Read All About It: Supreme Court Cracks Down on Soccer Moms

By Leonard M. Niehoff

In March of 1997, Gail Atwater was driving her pickup truck in Lago Vista, Texas, with her three-year-old son and five-year-old daughter in the front seat. None of them was wearing a seatbelt, in violation of Texas law. Bart Turek, a Lago Vista police officer, noticed the seatbelt violation and pulled Atwater over. Turek confronted Atwater with her violation, which she acknowledged, and told her she was going to jail. Atwater asked if she could take her children to a friend's house down the street, but Turek refused this request and indicated that he would take the children into custody as well. Some neighborhood kids witnessed the scene and summoned one of Atwater's friends, who came and took charge of her children.

Turek called for backup, handcuffed Atwater, placed her in the squad car, and drove her to the local police station. (Ironically, Turek did not have Atwater put her seatbelt on.) At the station, booking officers had Atwater remove her shoes, jewelry, and eyeglasses, and empty her pockets; they took her "mug shot," and they placed her, alone, in a jail cell for about an hour, after which she was taken before a magistrate and released on a bond in an amount more than six times the fine she would eventually pay after pleading no contest to the misdemeanor seatbelt offense. When Atwater returned to the scene of her arrest, she discovered that her car had been towed.

Atwater subsequently filed suit against Turek, the city of Lago Vista, and the chief of police under 42 USC 1983, claiming that they had violated her Fourth Amendment right to be free from unreasonable seizure. The district court granted the defendant's summary judgment motion; the Fifth Circuit reversed; sitting en banc, the Fifth Circuit then reversed the panel's decision and affirmed the district court, and the United States Supreme Court granted certiorari. In a 5–4 decision, the Supreme Court affirmed. *Atwater v City of Lago Vista*, 2001 US Lexis 3366 (2001).

Justice Souter delivered the opinion of the court, in which Chief Justice Rehnquist and Justices Scalia, Kennedy, and Thomas joined. The court began with an extended response to Atwater's claim that the authority of peace officers to make warrantless arrests for misdemeanors was restricted at common law. The court concluded that, while the argument was not insubstantial and had some support, it ultimately failed. The court similarly concluded that neither the history of the framing era, nor subsequent legal developments, indicated that the Fourth Amendment was intended to prohibit such arrests. The court then addressed Atwater's most compelling argument: regardless of history and original intent, what happened to her cannot be squared with contemporary notions of reasonableness.

> *"The court recognizes that the arrest of Gail Atwater was a 'pointless indignity' that served no discernable state interest…and yet holds that her arrest was constitutionally permissible."*

The majority showed some sympathy for Atwater's complaint. The court noted that, "[i]n her case, the physical incidents of arrest were merely gratuitous humiliations imposed by a police officer who was (at best) exercising extremely poor judgment." The court observed that "Atwater's claim to live free of pointless indignity and confinement clearly outweighs anything the city can raise against it specific to her case."

Nevertheless, the court decided 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." The court concluded that Atwater's arrest satisfied the constitutional requirements because there was no dispute that Turek had probable cause to believe that Atwater had committed a crime in his presence.

Justice O'Connor, joined by Justices Stevens, Ginsburg, and Breyer, filed a dissenting opinion. The thrust of that dissent is well-summarized in its opening paragraph, which states in part: "The Fourth Amendment guarantees the right to be free from unreasonable searches and seizures. The court recognizes that the arrest of Gail Atwater was a 'pointless indignity' that served no discernable state interest...and yet holds that her arrest was constitutionally permissible. The court's position is inconsistent with the explicit guarantees of the Fourth Amendment." Nor was the dissent persuaded by the majority's argument that Atwater had failed to suggest an acceptable bright-line rule governing such arrests; after all, the dissent noted, the "probable cause" standard is hardly a precision instrument. The dissent concluded, "The court neglects the Fourth Amendment's express command in the name of administrative ease. In so doing, it cloaks the pointless indignity that Gail Atwater suffered with the mantle of reasonableness."

This Supreme Court decision has generated significant discussion and controversy and will doubtless continue to do so. After all, two very different perspectives on this decision suggest themselves. Some might

view this decision as a disciplined effort by the court to declare the proper rule of law, undeterred by the specific hard facts presented. If you take this perspective, then the decision is a shining hour for the court, in which it demonstrated that justice is indeed blind. Others might view this decision as a draconian mistake by a court pointlessly wedded to an inflexible principle, unmoved by considerations of fairness and decency. If you take this perspective, then the decision is a dark hour for the court, in which it demonstrated that justice is blind, and deaf, and dumb. Really dumb. ✦

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