

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 PETITIONER/RESPONDENTS

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QUESTIONS PRESENTED

Police officers shot and injured Petitioner, However she fled and evaded arrest temporarily. In the following excessive force case, the district court allowed for a judgment summary of the police officers by virtue that no Fourth Amendment “seizure” occurred. The Tenth Circuit states that an officer's use of physical force is not a seizure if the person the force is applied against is still able to flee and evade officers.

The Question presented is:

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

	Page
QUESTION PRESENTED	I
TABLE OF AUTHORITIES	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
CONCLUSION	11

TABLE OF AUTHORITIES

CASES

***BRENDLIN V. CALIFORNIA*, 551 US 249 (SUPREME COURT 2007)**

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

***MULLENIX V. LUNA*, 136 S. CT. 305 (2015)**

***TENNESSEE V. GARNER*, 471 U.S. 1 (1985)**

***TORRES V. MADRID*, NO. 18-2134 (10TH CIR. 2019)**

OTHER SOURCES

GEORGE MASON, VIRGINIA DECLARATION OF RIGHTS (UNANIMOUSLY ADOPTED JUNE 12, 1776)

JAMES MADISON, “BILL OF RIGHTS AS PROPOSED” (MARCH 4, 1789)

***TORRES V. MADRID*, OYEZ, [HTTPS://WWW.OYEZ.ORG/CASES/2020/19-292](https://www.oyez.org/cases/2020/19-292) (LAST VISITED FEBRUARY 19, 2021)**

SUMMARY OF ARGUMENT

THE CASE OF TORRES V. MADRID, THE QUESTION OF WHAT CONSTITUTES A SEIZURE UNDER THE FOURTH AMENDMENT COMES INTO PLAY. COMMON LAW SAYS THAT AN ARREST OF A PERSON UNDER THE FOURTH AMENDMENT IS PUT INTO PLACE WHEN SOMEONE HAS BEEN TOUCHED NO MATTER HOW LONG AS LONG AS THE INTENTION IS FOR THE PURPOSE OF RESTRAINING A PERSON. HOWEVER, ACCORDING TO THE TENTH CIRCUIT COURT'S DECISION, AS LONG AS A PERSON CAN STILL FLEE OFFICERS THEY HAVE NOT BEEN SEIZED.

IN THIS CASE ROXXANNE TORRES WAS SEIZED WHEN SHE WAS SHOT. THIS IS BECAUSE ALTHOUGH THE OFFICERS DID NOT PHYSICALLY TOUCH HER, THEIR GUNS WERE AN EXTENSION OF THEIR FORCE. IN THIS CASE THE SHOTS FIRED HAD THE INTENTION OF DETAINING ROXANNE TORRES WHICH IS WHY THE GUNSHOTS ARE AN EXTENSION OF THE OFFICERS PHYSICAL FORCE. TORRES WAS SEIZED UNCONSTITUTIONALLY, HOWEVER, BECAUSE THE OFFICERS HAD NO FIRM EVIDENCE THAT WOULD LEAD TO ENGAGING TORRES IN A SEIZURE.

ARGUMENT

I. The shooting of Roxanne Torres was unreasonable.

A. Roxanne Torres should not have been shot according to *Tennessee v. Garner*

Seizure is enacted by an officer once they have applied physical force with the intent to detain someone. As stated by Justice White in the assent of *Tennessee v. Garner*, “[T]he constitutionality of the use of deadly force to prevent the escape of an apparently unarmed suspected felon. We conclude that such force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”¹ In the case of Roxanne Torres she was seized when she was shot by officers Williamson and Madrid as she was trying to flee. “When Torres put the car in drive, Officer Williamson brandished his firearm. At some point, Officer Madrid drew her firearm as well. Torres testified that she “stepped on the gas . . . to get away,” and the officers “shot as soon as

¹ *Tennessee v. Garner*, 471 U.S. 1 (1985).

the [Cruiser] creeped a little inch or two.” Id. at 206. Officer Madrid testified that the Cruiser “drove at [her]” and she fired “at the driver through the windshield” “to stop the driver from running [her] over.” Id. at 114. Officer Williamson testified that he shot at the driver because he feared being “crush[ed]” between the Cruiser and the neighboring car, as well as “to stop the action of [the Cruiser] going towards [Officer] Madrid.” Id. at 125”² This connects with *Garner v. Tennessee* because the officers claim that they had probable cause to believe Torres could have posed a threat to the safety of themselves as well as the safety of the community. However, according to the officers testimony they were not positioned around the car in a way that would pose the danger necessary for their actions to be justified as reasonable.

- B. According to the Fourth Amendment being shot is an extension of an officers physical force.

In the case of *Hodari D v. California* the court holds that physical action must be in place in order to constitute an arrest “Either by physically grasping the person, the slightest touching would suffice, or by the person’s voluntary submission to a

² *Torres v. Madrid*, No. 18-2134 (10th Cir. 2019)

show of authority.”³ In the case of Torres common law was enacted because the shots the officers fired were an extension of their physical touch. This is because when the officers shot Torres they had the intent to detain her. This idea can also be seen in the case of *Mullenix v. Luna* when officer Mullenix requested permission to shoot Israel Leija’s car in order to stop him from evading arrest “As Baker and Rodriguez maintained their pursuit, other law enforcement officers set up tire spikes at three locations. ... Upon learning of the other spike strip positions, however, Mullenix began to consider another tactic: shooting at Leija's car in order to disable it. 2013 WL 4017124, *1. In the case of Torres, officers Madrid and Williamson shot at her car in order to stop her from being able to evade them. In shooting at the car Officers Williamson and Madrid hit Torres which constitutes the seizure even with lacking physical touch that may be considered constitutional. In 1604 the countess of Rutland was taken prisoner by the sergeant at arms when he touched her with his mase and declared her his prisoner.⁴ This is yet another example of

³ *Hodari D v. California* 499 U.S 621(1991).

⁴ *Torres v. Madrid*, Oyez, <https://www.oyez.org/cases/2020/19-292> (last visited February 19, 2021)

when a weapon is considered an extension of a person's physical force.

II. Roxanne Torres was unreasonably seized due to the lack of evidence Officers Madrid and Williamson had against her.

A. Roxanne Torres was seized when she was shot by Officers Williamson and Madrid, but there was no reason for her to be seized in the first place. Williamson and Madrid were at the apartment Torres was parked in front of, on July 15, 2014, was to arrest a Kayenta Jackson. As stated by George Mason in the Virginia Declaration of Rights, “general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.”⁵ When the officers appeared they saw two people standing besides Torres’ car. Once seeing the officers, one

⁵ George Mason, Virginia Declaration of Rights (unanimously adopted June 12, 1776)

ran towards the apartment building, the other (Torres) got into the car. After seeing this, “Officer Richard Williamson approached the Cruiser’s closed driver-side window and told Torres several times, “Show me your hands,” as he perceived Torres was making “furtive movements . . . that [he] couldn’t really see because of the [Cruiser’s] tint[ed]” windows. *Id.* at 124 (internal quotation marks omitted). Officer Janice Madrid took up a position near the Cruiser’s driver-side front tire. She could not see who the driver was, but she perceived the driver was making “aggressive movements inside the vehicle.” *Id.* at 115. *Torres v. Madrid, No. 18-2134 (10th Cir. 2019)*. The officers had no way of knowing whether the person in the vehicle they approached was in fact the person they had the arrest warrant for. The officers in their [testimony, as stated in the Appeal to the Tenth Circuit], even stated that Torres was making “furtive movements . . . that [they] couldn’t really see because of the [Cruiser’s] tint[ed]” windows” and that they “could not see who the driver was”. Roxanne Torres was not the person named in the arrest warrant and she had not committed the act that that warrant was for.

- B. In the case of Roxanne Torres, there was no reason for the police to suspect her.

This likewise seen in the case of *Hodari D.* as stated by Justice Scalia, "In that court's view, *Hodari* was seized for purposes of the Fourth Amendment when he was chased and the seizure was unreasonable because the officer did not have a reasonable suspicion of criminal conduct that would justify a stop" *Hodari D v. California*. In *Hodari D's* case the small object that was thrown at the police was found to be cocaine, but this fact was discovered after the seizure and it couldn't be added as evidence. Likewise, at the time when Officers Williamson and Madrid approached Torres' car they did not know of her outstanding warrant and could not clearly tell that she was in fact on meth without testing her. This idea can also be seen in *Brendlin v. California* in which Deputy Sheriff Robert Brokenbrough and his partner pulled over Buick which they had previously seen, with expired registration tags, to check if its temporary operator's permit was valid. In a quote from this case "The officers decided to pull the Buick over to verify that the permit matched the vehicle, even though, as Brokenbrough admitted later, there was nothing unusual about the permit or the way it was affixed. Brokenbrough asked the driver, Karen Simeroth, for her license and saw a passenger in the front seat, petitioner Bruce Brendlin, whom he recognized as

"one of the Brendlin brothers." *Id.*, at 65. He recalled that either Scott or Bruce Brendlin had dropped out of parole supervision and asked Brendlin to identify himself.[1] Brokenbrough returned to his cruiser, called for backup ... Once reinforcements arrived, Brokenbrough went to the passenger side of the Buick, ordered him out of the car at gunpoint, and declared him under arrest. When the police searched Brendlin incident to arrest, they found an orange syringe cap on his person. A patdown search of Simeroth revealed syringes and a plastic bag of a green leafy substance, and she was also formally arrested. Officers then searched the car and found tubing, a scale, and other things used to produce methamphetamine."⁶ The officer in this case admitted that there was nothing suspicious about the permit, and so the officers really had no reason to stop the car. Brendlin was arrested by the police after being identified, but this was not the case in *Torres v. Madrid*. Officers Williamson and Madrid did approach the car of Roxanne Torres, but they did not identify her as the person whom they held the warrant for or know of her outstanding warrant. When Roxanne Torres entered her car, the police did know whether or not she was connected

⁶ *Brendlin v. California*, 551 US 249 - Supreme Court 2007

to the person they were going to arrest, they just decided to approach her car. At the time of her seizure, there was no real evidence for the police officers to suspect Roxanne Torres.

- C. As stated by James Madison in the “Bill of Rights as Proposed”, “[a]rticle the sixth. 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.”⁷ Roxanne Torres was unreasonably seized when Officers Williamson and Madrid shot at her car. According to James Madison, “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 warrant in the officers’ hands at the time of the seizure might have had this information, but this information did not support the seizure of Torres. The “place to be searched, and the persons or things to be seized” were not Roxanne

⁷ James Madison, “Bill of Rights as Proposed” (March 4, 1789)

**Torres and her car, but Kayenta Jackson
in her apartment.**

CONCLUSION

According to the Fourth Amendment as well as numerous other precedents set by the Supreme Court Roxanne Torress was seized however, that seizure was unreasonable. According to *Hodari D v. California*, and *Mullenix v. Luna*, and *Tennessee v. Garner* the shots fired at Torres, were an extension of the physical force of Officers Williamson and Madrid due to their intention of detaining Roxanne Torres. Although Torres was able to flee and evade officers she had been seized. However, Roxanne Torres was seized unreasonably due to the fact that Officers Williamson and Madrid did not have the proper evidence to detain Torres in the first place. The warrant that Officers Williamson and Madrid were at the apartment complex to fulfill was not against Roxanne Torres. Furthermore, the officers would have had no idea that Ms. Torres was intoxicated at the time of the incident.

It is because of this that we ask the court to view Ms. Torres has been seized. We would also ask that this court view Ms. Torres seizure as unreasonable because Officers Williamson and Madrid could not have known that Ms. Torres was breaking the law and had an outstanding warrant for her arrest at the time that they first inquired about her actions.

Respectfully submitted,

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