





# DPS TRAINING BULLETIN

**LEGAL BULLETIN NO. 247** May 7, 2001

# WARRANTLESS ARREST FOR MINOR CRIMINAL VIOLATION PERMISSIBLE UNDER FOURTH AMENDMENT

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УY	of	Lago	Vis	sta	et	al
			v	v.	v.	Gail Atwater et al v. cy of Lago Vista et

United States Supreme Court No. 99-1408 \_\_\_\_\_U.S.\_\_\_\_ April 24, 2001

# FACTS:

Texas law makes it a misdemeanor, punishable only by a fine, if a front-seat passenger or child is not secured with a seatbelt in a moving vehicle equipped with safety belts.

Police Officer Turek observed Atwater driving her pickup truck with her two children, ages 3 and 5, in the front seat. None of them were wearing a seatbelt. Officer Turek stopped the truck and yelled (to Atwater), "...we've met before (he had issued her a verbal warning on a prior occasion) and you're going to jail." A friend of Atwater arrived at the scene of the arrest and took custody of the two children.

Atwater was transported to jail where she was searched and processed. She was subsequently released on a \$310.00 bond. Atwater ultimately pleaded "no contest" to the seatbelt violation and paid a \$50.00 fine.

Atwater and her husband brought a civil suit (42 U.S.C. § 1983) against both the city and the arresting office alleging her <u>Fourth Amendment</u> "right to be free from unreasonable seizure" had been violated. The Atwater couple sought both compensatory and punitive damages. May 7, 2001

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# ISSUE:

Does the <u>Fourth Amendment</u> forbid a warrantless arrest for a minor offense, such as a misdemeanor seatbelt violation punishable only by a fine?

### HELD: No.

#### REASONING:

<u>1.</u> If an officer has probable cause to believe that an individual has committed <u>even a very minor</u> criminal offense in his presence, <u>he may arrest the offender without violating the</u> Fourth Amendment.

<u>2.</u> It is undisputed that Officer Turek had probable cause to believe that Atwater committed a crime in his presence. Officer Turek was authorized, though not required, to make a custodial arrest.

<u>3.</u> Atwater's arrest was surely "humiliating," but it was no more "harmful to...privacy or...physical interests" than the normal custodial arrest. The arrest and booking were inconvenient and embarrassing to Atwater, but not so extraordinary as to violate the Fourth Amendment.

#### NOTES:

This case only addresses the <u>Fourth Amendment</u> constitutional permission to arrest and does not preclude the legislature to enact a statute which would place limitations on the arrest powers for certain violations.

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