

U.S. Supreme Court ruling sowed confusion, injustice

The Baltimore Sun

May 03, 2001

By Peter Moskos

PERHAPS JUSTICE David H. Souter expects a thank-you from police.

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 a fine. Allowing police to jail people for once non-jailable offenses is absurd because it helps neither the public nor the police.

The Supreme Court case, *Atwater vs. Lago Vista*, involved the arrest of Gail Atwater for not wearing a seat belt, a traffic violation. Writing for the majority, Mr. Souter said the officer in question "was [at best] exercising extremely poor judgment" in causing Ms. Atwater "gratuitous humiliations" and "pointless indignity."

Nevertheless, Mr. Souter and the court's 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, like Maryland, would "naturally" legislate for citations in lieu of arrest for minor traffic violations. Ms. Atwater's Texas, naturally, has not.

Nearly everybody breaks some law, be it littering, jaywalking or cursing in public. In most such cases, the minor violation is ignored or a verbal warning is given. At most, a fine may be issued. 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 and/or punish an offender. The alternative to arrests are criminal citations that, like a speeding ticket, can skip the arrest and simply order a suspect to appear in court in the future.

When the public is not in danger, the identity of a suspect is known and there is no danger of flight, arresting a misdemeanor 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, merely 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.

An 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 conduct or assault by threat.

All these charges are minor, but jailable and completely legal.

The power to arrest minor offenders was never in question. The court was simply asked to draw a line limiting police power of arrest with regards to non-jailable misdemeanors. 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.

Atwater vs. Lago Vista is made especially troubling by another recent decision of the Supreme Court.

Last year, in *Florida vs. 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 seatbelt 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.

Peter Moskos, a graduate student in sociology at Harvard University, is a Baltimore City police officer.