilson's house, Wilson exited the house and shut the front door behind him. The officers saw that Wilson was acting odd and making nonsensical statements. They called for an ambulance. Wilson told the medical personnel that there was a duct-tape-wrapped glass jar with up to seven pounds of mercury in the house. He stated that he had been handling it for years, that he and his family would play with it, and that he had been licking and bathing in it. He said that his house was dangerous and anyone who went in might be severely hurt. The officers were concerned that there was mercury throughout the house.

Based on Wilson's remarks, the medical personnel called the fire department. The police officer learned from an onlooker that Wilson had recently suffered from a divorce and the death of a parent. He had claimed he was going to kill himself and his dog. The police also learned that a neighbor who had visited Wilson's home that day had been seen driving away in Wilson's car and claimed that Wilson had given it to him. This neighbor was located and brought to the scene at Wilson's house. The fire officials ordered both the neighbor and Wilson to undress and they were rinsed off. Wilson was taken to the hospital. Later, a nurse from the hospital called the police to ask for more information about Wilson's statements and the mercury.

Meanwhile, the fire chief called Steven Hardy, a volunteer fire fighter who had experience dealing with mercury spills through his position as a safety analyst and fire chief at a power plant. Hardy arrived a few hours later and was told that there was a large amount of mercury spilled throughout the house. Hardy told the officers that mercury was poisonous and can cause serious long-term health effects. Hardy consulted with two other hazardous-materials experts by phone and determined that the temperature that day "w[as]n't quite there [to the point of causing mercury vaporization] or just round there." Hardy asked the officers if he could enter the house to look into it further. The officers agreed, reasoning in part that the hospital would need to know whether Wilson required treatment for mercury poisoning.

A police officer and Hardy entered the house and spent ten minutes looking in every room for mercury. They found no mercury but the officer smelled marijuana and saw several marijuana plants in the laundry room behind a large basket. The officer and Hardy left the house and the officer obtained a search warrant. With the warrant, the officers seized the marijuana plants, drug paraphernalia, and firearms. The officer stated that he saw “indication of mercury” related to a “box in the hallway” but did not take the box out of the house or confirm the presence of mercury. A week or two later, however, Wilson’s son contacted the officer and surrendered a duct-tape-wrapped jar of mercury that he had found in the house. Hardy told Wilson’s family members that they needed to clean up some mercury on the floor.

Wilson was indicted for production of marijuana and possession of drug paraphernalia. Prior to trial, Wilson moved to suppress the evidence seized as the result of the warrantless search of his residence. The trial court denied the motion finding that exigent circumstances justified the warrantless entry and the marijuana plants were in plain view. After a bench trial, Wilson was convicted as charged. The trial court suspended imposition of sentence and placed Wilson on a two-year term of probation. Wilson appealed.

On appeal, Wilson argued that the trial court erred in denying his motion to suppress. The court of appeals agreed. First, the court of appeals found that the warrantless entry into Wilson’s home was not justified under the exigent circumstances exception. Possession of mercury is not a crime and there was no evidence of an imminent threat to the health of any person or the public generally. Next, the court of appeals concluded that the evidence did not support application of the emergency aid exception.

Finally, the court of appeals rejected the State’s argument that the warrantless entry was lawful because it was conducted pursuant to the police’s community caretaking function. The U.S. Supreme Court recognized the community caretaking function in Cady v. Dombrowski, 413 U.S. 433 (1973), which involved the warrantless search of an automobile in police custody. The court of appeals declined the State’s request to extend the community caretaking exception to residences. Unlike automobiles, residences are not regularly subject to noncriminal police contact and there is no diminished expectation of privacy. See, e.g., South Dakota v. Opperman, 428 U.S. 364, 367 (1976). If a situation in a residence creates a threat to public health or safety, the police may obtain a warrant or, if the facts allow, enter under an applicable warrant exception. The court of appeals noted the recent opinion in State v. Jacot, 235 Ariz. 224, 330 P.3d 981 (App. 2014), where a warrantless entry into a residence was upheld under the “rubric” of the community caretaking exception. The court agreed with the outcome in Jacot because there were exigent circumstances present to justify the entry. In Wilson’s case, however, there was no evidence that anyone was threatened with injury that would be mitigated by a warrantless entry into the unoccupied house.

The court of appeals reversed the order denying the motion to suppress and remanded the case to the superior court for further proceedings.

ISSUE:

After paramedics brought Appellant to the hospital for what appeared to be mercury

poisoning, police on scene escorted a firefighter into Appellant's house to determine the extent of the contamination. Did the court of appeals err in holding that the community caretaking doctrine does not extend to homes as a matter of law, contravening State v. Jacot, 235 Ariz. 224 (App. 2014), and stripping police of the ability to enter homes for purposes of ensuring public safety and protecting property?

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