

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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SUMMARY OF ARGUMENT

In 2014, a case calling for the interpretation of the fourth amendment arose once again, this time asking for the definition of a seizure. Roxanne Torres was standing alone by her car and was witnessed by two police officers (Williamson and Madrid) to be “tripping out” on methamphetamine. The officers approached Torres, but she aggressively got into her car and evaded arrest for her illegal actions. The officers, knowing their duty to stop threats from hurting the community, shot at her car in an attempt to stop her from escaping. Torres kept driving away, and eventually was in the clear from Williamson and Madrid. She was on the run for one day, and made it a total of 75 miles until she stopped at a hospital to have two bullet wounds treated from the events of the previous day. It was because the officer’s use of force was unsuccessful that Torres was not arrested immediately for her illegal drug use. Today, the issue brought before the court is common sense. If a suspect *escapes* the grasp of law enforcement, then how can you say that you seized that suspect? You will find that several supreme court precedents and historical writings have done your work for you, and answered the question in plain terms already. If physical force is not successful, one cannot call an encounter with a suspect a seizure. It could only be called a failed arrest, because it results in more public threats, more tracking, and more investigating.

ARGUMENT

I. Graham v. Connor has already set the standard for reasonableness of force.

The case *Graham v. Connor* went before the Supreme Court in 1989. Dethorne Graham had an insulin reaction, and his actions seemed suspicious to a police officer. He was pulled over, calmed down, and arrested. Despite being entirely innocent, Graham sustained several injuries from the traffic stop, including a broken foot. The issue of reasonableness of force was set before the supreme court. In the majority opinion written by William Rehnquist, he argued that “the ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” Additionally, he added that “proper application [of reason] requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” It can be concluded from these excerpts that one cannot simply measure reason, and it is far from black and white. Reasonableness of force depends on several different factors, each changing the outcome of the scenario. *Graham v. Connor* was clearly a misjudgement of force, which relates to today’s case as well. When putting yourself in the shoes of officers Madrid and Williamson, you will discover that they

were put in a life threatening situation. The actions of someone who is not in a stable state of mind are unpredictable. Roxanne Torres was witnessed by the officers just moments before, participating in illegal drug use. They didn't know the length she was willing to go to escape the authorities. That's why, in the moment, they weren't even thinking about a seizure, they were thinking about stopping a serious threat. They took out their guns, and fired them out of self defense, to ensure their safety and the safety of the citizens that could be nearby. However, they failed, because Roxanne Torres could have done a number of harmful things while she operated a stolen vehicle under the influence of meth for 1 day and 75 miles. Basically, the amount of force that was attempted by Williamson and Madrid was perfectly reasonable for the situation they were in, however it was misjudged, just like in *Graham v. Connor*. Misjudgements are common, although their consequences can be deadly. It was due to this misjudgement, that the seizure was a failure. Because of this information, it can be concluded that the force was unsuccessful because a seizure is meant to get rid of a threat.

II. Final Draft of the Virginia Declaration of Rights and the NY Ratification Convention Debates and Proceedings both define a seizure.

Officers Williamson and Madrid both discharged their firearms at Torres while she was aggressively driving toward the officers. Officer Williamson was in front of the FJ Cruiser when Torres got in and started to drive towards the officers. Both Madrid and Williamson

pulled out their firearms to defend themselves from the incoming car. The whole situation was not the process of a seizure described by the NY Ratification Convention Debates and Proceedings and the Final Draft of the Virginia Declaration of Rights. The Final Draft of the Virginia Declaration of Rights states in order for a seizure to occur there has to be reasonable cause or evidence demonstrating that a person has committed a crime. NY Ratification Convention Debates and Proceedings states that there has to be reasonable cause for seizure to occur. If Officers Williamson and Madrid were firing at Torres to detain her it would be considered a seizure, but that was not the primary cause of the physical force. Torres earlier made aggressive movements to the car and then started to drive toward the police officers. Reasonably the officers “feared for their lives” and out of self defense they started to shoot Torres to keep her from running them over. This was simply an act of self defense and not a seizure.

III. It has been determined in California v. Hodari D. that a seizure ends in one of two ways.

In California v. Hodari D., two police officers followed their protocol while approaching a suspicious group of kids. The kids evaded, and the police chased them. Hodari threw a large piece of crack cocaine away from himself before being tackled by law enforcement. The question that was disputed before the supreme court was how a seizure, by fourth amendment standards, occurs. Justice Scalia delivered the opinion of the court, asserting, “[a seizure] 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.” The same goes for today’s case. Madrid and Williamson attempted to approach Torres, but didn’t get close before she fled aggressively from the scene, resulting in a failed seizure. The bullets that wounded Torres did not stop her from driving away and escaping Madrid and Williamson. Additionally, the court’s opinion also included, “an arrest requires *either* physical force (to restrain movement) *or*, where that is absent, *submission* to the assertion of authority.” It is clear that there was not enough physical force to restrain Torres, as she was able to operate her own vehicle, steal another one, and flee for an entire day before getting caught. She also did not submit to the assertion of authority from Williamson and Madrid, because she evaded the officers. Her actions eliminate both of the two options that would have constituted this case as a seizure. While it may seem that her movement restrained her a little bit because she ended up going to the hospital, it was not enough because she was still a criminal posing a threat to the community for an entire day after she was shot.

IV. Mullenix v. Luna established the priority in these types of situations: to prevent harm on innocent lives.

In this case from 2015, a man was in a car chase with the police, and he was threatening to kill them. The police had a plan so that nobody would be hurt, but officer Mullenix took matters into his own hands to ensure the safety of his coworkers. He shot at the man,

and killed him. An excessive force case went to the supreme court, questioning whether Mullenix deserved qualified immunity for his actions. This case connects to *Torres v. Madrid* because it was determined that there is no clearly established law on the use of force on a fleeing suspect. Additionally, it is important to take into account the outcome of the situation. This officer did what he had to do in order to save innocent lives. As the court's opinion states, "it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." If he hadn't made that split second decision, the criminal could have killed several people. He used the correct amount of force, and the person was seized. However, Officers Williamson and Madrid did not use the correct amount of force. Because of their inability to arrest Torres, innocent lives could have been lost. However, Torres turned out to be lucky and her actions did not hurt anyone on this occasion. To prevent people from being hurt, it is crucial that force is successful to constitute a seizure.

CONCLUSION

The fourth amendment has been reinterpreted multiple times since its creation including the definition of a seizure. The cases *Graham v. Connor*, *California v. Hodari D.*, and *Mullenix v. Luna* all helped define the characteristics of a seizure. Torres was not being seized when physical force was used on her by the Respondents. Officers Williamson and Madrid were both firing at Torres out of fear for their own lives. For a seizure to occur based on the Final Draft of the Virginia Declaration of Rights and the NY Ratification Convention Debates and Proceedings, there has to be probable cause or evidence to seize a person or persons. Since these officers were shooting at Torres out of fear and not to objectively seize Torres they were never performing a seizure. Without a seizure there can not be an excessive force charge ruled against the respondents in this case. The Supreme Court Of The United States Of America should uphold the ruling of the Circuit Courts and the Court of Appeals. The Supreme Court should interpret the situation as self defense rather than a seizure since the primary actions of a seizure were not performed.

Respectfully submitted,

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