

No. 20-8030

ORIGINAL

Supreme Court, U.S.
FILED

MAR 30 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Reginald Tremaine Wilson PETITIONER
(Your Name)

vs.

State of North Carolina — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

North Carolina Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)
Supreme Court of North Carolina
PETITION FOR WRIT OF CERTIORARI

Reginald Tremaine Wilson
(Your Name)

701 Stevens Mill RD
(Address)

Goldsboro NC 27530
(City, State, Zip Code)

(919) 731-2023
(Phone Number)

QUESTION(S) PRESENTED

- 1) How can the court compare Wilson's evasiveness an an element to support Possession with Intent to sell and deliver?
- 2) How is it that even after ^{Beagon} ~~Beagon~~ testified to the fact that the amount of drugs found 11.53, amount up to personal use. But some how derived possession with intent to sell and deliver?
- 3) Why did Moore, hit his Emergency Blue lights ~~once~~ Moore just Drove past him? Mind you and was driving the correct speed limit.
- 4) What is a **CJLEADS**? Application for a computer that allows police to run North Carolina licenses, North Carolina tags, and search people that have been charged in North Carolina)?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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State v. Rose, 339 N.C. 172, 192, 451, S.E. 2d 211, 223 (1994)	

STATUTES AND RULES

N.C. Gen. Stat § 7A-31 (c)(2)
 15A- 979 (b) (2001)
 15A-1444 (e) (2001)

OTHER

American Civil Liberties Union, The War on Marijuana in Black and White (2013)

Howard N. Snyder, Arrest in the United States, 1990-2010 (2012)

National Research Council, The Growth of Incarceration in the United States (2014)

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at NORTH CAROLINA COURT OF APPEALS - 02-4-20; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the SUPREME COURT OF NORTH CAROLINA court appears at Appendix _____ to the petition and is

- ☐ reported at December 15, 2020; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 02-4-20.
A copy of that decision appears at Appendix _____.

☒ A timely petition for rehearing was thereafter denied on the following date: 12-15-20, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in _____ Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Whether the trial Court improperly
denied defendant's motion to
Dismiss N.C. Gen. Stat. §§ 15A-979(b)
(2001) 15A-1444 (e) (2001)

STATEMENT OF THE CASE

Defenden Reginald Wilson was indicted for possession of cocaine, possession of cocaine with intent to sell or deliver, maintain a vehicle for keeping or selling cocaine, driving while License Revoked, resisting a public officer, and having attained the status of a Habitual felon, in Buncombe county on 8th January 2018. (Rpp 12-16) On 22th May 2018 the matter came for trial before the Honorable Gary Gavenus. (Tg. 1) On that day, the state announced that it would Dismiss the charges of felony maintain ~~a~~ vehicle for the keeping or selling of controlled substances. (cocaine), ~~and~~ driving while license revoked and resisting a public officer (Tg. 26-27) On 23 May 2018, the jury found Mr. Wilson guilty of possession of cocaine, possession of cocaine with intent to sell or deliver, and attaining habitual felon status. (Rpp 33-34; 41)

Judge Gavenus found Mr. Wilson to be a prior record level **IV** for sentencing purposes. (Rpp 52-55). He then imposed consecutive sentences of 97-127 months in prison for possession of cocaine. (Rpp 52-55) Judge Gavenus also ordered a total of \$ 1,805.00 in cost and gave Mr. Wilson credit for a total of 3 day spent in confinement prior to the date of judgement (Rp 52)

MR. Wilson Appealed. (Rp 56)

REASONS FOR GRANTING THE PETITION

Officer Joseph Moore with the Black Mountain Police Dept. was patrolling on old Highway 70 East when he observed defendant driving and initiated a stop with his Blue Lights (Tpp 57-60). After stopping and parking his car defendant got out of his vehicle and refused to return to it when ordered by officer Moore. (Tpp. 64-65) there were no other occupants in the vehicle. (Tpp. 66.) Defendant was ducking up and down in front of another vehicle in the parking lot when he put his hands in his waist band (Tpp. 68). ~~After~~^{Before} the defendant went back to the car, officer Moore ~~put~~ withdrew his firearm and ordered defendant to show his hands. (Tpp. 68) After defendant showed his hands Officer Moore put his firearm back in his holster. Moore put the defendant in restraints. (hand cuffs) After arguing and then complying with Moore's commands. Then Defendant was placed in his patrol car. Moore returned to the car the defendant was driving. Officer Moore "observed on the driver's seat a clear plastic bag with an off-white, yellow substance in it. the packaging divided into a personal-use size and a much larger personal-use size package, and Defendant's evasive behavior and attempts to secrete the larger bag establish, at a minimum, a borderline case to support submission of the PWLSD-Cocaine charge to the jury [.]". Wilson, at *4 (emphasis added). Evasiveness and hiding of Drugs are behaviors that do not indicate an intent to sell or deliver, as the motivation to hide the illegal substance and evade detection is the same for someone possessing as it is for someone selling drugs.

The case law on sufficiency of an intention to

see Attachments →

Sell or deliver makes it clear that the evidence necessary to support this element must be evidence that **distinguishes** a drug dealer from a **drug user/possessor**. See *State v. Sanders*, 171 N.C. App. 46, 50, 613 S.E. 2d 708, 711 (2005) (holding that the **failure** of the testimony to establish that the manner of packaging was indicative of an intention to sell or deliver rather than "personal use" necessitated a dismissal for insufficiency); *State v. Nettles*, 170 N.C. App. 100, 107, 612 S.E. 2d 172, 177 (2005) (holding that while there was paraphernalia found that is generally associated with drug use, there was no evidence of paraphernalia **associated** with ~~any~~ selling of drugs).

Never before has a North Carolina appellate court held that evidence of evasiveness of a defendant or the hiding of an illegal substance can **support** ~~constructive possession~~ the element of an intent to sell or deliver. These are factors that are generally used to support sufficiency findings for constructive possession of a substance. ~~and beyond~~ It is well established that "close proximity to the controlled substance and conduct indicating an awareness of the drugs, such as efforts at concealment or behavior suggesting a fear of discovery are sufficient to permit a jury to find constructive possession." *State v. Turner*, 168 N.C. App. 152, 156, 607 S.E. 2d 19, **22-23** (2005) (emphasis added).

As the chart below demonstrates, Wilson clearly aligns more closely with the cases **our Courts** have **previously** found to have insufficient evidence of an intent to sell or deliver. It is only with the two new factors created by the Court of Appeals that Wilson begins to look more like the cases in which sufficiency was found. By using two new factors, evasiveness and hiding the drugs, to push this case past the point of sufficiency ~~the~~ the Court of Appeals is opening the door to allow cases that ~~can~~ cross the **sufficiency threshold** for constructive possession to go to the jury on an intent ~~to~~ to sell or deliver on the same evidence

	State v. Morgan, 329 N.C. 654, 406 S.E. 2d 833 (1991)	State v. Davis, 160 N.C. App. 693, 586 S.E. 2d 804 (2003)	State v. McClaude, 237 N.C. App. 350, 265 S.E. 2d 104 (2014)	State v. Alston, 91 N.C. App. 707, 373 S.E. 2d 306 (1988)	State v. McNeil, 165 N.C. App. 777, 600 S.E. 2d 31 (2004)	State v. Wilson	State v. Turner, 168 N.C. App. 152, 607 S.E. 2d 19 (2005)	State v. Battle, 167 N.C. App. 730, 606 S.E. 2d 418 (2005)	State v. Nettles, 170 N.C. App. 100, 612 S.E. 2d 172 (2005)
Total Amount of Cocaine	21 grams	20 grams	7.2 grams	5.5 grams	4.27 grams	11.53 grams	4.8 grams	1.9 grams	1.2 grams
Number of Packages		unknown "separately"		22	20	2	10 "rocks"		4-5 "rocks"
Amount of Cash		\$2,500			Over 10,000				\$411
Paraphernalia									Safety pin used by users to clean a crack pipe
Admission			"I was just trying to make enough money to pay for this child support," other admissions						
Sufficient/Insufficient	Sufficient	Sufficient	Sufficient	Sufficient	Sufficient		Insufficient	Insufficient	Insufficient
						Evasive Behavior Attempt to hide Drugs			

The effect of the Wilson decision can only be truly understood with knowledge of who is charged and convicted for drug offenses. It is well known that people of color face conviction for drug related offenses at rate highly disproportionate to their population and usage of illegal drugs. While "the pervalence of drug use" is fairly even between black and white people, and "[T]here is little evidence.... that blacks sell drugs more often than whites[.].... drug related arrest rates for blacks have been three to four times higher than those for whites." National Research Council, *The Growth of Incarceration in the United States* 60 (2014). In 2010, across the country, black people were 2.6 times more likely to be charged with the use or possession of an illegal drug than white people. Howard N. Snyder, *Arrest in the United States, 1990-2010* (2012). The disparity grew when looking at charges for the sale of drugs, with black people being 3.8 times more likely than whites. people to be ~~arrested~~^{charged}. In North Carolina, black people are 3.4 times more likely than white people to be arrested for marijuana possession. American Civil Liberties Union, *The War on Marijuana in Black and White* (2013).

With Wilson, the Court of Appeals has created two new factors for trial courts to use in assessing ~~whether~~ a drug case should be able to reach the jury on possession with intent to sell or deliver, evasive behavior and hiding the drugs. The Supreme Court of N.C. as well as the Court of Appeals has effectively eliminated the barrier between the lower level simple possession and possession with intent to sell and deliver. The weight of this decision will be disproportionately carried by people of color in North Carolina who will be subjected to higher charges and longer sentences as a result.

This court should review Mr. Wilson's case to ensure courts analyze sufficiency of an intent to sell or deliver with evidence that truly distinguishes this charge from the lower level ~~of~~ simple possession. This is "an legal principle of major significance to the jurisprudence of the state." Therefore I ask that this court consider the facts I presented in this Writ of Certiorari and grant this petition in favor of the defendant.

There are several factors the courts have ~~traditionally~~ considered in reviewing the sufficiency of the evidence of intent to sell or deliver, the way a substance is packaged, the way a substance is labeled, the way a substance is stored, the amount of a substance the presence of cash, the presence of drug paraphernalia, and the activity of the defendant. *State v. Wilkins*, 208 N.C. App. 729, 731, 703 S.E. 2d 807, 810 (2010)

The court of appeals declined to determine the 11.53 grams of cocaine found here was on its own, sufficiently substantial to support an intent to sell or deliver, the Supreme Court of N.C. has affirmed this and instead analyzed the case "assomming," it was not substantial enough to alone support an intent to sell or deliver. See *State v. Coley* - N.C. App. - 810 S.E. 2d 359, 365 (2018) (Emphasis added)

Error #1
1) That the Supreme Court erred by finding there was sufficient evidence of an intent to sell and deliver.

Moore testified (Tpp 80-81) that yes when Wilson drove past him in the opposite direction driving about 35 mph. It was at that time he immediately turned his blue lights on to force Wilson, to pull over. He never once ran the tags of the vehical Wilson was driving. He took the initiative to go off on ~~an~~ CJLEADS (Application for a computer) as he put it a "Watch List" Tpp 81, Ln. 5) Moore used just a mere identification that it looked to appear that it was Wilson driving.

4 Attachments →

~~The~~ fact ~~that~~ that defendant Wilson, at first refused an order to come from around the front of the car parked beside his does not constitute a violation of any statute because the stop was already unlawful by the time the order was given (See: United States v. Landeros, 2019 U.S. App. LEXIS 1021 (9th Cir. 2019)) and thus "the validity or not of the order standing alone does not matter" the court stated. Moore's reasonable suspicion of Wilson's apparent sighting, absent of any crime result in an unconstitutional seizure see Brown v. Texas, 443 U.S. 47 (1979) and its progeny for More on this topic.

The widespread use of an application for a computer (Tpp to conduct unregulated, warrantless long-term surveillance of individuals has become prevalent among the nation's police department policies allowing the unregulated practice of "undercover friending" as a dragnet surveillance technique. Wilson's case the ~~unregulated~~ unregulated practice is the so called CJLEADS as Moore, described in his testimony (Tpp 80-B1) A somewhat "watchdog list" of sorts that updates suspect files so to speak.

Not only is the practice conducive to abuse of authority but also to discriminate and racial profile men of color. These accounts cannot be used as a dragnet surveillance system, and the requesting officer must have a clear objective for a targeted individual likewise Moore's identification or sighting of Wilson in the morning should not have warranted Emergency Pursuit of the vehicle Wilson was driving.

Such sophisticated profiling not only violates, the defendant's forth Amendment Right, but this type of targeting an individual is not only in its self unconstitutional to the defendant, it creates unwanted scenarios that may turn ugly in a split second (see statement of case attached) (State v. Lee, 402 P.3d 1093 (Idaho 2017))

5 Attachments —

Finally, the State appears to argue that Mr. Wilson's "multiple prior convictions" demonstrated that he possessed the cocaine in this case with the intent to selling or delivering it to others. (St. Brief p. 11.) Although it is unclear from the State's argument, it appears that the State is asserting that the prior convictions supported Mr. Wilson's conviction for possession of cocaine with intent to sell or deliver because trial courts consider "all evidence admitted, whether competent or incompetent" when ruling on a motion to dismiss *State v. Rose*, 339 N.C. 172, 192, 451, S.E.2d 211, 223 (1994). However, the rule described in *Rose* is not applicable where the evidence was properly admitted for a limited

When this Court finds there was insufficient evidence of intent to sell or deliver a controlled substance, the case is remanded for entry of judgment on the lesser included charge of simple possession of that substance see State v Turner, 168 N.C. App. 152, 159, 607, S.E.2d 19, (2005). The appropriate remedy in this case to vacate the conviction of possession with intent to sell or deliver schedule II, 17 CRS 88785, and remand to the trial court for entry of judgment on possession of cocaine.

For the foregoing reason and authorities, Reginald Tremaine Wilson, the defendant herein, respectfully requests this ~~the~~ Court to vacate his conviction of possession with intent to sell or deliver cocaine in this matter, 17 CRS 88785, and remand to the trial court of entry of judgment on the lesser offense of possession of cocaine. ^{CONCLUSION}

Respectfully submitted,

Reginald T. Wilson

Date: March 14, 2021