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"?

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"Torres v. Madrid." Oyez, www.oyez.org/cases/2020/19-292. Accessed 10 Feb. 2021.

William Baude & James Y. Stern, The Positive Law Model of the Fourth Amendment, 129 Harv. L. Rev. 1821 (2016)

one more primary source

Summary of Argument

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated…" states the Fourth Amendment to the Constitution of the United States. As observed in the case California vs. Hodari D., the court ruled that physical force is required for a seizure. This gives leverage to the officer's case and at the same time degrades the case of the petitioner.

The petitioner cannot justify any claim that there was no probable cause. The officers were "clearly marked" and Torres was "tripping out" in front of the suspect's apartment. Another discrepancy in the Petitioner's case is Motive; as the officer could have been shooting at the vehicle in self-defense. Due to the fact that intent to

HARM/KILL IS HIGHLY SUBJECTIVE, THERE CANNOT BE ANY GIVEN PROOF FOR ONE SIDE OR THE OTHER. SO ANY CASE THE PETITIONER BRINGS THAT INCLUDES INTENT TO HARM CANNOT BE PROVEN AND IS IRRELEVANT AND UNABLE TO BE PROVEN EITHER WAY.

Finally, using the case presented in Atwater vs City of Lago Vista (2001), there was no intended harm to Torres in the initial encounter. There was probable cause, use of proper engagement, and the case was presented to her in a civil and abiding manner until she began to conduct herself erratically, putting the officers at risk.

Considering these, the decision of the Court of Appeals for the 10th Circuit should be upheld.

ARGUMENT

I. The term of "Seizure" has been clearly defined through preceding court cases

A. This court had defined seizure through preceding cases, generally leading to one conclusion

To begin, In the case California vs. Hodari D, this court held that a seizure is the result of applied physical force or submission to the authority.[1] *California vs. Hodari D, 1991.* This precedent rules out any argument of the Petitioner that claims an unreasonable seizure took place. This upholds that argument brought forth by the Respondent in the question of this case, "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"?" Going off of the precedent of this court, a seizure is defined as

[1] *California v. Hodari D., 499 U.S. 621 (1991)*

an application of physical force or submission to authority *with the result of the detention or restraint of the person.* [2]

Second, Using the case[3] *Mullenix V Luna,* this court agreed that "there was no clearly established law saying that the use of deadly force on a fleeing suspect that posed a danger to others violates the Fourth Amendment." Using the argument that Madrid and Williamson shot at Torres in self-defense and not out of aggression, their case is completely valid and acceptable. In this case, there was no reason to state that Williamson and Madrid were not justified in apprehending the suspect, and were not deemed inappropriate to the situation, there can be no valid argument holding the point that Torres was unjustifiably seized. As shown using this court's own precedent, a seizure must be applied physical force, and in order for the seizure to truly be constituted as a seizure, it must result in the apprehension of the suspect.

To support this, California vs Hodari D states, "The Supreme Court held that a Fourth Amendment seizure

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[2] *California v. Hodari D., 499 U.S. 621 (1991)*

[3] *Mullenix v. Luna, 136 S. Ct. 305 (2015)*

requires some sort of physical force with lawful authority, or submission to an assertion of authority."[4] *California v. Hodari D., 499 U.S. 621 (1991)* holds the largest and by far most supportive element in the entire case. Along with that, this, taken from the case itself, seizure is defined as "submission to an officer's "show of authority" to restrain the subject's liberty."[5] And as stated in the Respondent's brief for this case - "In the present case, there was no sign that Petitioner's freedom of movement was restrained as she fled, without pause, from the scene." There was no submission in this case, therefore any claim that the Petitioner has pertaining to unreasonable search and seizure is invalid and cannot stand in a court of law.

"From the time of the founding to the present, the word "seizure" has meant a "taking possession"[6] *California vs Hodari D (1991)*. To continue - "A seizure is a single act, and not a continuous fact"[7]. A seizure is a one-time circumstance. You either have seized the subject or you have not. This maintains the *explicitly stated* precedent

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[4] *"Torres v. Madrid." Oyez, www.oyez.org/cases/2020/19-292. Accessed 10 Feb. 2021.*

[5] *California v. Hodari D., 499 U.S. 621 (1991)*

[6] *California v. Hodari D., 499 U.S. 621 (1991)*

[7] *Cf. 85 U. S. Whitman, 18 Wall. 457, 85 U. S. 471 (1874)*

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”[8]. There was a show of authority that failed to restrain liberty, therefore the seizure was incomplete and cannot be defined as a true “seizure.”

“In that case, police cars with flashing lights had chased the decedent for 20 miles -- surely an adequate "show of authority" -- but he did not stop until his fatal crash into a police-erected blockade. The issue was whether his death could be held to be the consequence of an unreasonable seizure in violation of the Fourth Amendment. We did not even consider the possibility that a seizure could have occurred during the course of the chase because, as we explained, that "show of authority" did not produce his stop.”[9] This incident directly relates to the current matter at hand - although there was an “adequate show of authority”, there was no seizure because “the show of authority did not produce his stop.” Pertaining to the question at hand, the fact that there was either physical force or a show of authority did not matter, because the seizure was not in place until

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[8] *Terry v. Ohio, 392 U. S. 1, 392 U. S. 19, n. 1 (1968)*

[9] *Brower v. Inyo County, 489 U. S. 593, 489 U. S. 596 (1989)*

the subject was in custody. There was no consideration of a seizure before this was solidified.

When defining seizure using common law, we come to the same results. "...neither usage nor common law tradition makes an attempted seizure a seizure."[10] The mere attempt of a seizure through either physical force or a sufficient show of authority does not constitute a 4th Amendment seizure.

B. The Founders Had A Definition Of Seizure When The Bill Of Rights Was Written

The way that the Fourth Amendment was written gives some insight to the meaning behind the words. "...and the persons or things to be seized"[11] is how the Fourth Amendment to the Constitution concludes. It places persons and things in the same category of "things to be seized". A certified officer of the law will not attempt to show force or show authority over an inanimate object that they are under instruction to seize. No, they simply take the object and carry it away, or remove it for further scrutiny or use in a

[10] *California v. Hodari D., 499 U.S. 621 (1991)*

[11] *James Madison, "Bill of Rights as Proposed" (March 4, 1789):*

case. The way to handle a suspect in a seizure is quite similar if not the same. A simple show of force is not enough to constitute a seizure. The purpose of a seizure is not to show force or authority, but to successfully detain or apprehend the subject - placing the subject under the authority of the law. Torres was not seized until the moment the officers had custody of her. She was seized, but no seizure had taken place when she was shot by the officers Madrid and Williamson. There was a show of authority but they failed to detain her until the next day when she had checked into the hospital and been identified. She was under the control of the law.

II. THE PETITIONER'S CASE CANNOT SUPPORT THE PURPOSE OF SEIZURE

A. The word seizure "describes law enforcement's gathering of evidence"[12]

[12] *Legal Information Institute (LII)*

"Gathering of evidence" requires not only a show of force of authority but an apprehension of the evidence. In this case, the Petitioner, Torres, was the evidence in question.

Used in the case Terry v. Ohio, 392 U. S. 1 (1968), the terminology correctly conflates a seizure with an arrest, defining them the same. "...what constitutes an arrest (a seizure of the person)". We do not say that an arrest was a show of authority or the use of physical force; rather; we define arrest as "the action of seizing someone to take into custody."[13] We subsequently define "seizure" as "the action of capturing someone or something using force."[14] In this case, the force was present, but the capture did not take place until the next day. Therefore the seizure was not complete until her eventual arrest. The first attempt at a seizure was not enough to constitute a seizure in itself because the end result was inconclusive. It contributed to the seizure (by contributing to her need to check into a hospital) but was not the seizure itself. Using this information, a seizure is not a true seizure until apprehension

[13] *Merriam-Webster Dictionary*

[14] *Merriam-Webster Dictionary*

happens. A simple show of force is not enough to constitute a seizure unless the show of force results in the apprehension of the subject. The main issue being resolved here is not in the method used but in the result achieved, or the result that defines a seizure. The result here was only concluded a day later. The shooting in itself was not the seizure. You have only been seized while you are under the authority of the law- using this, we can conclude that during an investigatory stop or search, *that the suspect submits to*, the subject of the stop or search has been seized because they are under the authority of the law and are not free to leave. Merely showing the fact that the citizen is not free to leave is not enough- rather, the subject must be fully under the control of the law. "...no common law arrest occurs unless the arrestee submits"[15] *Terry v. Ohio, 392 U. S. 1 (1968),* supports the argument that no seizure has taken place until there is obvious and successful submission of the arrestee and they have been able to take said subject into custody.

[15] *Terry v. Ohio, 392 U. S. 1 (1968)*

"[The] timing of the seizure is governed by the citizen's reaction, rather than by the officer's conduct[16]"[17]. The officer can attempt a seizure using physical force or a show of authority, but if the attempt is not successful in detention of the suspect, there is no effective seizure. It could perhaps contribute to the eventual seizure but is not the seizure itself. Using this court's precedent, there are many instances and cases where the word seizure has been defined, including but not limited to *California vs. Hodari D, Terry vs. Ohio,* and more.

[16] *See ante at 499 U. S. 626-627*
[17] *California v. Hodari D., 499 U.S. 621 (1991)*

CONCLUSION

A seizure is not defined by the way it is gone about but by the result. The definition of seizure under the Fourth Amendment has been declared by this court in precedent: to argue this would be to overturn the many previous cases that have stated what a seizure is and how it is to be enacted. A seizure only truly takes place when the subject is in custody and not before. The way of going about a seizure does not define or help constitute a seizure; rather; the seizure is the one-step process of taking a subject into custody. Anything else is either a failed

attempt or a necessary in the process of apprehending the subject.

Therefore, using this court's own precedent, there is sufficient evidence to conclude that a seizure does not come into effect until the subject is under the law and in custody. This conclusion is in full support of the Fourth Amendment.

This court should hold that a seizure does not take place until the suspect is in custody of the officer, not before, no matter the attempts, failed or otherwise.

Respectfully submitted,

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