

No. 19-292

**In the Supreme Court of the United
States**

ROXANNE TORRES, *PETITIONER*,

v.

JANICE MADRID AND RICHARD WILLIAMSON, *RESPONDENTS*.

**On Writ of Certiorari to the
U.S. Court of Appeals for the Tenth Circuit**

BRIEF FOR RESPONDENTS

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QUESTIONS PRESENTED

Is an unsuccessful attempt to detain a suspect by use of physical force a “seizure” within the meaning of the Fourth Amendment or must physical force be successful in detaining a suspect to constitute a “seizure”?

TABLE OF CONTENTS

I. This constitutional interpretation of the word “seizure” supports the petitioner does not have a constitutional argument of the 4th amendment..... 6

 A. Jurisdiction..... 6

 B. Operating Definition of "Seizure".....6

 i. colloquial definition..... 6

 ii. legal definition.....7

 iii. Seizure as a prerequisite to search.....8

 C. Operating Definition of "Unreasonable" 9

 i. Legal Definition of Probable Cause...10

 ii. Legal Definition of Reasonable Suspicion..10

II. Original understanding of the word “seizure” at the time of the founding means that physical force is required to be successful to constitute seizure..... 10

TABLE OF AUTHORITIES

ILLINOIS V. WARDLOW :: 528 U.S. 119 (2000)

CALIFORNIA V. HODARI D., 499 U.S. 621 (1991)

TERRY V. OHIO, 392 U.S. 1(1968)

ART. 10 VIRGINIA DECLARATION OF RIGHTS 1776

AMEND. 4 TO THE UNITED STATES CONSTITUTION

**AMENT X. PENNSYLVANIA DECLARATION OF RIGHTS AND
CONSTITUTION, 1776**

SUMMARY OF ARGUMENT

THE RESPONDENTS PRESENT TWO SEPARATE AND UNIQUE ARGUMENTS IN THIS BRIEF. OUR FIRST ARGUMENT IS THE INTERPRETATION OF THE WORDS “SEIZURE” THROUGH THE COLOQUIAL, LEGAL, AND LINGUISTIC SENSE REQUIRES THAT PHYSICAL FORCE BE SUCCESSFUL TO CONSTITUTE A SEIZURE UNDER THE 4TH AMENDMENT TO THE UNITED STATES CONSTITUTION. THIS ARGUMENT IS SUPPORTED WITH EVIDENCE FROM THE LINGUISTIC EVIDENCE ALONG WITH THE SUPREME COURT’S OPINIONS IN *ILLINOIS V. WARDLOW*. OUR SECOND ARGUMENT IS BASED ON THE ORIGINAL MEANING OF THE WORD SEIZURE AND THE ORIGINAL PRACTICE AND UNDERSTANDING OF THE 4TH AMENDMENT TO THE UNITED STATES CONSTITUTION. THIS ARGUMENT SPECIFICALLY UNDERTAKES AN IN-DEPTH ANALYSIS OF THE COLONIAL PRACTICE OF SEARCHES AND SEIZURES AND HOW THAT SUPPORTS OUR CONTENTION THAT THE ORIGINAL MEANING SUPPORTS OUR DEFINITION OF SEIZURE. FURTHERMORE, OUR SECOND ARGUMENT IS BASED ON ANALYSES OF THE STRUCTURE OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION. WE CONCLUDE THAT OUR STRUCTURAL ARGUMENT SUPPORTS THE CONTENTION THAT PHYSICAL FORCE HAS TO BE SUCCESSFUL FOR SOMEONE TO BE SEIZED. IN THIS ARGUMENT WE CONCLUDE THAT FORCE HAS TO BE SUCCESSFUL BECAUSE WITHOUT IT AN OFFICER OF THE PEACE IS UNABLE TO CONTROL THE LIBERTY OF THE PERSON.

ARGUMENT

I. THIS CONSTITUTIONAL INTERPRETATION OF THE WORD "SEIZURE" SUPPORTS THE RESPONDENT THAT PETITIONER DOES NOT HAVE A CONSTITUTIONAL ARGUMENT ON THE 4TH AMENDMENT.

A. Jurisdiction

The petitioner's appeal falls under the jurisprudence of this Supreme Court by a matter of a constitutional question regarding the 4th amendment. The jurisdictional limit of this Supreme Court must be regarding the court's application of the 4th amendment as outlined in Article III Section II, "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution." Therefore the court must reject the petitioner's case if it is ruled that seizure does not include unsuccessful apprehensions; however, if the court rules that the petitioner's definition of seizure is incorrect that would mean the case was never a constitutional question to *begin with* and should have fallen outside the jurisdiction of the court.

B. Operating Definition of "Seizure"

i. Colloquial definition

To define both the court's jurisprudence pertaining this case as well as the substantiated conclusion on

whether the petitioner was "seized" this court should look at both the colloquial and legal definitions of the word. Colloquially, "seizure" is defined as "the taking possession of person or property by legal process."¹ It is evident that there was no unreasonable taking of possession of person or property, as the petitioner was not "possessed"; she was not taken into custody as she avoided the officer's lawful orders and fled the scene. The colloquial definition of the word is key to determine its usage within the constitution: despite being a legal document, its origins are not limited to those with a legal pedigree, and it had the intent to be accessible to the general populace.

ii. Legal Definition

Legal scholarship has been categorical that for the court to rule a seizure unconstitutional, a full apprehension of goods and persons must be achieved by the arresting officer. There is legal consensus that attempts must be successful in order to constitute a seizure: legal dictionaries state that seizure means, "the taking by law enforcement officers of potential evidence in a criminal case."² Likewise Nolo defines seizure as "The taking of physical evidence or property by law enforcement officials. Seized evidence can include taking blood for a drug test to

¹ "Seizure," Merriam-Webster (Merriam-Webster), accessed February 20, 2021, <https://www.merriam-webster.com/dictionary/seizure>.

² "Legal Dictionary - Law.com," Law.com Legal Dictionary, accessed February 20, 2021, <https://dictionary.law.com/Default.aspx?typed=Seizure&type=1>.

impounding a car used in a robbery, “³ and the state of *being seized* as, "Having ownership and possession of something"⁴; Black Law Dictionary likewise defines search and seizure as, "searching and taking property and data that can be used by the prosecution of the criminal."⁵ Effectively *all* legal and colloquial dictionaries define "taking" and "possession" as prerequisites for interaction with law enforcement to constitute a "seizure", which did not happen in this case since the petitioner evaded the officers. Since the officers in the case failed to "take" the petitioner, the petitioner cannot claim her 4th amendment rights were violated.

iii. Seizure as a prerequisite to search

Likewise, the constitution's original intent with its limits on seizures was not only to stop apprehension and arrest of a person but also to define seizure as a *prerequisite* to search. Searching an object or a person is impossible unless the officer has control of the suspect/object. In this particular case, it would have been impossible for the officers to search the suspect, as they were not in control of the petitioner. Searches and Seizures are words that have different meanings when used together and separately, and in this case, the officers were unable to take control of the suspect for both the purpose of arrest and for the purposes of searching her.

³ "Seizure," www.nolo.com, accessed February 22, 2021, <https://www.nolo.com/dictionary/seizure-term.html>.

⁴ *Ibid*

⁵ *Ibid footnote 2*

C. Operating Definition of "Unreasonable"

i. Legal Definition of Probable Cause

It is commonly accepted common law that unreasonable searches and seizures don't achieve the standard of probable cause. As defined by Nolo an unreasonable search or seizure is, "seizure by a law enforcement officer without a search warrant and without probable cause to believe that evidence of a crime is present."⁶ The petitioner was clearly inebriated, and was in close proximity to a car; the officers had probable cause both for use of illegal narcotics *and* the possibility of a DUI. Ruling that officers cannot stop a flagrant crime and prevent someone from committing another crime would be a massive overturning of precedent that would make it functionally impossible for police to operate and to prevent crime. The court must also remember that this case is not *statutory*, while there may be state laws that govern what tools can be used to effectuate a seizure, the constitution only takes a stance on whether the *initiation* of a seizure is reasonable or not; it clearly was in the petitioner's case. The case of excessive force should therefore be decided in the state courts, whose laws govern the police's modus operandi; the standard of probable cause was clearly

⁶"Unreasonable Search And Seizure," www.nolo.com, accessed February 20, 2021, <https://www.nolo.com/dictionary/unreasonable-search-and-seizure-term.html>.

met, and this case's constitutional question has no regard for *excessive force*.

ii. Legal Definition of Reasonable Suspicion

This case, however, should be evaluated on a paradigm of the reasonable suspicion that the officers had when originally stopping the petitioner. As established in *Illinois v Wardlow*, the officers only needed the legal requirement of reasonable suspicion to meet before asking the petitioner to stop. The precedent set on the multiple "stop and frisk" cases constitute that the respondents had the legal authority to request the petitioner to stop, thus constituting a lawful order. The officers' action constituted a lawful order under the standard set by the New Mexico legislature, which means the officers met their standard of probable cause when the petitioner refused to obey the officer's orders.

II. The original understanding of the word "seizure" at the time of the founding means that physical force is required to be successful to constitute a seizure.

Whether a person has been "seized" often determines if he or she receives Fourth Amendment protection. The founders understood that the "seizure" means that a person has to be under the sole control of the legal authority to constitute a seizure.

Colonial Virginia, which was the most consequential, acted as a "*laboratory of democracy*" for the formation of the Bill of Rights. It adopted a Declaration of Rights in June 1776, which provided "That general

warrants, whereby any officer...may be commanded....**to seize any person** or persons not named,...are grievous and oppressive, and ought not to be granted"(emphasis added). This provision implies that seizure of a person means that said person is under the control of the officer. Furthermore, colonial Pennsylvania in its amend. x of its Declaration of Rights intended to use the common law system and allow an officer of the peace to arrest a person who is trying to escape his commands. In this case, the word "arrest" is akin to the word "seize" where a person or object becomes "seized" when it is under the control and full direction of the law. Dictionaries and the time of the founding illuminate this view, that someone or something is seized when it is restrained and possession is transferred to the legal authority.

In order to restrain someone or something, officers of the law are able to use and exercise physical force to gain control, detain or arrest a person escaping from them. A seizure of a person requires the officer to control the liberty and free will of the person. The structure of the 4th Amendment reinforces this point, that an authorized warrant to seize a person has to become "seized" to constitute a seizure. For this to occur it requires that the physical control and the control of liberty has to be captured by the legal authority. As such, the use of physical force has to be successful for a person to be seized.

In the text of the 4th Amendment, the aforementioned words "seizure" and "seized" are explicitly written. This further reinforces the point that the seizure should mean that physical control is

necessary to control the person and his liberty to constitute a seizure. Furthermore, the Supreme Court has held based on the original public meaning in *Terry v. Ohio* based on the present facts of the case that a seizure is like holding a person for the protection of the officer while conducting a search. Furthermore, in *California v. Hadari D.* the court held that an escaping suspect is not “seized: unless the legal authorities apply physical force to the suspect. However, the facts of the case are different to this one. The court in *Hadari D.* did not reach the conclusion of whether the force has to be successful to constitute a seizure. However, we believe that the original public meaning supports the understanding that the person must be under the control of the officer to constitute a seizure. This meaning is the one that is most aligned with the practicality that police officers face on the ground and the Constitution’s original meaning as the founders envisioned. In conclusion, we believe that a seizure means that physical force is required to be successful to detain a person to constitute a seizure.

CONCLUSION

Respectfully submitted,

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