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R. v. Wilson, 2025 SCC 32: the Criminal Good Samaritan Question

R. v. Wilson, 2025 SCC 32 shows us that while our law is premised on years of jurisprudential consideration, often specific values and facts can be what shapes individual decisions, even at the Supreme Court of Canada.

In *Wilson*, the Supreme Court of Canada was asked to interpret s. 4.1(2) of the Controlled Drugs and Substance Act, a new section introduced by the Good Samaritan Drug Overdose Act Amendments. The new section created immunity for those who either call 911 or stay at the scene of a medical emergency (e.g., a drug overdose) from being charged or convicted of possession a controlled substance. The issue for the Supreme Court of Canada to consider was whether there is also immunity from arrest for possession of a controlled substance.

The majority found that there is immunity from arrest while the dissent did not. Each argue that their version of statutory interpretation is correct, and both provide ample principles of law to support their position. Ultimately though, it appears that strongly held values about drug use, civil liberties, and the specific facts of this case are what drive these opposing opinions.

The facts, and how they are framed, are essential to understanding the majority and the dissent. As outlined by the majority, Mr. Wilson and three others were travelling in a truck when a woman in their group started to overdose from fentanyl. A member of the group called 911.

First emergency medical services attended, then police showed up and observed two men underneath the truck trying to repair something while a woman stood nearby. The officer noticed signs of drug impairment and detained all three individuals. The officer observed what she believed to be crystal methamphetamine on the ground next to Mr. Wilson and, after further questioning, he produced syringes. The officer arrested all four individuals for possession of a controlled substance, including the woman in the ambulance.

Two other officers showed up and searched the truck. They found drugs and drug paraphernalia as well as a backpack that contained modified handguns, parts for firearms, and ammunition. Mr. Wilson confessed to owning that backpack during a statement at the police station. Mr. Wilson was charged with firearms and other offences but was not charged with trafficking or possession of a controlled substance.¹

It is important to also note the facts highlighted by the dissent. They note that this incident occurred directly adjacent to an elementary school. The incident happened just before school was scheduled to start, which meant that young children were in the area. The school principal had also called 911 and construction workers had warned the principal that the four individuals “appeared very high and should absolutely not be driving” and they were “certain drugs were involved.”

The first officer on scene was a 20-year veteran, and because this occurred in a rural area of Saskatchewan, she was the sole police officer confronting three individuals. After the arrests, police asked the school administrators to walk around the school perimeter to check for safety concerns or needles.²

THE BASICS OF ARREST AND DETENTION POWERS IN CRIMINAL LAW

When police stop someone or tell them that they cannot leave, that is a detention. In most circumstances, police cannot detain a person without a reasonable suspicion they are involved in a criminal activity. But a reasonable suspicion is a low standard.

A detention allows officers to control the scene of an incident or keep a suspicious person from leaving. It also allows a limited pat-down search of an individual for officer safety. It specifically does not allow an officer to reach into pockets to pull out drugs.³ In rare circumstances that limited safety search could extend to a vehicle, but that was not the case in *Wilson*.

An arrest, however, allows a more fulsome search of the person and their surrounding area. Upon a valid arrest for possession of a controlled substance the police are entitled to search a vehicle and even the inside a backpack found inside the vehicle to look for additional drugs. While a search incidental to arrest to look for evidence must be rooted in locating evidence specific to the offence for which the person has been arrested, if during that search, police find evidence of additional offences then they can validly seize that evidence and make subsequent arrests based on the new evidence.

At any time, police are allowed to observe and act on items in plain view. Any drugs out in the open could be confiscated by police, but unless there is an arrest, police cannot go underneath clothing or search areas of a vehicle that are not observable through the windows and in plain view.

THE WILSON DECISION

While the case is about an arrest for possession of a controlled substance, it is really about the police powers that flow from an arrest. The only way the firearms were discovered in this case is because the police arrested Mr. Wilson. The only possible grounds to arrest him were for possession of a controlled substance. The entire case turned on whether that arrest was lawful.

The majority’s interpretation is that the legislature’s purpose in enacting s. 4.1(2) of the *Controlled Drugs and Substances Act* is to save lives. Allowing an arrest would be a very significant detriment to encouraging individuals to call 911 when an overdose occurs. It is a plain fact that most people in such a situation are likely to be drug users themselves and likely would be carrying their own personal supplies of drugs with them. If police can put them in handcuffs, rifle through their belongings, and take their supply away from them, they are not likely to call 911. More people will die of drug overdoses if there is not immunity from arrest.

The majority also found that the section requires a simple and clear message that the public is able to grasp. The public would simply not understand how one could be arrested for possession, while there is no possibility of being charged with that offence. They held that a theme of our law more generally is that a warrantless arrest cannot be done for pure investigative purposes. To allow that would be a significant expansion of state powers via the police. **Finally, they noted that this interpretation does not risk officer or public safety because it does not circumvent police powers to seize substances or weapons in plain view, to conduct investigative detentions, or to make arrests for other offences if there are sufficient grounds.** Parliament’s clear purpose was to save lives and not to expand police powers to allow officers to use arrest for possession as a pretext for other investigations.⁴

The dissent argues that the text, context, and purpose of s. 4.1(2) establishes that parliament’s intention was to provide a limited immunity, but only for formal charges and conviction. The text of the provision does not use the word arrest, and both “charged” and “convicted” are terms of art that have specific legal meanings. Simple possession remains an offence generally and s. 4.1(2) does not limit police powers to make arrests for offences in any way.

Instead, they dissent argues that the purpose of the section is to strike a balance between public health and public safety,

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and the police still have a duty and power to investigate the scene of a drug overdose to remove illegal and harmful drugs, like fentanyl, from the streets. The Member of Parliament that sponsored the bill specifically indicated the “proposed measure was ‘not about weapons-related offences’, would ‘not exempt anyone from further investigation,’ and would ‘not limit police powers’” and yet the dissent finds the majority’s interpretation does just that.⁵

More importantly, an interpretation that prevents arrest for simple possession by implication indicates the police also lack the power to conduct an investigative detention for possession. Restricting police powers so they cannot control the scene of an overdose or search for illegal drugs and weapons when they observe the crime of possession being committed places the police and the public at significant risk.⁶

While the dissent supplies ample analytical and jurisprudential reasons for their conclusion, the specific concerns for public safety on this exact set of facts were

clearly at the forefront of the dissent’s understanding of the case. The dissent comments on the fact that police cannot be restricted in their ability to arrest, especially near an elementary school on a school day: “This remains so, even at a school, where many young children are present and the accused has drugs, firearms, and ammunition close at hand. I cannot accept that Parliament intended this result.”⁷

One can almost hear the phrase, “think of the children.”

THE CRUX OF THE ISSUE IN WILSON

While there is problematic reasoning on both sides, I firmly find myself on the side of the majority. In my opinion, the dissent focuses on the fear in this case – firearms near an elementary school – and lets that fear manifest into a bad legal decision. The dissent seems to suggest that arresting drug addicts at the scene of an overdose is necessary for public safety. The assumption being that drugs addicts are dangerous and they will be possessing weapons.

The difficulty with this view, in my opinion, is that it is

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based on a false assumption. It fuels a culture of fear, and creates very real negative outcomes for specific people in our society. The false assumption is that intractable drug use is a criminal issue, when it is a medical issue. The majority goes to great pains to highlight how the legislature concluded this in the parliamentary debates.⁸ Substance use disorder cannot be arrested or prosecuted out of someone anymore than cancer can be. While some drug users do commit crimes to support their habit, experience shows that it is often property crime, not violent crime.

I also do not agree with the assumption that drug users are dangerous and have weapons, such that there is a clear need to have police search individuals at the scene of every overdose. In my experience as a criminal defence lawyer, some drug users will carry homemade or makeshift weapons, but for the purpose of self defence or to present as a deterrent to theft of their own belongings due to the lack of stable housing and shelter.

Certainly, drugs and firearms are associated with each other, but almost always in the context of drug trafficking. The original trial decision does not appear to be published, but the Saskatchewan Court of Appeal outlines that “officers also discovered scales, baggies and needles that were evidence of drug trafficking.”⁹ In my experience as a criminal defence lawyer, my unhoused clients who are struggling with substance use are usually not the same ones possessing firearms. At the same time, drug traffickers are much less

AT ANY TIME, POLICE ARE ALLOWED TO OBSERVE AND ACT ON ITEMS IN PLAIN VIEW. ANY DRUGS OUT IN THE OPEN COULD BE CONFISCATED BY POLICE, BUT UNLESS THERE IS AN ARREST, POLICE CANNOT GO UNDERNEATH CLOTHING OR SEARCH AREAS OF A VEHICLE THAT ARE NOT OBSERVABLE THROUGH THE WINDOWS AND IN PLAIN VIEW.

likely to be the ones to call 911 when an overdose occurs, especially if they know their vehicles will be searched. The dissent’s opinion would disproportionately affect unhoused individuals rather than do anything to stop drug traffickers.

Finally, while I fully agree that illegal drugs should be removed from the street, I do not see the effectiveness of doing this one dime bag at a time from someone’s personal supply. The toxic drug supply problem is overwhelming, and arresting individual drug users to confiscate their supply will not make a dent in its impact.

One response may be to return to the fact that firearms with ammunition were found right next to an elementary school. Yes, firearms were found in this case, but the evidence as found by the Court of Appeal suggests that these were drug traffickers. Potentially, a little extra police work could have discovered that, and then valid arrests could have occurred in any event.

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All members of the Supreme Court of Canada agree that there is no immunity from arrest for drug trafficking or possession for the purpose of trafficking. Even if additional police work would not have uncovered valid grounds for arrest, that is the risk we take by living in a society that has civil liberties. There might be a lot less crime if the state could search any backpack in any vehicle at any time, but we do not allow that unless there is a valid arrest connected to a specific crime that can be prosecuted.

While I am firmly on the side of the majority, there is a strong point raised by the dissent. The majority specifically avoids the issue of detention, but the dissent squarely says that the majority’s logic means police cannot even detain for possession of a controlled substance. I agree with the dissent that the majority’s analytical route leads to that conclusion, and their response of leaving that issue for another day is deeply unsatisfying.

Simply put, if the police can detain for possession of a controlled substance, why can they not arrest? In short, it seems that the majority wants to preserve the purpose of removing disincentives to calling 911 during an overdose, but also still allow the police the power to prevent people from leaving the scene and investigate more serious crimes

that may be occurring. The only way the majority gets both is ignoring the issue of detention.

While this article has not gone through all the legal justification for the majority and dissent, both are replete with clear rules of statutory interpretation that fully support their interpretation. Even with all the jurisprudential ink spilled though, the majority’s reasoning seems to tap directly into outcome-based reasoning: having a conclusion and then using the law to justify it. The dissent’s is even more problematic though, in that it relies on concerning facts and promotes a decision based on fear, rather than logic. ■

1. *R. v. Wilson*, 2025 SCC 32 at paras 10-14.
2. *R. v. Wilson*, 2025 SCC 32 at paras 110-120.
3. *R. v. Wilson*, 2004 SCC 52 at para 56.
4. *R. v. Wilson*, 2025 SCC 32 at paras 5-9.
5. *R. v. Wilson*, 2025 SCC 32 at para 107.
6. *R. v. Wilson*, 2025 SCC 32 at paras 103-108.
7. *R. v. Wilson*, 2025 SCC 32 at para 108.
8. *R. v. Wilson*, 2025 SCC 32 at para 30.
9. *R. v. Wilson*, 2023 SKCA 106 at para 11.

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