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Curbside Justice

Court gives police the green light to arrest for minor infractions

BY KATHRYN R. URBONYA

Three-year-old Mac and 5-year-old Anya almost went to jail. Why? Their mom, Gail Atwater of Lago Vista, Texas, failed to buckle their seatbelts, a misdemeanor according to state law. The children avoided that fate because a neighbor took care of them as police officer Bart Turek handcuffed and hauled their mother to jail.

Believing that the 1997 incident traumatized Mac and Anya, Atwater and Michael Haas, her husband, sued Turek, the chief of police, and the city of Lago Vista. They sought compensatory and punitive damages for the alleged unreasonable seizure under the Fourth Amendment.

Four years later, the U.S. Supreme Court in *Atwater v. City of Lago Vista*, No. 99-1408, held 5-4 that her arrest was reasonable, even though the offense carried only a \$25 to \$50 fine.

The April 24 decision produced an unusual lineup of justices. Justice David Souter wrote the majority opinion, joined by Chief Justice William H. Rehnquist and Justices Antonin Scalia, Anthony M. Kennedy and Clarence Thomas. Justice Sandra Day O'Connor dissented, along with Justices John Paul Stevens, Stephen Breyer and Ruth Bader Ginsburg.

Nabbed Again

Turek and Gail Atwater were not strangers in this small town of 2,486 people. Previously he had stopped her, mistakenly believing that son Mac was not buckled up. When Turek stopped Atwater this time, the infraction gave him the option of either issuing a citation or arresting her.

As Turek approached her car, Atwater alleged, he began yelling

and telling her that she was going to jail. Atwater admitted that she did not have her driver's license and proof of insurance because someone had stolen her purse.

At the station, police officers took Atwater's mug shot. She emptied her pockets, took off her shoes

American practices allowed warrantless arrests for profane swearing and Sabbath-breaking.

Souter looked to current practices and noted that neither the states nor the District of Columbia require a breach of peace to justify a warrantless misdemeanor arrest. He

also discussed the second question, assessing reasonableness as to specific facts. Even though he stated that Atwater might prevail under such a fact-specific question, he did not want officers in the field to make independent reasonableness judgments. To do so, he said, would subject officers to countless lawsuits.

Notwithstanding her strong support for state rights, O'Connor expressed a distrust of expanded police powers. She viewed the majority as giving police officers "constitutional

al carte blanche to effect an arrest."

To protect citizens, O'Connor would have imposed a limitation on officers' misdemeanor arrest powers. Quoting from the 1968 case *Terry v. Ohio*, she said officers should issue a citation unless they have "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the additional] intrusion of a full custodial arrest."

O'Connor also warned of potential abuse, citing the problem of racial profiling, in which minorities are stopped in disproportionate numbers for minor traffic offenses.

After *Atwater*, we need not be in a car for an officer to stop and arrest us for a minor offense. With this constitutional green light, will officers drive more people to the station, asserting both their arrest and search powers? Or will the costs to society be too great to make it a well-traveled road? ■

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JUDGMENT CALL Gail Atwater was treated reasonably, the Court said, when she was arrested for failing to have her children, Anya and Mac, use seatbelts.

and jewelry, and waited an hour in a holding cell. She then posted a \$310 bond. She later pleaded no contest to the seatbelt offenses, paying a \$50 fine.

In determining the reasonableness of Atwater's arrest, both Souter and O'Connor asked two familiar questions: 1) Would the challenged practice have been reasonable at common law? and 2) Did the government's need to intrude outweigh an individual's interests in privacy?

They disagreed, however, as to how to answer these questions. Souter delved extensively into English and American history, while O'Connor cited history as just "one of the tools we use in conducting the reasonableness inquiry."

Justice Souter unearthed historical practices that granted broad warrantless arrest powers. "Night-walker" statutes from 1285 to 1827 allowed police to detain strangers walking in the night; 16th century statutes permitted arrests for bowling, juggling, playing cards and reading palms. In addition, early