

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-001087-MR

LINDSEY WILSON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE PAMELA R. GOODWINE, JUDGE  
ACTION NO. 17-CR-00596-01

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT, MAZE AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Lindsey Wilson brings this appeal from a July 10, 2018, final judgment of imprisonment of the Fayette Circuit Court upon Wilson's conditional guilty plea. We affirm.

On June 6, 2017, Wilson was indicted by the Fayette County Grand Jury upon the offenses of first-degree possession of a controlled substance, possession of drug paraphernalia, operating a motor vehicle under the influence of

alcohol/drugs, and expired registration plate. On October 26, 2017, Wilson filed a motion to dismiss counts one and two of the indictment – possession of a controlled substance and possession of drug paraphernalia. Wilson maintained that Kentucky Revised Statutes (KRS) 218A.133 prohibited the Commonwealth from charging her with possession of a controlled substance or possession of drug paraphernalia as a call to 911 was placed due to Wilson’s apparent drug overdose. The circuit court held an evidentiary hearing, and by order entered December 19, 2017, the court denied the motion.

Thereafter, Wilson and the Commonwealth reached a plea agreement. Pursuant to the plea agreement, Wilson entered a conditional guilty plea to first-degree possession of a controlled substance, possession of drug paraphernalia, and operating a motor vehicle under the influence of alcohol/drugs. In return, the Commonwealth agreed to dismiss the charge of expired registration plate and to recommend a probated sentence of one-year imprisonment. Wilson preserved her right to appeal the denial of her motion to dismiss the charges of possession of a controlled substance and possession of drug paraphernalia. By final judgment entered July 10, 2018, the circuit court sentenced Wilson to a total of one-year imprisonment probated for a period of three years. This appeal follows.

Wilson contends that the circuit court erred by denying her motion to dismiss the charges of first-degree possession of a controlled substance and

possession of drug paraphernalia pursuant to KRS 218A.133. Wilson maintains the controlled substance and drug paraphernalia were seized by police only after a third-party called 911 due to Wilson's apparent drug overdose. Under these circumstances, Wilson argues that KRS 218A.133 prohibits the Commonwealth from charging her with either possession of a controlled substance or possession of drug paraphernalia. Wilson alleges the circuit court erred in its interpretation and application of KRS 218A.133.

To begin, the interpretation of a statute presents an issue of law, and our review is *de novo*. *Ford v. Perkins*, 382 S.W.3d 821, 824 (Ky. 2012). When interpreting a statute, a court is to be guided by legislative intent. *Strong v. Chandler*, 70 S.W.3d 405, 410 (Ky. 2002). And, words in a statute are to be accorded their plain ordinary meaning unless to do so would produce an absurd result. *City of Covington v. Kenton County*, 149 S.W.3d 358, 362 (Ky. 2004).

KRS 218A.133 reads in pertinent part:

(1) As used in this section:

- (a) "Drug overdose" means an acute condition of physical illness, coma, mania, hysteria, seizure, cardiac arrest, cessation of breathing, or death which reasonably appears to be the result of consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson

would reasonably believe requires medical assistance; and

(b) “Good faith” does not include seeking medical assistance during the course of the execution of an arrest warrant, or search warrant, or a lawful search.

(2) A person shall not be charged with or prosecuted for a criminal offense prohibiting the possession of a controlled substance or the possession of drug paraphernalia if:

(a) In good faith, medical assistance with a drug overdose is sought from a public safety answering point, emergency medical services, a law enforcement officer, or a health practitioner because the person:

.....

3. Appears to be in need of emergency medical assistance and is the individual for whom the request was made;

(b) The person remains with, or is, the individual who appears to be experiencing a drug overdose until the requested assistance is provided; and

(c) The evidence for the charge or prosecution is obtained as a result of the drug overdose and the need for medical assistance.

(3) The provisions of subsection (2) of this section shall not extend to the investigation and prosecution of any other crimes committed by a person who otherwise qualifies under this section.

(4) When contact information is available for the person who requested emergency medical assistance, it shall be reported to the local health department. Health department personnel shall make contact with the person who requested emergency medical assistance in order to offer referrals regarding substance abuse treatment, if appropriate.

Relevant to the facts of this appeal, KRS 218A.133 provides that a person shall not be charged with either possession of a controlled substance or possession of drug paraphernalia if: (i) in good faith, (ii) medical assistance for a drug overdose, (iii) is sought from emergency services, (iv) because the person appears to need medical assistance, and (v) is the individual for whom medical assistance was sought. At issue in this appeal is whether medical assistance was sought for a drug overdose within the meaning of KRS 218A.133(2)(a).

At the evidentiary hearing, the only witness to testify was the responding police officer. According to the officer, she received a call from dispatch on the afternoon of April 13, 2017, that two females were slumped over inside a car that was running and parked in the caller's driveway. The caller indicated that she knocked on the windows of the vehicle, but neither occupant responded. Upon arriving at the scene, the officer stated that she was met by the caller who owned the property where the vehicle was located. Neither of the occupants of the vehicle resided at this residence. The officer then observed Wilson in the driver seat of the vehicle with her head between the seat's headrest

and door. The officer testified that she attempted to rouse the occupants of the vehicle by knocking on the windows with her baton and then unsuccessfully attempted to open the locked doors of the vehicle. The officer additionally recounted observing a plastic cup lid with residue and blue tourniquets in the vehicle, so she believed that the occupants had been using drugs and may have suffered a possible drug overdose. Shortly thereafter, the officer stated that Wilson awoke and was confused with slurred speech. The officer also testified that Wilson declined medical treatment.

On the video record of the hearing, the circuit judge announced that she believed Wilson failed to demonstrate that KRS 218A.133 was applicable. The court specifically found it was unclear whether the caller summoned the police due to a drug overdose. The judge indicated on the record that she interpreted KRS 218A.133 as requiring a good faith belief that medical assistance was needed due to a drug overdose. Based upon this reasoning, the circuit court viewed KRS 218A.133 as inapplicable.

We, likewise, believe it is incumbent that medical assistance is sought in good faith from emergency personnel for a drug overdose to trigger the immunity provision of KRS 218A.133. In this case, the caller did not know the occupants or whether a drug overdose had occurred. The caller reported an unknown vehicle parked in her driveway with nonresponsive occupants. Thus, we

do not view as erroneous the circuit court's finding that it was unclear whether the caller summoned police due to a drug overdose. Given these circumstances, we are of the opinion that the circuit court did not err by concluding that KRS 218A.133 was inapplicable and that Wilson was properly charged with possession of a controlled substance and possession of drug paraphernalia.

We view any remaining contentions of error as moot or without merit.

For the foregoing reasons, the final judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT  
FOR APPELLANT:

Steven Nathan Goens  
Assistant Public Advocate  
Department of Public Advocacy  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear  
Attorney General of Kentucky  
Frankfort, Kentucky

Courtney J. Hightower  
Assistant Attorney General  
Frankfort, Kentucky

ORAL ARGUMENT FOR  
APPELLEE:

Courtney J. Hightower  
Assistant Attorney General  
Frankfort, Kentucky