

Buckle-Up or the Lock-Up

“U.S. Supreme Court Ruling Sowed Confusion, Injustice”

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by **Peter Moskos**

Perhaps Justice David H. Souter expects a thank you from police. Writing for the Supreme Court majority in *Atwater v. Lago Vista*, Justice Souter greatly expanded police power. It is now constitutional for police to arrest individuals for any minor misdemeanor committed in an officer's presence, even for crimes punishable only by fine. Allowing police to jail people for non-jailable offenses is absurd as it helps neither the public nor the police.

The case involved the arrest of Gail Atwater for not wearing a seat belt, a misdemeanor subject only to a fine. Ms. Atwater was handcuffed, taken to jail, photographed, and held in a cell for about an hour. Released on bond, she eventually paid a \$50 fine for the seat belt violation. In his decision, Justice Souter wrote that the officer in question “was (at best) exercising extremely poor judgment.” Justice Souter also said that Ms. Atwater suffered “gratuitous humiliations” and “pointless indignity.”

Nevertheless, Souter and the Court majority ruled that the arrest and subsequent search and detention of Ms. Atwater were entirely constitutional despite the Fourth Amendment's prohibition of unreasonable search and seizure. The Court was pleased to observe that many states would “naturally” legislate for citations in lieu of arrest for minor traffic violations. Maryland already has such a law. Ms. Atwater's Texas, naturally, has not.

Almost everybody breaks some law, sometimes through choice—think littering, jaywalking, not fastening your seat belt—sometimes unconsciously, be it cursing in public or driving on expired license plates. In most such cases, the minor violation is ignored or a verbal warning is given. At most a fine may be issued. But now the court has ruled that all crimes are jailable (and any suspect held for up to 48 hours), no matter how minor.

At no point should police imposed punishment for an offense be greater than the maximum potential penalty for that offense. The purpose of an arrest is to protect the public, ensure appearance in court, or punish an offender. The alternative to arrests are criminal citations which, like a speeding ticket, can skip the arrest and simply order a suspect to appear in court at a future date. When the public is not in danger, the identity of a suspect is known, and there is no danger of flight, arresting a misdemeanant is

only a form of punishment made at the discretion of the police.

This power to arrest minor offenders is essential to effective policing. Often just the threat of arrest can solve a problem. A good police officer uses both discretion and the law. Need to get squeegee men off the streets in New York? Arrest them for failure to appear in court. Intimidating gang controlling the street corner? Clear the corner by arresting people for drinking, littering, loitering, or even cursing in public and failing to have identification. A fearful girlfriend huddled in the corner, afraid of her drunk boyfriend? Lock him up for disorderly or assault by threat. All these charges are minor, but jailable and completely legal.

The power to arrest minor offenders is essential to police work and was never in question. The Court was simply asked to draw a line limiting police power of arrest with regards to non-jailable misdemeanors, such as not wearing a seat belt or unknowingly driving with a burnt-out taillight. Drawing such a line would not limit police power, but serve to protect both the public and the police from ineffective, stupid, or downright mean officers. Police, as they should, have great discretion in their interpretation of the law. A good police officer uses the law like a chisel, slowly nicking away at a problem, creating a greater good. That same tool becomes a sledgehammer in the wrong officer's hands.

The failure to draw such a line in *Atwater v. Lago Vista* is made especially troubling by another recent decision of the Supreme Court. Last year in *Florida v. J.L.*, the Court ruled that an anonymous call giving the description of a man armed with a gun does not give police the reasonable suspicion needed to stop and pat-down that potential felon. “Reasonable suspicion,” needed to stop an individual, is supposed to be a lesser standard than the “probable cause” needed for an arrest. In an inane legal contortion, the Court has made it easier for police to arrest (and subsequently search) an individual for not wearing a seat belt than to briefly search (and potentially arrest) someone who may be armed with a gun.

The issue is not the necessity to arrest some suspects for minor offenses, but the right of the state to arrest and search an individual for any offense. Think about the new irrelevance of the Fourth Amendment the next time you go over the speed limit, utter a curse, or cross against a “don't walk” sign.

As for the police thanking the Supreme Court for our new power, not from this cop.