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**Homes as castles and cars as downhill skateboards.**

Image from National Institute of Standards & Technology. United States courts generally treat one's home as the closest thing to one's castle, by making limited exceptions for warrantless home searches. (On the other hand, search warrants ordinarily are too easy for police officers to obtain, with the honesty of warrant applications generally taken by judicial officers at face value; fortunately, defendants are permitted to challenge warrants at suppression hearings and on appeal). In relation to private homes, cars tend to be afforded no more privacy than a skateboard headed downhill, with car drivers being oppressed by the Supreme Court's unholy triumvirate of *Whren v. U.S.*, 517 U.S. 806 (1996), *Atwater v. Lago Vista*, 532 U.S. 318 (2001), and *New York v. Belton*, 453 U.S. 454 (1981) -- all detailed below -- together with exposure to invasive field sobriety checkpoints, hassling drunk driving investigations even for a faint odor of alcohol consumed long beforehand, lengthy moving violation stops while the cop presumably checks one's license for open warrants and the car for any stolen vehicle report (sometimes with a drug dog sniff thrown in, to boot), and an almost inevitable search of the car and its occupants for even the slightest alleged whiff of the smell of smoked marijuana. Under *Whren*, the police may stop a car under the pretext of a moving violation, even when the cops' intention is to investigate the violation of drug laws or other criminal laws that have nothing to do with speeding and other moving violations. Unfortunately, *Whren* will encourage police prevarication about moving violations to justify car stops. At hearings to suppress car stops, judges ordinarily will believe the cop more than the testifying defendant, at minimum figuring the cop has less at stake to want to lie than the defendant (which I vehemently dispute). Furthermore, even if a suppression hearing judge finds neither the cop nor the defense witnesses any less credible than the other, the judge still may find that where credibility is in equipoise, that does not eliminate probable cause or reasonable suspicion to stop the car (for instance, a judge may find that a police officer can have reasonable suspicion to believe that a car's tinting exceeds the legal limit even if the defendant proves that the tinting did not exceed the legal limit (at least where the tinting comes close to the legal limit)). Under *Atwater*, the Constitution does not preclude police from arresting and taking a person into custody for committing a non-jailable traffic offense (for instance, an unlawful U-turn). (Fortunately, the law in such states as Virginia prohibits such arrests for non-jailable moving violations). *Atwater* will encourage more pretextual car stops under *Whren*, in order to give police the opportunity to arrest people for non-jailable traffic violations, and to search both the arrestee and the arrestee's car incident to arrest. *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990) (permitting warrantless searches incident to arrest); *Belton*, 453 U.S. 454 (permitting warrantless car passenger compartment searches incident to arrest). Alternatively, after making a lawful car stop, a police officer may be able to conduct a car inventory search if the police officer determines that the car is not current on mandatory inspections, if the driver does not have a current license, or if nobody is able to drive the car away immediately (for instance, if the officer arrests the driver under *Atwater*). Fortunately, drivers and passengers do not automatically lose all rights by being stopped in cars. For instance, see here (our rights page) and here (Flex Your Rights' Busted video). Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:15