Atwater v. City of Lago Vista
(April 24, 2001) __ US __

ISSUE

Is it a violation of the Fourth Amendment for an officer to make a warrantless custodial arrest for a violation of a misdemeanor punishable by only a fine?

FACTS

A Lago Vista, Texas police officer stopped a car driven by Atwater because neither Atwater nor her two children were wearing seatbelts. Although violations of the Texas seatbelt law are misdemeanors punishable by only a fine, the law gives officers the option of taking the violator into custody or issuing a citation. For no apparent reason, the officer elected to take Atwater into custody.[1]T As a result, she was handcuffed, driven to the police station, booked, and confined in a cell for about one hour until she was released on bail.

After pleading guilty to the seatbelt violation, Atwater filed a civil rights lawsuit against the officer, the police chief, and the city alleging her warrantless custodial arrest constituted a violation of the Fourth Amendment's prohibition against unreasonable seizures.

DISCUSSION

The issue in *Atwater* was whether, absent a compelling need, it is a violation of the Fourth Amendment for an officer to make a warrantless custodial arrest for a misdemeanor that can be punished by only a fine. Atwater urged the Court to announce such a rule but, for the following reasons, the Court refused: [2]

Increased litigation: It would clog up the courts with motions to suppress evidence in criminal cases and civil lawsuits for damages, both based on allegations that a "compelling need" for a custodial arrest did not exist.[3] For example, the Court noted such a rule could result in litigation over whether officers could take a speeder with priors into custody, the "compelling need" being the possibility that "a chronic speeder will speed again despite a citation in his pocket."

Judicial second-guessing: A requirement that officers balance competing interests before making a custodial arrest for a fine-only misdemeanor is impractical because decisions as to when and how to make an arrest must often be made "on the spur (and in the heat) of the moment." Not only would the officers' determinations be subject to "judicial second-guessing months and years after an arrest or search is made," a judge's ruling that the officer made the wrong decision could result in the suppression of critical evidence.

Too many variables: It will often be difficult for officers to determine whether a crime is "jailable" or "fine-only." This is because, as the Court noted, the "penalty schemes" contained in penal codes are "frequently complex" involving various combinations of circumstances, such as whether the suspect is a repeat offender, and whether "the weight of the marijuana [is] a gram above or a gram below the fine-

only line." In addition, when certain conduct violates two or more statutes, the penalty may depend on how the case is charged by the district attorney.

No need: There does not seem to be any real need for such a rule. Although Atwater contended that many horrible things would happen unless Constitutional limits were placed on misdemeanor arrest authority, the Court observed, "Noticeably absent from the parade of horribles is any indication that the potential for abuse has ever ripened into a reality. In fact, there simply is no evidence of widespread abuse of minor-offense arrest authority." [4]

Abuses can be addressed under existing law: There is already a procedure in place to deal with extreme abuses. In *Whren* v. *United States* [5] the Court ruled a Fourth Amendment violation may result if an arrest was "conducted in an extraordinary manner, unusually harmful to an individual's privacy or even physical interests." Consequently, serious abuses of the right to make custodial arrests for fine-only misdemeanors may constitute a Fourth Amendment violation under *Whren.*

For these reasons, the Court refused to impose a new rule limiting warrantless custodial arrests for fine-only misdemeanors. It also ruled Atwater's arrest did not constitute a violation of *Whren* because (1) there was probable cause to arrest her, (2) the officer was authorized under Texas law to make a custodial arrest for a seatbelt violation, and (3) the arrest was not made in an "extraordinary" or "unusually harmful" manner. [6]

DA's COMMENT

Some critics of the *Atwater* decision claimed it would result in shocking abuses. For example, a civil libertarian who appeared on network television said it would probably result in the routine arrest, search, and booking of jaywalkers and speeders. Even the dissenters—who should have known better—said *Atwater* "deems a full custodial arrest to be reasonable *in every circumstance*." Emphasis added. But if you read *Atwater* closely, and if you look at how officers have actually been applying the law over the years, you will see that these are overreactions.

As a practical matter, most officers exercise good judgment in determining what action is appropriate when making misdemeanor arrests and, when in doubt, will usually consult their supervisors. Furthermore, officers usually have no incentive to take the time to make a custodial arrest when a citation would suffice; and most law enforcement agencies make it clear to their officers that they do not want them to waste their time and departmental resources for such an unnecessary endeavor.

In addition, there is reason to believe a Fourth Amendment violation would, in fact, result if an officer's act of taking a misdemeanor arrestee into custody clearly violated state law. This was not an issue in *Atwater* because, as noted, the Texas statute under which Atwater was arrested specifically gave officers the option of citing or arresting a violator. If, however, a custodial arrest was plainly not permitted under state law, the officer's act of doing so might be deemed "extraordinary" and "unusually harmful" under *Whren,* thereby triggering the various remedies for violations of the Fourth Amendment.

It should also be noted that California has a fairly comprehensive statutory scheme in place that significantly reduces the officer's discretion in deciding whether a person arrested for a misdemeanor should be cited-and-released or taken into custody.[7] For example, Atwater's custodial arrest, had it

occurred in California, would have been unlawful because California law does not authorize a custodial arrest for a routine seatbelt violation. [8]

For these reasons, it appears that *Atwater* will not result in any significant changes in police procedure in California.[9]

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[1] **NOTE:** In discussing the officer's conduct, the Court said "the physical incidents of arrest were merely gratuitous humiliations imposed by a police officer who was (at best) exercising extremely poor judgment."

[2] **NOTE:** Atwater also contended that such arrests violated "founding-era common-law rules" which prohibited warrantless misdemeanor arrests for crimes that did not involve an actual or threatened breach of the peace. After a rather exhaustive review of the subject, however, the Court stated, "We simply cannot conclude that the Fourth Amendment, as originally understood, forbade peace officers to arrest without a warrant for misdemeanors not amounting to or involving breach of the peace."

[3] Specifically, the Court said, "[W]e have traditionally recognized that a responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need, lest every discretionary judgment in the field be converted into an occasion for constitutional review."

[4] At fn.25.

[5](1996) 517 US 806, 818.

[6] **NOTE:** In ruling that Atwater's arrest was not made in an "extraordinary" or "unusually harmful" manner, the Court said, "Atwater's arrest was surely 'humiliating' . . . but it was no more harmful to privacy or physical interests than the normal custodial arrest. She was handcuffed, placed in a squad car, and taken to the local police station, where officers asked her to remove her shoes, jewelry, and glasses, and to empty her pockets. They then took her photographed and placed her in a cell, alone, for about an hour, after which she was taken before a magistrate, and released on $310 bond. The arrest and booking were inconvenient and embarrassing to Atwater, but not so extraordinary as to violate the Fourth Amendment."

[7] See *People* v. *Monroe* (1993) 12 Cal.App.4th 1174, 1180-2.

Misdemeanors:

Mandatory custody: A person a arrested without a warrant for a misdemeanor must be taken into custody if any of the following apply:

Arrest for violation of Vehicle Code ' 23152. See Vehicle Code § 40302(d).

Arrest for Vehicle Code violation; unable to provide satisfactory ID. See Vehicle Code § 40302(a).

Arrest for domestic violence or violation of a protective court order involving domestic violence. See Penal Code § 853.6(a), 13701.

Arrest for Vehicle Code violation; arrestee demands immediate appearance before magistrate. See Vehicle Code § 40302(c).

Optional custody: If a custodial arrest is not mandated, the arrestee must be cited and released unless one of the following circumstances existed:

It is reasonably likely the offense would continue if the person was not taken into custody. Penal Code § 853.6(i)(7).

It is reasonably likely the safety of persons or property would be jeopardized by immediate release. Penal Code § 853.6(i)(7).

Arrest for Penal Code violation; unable to provide satisfactory ID. Penal Code § 853.6(i)(5).

Arrestee was so intoxicated he could have been a danger to himself or others. See Penal Code § 853.6(i)(1).

Arrestee needed medical care or was unable to care for his safety. See Penal Code § 853.6(i)(2).

Arrest for Penal Code violation, arrestee demands immediate appearance before magistrate. See Penal Code § 853.6(i)(8).

Arrest for Penal Code violation, arrestee refuses to sign the promise to appear. See Penal Code § 853.6(i)(8).

Arrestee has other outstanding warrants. See Penal Code § 853.6(i)(4).

Arrest for violation of any of the following Vehicle Code sections: 10852, 10853, 23103, 23104, 2800, 20002, 20003, 23109, 14601, 14601.1, 14601.2, 23332, 2813, 21461.5, 21200.5. See Vehicle Code § 40303; *People* v. *Superior Court (Simon)* (1972) 7 Cal.3d 186, 199; *People* v. *Monroe* (1993) 12 Cal.App.4th 1174, 1180-1.

Arrest for non-Vehicle Code violation, arrestee was unable to provide satisfactory evidence of ID. See Penal Code § 853.6(i)(5). **COMPARE** Vehicle Code § 40302(a) [no release if arrest for violation of Vehicle Code].

Immediate release might jeopardize prosecution. See Penal Code § 853.6(i)(6).

There is reason to believe arrestee would not make court appearance. See Penal Code § 853.6(i)(9).

Arrest for Penal Code violation; arrestee demands immediate appearance before magistrate. See Penal Code § 853.6(i)(8).

Infractions: Cite and release except that arrestee must be taken into custody if any of the following apply:

Arrestee, who was arrested for a violation of the Vehicle Code, demanded an immediate appearance before a magistrate. See Vehicle Code § 40302(c).

Arrestee refused to sign a promise to appear. See Vehicle Code § 40302(b).

Arrestee was unable to provide satisfactory identification. See Vehicle Code § 40302(a).

Arrestee who was unable to provide satisfactory identification refused to provide a thumbprint of fingerprint on the promise to appear. See Penal Code § 853.5.

[8] See Vehicle Code §§ 27315, 40302, 40303.

[9] **NOTE re the "In the presence" requirement:** The Court in *Atwater* did not rule on whether its decision affected the requirement that warrantless arrests for misdemeanors may be made only if the crime was committed in the officers' presence. See Penal Code § 836(a)(1). Said the Court, "We need not, and thus do not, speculate whether the Fourth Amendment entails an 'in the presence' requirement for purposes of misdemeanor arrests." At fn.11.