Florida Law Review

Volume 54 | Issue 3 Article 7

July 2002

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Recommended Citation

Tamra J. Carsten, *Constitutional Law: Narrowing the Scope of the Fourth Amendment*, 54 Fla. L. Rev. 567 (2002).
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CASE COMMENT

CONSTITUTIONAL LAW: NARROWING THE SCOPE OF THE FOURTH AMENDMENT

Atwater v. City of Lago Vista, 532 U.S. 318 (2001)

*Tamra J. Carsten**

A Lago Vista police officer arrested Petitioner,[1] without a warrant, for violating a Texas seatbelt law,[2] a misdemeanor punishable only by fine.[3] Petitioner filed suit,[4] alleging Respondents[5] had violated her Fourth Amendment right to be free from unreasonable seizure.[6] The United States District Court for the Western District of Texas granted summary judgment for Respondents based on Petitioner's admission that she had violated the law.[7] On appeal, a panel of the United States Court of Appeals for the Fifth Circuit reversed, concluding that an arrest for a first-time seatbelt offense was an unreasonable seizure under the Fourth Amendment.[8] Sitting en banc, the Court of Appeals reinstated the District Court's summary judgment for Respondents.[9] The United States Supreme

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* For my parents, Lawrence and Joan Carsten.

1. Petitioner is Gail Atwater, a long-time resident of Lago Vista. Atwater v. City of Lago Vista, 532 U.S. 318, 346 (2001). At the time of the arrest, she was driving her children home from soccer practice. Atwater v. City of Lago Vista, 165 F.3d 380, 382 (5th Cir. 1999). She was driving at fifteen miles per hour through her neighborhood when Respondent pulled her over. *Id.*

2. TEX. TRANSP. CODE ANN. § 545.413 (Vernon 2001). The Texas statute provides that front-seat passengers of cars equipped with seatbelts must wear them. *Id.* § 545.413(a). In addition, it provides that drivers must secure small children riding in the front. *Id.* § 545.413(b).

3. *Id.* § 545.413(d). Violation of section 545.413(a) carries a maximum penalty of a fifty dollar fine. *Id.*

4. *Atwater*, 532 U.S. at 325. Petitioner filed suit in a Texas state court under 42 U.S.C. § 1983. *Id.* Section 1983 provides in pertinent part: "Every person who . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured." 42 U.S.C. § 1983 (2001). The City removed the suit to federal court. *Atwater*, 532 U.S. at 325.

5. Respondents are Officer Bart Turek, City of Lago Vista, and Chief of Police Frank Miller. *Atwater*, 532 U.S. at 325.

6. *Id.*

7. *Id.*

8. *Id.* The panel based its conclusion on its assessment that Petitioner was not a serious repeat offender, did not pose a flight risk, and did not pose a safety risk to the officer or to the public. Atwater v. City of Lago Vista, 165 F.3d 380, 387 (5th Cir. 1999). In addition, the panel noted that Respondent was an overzealous police officer acting only to harass Petitioner. *Id.* at 388.

9. *Atwater*, 532 U.S. at 325. The Court of Appeals concluded that the arrest was reasonable within the meaning of the Fourth Amendment because it was based on probable cause and because it was not conducted in an extraordinary manner. Atwater v. City of Lago Vista, 195 F.3d 242, 245

Published by UF Law Scholarship Repository, 2002

Court granted certiorari,[10] and in affirming the decision of the Court of Appeals, HELD that the Fourth Amendment does not prohibit a warrantless arrest for a misdemeanor seatbelt violation punishable only by fine.[11]

The Fourth Amendment provides for the right of people to be secure against unreasonable searches and seizures.[12] Traditionally, searches and seizures are reasonable within the meaning of the Fourth Amendment when an officer has either a warrant or probable cause to believe that an individual has committed an offense.[13] Evidence uncovered during searches incident to unlawful arrests is inadmissible against defendants in subsequent prosecution.[14] The probable cause threshold, however, is not without exception. In *Terry v. Ohio*,[15] the Court recognized limited circumstances under which searches and seizures are reasonable in the absence of probable cause.[16]

In *Terry*, the Court evaluated the constitutionality of police "stop-and-frisk" procedures.[17] Respondent, believing that Petitioner was contemplating a store robbery,[18] detained Petitioner and patted him down for weapons.[19] The frisk uncovered a gun in Petitioner's overcoat, resulting in prosecution for carrying a concealed weapon.[20] Although Petitioner's conduct fell short of probable cause,[21] the Court reasoned that the need for

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(5th Cir. 1999).

10. *Atwater*, 532 U.S. at 326.

11. *Id.* at 354.

12. U.S. CONST. amend. IV. The Fourth Amendment reads in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." *Id.*

13. *See, e.g.*, United States v. Watson, 423 U.S. 411, 418 (1976); United States v. Robinson, 414 U.S. 218, 224 (1973).

14. *E.g.*, Terry v. Ohio, 392 U.S. 1, 15 (1968). "[P]olice conduct which is overbearing or harassing . . . must be condemned by the judiciary and its fruits must be excluded from evidence in criminal trials." *Id.* Further, the Court stated that the rule excluding evidence unlawfully seized is the only effective deterrent to police misconduct. *Id.* at 12.

15. *Id.*

16. *Id.* at 24. The Court concluded that it would be unreasonable to deny police officers the authority to conduct a weapons search of a person behaving suspiciously, even where probable cause is lacking. *Id.*

17. *Id.* at 9-10.

18. *Id.* at 6. Petitioner and another man walked by a store and peered in the window approximately a dozen times. The officer suspected that they were "casing a job." *Id.*

19. *Id.* at 7.

20. *Id.*

21. *Id.* at 7-8. The trial court found that it would be "stretching the facts beyond reasonable comprehension" to find that the officer had probable cause. *Id.*

effective law enforcement[22] and officer safety[23] warranted a departure from traditional probable cause requirements.[24]

The Court applied a balancing test, weighing the need to search or seize against the degree of intrusion the search or seizure would have upon the individual's security.[25] The Court held that Respondent's "stop-and-frisk" of Petitioner passed the balancing test and was thus reasonable under the Fourth Amendment.[26] Accordingly, the gun was properly admitted into evidence.[27] Reluctant to apply a blanket rule, however, the Court noted that the constitutionality of "stop-and-frisk" procedures must be decided on a case-by-case basis.[28]

The Court has been less willing to deviate from traditional standards when evaluating claims that searches and seizures are unreasonable despite the existence of probable cause.[29] In *United States v. Robinson*,[30] the Court refused to hold that a full custodial arrest of a person driving without a license violated the Fourth Amendment.[31] Rather, the Court held that the arrest was lawful because the officer had probable cause to believe that Respondent was driving while his license was revoked.[32] Thus, the Court concluded that the search incident to the arrest, which uncovered heroin, formed a proper basis for Respondent's drug conviction.[33]

Relying on the Court's holding in *Terry*, Respondent argued that because a search could yield no further evidence of driving without a license, Petitioner was limited to a frisk for weapons only.[34] The Court disagreed.[35] Recognizing that an absolute authority to search incident to a

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22. *Id.* at 20.

23. *Id.* at 24. The Court explained that many police officers are killed in the line of duty, most as a result of gun and knife wounds. *Id.* at 23-24. In 1966, fifty-seven officers were killed in the line of the duty in the United States, and another 23,851 were assaulted. *Id.* at 24. "In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest." *Id.*

24. *Id.*

25. *Id.* at 21 (quoting Camara v. Municipal Court, 387 U.S. 523, 536-37 (1967)).

26. *Id.* at 31.

27. *Id.* at 30.

28. *Id.*

29. *See, e.g.*, United States v. Whren, 517 U.S. 806, 817 (1996); United States v. Robinson, 414 U.S. 218, 235 (1973).

30. 414 U.S. 218 (1973).

31. *Id.* at 235-36.

32. *Id.* at 235.

33. *Id.* at 236.

34. *Id.* at 227.

35. *Id.* at 228.

lawful arrest exists only in dicta,[36] the Court considered whether searches based on probable cause should be scrutinized for further justification.[37]

In reaching its decision, the Court investigated the need for officers to make ad hoc decisions in the field.[38] Ultimately, the Court decided that probable cause alone is sufficient justification for conducting a search incident to a lawful arrest.[39] To rule otherwise would undermine the goal of effective law enforcement.[40] The Court, however, left open the question of whether its holding would stand when an officer's decision to make an arrest deviated from standard police practice.[41]

The Supreme Court revisited this question in *Whren v. United States*,[42] and answered in the affirmative.[43] The Court in *Whren* considered whether an officer's subjective intent can invalidate an otherwise lawful arrest.[44] Petitioners were pulled over for speeding and failing to signal.[45] Upon observing crack cocaine in plain view, the officer placed Petitioners under arrest.[46] Petitioners, two African-American males,[47] alleged that the officer lacked probable cause to believe they were dealing drugs.[48] The detention, they argued, was pretext for a narcotics search.[49]

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36. *Id.* at 230.

37. *See id.* at 233-34.

38. *Id.* at 235.

39. *Id.*

40. *See id. But see* Florida v. Royer, 460 U.S. 491, 513 (1983) ("We must not allow our zeal for effective law enforcement to blind us to the peril to our free society that lies in this Court's disregard of the protections afforded by the Fourth Amendment.") (Brennan, J., concurring).

41. *Robinson*, 414 U.S. at 221 n.1.

> We think it is sufficient for purposes of our decision that respondent was lawfully arrested for an offense, and that . . . placing him in custody following that arrest was not a departure from established police department practice. We leave for another day questions which would arise on facts different from these.

Id. The Court also identified the Fourteenth Amendment as a potential basis for scrutiny. *See id.* at 236.

42. 517 U.S. 806 (1996).

43. *Id.* at 819.

44. *Id.* at 808.

45. *Id.*

46. *Id.* at 809.

47. *Id.* at 810.

48. *Id.* at 809.

49. *Id.* Petitioners argued that the officers would not have pulled them over simply to enforce the traffic laws and that the sole purpose for the stop was to conduct a narcotics search. *Id.* They urged the Court to consider not whether the officers had probable cause to make the stop, but whether a reasonable officer would have enforced the traffic laws. *Id.* at 810.

The Court agreed that racial motivation may give rise to discriminatory enforcement of traffic laws.[50] But the Court also found that officer intent is irrelevant to Fourth Amendment analysis,[51] except when a search or seizure is conducted in an extraordinary manner.[52] Further, the Court identified the Fourteenth Amendment as an alternative route to recovery.[53] Reasoning that the officer had probable cause to believe that Petitioners had violated the traffic laws and that the arrest was not conducted in an extraordinary manner, the Court held that the arrest was reasonable within the meaning of the Fourth Amendment.[54] Thus, the drug convictions were upheld.[55]

Like *Robinson* and *Whren*, the instant Court reaffirmed the sufficiency of probable cause to uphold a seizure under the Fourth Amendment.[56] Focusing on both tradition[57] and practicality, the instant Court rejected Petitioner's proposal of a modern rule which would restrict police authority to make custodial arrests for minor infractions.[58] This rule, modeled after the *Terry* balancing test, would require the government to articulate a compelling need for immediate detention each time an arrest is made pursuant to a violation not punishable by jail time.[59] Relying on *Robinson*, the instant Court stated that case-by-case analysis would undermine the goal of effective law enforcement.[60] Further, the Court warned against the floodgate of litigation that case-by-case analysis would precipitate.[61]

In reaching its decision, the instant Court compared the administrability of the traditional rule with that of the modern rule.[62] The instant Court

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50. *Id.* at 813. "We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race." *Id.*

51. *Id.*

52. *Id.* at 818. The Court stated that "seizure by means of deadly force, unannounced entry into a home, entry into a home without a warrant, [and] physical penetration of the body" may be examples of searches or seizures conducted in an extraordinary manner. *Id.* (citations omitted).

53. *Id.* at 813. The Court explained that the Equal Protection Clause of the Fourteenth Amendment, rather than the Fourth Amendment, is the proper basis for bringing claims of discriminatory enforcement. *Id.*

54. *Id.* at 819.

55. *Id.*

56. Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001).

57. Upon an exhaustive review of case and statutory history, the Court concluded that the common law majority rule authorized officers to make warrantless misdemeanor arrests upon probable cause. *Id.* at 345.

58. *Id.* at 346.

59. *Id.*

60. *Id.* at 347.

61. *Id.* at 350. The Court also voiced the concern that case-by-case analysis would turn every arrest into an occasion for constitutional review. *Id.* at 347.

62. *See id.* at 350. "Fourth Amendment rules 'ought to be expressed in terms that are readily

focused on fallacies in the modern rule, such as its assumption that officers are aware of complex penalty schemes and its disregard for the fact that subsequent violations of a fine-only offense are often jailable.[63] The instant Court characterized Petitioner's arrest as a "pointless indignity," admitting that Petitioner might well prevail under a modern *Terry*-based rule.[64] Borrowing language from *Whren*, however, the instant Court held that the arrest was not conducted in an extraordinary manner and was therefore within Fourth Amendment bounds.[65]

In a strong dissent, Justice O'Connor, joined by Justices Stevens, Ginsburg, and Breyer, urged that the majority's ruling defies the constitutional guarantee of the Fourth Amendment.[66] Justice O'Connor opined that while probable cause is necessary to effect a lawful custodial arrest, it is not always sufficient.[67] Particularly, she disapproved of the majority's decision to set aside Petitioner's case on the merits in order to curtail litigation.[68] She also disagreed with the majority's conclusion that the traditional probable cause threshold is more easily administrable than a rule requiring the government to articulate legitimate grounds for making a full custodial arrest.[69]

Further, Justice O'Connor distinguished the instant case from *Whren*.[70] *Whren* involved only a temporary detention, which is a much lesser intrusion on an individual's security than a full custodial arrest.[71] The holding in *Whren*, she concluded, did not control the instant case.[72] Finally, Justice O'Connor expressed her concern that unbridled discretion to make custodial arrests would spawn high potential for abuse.[73]

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applicable by the police in the context of the law enforcement activities in which they are necessarily engaged' and not 'qualified by all sorts of ifs, ands, and buts.'" *Id.* at 347 (quoting New York v. Belton, 453 U.S. 454, 458 (1981)).

63. *Id.* at 348-49.

64. *Id.* at 346.

65. *Id.* at 353.

66. *Id.* at 362 (O'Connor, J., dissenting).

67. *Id.* at 362-63 (O'Connor, J., dissenting).

68. *Id.* at 361 (O'Connor, J., dissenting). According to Justice O'Connor, the majority concluded that case and statutory history was inconclusive as to whether common law rules prohibited warrantless misdemeanor arrests. Thus, she accused the majority of ignoring that conclusion in order to obviate the need to apply the *Terry* balancing test. *See id.* (O'Connor, J., dissenting).

69. *Id.* at 366 (O'Connor, J., dissenting). Justice O'Connor explained that even the probable cause threshold is not a bright-line test. *Id.* "'The quantum of information which constitutes probable cause . . . must be measured by the facts of the particular case.'" *Id.* (O'Connor, J., dissenting) (quoting Wong Sun v. United States, 371 U.S. 471, 479 (1963)).

70. *Id.* at 363 (O'Connor, J., dissenting).

71. *Id.* (O'Connor, J., dissenting).

72. *Id.* (O'Connor, J., dissenting).

73. *Id.* at 372 (O'Connor, J., dissenting).

By upholding the validity of Petitioner's arrest even though it was wholly unwarranted by government need,[74] the instant Court fashioned a per se rule that probable cause is a sufficient condition to justify a custodial arrest.[75] This rule applies irrespective of the severity of the offense, the risk to officer safety, and the motive of the arresting officer.[76] A critical question is whether the instant Court's reasons for rejecting the *Terry* balancing test in favor of a rigid rule are well-grounded.

The instant Court's ruling will defeat a wealth of otherwise valid Fourth Amendment claims.[77] Litigants, however, may circumvent the ruling by raising similar claims under the Fourteenth Amendment, asserting themselves as victims of discriminatory enforcement.[78] Thus, the instant Court's attempt to curtail litigation may be ineffectual.

Additionally, by focusing on potential difficulties in administering a modern rule, the instant Court declined to consider the imprecision of the probable cause standard. Probable cause, itself being a rule of reasonableness, may invoke as much ambiguity as a modern *Terry*-based rule requiring the government to articulate a need for immediate detention.[79]

The instant Court's decision may be a response to the broad rule excluding evidence uncovered in searches incident to unlawful arrests.[80] Had the instant facts paralleled those of *Whren* and *Robinson*, inculpatory evidence found in Petitioner's possession would be admissible against her in criminal proceedings.[81] By deeming all arrests upon probable cause lawful, even arrests for minor traffic infractions, the instant Court immunizes law enforcement against the exclusion of evidence on Fourth Amendment technicalities.[82] While the instant Court's ruling promotes the interest of effective law enforcement, one potential problem is that effective law enforcement may turn into overzealous law enforcement,

74. *See id.* at 347.

75. *See id.*

76. *See id.* In dissent, Justice O'Connor states that "[a]fter today . . . [a]n officer's subjective motivations for making a traffic stop are not relevant considerations in determining the reasonableness of the stop." *Id.* at 372 (O'Connor, J., dissenting).

77. *See id.* at 346. "If we were to derive a rule exclusively to address the uncontested facts of this case, Atwater might well prevail." *Id.* "Atwater's claim to live free of pointless indignity and confinement clearly outweighs anything the City can raise against it specific to her case." *Id.*

78. *See* United States v. Whren, 517 U.S. 806, 813 (1996).

79. *Atwater*, 532 U.S. at 366 (O'Connor, J., dissenting).

80. *See, e.g.*, Terry v. Ohio, 392 U.S. 1, 15 (1968).

81. *See id.*

82. *See id.*

with minority groups as the targets.[83] The Fourteenth Amendment, however, may mitigate against this possibility.[84]

The instant Court's unwillingness to adopt a modern rule requiring the government to articulate a clear need for immediate detention may reflect a reluctance to create a disincentive to arrest.[85] In borderline cases, officers acting under a modern rule would be apt to avoid liability by not making the arrest.[86] This would result in non-enforcement of the law, leaving criminal offenders at large and compromising the public welfare.[87] Though promoting effective law enforcement, the instant Court's reasoning focuses on the aggregate effect of adopting a modern rule,[88] which may undermine individual Fourth Amendment safeguards.

Furthermore, the instant Court's ruling may relinquish to police officers law-making authority reserved to state legislatures.[89] In this case, the Texas legislature made the violation of the seatbelt law a misdemeanor punishable only by fine.[90] Judging from the penalty, it is likely that the Texas legislature deemed noncompliance a minor offense.[91] Therefore, it is unlikely that the Texas legislature intended for citizens to be arrested for violating the seatbelt law.[92] By upholding police authority to make full custodial arrests incident to violation of fine-only misdemeanors, the instant Court allows police officers to punish violators beyond the extent of the law.[93] In addition to being counterintuitive, this may be an encroachment on the legislative function.[94]

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83. *See Whren*, 517 U.S. at 810. *But see Terry*, 392 U.S. at 14 (warning that the exclusionary rule is not an effective means of thwarting harassment of minority groups by the police). *See also* New York v. Belton, 453 U.S. 454, 469 (1981) ("The mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment.") (quoting Mincey v. Arizona, 437 U.S. 385, 393 (1978)); United States v. Mesa, 62 F.3d 159, 163 (6th Cir. 1995) (condemning the temptation to uphold unlawful searches that have uncovered illegal contraband in order to "let the end justify the means").

84. *See supra* text accompanying note 78.

85. Atwater v. City of Lago Vista, 532 U.S. 318, 351 (2001).

86. *See id.*; *see also* Harlow v. Fitzgerald, 457 U.S. 800, 815 (1982) (discussing the applicability of the qualified immunity defense). *Cf.* Anderson v. Creighton, 483 U.S. 635, 641 (1987) (explaining that, under qualified immunity principles, an officer who is reasonable but mistaken will not be liable). Thus, it appears that the qualified immunity defense may mitigate against any likelihood of non-enforcement.

87. *See Atwater*, 532 U.S. 318 at 351.

88. *Id.* "Multiplied many times over, the costs to society of such underenforcement could easily outweigh the costs to defendants of being needlessly arrested and booked." *Id.*

89. *See id.* at 365, 369 (O'Connor, J., dissenting).

90. TEX. TRANSP. CODE ANN. § 545.413(d) (1991).

91. *Atwater*, 532 U.S. at 365 (O'Connor, J., dissenting).

92. *See id.* (O'Connor, J., dissenting).

93. *See id.* (O'Connor, J., dissenting).

94. *See id.* (O'Connor, J., dissenting).

The instant Court's ruling raises another question. If an arrest characterized as a "pointless indignity,"[95] is not considered an "extraordinary"[96] arrest, what then is an arrest conducted in an extraordinary manner? The instant Court declined to give a definitive answer.[97] The ruling suggests, however, that the severity of the offense and the offender's risk to officer safety have no bearing on whether an arrest is "extraordinary."

One alternative basis for the instant Court's ruling would have more tightly guarded the Fourth Amendment guarantee. Rather than crystallizing the traditional rule that an arrest is reasonable upon probable cause, the instant Court could have applied the *Terry* balancing test, citing officer and public safety as the primary government interests to be protected. Field decisions based on such factors would not be contingent on officer awareness of penalty schemes, thus eliminating some concern over the rule's administrability. This would strike a more even balance between a per se rule and unbridled police discretion, and not at the cost of effective law enforcement.

The instant Court's ruling has narrowed the scope of the Fourth Amendment protection against unreasonable searches and seizures.[98] The judiciary has forfeited its power, and perhaps even its responsibility, to place a check on police decisionmaking.[99] As a result, there is little to protect against intrusive searches and seizures, and citizens are more prone to suffer abuse at the hands of the police.[100] It is unlikely that the public would appreciate the Court's abandonment of its authority for judicial review.[101]

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95. *Id.* at 347.

96. *Id.* at 355.

97. *See id.* at 354-55. The Court found that Atwater's arrest was "inconvenient and embarrassing . . . but not so extraordinary as to violate the Fourth Amendment." *Id.* at 355.

98. *See id.* at 360 (O'Connor, J., dissenting).

99. *See id.* at 372 (O'Connor, J., dissenting).

100. *See generally* Michele Deitch, *Veto Risks Texans' Civil Rights*, DALLAS MORNING NEWS, July 1, 2001, at 5J (describing the instant Court's decision as sacrificing civil liberties). "Such unbounded discretion carries with it grave potential for abuse." *Atwater*, 532 U.S. at 372 (O'Connor, J., dissenting).

101. *See generally* Michele Deitch, *Don't Lock People Up for Minor Offenses*, DALLAS MORNING NEWS, May 4, 2001, at 31A.