Chapter 4—
Arrest

Introduction

The law of arrest is of great importance to law enforcement officers. An illegal arrest violates the constitutional rights of an individual and can lead to lawsuits against the police. An arrest is defined as the taking of a person into custody against his or her will for the purpose of criminal prosecution or interrogation (*Dunaway v. New York*, 442 U.S. 200 [1979]). Not all detentions constitute an arrest. An arrest occurs only when there is governmental termination of freedom of movement through means intentionally applied (*Brower v. County of Inyo*, 486 U.S. 593 [1989]).

Police arrests may be classified into two general categories: with a warrant and without a warrant. In both categories, probable cause is required. The difference is that, in arrests with a warrant, probable cause has already been determined by a judge or magistrate. In arrests without a warrant, probable cause must be established by the police.

An arrest has four elements. These are: (1) seizure and detention, (2) intention to arrest, (3) arrest authority, and (4) understanding by the person arrested. Seizure and detention can be actual or constructive. Actual seizure takes place when the police take the person into custody with the use of hands or firearms, or by merely touching the individual without the use of force. Constructive seizure takes place without any physical touching, grabbing, holding, or use of force. It occurs when the person peacefully submits to the will and control of the officer. The intent to arrest exists in the mind of the police officer and is therefore difficult for the arrested person to prove. But actions often speak louder than words. For example, if an officer places handcuffs on a suspect or takes the suspect to the police station in a police car, intent to arrest may be present although the police officer may not have said: "You are under arrest." Arrest authority is inherent in policing in that every police officer is authorized to make an arrest unless there are specified limitations otherwise. Some jurisdictions limit this authority to the time during which an officer is on duty; other jurisdictions authorize officers to arrest a person even while off-duty if there is probable cause to believe that a crime has been or is being committed.

When a person is under arrest has been addressed by the Supreme Court in a number of cases, starting with *Michigan v. Chesternut*, 486 U.S. 567 (1988), in which the Court ruled that the test to determine whether a seizure occurs is whether a reasonable person viewing the police conduct would conclude that he or she is free to leave. In *Brower v. County of Inyo*, 489 U.S. 593 (1989), the Court held that a seizure occurs when there is a "governmental termination of freedom of movement through means intentionally applied." Then, in *California v. Hodari D.*, 499 U.S. 621 (1991), the Court held that no seizure occurs when an officer seeks to arrest a suspect through a show of authority, but applies no physical force, and the subject does not willingly submit (therefore there was no actual or constructive seizure). Finally, in *Florida v. Bostick*, 501 U.S. 429 (1991), the Court ruled that the test to determine

whether a police-citizen encounter on a bus is a seizure is whether a reasonable passenger would feel free to decline the officers' request or otherwise terminate the encounter. In sum, not every encounter with the police is an arrest. The general test is that it is an arrest only if a reasonable person under the same circumstances would have considered the encounter with the police to be an arrest.

Two recent cases have further clarified the authority of the police in arrest cases. In *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001), the Court held that the Fourth Amendment does not forbid a warrantless arrest for a minor criminal offense, such as a misdemeanor seatbelt violation, which is punishable only by a fine. This settles an issue that the Court had not addressed before. At present, all 50 states at present authorize the police to make an arrest even for non-jailable offenses. Another recent case holds that under emergency circumstances, and where there is need to preserve evidence until the police can obtain a warrant, they may temporarily restrain a person's movement without violating his or her Fourth Amendment rights (*Illinois v. McArthur*, 531 U.S. 326 (2001). This gives the police more power to limit the movement of a suspect who has not been arrested and where the police are sure they have probable cause to obtain a warrant and are in the process of obtaining it.

The leading cases briefed in this section on arrest are *United States v. Watson, Payton v. New York*, and *Atwater v. City of Lago Vista*.

Frisbie v. Collins
342 U.S. 519 (1952)

CAPSULE: An unlawful arrest does not deprive the court of jurisdiction to try a criminal case.

FACTS: Acting as his own lawyer, Collins brought a habeas corpus action in federal court seeking release from a Michigan state prison where he was serving a life sentence for murder. He alleged that, while he was living in Chicago, officers from Michigan forcibly handcuffed, blackjacked and abducted him, and took him back to Michigan. He claimed that the trial and conviction under such circumstances violated his due process rights under the Fourteenth Amendment and the Federal Kidnapping Act and were therefore void.

SUPREME COURT DECISION: Does the unlawful arrest of a defendant affect the validity of a court's jurisdiction in a criminal proceeding? NO.

SUPREME COURT DECISION: An unlawful arrest has no impact on a subsequent criminal prosecution. An invalid arrest, therefore, does not deprive the court of jurisdiction to try a criminal case.

REASON: "This Court has never departed from the rule announced in Ker v. Illinois, 119 U.S. 436 (1886), that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.' No persuasive reasons are now presented to justify overruling this line of cases. They rest on sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will."

CASE SIGNIFICANCE: The *Collins* decision constitutes what might seem to be a surprising exception to the exclusionary rule. It would seem logical to think that if items subject to illegal search and seizure are not admissible in evidence, then defendants illegally arrested ought not to be subject to court jurisdiction (for purposes of a trial) either. The Court disagrees, stating that "the power of the court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.'" It then added that "[t]here is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will." Note that the *Collins* case was decided in 1952, before the exclusionary rule was applied to the states in *Mapp v. Ohio*. Nonetheless, the ruling is still valid today.

United States v. Santana
427 U.S. 38 (1975)

CAPSULE: A warrantless arrest that begins in a public place is valid even if the suspect retreats to a private place and is arrested there.

FACTS: An undercover police officer arranged a heroin buy from Patricia McCafferty. After meeting with the officer and driving to the residence of Santana, McCafferty took the officer's $115 of marked bills, went into Santana's house and returned shortly thereafter. The officer asked McCafferty for the heroin; she gave several envelopes of heroin to him. The officer then placed McCafferty under arrest. When asked where the money was, McCafferty replied that Santana had it. While McCafferty was being taken to the police station, other officers drove to Santana's house where they saw her standing in the doorway with a brown paper bag in her hand. After they identified themselves as police officers, Santana attempted to escape into her house. The officers chased and caught her. During the ensuing scuffle, two bundles of heroin fell to the floor, which the police recovered. Told to empty her pockets, Santana produced $135, of which $70 was the undercover officer's marked money. Santana and others were later charged with possession of heroin with intent to distribute.

SUPREME COURT DECISION: Is the warrantless arrest of a suspect in a public place valid if the suspect retreats from a public place to a private place? YES.

SUPREME COURT DECISION: A warrantless arrest that begins in a public place is valid even if the suspect retreats to a private place and is arrested there.

REASON: "While it may be true under common law of property that the threshold of one's dwelling is 'private,' as is the yard surrounding the house, it is nonetheless clear that under the cases interpreting the Fourth Amendment, Santana was in a 'public' place,... not in an area where she had any expectation of privacy ... She was not merely visible to the public but was exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house." The police, therefore, had probable cause to arrest her and did so in the proper manner. Santana could not, furthermore, thwart her arrest by retreating into her private home. "The District Court was correct in concluding that 'hot pursuit' means some sort of a chase, but it need not be an extended hue and cry 'in and about [the] public streets.' The fact that the pursuit ended almost as soon as it began did not render it any less a 'hot pursuit' sufficient to justify the warrantless entry into Santana's house."

CASE SIGNIFICANCE: In *United States v. Watson*, 423 U.S. 411 (1976), the Court held that the police are not required to obtain a warrant before arresting a person in a public place even if there was time and opportunity to obtain a warrant, as long as there is probable cause. The *Santana* case extends that principle to instances in which the arrest begins in a public place, but ends up in a private place (in this case, the suspect's home) because the suspect goes there. Santana was in a public place when she was standing in the doorway of her house, but ended up in a private place when she retreated. The Court considered what happened as a case of "hot pursuit" and therefore did not require a warrant. Note, however, that as in the case of Watson, a warrantless arrest in a public place—even if based on probable cause—may be invalid if prohibited by state law or agency policy.

United States v. Watson
423 U.S. 411 (1976)

CAPSULE: An arrest without a warrant in a public place is valid as long as there is probable cause, even if there is time to obtain a warrant.

FACTS: A reliable informant telephoned the postal inspector and informed him that he was in possession of a stolen credit card provided by Watson and that Watson had agreed to furnish the informant with additional cards. The informant agreed to meet with Watson and give a signal if he had additional

stolen cards. When the signal was given, officers arrested Watson and took him from the restaurant where he was sitting to the street, where he was given his Miranda warnings. When a search revealed no stolen credit cards on Watson, the postal inspector asked if he could look inside Watson's automobile. The inspector told Watson that "if I find anything, it is going to go against you." Watson agreed to the search. Using keys furnished by Watson, the car was searched and an envelope containing stolen credit cards was found. Watson was charged with and convicted of possession of stolen credit cards.

SUPREME COURT DECISION: Can officers arrest an individual in a public place with probable cause but without an arrest warrant even if there was time to obtain a warrant? YES.

SUPREME COURT DECISION: An officer may arrest a suspect in a public place without a warrant, even if there is time and opportunity to obtain one, if there is probable cause to believe that a criminal act has been committed.

REASON: "The usual rule is that a police officer may arrest without a warrant one believed by the officer upon reasonable cause to have been guilty of a felony.... Just last term, while recognizing that maximum protection of individual rights could be assured by requiring a magistrate's review of the factual justification prior to any arrest, we stated that 'such a requirement would constitute an intolerable handicap for legitimate law enforcement' and noted that the Court 'has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant.'" [Citations omitted.]

"The cases construing the Fourth Amendment thus reflect the ancient common-law rule that a peace officer was permitted to arrest without a warrant for a misdemeanor or felony committed in his presence as well as for a felony not committed in his presence if there was reasonable grounds for making the arrest ..."

CASE SIGNIFICANCE: This case states that police officers can make an arrest in a public place, without a warrant, based on probable cause, hence dispensing with the warrant requirement even if the police have time to obtain a warrant. The general rule is that a warrant must be obtained before making an arrest, unless the arrest falls under one of the many exceptions to the warrant requirement. This is one of those exceptions—arrest in a public place based on probable cause. The suspect in this case argued that the police should have obtained a warrant because they had time to do so. The Supreme Court ruled that the common law and the laws of most states do not require a warrant to be obtained under these circumstances.

Watson is a federal case involving postal service officers. These officers acted in accordance with a federal law that authorizes officers to "make arrest

without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony." Watson sought to have this law declared unconstitutional, in effect saying that an arrest warrant was constitutionally required whenever there was time to obtain it, even if the arrest is made in a public place. The Court disagreed, saying that this has never been required under common law, the laws of many states, or previous Supreme Court decisions. Note that this case simply says that an arrest warrant is not constitutionally required for arrests made in a public place that are based on probable cause. If a state statute requires that a warrant be obtained, then the statute must be followed. The Court noted, however, that state statutes usually do not require an arrest warrant. The rule stands, therefore, that unless a state statute or case law provides otherwise, the police can make a warrantless arrest in a public place, based on probable cause, even if they have time to obtain a warrant.

Dunaway v. New York
442 U.S. 200 (1979)

CAPSULE: Probable cause is needed for the stationhouse detention of a suspect if such detention is accompanied by an interrogation.

FACTS: An informant implicated Dunaway in a murder but could not provide sufficient information to justify the issuance of a warrant. The police, however, ordered Dunaway to be picked up and brought to the police station, where he was taken into custody. Although he was never told that he was under arrest, there was evidence that "he would have been physically restrained if he had attempted to leave." At the station, Dunaway made statements implicating himself in the murder after receiving his Miranda warnings. Dunaway was charged with and convicted of murder.

SUPREME COURT DECISION: May the police take any suspects into custody, transport them to a police station, and detain them there for interrogation without probable cause to make an arrest? NO.

SUPREME COURT DECISION: The taking of a person into custody against his or her will for the purpose of criminal prosecution or interrogation constitutes an arrest for which probable cause is needed. Probable cause is therefore necessary for the stationhouse detention of a suspect when such detention is accompanied by interrogation (as opposed to just fingerprinting), even if no formal arrest is made.

REASON: "... [T]he detention of petitioner was in important respects indistinguishable from a traditional arrest. Petitioner was not questioned briefly where he was found. Instead, he was taken from a neighbor's home to a

police car, transported to a police station, and placed in an interrogation room. He was never informed that he was 'free to go'; indeed, he would have been physically restrained if he had refused to accompany the officers or had tried to escape their custody."

"The central importance of the probable cause requirement to the protection of a citizen's privacy afforded by the Fourth Amendment guarantees cannot be compromised in this fashion.... Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment, and decisions immediately after its adoption affirmed that 'common rumor or report, suspicion, or even "strong reason to suspect" was not adequate to support a warrant for arrest.'"

CASE SIGNIFICANCE: This case resolves the issue of whether the stationhouse detention of a suspect, accompanied by interrogation, is so restrictive of a person's freedom as to be the equivalent of an arrest, which is illegal without probable cause. In this case, there was no probable cause to arrest Dunaway, but there were reasons for the police to consider him a suspect in connection with a crime being investigated. Dunaway was therefore asked to come to police headquarters. He was never told that he was under arrest, but probably would have been physically restrained had he attempted to leave. He received his *Miranda* warnings, was questioned, and ultimately confessed. The Court held that, because Dunaway was in fact taken into custody by the police and not simply stopped on the street, probable cause was required to take him to the police station. Because probable cause was absent, Dunaway's detention at the stationhouse was illegal and the evidence obtained from him, despite the fact that he was given the *Miranda* warnings, was inadmissible.

Payton v. New York
445 U.S. 573 (1980)

CAPSULE: The police may not validly enter a private home to make a routine, warrantless felony arrest, unless justified by exigent circumstances.

FACTS: After two days of intensive investigation, police officers assembled sufficient evidence to establish probable cause to believe that Payton had murdered the manager of a gas station. Officers went to Payton's apartment to arrest him. They had no warrant, although they had time to obtain one. Although light and music emanated from the apartment, there was no response to their knock on the metal door. They summoned emergency assistance and used crowbars to break open the door and enter the apartment. There was no one in the apartment, but in plain view was a .30-caliber shell casing that was seized and later admitted into evidence at Payton's trial. Payton later surrendered to the police and was indicted for murder. In a motion to suppress the evidence, the court ruled that the search of the house was illegal and

suppressed the evidence, but also said that the shell casing was in plain view and admitted it into evidence. Payton was ultimately convicted.

SUPREME COURT DECISION: Does the Fourth Amendment guarantee against unreasonable search and seizure require officers to obtain a warrant if making a routine felony arrest when there is time to obtain a warrant? YES.

SUPREME COURT DECISION: In the absence of exigent circumstances or consent, the police may not enter a private home to make a routine, warrantless felony arrest. The evidence was not admissible because there was time to obtain a warrant and there were no exigent circumstances to justify a warrantless search.

REASON: "In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant."

CASE SIGNIFICANCE: The *Payton* case settled the issue of whether the police can make a warrantless arrest in a routine felony case. The practice was authorized by the state of New York and 23 other states at the time *Payton* was decided. These authorizations are now unconstitutional and officers must obtain a warrant before making a routine felony arrest. If the arrest is not routine (meaning exigent circumstances are present), a warrantless arrest can be made.

Welsh v. Wisconsin
466 U.S. 740 (1984)

CAPSULE: The warrantless nighttime entry of a suspect's home to effect an arrest for a nonjailable offense violates the Fourth Amendment.

FACTS: A witness saw Welsh's automobile being driven erratically, eventually swerving off the road and stopping in a field. Before the police could arrive, Welsh walked away from the accident. Upon arrival at the scene, the police were told that the driver was either drunk or very sick. The police checked the registration of the car and went to the owner's house without obtaining a warrant. The police gained entry to the house when Welsh's stepdaughter answered the door. Welsh was arrested and convicted for driving while under the influence of intoxicants.

SUPREME COURT DECISION: Is a warrantless nighttime entry of a person's home to make an arrest for a nonjailable traffic offense constitutional under the Fourth Amendment? NO.

SUPREME COURT DECISION: The warrantless nighttime entry of a suspect's home to effect an arrest for a nonjailable offense is prohibited by the Fourth Amendment.

REASON: "Before government agents may invade the sanctity of the home, it must demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries. An important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made. Moreover, although no exigency is created simply because there is probable cause to believe that a serious crime has been committed, application of the exigent circumstances exception in the context of home entry should rarely be sanctioned when there is probable cause that only a minor offense has been committed."

CASE SIGNIFICANCE: Probable cause and exigent circumstances almost always justify a warrantless search or seizure. This means that as long as probable cause and exigent (emergency) circumstances that justify immediate action by the officer are present, a warrantless search or seizure is valid. This case adds a third dimension to this general rule. The Court said that the gravity of the offense must be considered when determining whether a warrantless search or seizure can be undertaken. If the offense is minor and nonjailable, a warrantless entry into a home is not justified, particularly at night. There are, however, unanswered questions in this case. For example, what if the offense is minor but carries a jail term? Or suppose the incident takes place during the day? Or how might current DWI laws with more severe sentences change this ruling? What is clear from this case is that a warrantless nighttime entry into a person's home to make an arrest for a nonjailable traffic offense is invalid under the Fourth Amendment.

Michigan v. Chesternut
486 U.S. 567 (1988)

CAPSULE: The test to determine whether a seizure occurs is whether a reasonable person, viewing the police conduct and surrounding circumstances, would conclude that he or she is not free to leave.

FACTS: Chesternut began to run after observing the approach of a police car. Officers followed him to "see where he was going." As the officers drove alongside Chesternut, they observed him pull a number of packets from his pocket and throw them away. The officers stopped and seized the packets, concluding that they might be contraband. Chesternut was then arrested. A subsequent search revealed more drugs. Chesternut was charged with felony narcotics possession.

SUPREME COURT DECISION: Did the officer's investigatory pursuit of Chesternut to "see where he was going" constitute a seizure under the Fourth Amendment? NO.

SUPREME COURT DECISION: The appropriate test to determine whether a seizure has occurred is whether a reasonable person, viewing the police conduct and surrounding circumstances, would conclude that he or she is not free to leave. There is no seizure per se in police investigatory pursuits.

REASON: "No bright-line rule applicable to all investigatory pursuits can be fashioned. Rather, the appropriate test is whether a reasonable man, viewing the particular police conduct as a whole and within the setting of all the surrounding circumstances, would have concluded that the police had in some [manner] restrained his liberty so that he was not free to leave. . . . Under this test, respondent [Chesternut] was not 'seized' before he discarded the drug packets. . . . The record does not reflect that the police activated a siren or flashers; commanded respondent to halt or displayed any weapons; or operated the car aggressively to block his course or to control his direction or speed. Thus, respondent could not reasonably have believed that he was not free to disregard the police presence and go about his business. The police, therefore, were not required to have a particularized and objective basis for suspecting him of criminal activity, in order to pursue him."

CASE SIGNIFICANCE: This case provides guidelines to a persistent and difficult question in police work: When is a person considered seized by the police? The question is important because seizure by the police involves the Fourth Amendment and sets in motion constitutional guarantees, particularly the requirements of probable cause and, whenever possible, a warrant. Absent seizure, the police do not have to abide by constitutional guarantees. The Court stated that there is no definitive test to determine seizure; rather, it sets the following guideline: "whether a reasonable man, viewing the particular police conduct as a whole and within the setting of all the surrounding circumstances, would have concluded that the police had in some way restrained his liberty so that he was not free to leave." The standard is not whether the police intended to make a seizure, but whether the suspect would have concluded (as a reasonable person would have) that the police had in some way restrained his or her liberty so that he or she was not free to leave. This is ultimately a question of fact for the judge or jury to decide. Such determination, however, must be made by taking all surrounding circumstances into account; i.e., use of siren or flashers, commands to halt, etc. If the behavior of the police is passive rather than active, chances are that there is no seizure.

Brower v. County of Inyo
489 U.S. 593 (1989)

CAPSULE: A seizure occurs when there is a "governmental termination of freedom of movement through means intentionally applied."

FACTS: In an effort to stop Brower, who had stolen a car and eluded the police in a chase of more than 20 miles, police placed an 18-wheeled truck across both lanes of a highway, behind a curve, with a police car's headlights pointed in a manner that would blind Brower. Brower was killed in the crash as a result of the roadblock. Brower's heirs and estate brought a civil rights action (42 U.S.C. § 1983) for damages against the police, alleging a violation of Brower's constitutional right against unreasonable search and seizure.

SUPREME COURT DECISION: Is a roadblock set up by the police to stop a fleeing suspect a form of seizure under the Fourth Amendment? YES.

SUPREME COURT DECISION: A seizure occurs when there is a "governmental termination of freedom of movement through means intentionally applied." Because Brower was stopped through means intentionally designed to stop him, the stop constituted a seizure.

REASON: "Consistent with the language, history, and judicial construction of the Fourth Amendment, a seizure occurs when governmental termination of a person's movement is effected through means intentionally applied. Because the complaint alleges that Brower was stopped by the instrumentality set in motion or put in place to stop him, it states a claim of Fourth Amendment 'seizure.'"

CASE SIGNIFICANCE: The importance of this case lies in the Court's definition of a "seizure" under the Fourth Amendment. Under the Court's definition of seizure, a roadblock is a form of seizure; and, because the roadblock in this case was set up in such a manner that it was likely to kill Brower, the Court decided that there was possible civil liability for his death. The Court did not say, however, that the police were automatically liable. Instead, it remanded the case to the Court of Appeals to determine whether the District Court erred in concluding that the roadblock was reasonable. If the roadblock was reasonable, then no liability could be imposed on the police. If, however, the roadblock was unreasonable, liability could be imposed.

California v. Hodari D.
499 U.S. 621 (1991)

CAPSULE: No seizure occurs when an officer seeks to arrest a suspect through a show of authority, but applies no physical force, and the subject does not willingly submit.

FACTS: Two police officers were patrolling a high-crime area in Oakland, California, late one evening. They saw four or five youths huddled around a small red car parked at the curb. When the youths saw the police car approaching, they fled. One officer, who was wearing a jacket with the word "Police" embossed on its front, left the car to give chase. The officer did not follow one of the youths, who turned out to be Hodari, directly; instead, the officer took another route that brought them face to face on a parallel street. Hodari was looking behind as he ran and did not turn to see the officer until they were upon each other; whereupon Hodari tossed away a small rock. The officer tackled Hodari and recovered the rock, which turned out to be crack cocaine. This was used as evidence against Hodari in a subsequent juvenile proceeding.

SUPREME COURT DECISION: Had Hodari been "seized" within the meaning of the Fourth Amendment at the time he dropped the crack cocaine? NO.

SUPREME COURT DECISION: No "seizure" occurs under the Fourth Amendment when a law enforcement officer seeks to arrest a suspect through a show of authority, but applies no physical force, and the suspect does not willingly submit. "Seizure" under the Fourth Amendment occurs only when there is either use of physical force or submission by the suspect to the authority of the officer.

REASON: "To say that an arrest is effected by the slightest application of physical force, despite the arrestee's escape, is not to say that for Fourth Amendment purposes there is a continuing arrest during the period of fugitivity. If, for example, Pertoso [the officer] had laid his hands upon Hodari to arrest him, but Hodari had broken away and had then cast away the cocaine, it would hardly be realistic to say that disclosure had been made during the course of an arrest. The present case, however, is even one step further removed. It does not involve the application of any physical force; Hodari was untouched by Officer Pertoso at the time he discarded the cocaine. His defense relies instead upon the proposition that a seizure occurs 'when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.' Hodari contends that Pertoso's pursuit qualified as a 'show of authority' calling upon Hodari to halt. The narrow question before us is whether, with respect to a show of authority as with respect to application of

physical force, a seizure occurs even though the subject does not yield. We hold that it does not."

"The language of the Fourth Amendment, of course, cannot sustain respondent's contention. The word 'seizure' readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful. It does not remotely apply, however, to the prospect of a policeman yelling 'Stop, in the name of the law!' at a fleeing form that continues to flee. That is no seizure. Nor can the result respondent wishes to achieve be produced—indirectly, as it were—by suggesting that Pertoso's uncomplied-with show of authority was a common-law arrest, and then appealing to the principle that all common-law arrests are seizures. An arrest requires either physical force or, where that is absent, submission to the assertion of authority."

CASE SIGNIFICANCE: There are four elements for an arrest to take place: intention to arrest, authority to arrest, seizure and detention, and the understanding of the individual that he or she is being arrested. This case clarifies one of these elements—seizure and detention. The issue here was whether, at the time Hodari threw away the crack cocaine, he had been arrested. Had he been arrested before throwing away the crack cocaine, the evidence would have been excluded because at that time there was no probable cause for his arrest. On the other hand, if he had not been arrested, the evidence would be admissible because what Hodari did would constitute abandonment.

The Court held that, at the time Hodari dropped the drugs, he had not been "seized" within the meaning of the Fourth Amendment. This is because for "seizure" to be present under the Fourth Amendment, there must be "either the application of physical force, however slight, or, where that is absent, submission to an officer's 'show of authority' to restrain the subject's liberty." There are generally two types of seizures: actual and constructive. Actual seizure is accomplished by taking the person into custody with the use of hands or firearms (denoting use of force without touching the individual) or by merely touching the individual without the use of force. Constructive seizure is accomplished without any physical touching, grabbing, holding, or the use of force. It occurs when the individual peacefully submits to the officer's will and control.

The facts show that Hodari was untouched by the officer before he dropped the cocaine, hence no physical force had been applied. The officer had told Hodari to "halt," but Hodari did not comply and, therefore, he was not seized until he was tackled. There was, therefore, no actual or constructive seizure; hence, one of the elements of an arrest under the Fourth Amendment was missing. Because no illegal arrest had taken place at the time the crack cocaine was tossed away, the evidence recovered by the police was admissible in court.

County of Riverside v. McLaughlin
500 U.S. 413 (1991)

CAPSULE: Detention of a suspect for 48 hours is presumptively reasonable. If the time-to-hearing is longer, the burden of proof shifts to the police to prove reasonableness. If the time-to-hearing is shorter, the burden of proof of unreasonable delay shifts to the suspect.

FACTS: A lawsuit was brought challenging Riverside County, California's process of determining probable cause for warrantless arrests. The county's policy was to combine probable cause determinations with arraignment proceedings. The policy was close to the California Penal Code, which says that arraignments must be conducted without unnecessary delay and within two days (48 hours) of arrest, excluding weekends and holidays. The U.S. District Court issued a preliminary injunction requiring the county to provide all persons arrested without a warrant with a probable cause hearing within 36 hours. The Ninth Circuit Court of Appeals affirmed, saying that the county policy of providing a probable cause hearing at arraignment within 48 hours was not in accord with Gerstein's [v. Pugh, 420 U.S. 103 (1975)] requirement of promptly providing the probable cause determination after arrest because no more than 36 hours were needed to complete the administrative steps incident to arrest.

There was conflict among the Circuit Courts of Appeals on this issue. The Ninth, Fourth, and Seventh Circuit Courts of Appeals all required a probable cause determination immediately following completion of the administrative procedures incident to arrest. The Second Circuit Court of Appeals allowed flexibility and permitted states to combine probable cause determinations with other pretrial proceedings.

SUPREME COURT DECISION: Does the Fourth Amendment require a judicial determination of probable cause immediately after completing the administrative steps incident to arrest (within 36 hours after arrest)? NO.

SUPREME COURT DECISION: If a probable cause determination is combined with arraignment, it is presumptively reasonable for the arrest-to-hearing period to last up to 48 hours. If more time than that elapses, the government bears the burden of showing that the delay is reasonable. Conversely, if the release is made before 48 hours after arrest, the burden of showing unreasonable delay shifts to the person arrested.

REASON: "Our task in this case is to articulate more clearly the boundaries of what is permissible under the Fourth Amendment. Although we hesitate to announce that the Constitution compels a specific time limit, it is important to provide some degree of certainty so that States and counties may establish procedures with confidence that they fall within constitutional bounds. Taking

into account the competing interests articulated in Gerstein, we believe that a jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of Gerstein. For this reason, such jurisdictions will be immune from systemic challenges."

"This is not to say that the probable cause determination in a particular case passes constitutional muster simply because it is provided within 48 hours. Such a hearing may nonetheless violate Gerstein if the arrested individual can prove that his or her probable cause determination was delayed unreasonably. Examples of unreasonable delays are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake. In evaluating whether the delay in a particular case is unreasonable, however, courts must allow a substantial degree of flexibility. Courts cannot ignore the often unavoidable delays in transporting arrested persons from one facility to another, handling late-night bookings where no magistrate is readily available, obtaining the presence of an arresting officer who may be busy processing other suspects or securing the premises of an arrest, and other practical realities."

CASE SIGNIFICANCE: This case defines the allowable time a suspect may be detained by the police without a hearing when a warrantless arrest occurs. In *Gerstein v. Pugh*, the Court held that "the Fourth Amendment requires a prompt judicial determination of probable cause as a prerequisite to an extended pretrial detention following a warrantless arrest." In this case, the Court clarified what the term "prompt" in *Gerstein* means. The Court said that it is presumptively reasonable for the detention to last up to 48 hours. If more than 48 hours elapse, the government bears the burden of showing that the delay was reasonable. On the other hand, release within 48 hours does not necessarily mean that there was no unreasonable delay, but the burden of showing that the delay was unreasonable shifts to the person who has been detained. In the words of the Court, "although we hesitate to announce that the Constitution compels a specific time limit, it is important to provide some degree of certainty so that States and counties may establish procedures with confidence that they fall within constitutional bounds." The Court added that, in evaluating whether the delay in a particular case is unreasonable, courts must allow a substantial degree of flexibility, taking into account practical realities. This includes unavoidable delays in transporting arrested persons, handling late-night bookings, and obtaining the presence of an arresting officer who may be busy doing other jobs. Determinations of unreasonable or reasonable delay are made by lower courts on a case-by-case basis, but using the principle laid out in *McLaughlin* as a standard. This puts more substance and meaning into the word "prompt."

United States v. Alvarez-Machain
504 U.S. 655 (1992)

CAPSULE: The abduction of a foreigner that is not in violation of a treaty does not deprive a U.S. court of jurisdiction in a criminal trial.

FACTS: Alvarez-Machain, a citizen and resident of Mexico, was indicted in the United States for participating in the kidnapping and murder of a U.S. Drug Enforcement Administration (DEA) agent, Enrique Camarena-Salazar, and his pilot. Alvarez-Machain was subsequently abducted from his medical office in Guadalajara, Mexico and flown to El Paso, Texas, where he was arrested by DEA officials. In court, Alvarez-Machain moved to dismiss the indictment, claiming that the U.S. District Court did not have jurisdiction to try him because he was abducted in violation of an extradition treaty between the U.S. and Mexico.

SUPREME COURT DECISION: Can a criminal defendant, forcibly abducted and brought to the United States from Mexico, be tried by a United States court? YES.

SUPREME COURT DECISION: Alvarez-Machain's abduction did not violate the Extradition Treaty between the United States and Mexico; therefore, the abduction did not deprive the U.S. court of jurisdiction in a criminal trial.

REASON: "This Court has never departed from the rule announced in *Ker* [*v. Illinois*, 119 U.S. 436 (1886)] that the power of a court to try a person for [a] crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.' No persuasive reasons are newly presented to justify overruling this line of cases. They rest on the sound basis that due process of law is satisfied when one present in court is convicted of [a] crime after having been fairly apprised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will" (citing *Frisbie v. Collins*, 342 U.S. 519 [1952]).

CASE SIGNIFICANCE: The decision in this case was based on provisions of the Extradition Treaty between the United States and Mexico. The Court said that a defendant cannot be prosecuted in violation of the terms of an extradition treaty, but that the Extradition Treaty between the United States and Mexico did not contain any prohibition against kidnapping. Said the Court: "[n]either the Treaty's language nor the history of negotiations and practice under it supports the proposition that it prohibits abductions outside its terms."

The greater significance of this case, however, lies in the Court's implied reaffirmation of the principle that "the power of a court to try a person for crime is not impaired by the fact that [a defendant] had been brought within the court's jurisdiction by reason of a 'forcible abduction'" (*Frisbie v. Collins*, 342 U.S., at 522 [1952]). In Frisbie, a defendant alleged that while he was living in Chicago, Michigan officers forcibly seized, handcuffed, blackjacked, and then abducted him back to Michigan. He sought release from the Michigan state prison in a habeas corpus case. The Court denied his release, saying that an unlawful arrest has no impact on a subsequent criminal prosecution and that an invalid arrest does not deprive the court of jurisdiction to try a criminal case. This leads to an interesting situation: evidence illegally seized is not admissible in a court of law, but a defendant who has been unlawfully arrested can nonetheless be lawfully tried in criminal court.

Illinois v. McArthur
531 U.S. 326 (2001)

CAPSULE: Under exigent circumstances, and where there is a need to preserve evidence until the police can obtain a warrant, they may temporarily restrain a person's movements without violating his or her Fourth Amendment right.

FACTS: A woman asked police officers to accompany her to the trailer where she lived with her husband, McArthur, while she removed her belongings. The woman went inside where McArthur was present, and the officers remained outside. When the woman emerged, she told one of the officers that McArthur had drugs in the trailer. This established probable cause and so the officer knocked on the door and asked permission to search the trailer, which McArthur denied. One officer left to obtain a warrant. When McArthur stepped onto his porch, the other officer prevented him from reentering his trailer unaccompanied. McArthur did reenter the trailer on three occasions while the officer stood in the doorway and observed him. When the other officer returned with a warrant, the officers searched the trailer and found drugs and paraphernalia.

SUPREME COURT DECISION: Was the temporary seizure of a suspect while officers obtained a warrant to search his trailer valid? YES.

SUPREME COURT DECISION: Under exigent circumstances, and where there is a need to preserve evidence until the police obtain a warrant, they may temporarily restrain a suspect without violating his or her Fourth Amendment right against unreasonable searches and seizures. The minimal nature of the intrusion and the law enforcement interest at stake justified the brief seizure.

REASON: "When faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable." "Temporarily keeping a person from entering his home, a consequence whenever police stop a person on the street, is considerably less intrusive than police entry into the home itself in order to make a warrantless arrest or conduct a search." "We have found no case in which this Court has held unlawful a temporary seizure that was supported by probable cause and was designed to prevent the loss of evidence while the police diligently obtained a warrant in a reasonable period of time."

CASE SIGNIFICANCE: The Court gave four reasons for this decision:

1. The police had probable cause to believe that the trailer home contained evidence of a crime and unlawful drugs;

2. The police had good reasons to fear that, unless restrained, the suspect would destroy the drugs before they could return with a warrant;

3. The police made reasonable effort to reconcile their law enforcement needs with the demands of suspect's personal privacy; and

4. The police imposed the restraint for a limited time—two hours.

The Court concluded: the police officers in this case had probable cause to believe that a home contained contraband, which was evidence of a crime. They reasonably believed that the home's resident, if left free of any restraint, would destroy that evidence. And they imposed a restraint that was both limited and tailored reasonably to secure law enforcement needs while protecting privacy interests. In our view, the restraint met the Fourth Amendment's demands.

This case is enlightening because although the Court allowed the temporary restraint of the suspect while another officer went to obtain a warrant, the decision carefully pointed out the circumstances that justified the restraint. The implication is that temporary restraints by officers must be justified by circumstances similar to this case for the restraint to be valid. How similar is difficult to determine; that will have to be decided on a case-by-case basis. It is safe to say, however, that the closer the circumstances are to this case, the greater is the likelihood that the police restraint will be deemed valid.

Atwater v. City of Lago Vista
532 U.S. 318 (2000)

CAPSULE: "The Fourth Amendment does not forbid a warrantless arrest for a minor criminal offense, such as a misdemeanor seatbelt violation, punishable only by a fine."

FACTS: A Texas law requires all front seat passengers to wear a seatbelt, a crime punishable by a fine of not more than $50. Texas law also expressly authorizes a police officer to arrest without a warrant if a person is found in violation of the law, although the police may issue a citation in lieu of arrest. Atwater was driving a vehicle with her two young children in the front seat; none was wearing a seatbelt. An officer observed the violation and stopped Atwater—telling her as he approached the vehicle that she was going to jail. Following the release of Atwater's children to a neighbor, the officer handcuffed Atwater, placed her in his police car, and took her to the police station where she was made to remove her shoes, jewelry, eyeglasses, and empty her pockets. Officers later took her mug shot and placed her in a cell for about an hour. She was then taken before a magistrate and released on bond. She later pleaded no contest and paid a $50 fine.

SUPREME COURT DECISION: Does the Fourth Amendment forbid a warrantless arrest for a minor criminal offense punishable only by a fine? NO.

SUPREME COURT DECISION: "The Fourth Amendment does not forbid a warrantless arrest for a minor criminal offense, such as a misdemeanor seatbelt violation, punishable only by a fine."

REASON: At common law, commentators disagreed on the ability of police officers to make a warrantless arrest of an individual if the crime committed was not a felony or a misdemeanor involving a breach of the peace. However, during the time of the framing of the Bill of Rights, the states regularly authorized police officers to make warrantless misdemeanor arrests without the requirement of a breach of the peace. When combined with the fact that each of the states currently has laws authorizing arrest for misdemeanors not involving a breach of the peace, Atwater's argument of a constitutional proscription against warrantless arrests for minor violations was not persuasive. Atwater also argued that, even if there was not a constitutional provision against such arrests, the Court should create one, drawing a distinction between crimes for which a sentence of jail time could accrue from those punishable only by a fine. The latter, then, could not result in an arrest without a warrant. "The trouble with this distinction, of course, is that an officer on the street might not be able to tell [if the crime carries a jail sentence]" "... [because] penalties for ostensibly identical conduct can vary on account of facts difficult (if not impossible) to know at the scene of the arrest." "For all these reasons, Atwater's various distinctions between permissible and impermissible arrests for minor crimes strike us as very unsatisfactory lines to require police officers to draw on a moment's notice."

CASE SIGNIFICANCE: This case is important because it settles an issue of concern to the police: whether the police can arrest persons who violate laws or ordinances that are not punishable with jail or prison time. At present, all

50 states and the District of Columbia have laws authorizing such warrantless arrests. Texas allows a warrantless arrest even for a minor criminal offense, such as not wearing a seatbelt, which is punishable only by a $50 fine. Atwater paid the fine, but later challenged the constitutionality of the law, arguing that it violated her Fourth Amendment right. She maintained that no such arrests were authorized under common law and that the history and intent of the framers of the Constitution did not allow such arrests. The Court disagreed, saying that it was unclear whether or not such arrests were authorized under common law, and also found that "there is no historical evidence that the framers or proponents of the Fourth Amendment, outspokenly opposed to the infamous general warrants and writs of assistance, were at all concerned about warrantless arrests by local constables and other peace officers." The Court then concluded that: "We simply cannot conclude that the Fourth Amendment, as originally understood, forbade peace officers to arrest without warrant for misdemeanors not amounting to or involving breach of the peace." Given these, the Court held that warrantless arrests for nonjailable offenses are constitutional.

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