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DISCRETIONARY WARRANTLESS SEARCHES AND SEIZURES AND THE FOURTH AMENDMENT: A NEED FOR CLEARER GUIDELINES

I. INTRODUCTION

In November 2000, the United States Supreme Court examined the constitutionality of a city's drug interdiction checkpoint program in City of Indianapolis v. Edmond. The Court held that the program's secondary purposes of keeping impaired motorists off the road and verifying licenses and registrations could not justify a warrantless stop the primary purpose of which was to detect narcotics. However, in Atwater v. City of Lago Vista, decided just five months later, the Court held that a police officer could arrest a motorist for a fine-only misdemeanor without violating the motorist's Fourth Amendment rights.

This Comment argues that the theories behind these two recent cases are in conflict. In Edmond, the Court prohibited the police from discretarily using their regulatory authority to investigate individuals for narcotics possession. By contrast, in Atwater the Court held that the police officer was allowed to use his discretionary regulatory authority to arrest a motorist for a violation of a traffic law and that this warrantless arrest gave him the authority to conduct an investigatory search of the motorist's vehicle.

Part II of this Comment provides an overview of the cases that have addressed the constitutionality of warrantless searches and seizures and discusses the relevant facts of Edmond and Atwater. Part III analyzes the contradictions between Edmond and Atwater in light of prior warrantless search and seizure cases. Part III also discusses the treatment of traffic violations as criminal offenses, the policy of police discretion, and the wisdom of creating a bright-line rule for police officers to follow in warrantless search and seizure situations. Finally, Part IV emphasizes the need for state legislation to set forth the proper procedures for police officers to follow and proposes legislative solutions to promote consistency, precision, and predictability in future search and seizure cases.

2. Id. at 48.
4. Id. at 323-24, 354.
6. Atwater, 532 U.S. at 354-55; see infra Part II.B.3.
II. BACKGROUND

A. Fourth Amendment

The Fourth Amendment grants individuals a general constitutional right to privacy and protects against inappropriate government intrusion. The Fourth Amendment states as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The test most frequently cited to determine whether an individual's Fourth Amendment rights have been violated originated in Justice Harlan's concurring opinion in Katz v. United States. The test requires "first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'" Cases following Katz have used this test to determine if the Fourth Amendment was violated.

B. Exceptions to the Rule

1. Automobile Exception

Cases interpreting the Fourth Amendment state that a government search or seizure of a person, a person's home, or a person's effects without a warrant is unreasonable unless it falls within one of the exceptions to the Fourth Amendment. The United States Supreme Court has recognized a distinction

7. U.S. Const. amend. IV.
8. Id.
9. 389 U.S. 347, 361 (1967) (Harlan, J., concurring). The majority reasoned that the Fourth Amendment did not protect information that a person knowingly exposed to the public, but what a person kept private, even in a public place, might be protected. Id. at 351-52.
10. Id. at 361 (Harlan, J., concurring).
11. See, e.g., Oliver v. United States, 466 U.S. 170, 184 (1984) (holding that a person does not have a reasonable expectation of privacy in an open field); Smith v. Maryland, 442 U.S. 735, 745 (1979) (holding that an individual does not have a reasonable expectation of privacy regarding information given to a third person); United States v. White, 401 U.S. 745, 752-54 (1971) (holding that an individual does not have a reasonable expectation of privacy when revealing information to someone with whom he is speaking).
between a person's reasonable expectation of privacy in his home and in his automobile. According to the Court in *Carroll v. United States*,

[there is] a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon, or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

In *Chambers v. Maroney*, the Court interpreted *Carroll* to hold that "a search warrant [is] unnecessary where there is probable cause to search an automobile stopped on the highway; the car is movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained."

The *Chambers* Court followed *Carroll* and held that a warrantless police search of a vehicle at the police station following the arrest of four men suspected of armed robbery was reasonable under the Fourth Amendment. Based on the constitutional difference between houses and cars, the Court held that a warrantless search of an automobile was reasonable whenever the police had probable cause to search the vehicle. *Carroll* and *Chambers* established this now well-settled automobile exception to the Fourth Amendment's warrant requirement based on automobiles' mobility, the lessened expectation of privacy to which they are entitled, and the pervasive government regulation to which they are subject.

2. **Police Regulartory Function (Vehicle Checkpoints)**

Based on the regulatory authority of the police, the Supreme Court has held that in certain circumstances routine vehicle checkpoints or roadblocks do not violate the Fourth Amendment and need not be authorized by judicial warrants. In determining whether a checkpoint is unreasonable, "the Court has weighed the

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(1973) (affirming the warrantless search incident to arrest exception); Warden v. Hayden, 387 U.S. 294, 298-99 (1967) (discussing the exigent circumstances exception).
13. Opperman, 428 U.S. at 367 ("[T]he inherent mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible.").
16. Id. at 52.
17. Id. at 51-52.
18. See South Dakota v. Opperman, 428 U.S. 364, 367-68 (1976); see also Cardwell v. Lewis, 417 U.S. 583, 592-96 (1974) (holding that where officers had probable cause, impoundment of the suspect's vehicle and a warrantless examination of its exterior did not violate an expectation of privacy when the vehicle had been parked in a public place).
public interest against the Fourth Amendment interest of the individual." In United States v. Martinez-Fuerte, the Court held that a fixed-border checkpoint used to identify illegal aliens did not violate the Fourth Amendment because the need to control the entrance of illegal immigrants was great, while "the consequent intrusion on Fourth Amendment interests [was] quite limited." Furthermore, the Court stated that the checkpoint stops could be made without a warrant and without any reasonable suspicion that the driver or passenger was an illegal alien. The Court reasoned that the warrantless stops did not violate the Fourth Amendment because the motorists were only detained briefly, border patrol visually inspected the vehicle without searching the person or the vehicle, signs indicated an approaching checkpoint and notified drivers that they would be stopped, and claims of unreasonableness were subject to judicial review. Lastly, the Court stated that the checkpoint could operate without a warrant because the probability that an officer’s discretion would be abused was reduced by the presence of other officials at the checkpoint and by the routine nature of vehicle stops.

In Martinez-Fuerte, the Supreme Court carefully limited its opinion to permanent, fixed checkpoints and indicated that its holding did not apply to "random roving-patrol stops." Similarly, in Delaware v. Prouse, the Court held that police officers could not use their regulatory powers to randomly stop and detain a driver for the sole purpose of checking his license and vehicle registration absent "articulable and reasonable suspicion" that he was unlicensed or that the vehicle was not registered. The Court stated "that persons in automobiles on public roadways may not . . . have their travel and privacy interfered with at the unbridled discretion of police officers."

Relying on Martinez-Fuerte and distinguishing Prouse, the Supreme Court upheld the constitutionality of a sobriety checkpoint in Michigan Department of State Police v. Sitz. The Court stated that "[t]he intrusion resulting from the brief stop at the sobriety checkpoint is for constitutional purposes indistinguishable from the checkpoint stops we upheld in Martinez-Fuerte." As in Martinez-Fuerte, the Court balanced the public’s interest with the level of intrusion on an individual’s privacy to determine the checkpoint’s constitutionality. The Court reasoned that the undisputed problem of drunken driving had a substantial effect on the public, while the brief detainment of an individual at a sobriety checkpoint intruded only

21. Id. at 556-57.
22. Id. at 560-67.
23. Id. at 558-59.
24. Id. at 565-66.
25. Id. at 558-59, 566-67. But see United States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975) (holding that random roving-patrol stops did not violate the Fourth Amendment when the stops were based on an articulable reasonable suspicion that the vehicle contained illegal immigrants).
27. Id.
29. Id. at 453.
30. Id. at 451-53.
slightly on his privacy rights.\textsuperscript{31} To support its decision, the Court contrasted fixed checkpoint stops, where every car is routinely stopped, with random roving patrol stops:

\[\text{[T]he circumstances surrounding a [fixed] checkpoint stop and search are far less intrusive than those attending a roving-patrol stop. Roving patrols often operate at night on seldom-traveled roads, and their approach may frighten motorists. At traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion.}\textsuperscript{32}\]

These distinctions, combined with the State's interest, the effectiveness of the checkpoints, and the minimal intrusion on the individual led the Court to hold that the fixed sobriety checkpoints did not violate the Fourth Amendment.\textsuperscript{33}

Contrary to its pro-law enforcement decisions in \textit{Martinez-Fuerte} and \textit{Sitz}, the Supreme Court held in \textit{City of Indianapolis v. Edmond} that Indianapolis's drug interdiction checkpoint program violated the Fourth Amendment.\textsuperscript{34} The Court declined "to suspend the usual requirement of individualized suspicion where the police [sought] to employ a checkpoint primarily for the \textit{ordinary enterprise of investigating crimes}."\textsuperscript{35} In \textit{Edmond}, the city of Indianapolis conducted six vehicle checkpoints between August and November 1998 in an effort to detect the presence of illegal drugs.\textsuperscript{36} During that time, the officers stopped 1161 vehicles and arrested 104 motorists; 55 of the arrests related to the possession of illegal drugs.\textsuperscript{37}

Following program directives, officers at the checkpoints would stop a group of vehicles according to a predetermined sequence.\textsuperscript{38} An officer would approach the vehicle, explain the drug checkpoint to the motorist, and ask the driver for a license and registration.\textsuperscript{39} Simultaneously, the officer would visually inspect the outside of the vehicle and its open areas while a narcotics dog walked around the stopped vehicle.\textsuperscript{40} Officers were not allowed to search the vehicle absent consent or a reasonable suspicion that the motorist was impaired or that the vehicle contained illegal drugs.\textsuperscript{41}

\begin{itemize}
\item \textsuperscript{31} \textit{Id.}
\item \textsuperscript{32} \textit{Id.} at 452-53 (first alteration in original) (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 558 (1976)).
\item \textsuperscript{33} \textit{Id.} at 455.
\item \textsuperscript{34} City of Indianapolis v. Edmond, 531 U.S. 32, 48 (2000).
\item \textsuperscript{35} \textit{Id.} at 44 (emphasis added).
\item \textsuperscript{36} \textit{Id.} at 34-35.
\item \textsuperscript{37} \textit{Id.}
\item \textsuperscript{38} \textit{Id.} at 35.
\item \textsuperscript{39} \textit{Id.}
\item \textsuperscript{40} \textit{Edmond}, 531 U.S. at 35.
\item \textsuperscript{41} \textit{Id.}
\end{itemize}
Two motorists who had been stopped at a checkpoint filed a class-action lawsuit against the City of Indianapolis on behalf of themselves and all motorists who had been stopped in the past or could conceivably be stopped in the future at the Indianapolis checkpoints. The United States District Court for the Southern District of Indiana held that the checkpoint program did not violate the Fourth Amendment. The Seventh Circuit Court of Appeals reversed the lower court’s decision, and the United States Supreme Court affirmed the Seventh Circuit’s holding.

The Court held that the checkpoint in Edmond violated the Fourth Amendment because its “primary purpose” was the interdiction of narcotics. The Court explained that it had “never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing.” Further, the Court reasoned that it “would not credit the ‘general interest in crime control’ as justification for a regime of suspicionless stops.” Unlike Martinez-Fuerte, where the checkpoints served to patrol the border for illegal immigration, and Sitz, where the checkpoints served to eradicate drunk driving, the Court reasoned that the checkpoints in Edmond were too generalized and that upholding them “would [provide] little check on the ability of the authorities to construct roadblocks for almost any conceivable law enforcement purpose.” Therefore, because the drug interdiction checkpoint program’s general purpose was crime control, the Court held that it violated the Fourth Amendment.

3. Search Incident to a Lawful Warrantless Arrest

A search and seizure conducted incident to a lawful warrantless arrest is another exception to the Fourth Amendment’s general warrant requirement. Following a lawful warrantless arrest, an officer may search the person arrested and the area within the arrestee’s reach based on the need to seize weapons and to prevent the destruction of evidence. In Chimel v. California, the Supreme Court held that a warrantless search incident to an arrest was unreasonable because after the suspect had been arrested, the officers searched his entire home, including the attic and garage, and eventually seized numerous items. The Court concluded that the search “went far beyond the [arrestee’s] person and the area from within which

42. Id. at 36.
43. Id.
44. Id.
45. Id. at 41-42.
46. Edmond, 531 U.S. at 41.
47. Id. (quoting Delaware v. Prouse, 440 U.S. 648, 659 n.18 (1979)).
50. Edmond, 531 U.S. at 42.
51. Id. at 42, 48.
53. Id. at 762-63.
54. Id. at 753-54, 768.
he might have obtained either a weapon or something that could have been used as evidence against him. There was no constitutional justification, in the absence of a search warrant, for extending the search beyond that area.\textsuperscript{55}

A movement toward a bright-line approach to warrantless searches incident to arrests has emerged in cases where the arrest is made in conjunction with a traffic violation.\textsuperscript{56} In \textit{United States v. Robinson}, the Supreme Court upheld the reasonableness of a police officer’s search of a driver following the driver’s arrest for operating a motor vehicle without a license.\textsuperscript{57} The police officer searched the driver’s pocket, found a cigarette package, and unwrapped an object found inside the cigarette package which turned out to be heroin.\textsuperscript{58} In his dissenting opinion, Justice Marshall questioned whether the officer had reason to believe that the cigarette package could have contained any weapons and argued that the search constituted an abuse of police discretion.\textsuperscript{59} However, the majority reasoned that police officers needed a bright-line rule to follow and concluded that “[a] police officer’s determination as to how and where to search the person of a suspect whom he ha[d] arrested [was] necessarily a quick \textit{ad hoc} judgment which the Fourth Amendment [did] not require to be broken down in each instance into an analysis of each step in the search.”\textsuperscript{60}

In \textit{New York v. Belton}, the Supreme Court held that the police may search not only one’s person following a warrantless arrest related to a traffic violation, but also the passenger compartment of the automobile.\textsuperscript{61} Based on the reasoning in \textit{Chimel}, the Court explained that the passenger compartment of an automobile would be “within ‘the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m]’.”\textsuperscript{62} Therefore, the \textit{Belton} Court held that a police officer’s search of the automobile’s passenger compartment did not violate the Fourth Amendment.\textsuperscript{63} According to the Court, the searches were lawful because the driver’s traffic violation justified the stop.\textsuperscript{64} Additionally, once the officer smelled marijuana, he had probable cause to arrest the men for narcotics possession.\textsuperscript{65}

\textsuperscript{55} \textit{Id.} at 768.

\textsuperscript{56} See, for example, \textit{United States v. Robinson}, 414 U.S. 218, 235 (1973), where the Court stated that

\begin{quote}
[t]he authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect.
\end{quote}

\textsuperscript{57} \textit{Id.} at 220-23, 236; \textit{see also} Gustafson v. Florida, 414 U.S. 260, 262, 265 (1973) (holding that a warrantless search incident to an arrest for operating a motor vehicle without a license was reasonable even though police regulations did not require the officer to take the driver into custody and police policy did not require a full-body search of the person incident to the arrest).

\textsuperscript{58} \textit{Robinson}, 414 U.S. at 222-23.

\textsuperscript{59} \textit{Id.} at 241, 255-56 (Marshall, J., dissenting).

\textsuperscript{60} \textit{Id.} at 235.


\textsuperscript{62} \textit{Id.} (alteration in original) (quoting \textit{Chimel v. California}, 395 U.S. 752, 763 (1969)).

\textsuperscript{63} \textit{Id.} at 462-63.

\textsuperscript{64} \textit{Id.} at 461.

\textsuperscript{65} \textit{Id.} at 455.
A police officer’s discretion to search a person and the passenger compartment of an automobile incident to a warrantless arrest does not change based on the officer’s motivations for the arrest. Justice Scalia, writing the opinion for a unanimous Court in Whren v. United States, reasoned that the Court "described Robinson as having established that 'the fact that the officer does not have the state of mind which is hypothesized by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.'"67

The events described in Whren occurred in a "high drug area" of the District of Columbia. The police officer passed a truck with a temporary license plate which was being driven by a young man who was looking down into the lap of the passenger in the front seat.99 When the officer made a U-turn to drive toward the truck, the driver quickly turned to the right and "sped off."70 After catching up with the young men, the officer approached the vehicle and spotted two bags of crack cocaine in the passenger’s lap.71 The officer arrested the two men and seized various illegal drugs from the vehicle.72

At a pretrial suppression hearing, the petitioners argued that the drugs should be inadmissible because the police officer had made a "pretextual" stop unsupported by probable cause.73 The petitioners further claimed that the test of reasonableness should be "whether the officer’s conduct deviated materially from usual police practices, so that a reasonable officer in the same circumstances would not have made the stop for the reasons given."74 The Court refused to apply this test due to its subjective nature (notwithstanding its objective language) and instead stated that "the Fourth Amendment’s concern with 'reasonableness' allows certain actions to be taken in certain circumstances, whatever the subjective intent."75 Therefore, the Court held that since the officer had probable cause to search the petitioners for a traffic violation, the stop was reasonable under the Fourth Amendment.76 Furthermore, when the officer viewed the illegal drugs in the passenger’s lap, the Court held that he acted appropriately in arresting the young men and in seizing the evidence.77

The Court applied the Whren holding to a minor, fine-only offense in Atwater v. City of Lago Vista.78 In Atwater, decided on April 24, 2001, Gail Atwater and her

67. Id. (quoting Scott v. United States, 436 U.S. 128, 138 (1978)).
68. Id. at 808.
69. Id.
70. Id.
71. Id. at 808-09.
72. Whren, 517 U.S. at 809.
73. Id.
74. Id. at 814.
75. Id.
76. Id. at 819.
77. See id.
husband filed suit against the City of Lago Vista under 42 U.S.C. § 1983. The Atwaters claimed that Gail’s warrantless arrest for the misdemeanor charges of driving without her seatbelt, failing to secure her children in seatbelts, and driving without a license and proof of insurance was unreasonable under the Fourth Amendment. A majority of the Court affirmed the decision of the Fifth Circuit Court of Appeals and held that Atwater’s arrest was “not so extraordinary as to violate the Fourth Amendment.”

In *Atwater*, Officer Turek pulled Atwater over for seatbelt violations. Officer Turek asked to see Atwater’s license and registration, as required by state law, and Atwater replied that she did not have the paperwork because her purse had been stolen the day before. The officer placed Atwater under arrest, prevented her from taking her children anywhere, and took her into police custody, where she remained in a jail cell for about one hour.

Atwater argued that her warrantless arrest for a fine-only misdemeanor was an unreasonable seizure because the police officer did not encounter a threat of violence and she had not committed a felony. After examining a lengthy history of the common law concerning an officer’s arrest authority pursuant to a misdemeanor not amounting to a “breach of the peace,” Justice Souter, writing for the majority, stated:

> Atwater has cited no particular evidence that those who framed and ratified the Fourth Amendment sought to limit peace officers’ warrantless misdemeanor arrest authority to instances of actual breach of the peace, and our own review of the recent and respected compilations of framing-era documentary history has likewise failed to reveal any such design.

In addition, the Court rejected Atwater’s proposal for a modern test that would forbid a warrantless arrest “when conviction could not ultimately carry any jail time and when the government show[ed] no compelling need for immediate detention.” Justice Souter explained that the Fourth Amendment was not well-served by a case-by-case approach to determining reasonableness. Souter further stated that

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79. *Id.* at 325.
80. *Id.* at 323-25.
81. *Id.* at 355.
82. *Id.* at 324. Officer Turek was familiar with Atwater from a prior stop during which he had warned her about the unsafe seating position of her child on the vehicle’s armrest. *Id.* at 324 n.1.
83. *Id.* at 324.
84. *Atwater*, 532 U.S. at 324.
85. *Id.* at 326-27.
86. *Id.* at 336.
87. *Id.* at 346.
88. *Id.* at 347.
the Fourth Amendment has to be applied on the spur (and in the heat) of the moment, and the object in implementing its command of reasonableness is to draw standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made.  

In short, the Court held that the arrest of Gail Atwater was not unreasonable and did not violate her Fourth Amendment rights because Officer Turek had probable cause to believe Atwater had committed a traffic violation, he was authorized to make a custodial arrest, and he made the arrest in an ordinary manner.

4. Police Caretaking Function (Automobile Inventory)

In cases of abandoned vehicles, automobile accidents, or traffic violations leading to arrests, government officials have the authority, "as part of what the Court has called 'community caretaking functions," to impound the vehicle and to take an inventory of its contents. Police departments develop and follow routine procedures in order to meet the needs of the inventory search, namely, "the protection of the owner's property while it remains in police custody; the protection of the police against claims or disputes over lost or stolen property; and the

89. Id.
90. Atwater, 532 U.S. at 354-55.
91. South Dakota v. Opperman, 428 U.S. 364, 368 (1976) (quoting Cady v. Dombrowski, 413 U.S. 433, 441 (1973)). Under the police caretaking function, another exception to the general warrant rule exists where "exigent circumstances" necessitate action regardless of a person's reasonable expectation of privacy. See Warden v. Hayden, 387 U.S. 294, 298-99 (1967); cf. John F. Decker, Emergency Circumstances, Police Responses, and Fourth Amendment Restrictions, 89 J. CRIM. L. & CRIMINOLOGY 433, 457-510 (1999) (proposing that pursuant to the police caretaking function, other emergency situations, such as children in danger, the odor of a dead body, or the presence of explosive devices or volatile chemicals, create a separate category of exception to the Fourth Amendment outside of the exigent circumstances exception). The Warden Court held that warrantless searches or seizures were reasonable when "the exigencies of the situation made that course imperative." Warden, 387 U.S. at 298 (quoting McDonald v. United States, 335 U.S. 451, 456 (1948)). The Court further stated that "[t]he Fourth Amendment [did] not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others." Id. at 298-99. In Welsh v. Wisconsin, the Court questioned the scope of the exigent circumstances exception and noted that "police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests." Welsh v. Wisconsin, 466 U.S. 740, 749-50 (1984). The Court held that a police officer's warrantless entry into the suspect's home violated the Fourth Amendment because the suspect had committed only a minor offense. Id. at 750. The Court reasoned that while the exigent circumstances exception could be employed in cases of violent crimes, threats of violence, hot pursuit of a fleeing felon, or destruction of evidence, a minor offense absent these characteristics would not justify using the exception. Id. at 749-52. In sum, the Court believed that "[w]hen an officer undertakes to act as his own magistrate, he ought to be in a position to justify it by pointing to some real immediate and serious consequences if he postponed action to get a warrant." Id. at 751 (quoting McDonald, 335 U.S. at 460).
protection of the police from potential danger." In *South Dakota v. Opperman*, the Supreme Court held that a lawful impoundment of an automobile and a subsequent warrantless search did not violate the Fourth Amendment when police followed standard procedures and the automobile contained valuables, which could plainly be seen from outside the automobile. In the Court's view, the police conducted the search for the lawful purpose of taking an inventory of the automobile's contents, which was consistent with the established needs of the inventory search.

When police conduct an inventory search based on their administrative, caretaking function, the search may be reasonable even absent probable cause. In *Colorado v. Bertine*, a police officer performed an inventory search of a van after arresting its owner for driving under the influence of alcohol. The officer conducted the search after taking the man into custody and before moving the van from the site. During the search, the officer found a backpack containing metal canisters, and the canisters held cocaine and cocaine paraphernalia. The Court upheld the search as reasonable because the officer followed standard procedures and there was no evidence that he "acted in bad faith or for the sole purpose of investigation." The Court concluded that "reasonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment, even though courts might as a matter of hindsight be able to devise equally reasonable rules requiring a different procedure."

However, an inventory search is not reasonable when a police department fails to adopt detailed procedures to follow when conducting the search. The reasonableness of an inventory search turns on whether the officer used judgment constrained by standard police procedures or whether he acted with unchecked discretion solely on the suspicion of a crime.

In *Florida v. Wells*, the Supreme Court held that a police officer's inventory search violated the Fourth Amendment because the Florida Police Department did not have a specific inventory policy regarding the opening of closed containers. In *Wells*, the police officer arrested the petitioner for driving under the influence. After impounding the driver's car, the officer conducted an inventory search and

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93. *Id.* at 369 (citations omitted).
94. *Id.* at 366, 375-76.
95. *Id.* at 375-76.
96. See, e.g., *Colorado v. Bertine*, 479 U.S. 367, 371 (1987) ("The probable-cause approach is unhelpful when analysis centers upon the reasonableness of routine administrative caretaking functions, particularly when no claim is made that the protective procedures are a subterfuge for criminal investigations." (quoting *Opperman*, 428 U.S. at 370 n.5)).
97. *Id.* at 368-69.
98. *Id.*
99. *Id.* at 369.
100. *Id.* at 372.
101. *Id.* at 374 (footnote omitted).
103. *Id.* at 3-4.
104. *Id.* at 4-5.
105. *Id.* at 2.
uncovered two marijuana cigarette butts in the ashtray and a locked suitcase in the trunk. 106 After the suitcase was forced open, it revealed a garbage bag containing marijuana. 107 In holding that the search violated the Fourth Amendment, the Court reasoned as follows: "Our view that standardized criteria or established routine must regulate the opening of containers found during inventory searches is based on the principle that an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence." 108 Based on the Court's holding, inventory searches are reasonable when they have a caretaking purpose and when they are implemented according to standard police procedures. 109

III. ANALYSIS

A. Interpretative Inconsistencies

The Supreme Court's past decisions addressing the reasonableness of searches and seizures have been fairly consistent and have helped to define the scope of the Fourth Amendment. However, the theories behind the Court's most recent decisions in Edmond and Atwater seem to contradict each other and to muddy the waters rather than to provide clear guidance. 110 The source of the problem is that police are authorized to enforce traffic laws (regulatory function) in addition to criminal laws (investigatory function), but there is no distinction between the powers that the police may exercise when performing one function versus the other. 111 In Edmond, for example, the Court prohibited the police from using their regulatory authority to operate a vehicle checkpoint when the checkpoint served as a means of interdicting narcotics, or in other words, when the checkpoint was used as a way to investigate criminal activity. 112 However, in Atwater, the Court allowed a police officer to use his regulatory power to arrest Ms. Atwater for a traffic violation, and this arrest gave the officer the authority to perform an investigatory search pursuant to either the search incident to an arrest doctrine or to the inventory caretaking function. 113 These holdings seem to state that a police officer cannot stop multiple automobiles at a checkpoint when several officers are present and discretion is least likely to be abused; 114 however, a single officer can stop an individual driver for a violation of a minor traffic regulation, and if the officer suspects criminal activity, he has the authority to arrest the individual and to conduct a search of the occupants and of the passenger area of the automobile. 115

106. Id.
107. Id.
108. Wells, 495 U.S. at 4 (citations omitted).
109. Id. at 4-5.
110. See supra notes 1-4, 34-51, 78-90 and accompanying text.
111. See supra Part II.B.
114. Edmond, 531 U.S. at 35.
The problems associated with distinguishing between proper police actions in the performance of different police functions also arise in comparing Whren and Atwater. Whren clearly held that while police officers were performing a regulatory function, they were authorized to stop a driver for a traffic violation (regardless of the officers' motivations), and the officers were further authorized to arrest the driver and the passenger after they viewed the narcotics in the vehicle.\textsuperscript{116} Additionally, following the arrests, the police officers were permitted to search the suspects as well as the suspects' automobile.\textsuperscript{117} In one swift chain of events, the police officers' regulatory authority facilitated their investigatory function.

This chain of events could have been even more exaggerated. For example, in Atwater, the police officer was authorized to stop Ms. Atwater for violating a minor, fine-only seatbelt law.\textsuperscript{118} Using this violation to assert his discretion, the officer arrested Atwater.\textsuperscript{119} Based on the holding in Whren and on the search incident to an arrest doctrine, the officer could have used his regulatory authority to investigate Atwater for any suspected criminal activity.\textsuperscript{120} For example, suppose the officer suspected that Ms. Atwater shoplifted food from a local grocery, but he did not have probable cause to obtain a search warrant. Pursuant to Whren and Atwater, the officer could wait until he caught Ms. Atwater committing a traffic violation, arrest her for the violation, and then search her vehicle for the stolen items.\textsuperscript{121} Furthermore, the officer could impound Atwater's car following the arrest and use his authority under the caretaking function to inventory the vehicle's contents, thereby allowing him to search more extensively for the stolen items and to simultaneously investigate any other possible criminal activity.\textsuperscript{122}

This hypothetical scenario illustrates that police officers' authorized actions do not vary according to their functions. If a police department had a written policy directing officers to use their regulatory authority to investigate suspected individuals for criminal activity based on less than probable cause, courts would be quick to label it unconstitutional.\textsuperscript{123} However, absent a written policy, the Court has allowed police officers to circumvent the warrant requirement based on the search incident to an arrest doctrine, regardless of the type of arrest or of the police function performed.\textsuperscript{124}

\textsuperscript{116} Whren v. United States, 517 U.S. 806, 813, 819 (1996).
\textsuperscript{117} Id. at 819.
\textsuperscript{118} Atwater, 532 U.S. at 323-26.
\textsuperscript{119} Id. at 323-24.
\textsuperscript{120} See, e.g., New York v. Belton, 453 U.S. 454, 460 (1981) (holding that the police may search a motorist and the passenger compartment of his automobile following a warrantless arrest related to a traffic violation).
\textsuperscript{121} Id.
\textsuperscript{122} See, e.g., South Dakota v. Opperman, 428 U.S. 364, 368-72 (1976) (upholding the authorized impoundment of vehicles pursuant to the police caretaking function).
\textsuperscript{123} See supra notes 34-51 and accompanying text.
\textsuperscript{124} See supra notes 116-22 and accompanying text.
B. Custodial Arrest for a Minor Traffic Violation

In United States v. Robinson, the Court stated that the justification for a search incident to an arrest rests "on the need to disarm the suspect in order to take him into custody" and "on the need to preserve evidence on his person for later use at trial." One could argue that an individual like the defendant in Robinson waives his privacy rights when he commits a crime such as possession of narcotics. However, this reasoning fails when applied to the Atwater case. It is difficult to understand how a person's failure to secure his seatbelt could ever be considered a waiver of his right to privacy. The Robinson Court held that

[i]t is the fact of the lawful arrest which establishes the authority to search, and . . . in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under that Amendment.

This reasoning makes sense for situations in which the police are acting in an investigatory capacity. Obviously, when police are enforcing criminal laws pursuant to their investigatory function, they are more likely to encounter weapons or contraband, so the need to search is greater. However, the reasonableness of the search incident to an arrest in Atwater is questionable when it is justified based on the officer's regulatory authority.

Furthermore, Ms. Atwater's arrest, or any custodial arrest for a relatively minor traffic violation, cannot be justified by the government's interest in crime control. According to one commentator, "[g]overnmental interests in custodial arrests include: 1) insuring the presence of the suspect to answer the charges against him or her; 2) obtaining evidence of the crime of which the suspect is accused; 3) preventing future harm; 4) providing certain social service functions; and 5) maintaining the proper respect for law and the police." For the majority of traffic-violation stops, these governmental interests do not justify a custodial arrest. The only instance in which a custodial arrest is warranted is in the case of an intoxicated driver. In almost every other situation, the government's interest in enforcing traffic regulations will be satisfied by issuing a citation and by fining the driver for the violation.

126. See supra notes 57-58 and accompanying text.
129. Id. at 274.
130. Id.
131. Id.
C. Minor Traffic Violations As Criminal Offenses

Most jurisdictions generally classify traffic violations as a criminal offense, even though traffic violations merely involve the violation of a state regulation. As states developed professional police forces, legislatures increased government officials’ arrest power. One author explains the legislatures’ treatment of traffic violations as follows:

Without considering whether the taking of immediate custody was necessary, legislatures began to authorize custodial arrests for minor crimes. This change appears to have been aimed at making it easier to arrest without a warrant, but the effect was to authorize custodial arrests for many offenses, “such as ordinance and regulatory violations, that had previously not been subject to arrest at all.”

This treatment of traffic violations as crimes gives police the discretionary authority, absent a statutory provision prohibiting a custodial arrest, to arrest a motorist for a minor traffic offense; this arrest in turn gives police officers the discretionary authority to search the driver and the automobile pursuant to the search incident to an arrest doctrine.

D. Police Discretion

In examining police functions in conjunction with the common law and in trying to reconcile *Edmond* and *Atwater*, one must question whether police discretion should be limited or whether officers should have broad discretion to aid in efficient crime control. According to the United States Supreme Court, “[t]he essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of ‘reasonableness’ upon the exercise of discretion by government officials, including law enforcement agents, in order “to safeguard the privacy and

132. 7A AM. JUR. 2D Automobiles and Highway Traffic § 244 (1997).
133. Salken, supra note 128, at 258-59.
134. Id. at 259 (footnotes omitted) (quoting FLOYD FEENEY, THE POLICE AND PRETRIAL RELEASE 11 (1982)).
135. See supra notes 116-22 and accompanying text. One could argue that traffic violations should be handled quite differently than criminal offenses. A separately designated group of government officials could be solely responsible for issuing traffic citations. For example, most states monitor truck weight loads on state highways in a similar fashion. 7A AM. JUR. 2D Automobiles and Highway Traffic §§ 242-43 (1997). States have the power “to enact statutes empowering police or other designated officers to inspect motor vehicles to detect inadequacy of equipment, overloading, and other violations of the law relating to the equipment, size and weight of motor vehicles.” Id. (emphasis added) (footnotes omitted). “In order to enforce statutory provisions relative to the weight and load of motor vehicles, designated officials may be empowered to stop apparently overloaded vehicles to ascertain their exact weight.” Id. § 243 (footnote omitted).
security of individuals against arbitrary invasions. ...”136 In Edmond, the Court limited the discretion of police officers in cases involving checkpoints by explaining:

If we were to rest the case at this high level of generality, there would be little check on the ability of the authorities to construct roadblocks for almost any conceivable law enforcement purpose. Without drawing [this] line ..., the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life.137

Likewise, Prouse held that “persons in automobiles on public roadways may not for that reason alone have their travel and privacy interfered with at the unbridled discretion of police officers.”138

However, Atwater allows exactly what Edmond prohibits. Atwater enables police officers to stop drivers for any conceivable regulatory purpose, thus providing little check on the officers’ discretion.139 When Atwater’s outcome is viewed in light of the Court’s holding in Whren—that the police officer’s motivation for stopping a driver for a traffic violation should not be considered as long as the officer had probable cause to make the stop140—it is clear that problems such as pretextual stops and racial profiling may increase considerably. One commentator proposes that

[t]he sort of abuses recently documented can be remedied, in part, by limiting the officer’s power to decide which offender to stop. . . . Limiting the power to search for drugs absent suspicion removes the incentive for police to elect one offender for prosecution because societal prejudices and stereotypes lead him to believe the bounty will far exceed the offense he instantly observes. Decisions about how to enforce traffic laws will then turn on questions about how traffic laws ought to be enforced instead of inarticulable hunches and demographic profiles that subject perfectly innocent Americans to invasions of privacy and the denial of dignity.141

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138. Prouse, 440 U.S. at 663.
139. See supra notes 78-90 and accompanying text.
regarding the scope of police authority. For example, South Carolina Code section 16-25-70 limits the police’s authority to search for evidence in a suspect’s home following an arrest for domestic abuse.148 Section 16-25-70(H) provides that “[n]o evidence other than evidence of violations of this article found as a result of a warrantless search is admissible in a court of law.”149 This statute authorizes police entry into a suspect’s residence and permits a warrantless arrest of an individual for criminal domestic violence where an officer has probable cause to believe that such action is necessary to prevent further harm.150 However, the statute effectively limits police action to the criminal violation at issue instead of allowing officers to use the domestic abuse violation to facilitate further criminal investigation.151

South Carolina’s 2001 Session Laws also serve as a model for providing clear guidelines to police officers regarding proper searches and seizures pursuant to seat belt violations. South Carolina Code section 56-5-6525 was amended to provide that

[t]he Department of Public Safety or any other law enforcement agency must not use a “Click It or Ticket” campaign or a similar endeavor of systematic checkpoints or roadblocks as a law enforcement tool where the principal purpose is to detect and issue a ticket to a violator of the provisions of this article on either a primary or secondary basis.152

Furthermore, section 56-5-6540(F) provides that “[n]o vehicle, driver, or occupant in a vehicle may be searched solely because of a violation” of the mandatory seat belt provision.153 These recent amendments should serve as the first step in making the complicated search-and-seizure procedures more clear and less likely to create inconsistent outcomes.154 In addition, they should serve as a model for other states to begin a similar clarification process.

IV. CONCLUSION

The United States has a rich history of cases interpreting the Fourth Amendment as it relates to warrantless police searches and seizures. In order to

149.  Id.
150.  Id. § 16-25-70(A)-(C).
151.  Id. § 16-25-70(H).
153.  Id. § 5(F).
154.  These amendments relate to Article I, section 10 of the South Carolina Constitution, which gives South Carolina citizens an added protection against invasions of privacy. See S.C. CONST. art. I, § 10. Article I, section 10 protects citizens against “unreasonable searches and seizures and unreasonable invasions of privacy,” whereas the Fourth Amendment does not include protection against unreasonable invasions of privacy. Id. (emphasis added); see supra notes 7-8 and accompanying text.
E. Bright-Line Rule v. Case-by-Case Basis

Several inconsistencies between the cases stem from the struggle between the need for a bright-line rule that would allow police officers to be effective without a court second guessing their actions and the countervailing need for an approach by which fairness could be determined from examining the facts and circumstances of each particular case. In *Atwater*, Justice Souter stated "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." By contrast, in *Opperman*, Chief Justice Burger reasoned that "[t]he relevant [Fourth Amendment] test . . . [is] the reasonableness of the seizure under all the circumstances. The test of reasonableness cannot be fixed by *per se* rules; each case must be decided on its own facts." Despite the Court’s approach in *Opperman*, the most recent cases exhibit the Court’s tendency to seek a bright-line solution for determining reasonableness.

F. Proposed Solution

The inherent difficulties in determining how a police officer should act in performing different police functions could be ameliorated with state legislation. Adopting state legislation would also create a bright-line “rule” approach without giving police officers unlimited discretion. One author suggests that “[i]f law enforcement officers are limited in their authority to those practices that are authorized, defined, and limited by state law, such enabling state law may provide adequate bases for assuring that this authority is exercised in a consistent manner.” In *Atwater*, for example, the Court discussed the power of state legislatures either to impose restrictions on warrantless arrests or to authorize warrantless arrests in certain limited situations. Justice Souter reasoned that “[i]t is . . . easier to devise a minor-offense limitation by statute than to derive one through the Constitution, simply because the statute can let the arrest power turn on any sort of practical consideration without having to subsume it under a broader principle.”

Courts should not have to decide these issues; the legislature is the more appropriate setting for discussing police discretion and for making decisions.

144. *See, e.g.*, *Whren*, 517 U.S. at 813, 819 (holding that despite an officer’s subjective motivations, a stop is reasonable under the Fourth Amendment if the officer has probable cause to believe that a traffic violation has occurred).
146. *Atwater*, 532 U.S. at 343-45, 352.
147. *Id.* at 352.
determine the validity of a search, the Supreme Court has historically balanced the
need for efficient and effective government involvement in crime control against
the need to protect individuals from unreasonable invasions of privacy. In an
effort to address the reasonableness of government action, the Court has developed
several exceptions to the general rule against warrantless searches and seizures
presented by the Fourth Amendment. Although these exceptions appropriately
give police authority to act when certain situations demand their involvement, the
most recent Supreme Court cases address these exceptions inconsistently. As this
Comment discusses, in Edmond, the police were prohibited from using their
discretionary regulatory authority to investigate individuals for narcotics possession
in a checkpoint situation; by contrast, in Atwater, the police were allowed to use
this same discretionary authority to arrest the motorist for a minor fine-only traffic
violation. These cases illustrate the inconsistencies between police officers’
authority in differing circumstances. These inconsistencies present questions that
demand examination.

State involvement through legislation provides the best way to improve
consistency, precision, and predictability in the area of warrantless police searches
and seizures, particularly those involving automobiles. South Carolina has taken
this first step with its criminal domestic violence statute and with its recent amendments concerning seat belt laws. In discussing this issue, state legislatures
should consider the differences between the three police functions (regulatory,
investigatory, and caretaking), the treatment of traffic violations as criminal
offenses, the role of police discretion as it relates to the Fourth Amendment and to
the individual state’s constitution, and whether certain situations require a bright-
line rule or a case-by-case approach. With further state involvement, courts will not
be forced to walk the fine line of limiting police discretion to ensure individual
privacy while simultaneously attempting to allow police discretion to ensure
effective crime control. The legislature is a better forum for addressing these
complicated issues due to its ability to conduct thorough research and to consider
community input.

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155. See supra notes 30-33 and accompanying text.
156. See supra Part II.B.
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