IN THE SUPREME COURT OF

THE UNITED STATES

Roxanne Torres

Petitioner

v.

Janice Madrid and Richard Williamson

Respondents

On Writ of Certiorari to the

United States Supreme Court

Christian Velazquez & Isaac Yoo

Brief for Respondent

QUESTION 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 the use of physical force be successful in detaining a suspect to constitute a "seizure"?

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT OF THE CASE

On July 15, 2014 in Albuquerque, New Mexico, Officers Janice Madrid and Richard William set out to arrest Roxanne Torres near an apartment complex. Ms.Torres, who was standing near her vehicle at that time, was under the influence of methenamine and, as both officers approached, Ms. Torres made the hasty decision to enter her vehicle. Ms. Torres was under the false impression she was being car jacked and did not realize both Janice Madrid and Richard William were officers. After Roxanne decided to take flight, both officers drew their weapons and began firing at the vehicle. Two bullets penetrated Ms. Torres, but she continued to drive away. Later she obtained another car and drove 75 miles more to a hospital and was then arrested the next day. Torres then sued Williamson and Madrid for violating her Fourth Amendment rights. Torres argued that the officers used "excessive force" to seize her. The district court concluded that the "officers had not seized Torres at the time of the shooting, and without a seizure, there could be no Fourth Amendment violation." The court concluded that for a seizure to occur, it would require for the subject's movement to come to a halt. Neither shot resulted in the halting of Roxanne Torres, therefore no seizure took place. Ms. Torres then requested a hearing at the Supreme Court and was granted the opportunity.

STATEMENT OF ARGUMENT

The use of force applied by Officers Madrid and Williamson onto Ms. Torres in the form of gunshots were not seizures under Fourth Amendment standards because they were unsuccessful in attaining the required element of control over her, as dictated by judicial precedent set by this court. Common law principles concerning "mere touch" arrests as well as the non-binding dicta in the Hodari D. opinion and cited by the Petitioner are not pertinent to the definition and evaluation of seizures under the Fourth Amendment in our contemporary usage and application.

ARGUMENT I: Adherence to constitutional and judicial precedent.

The unsuccessful attempt to restrain Ms. Torres by Officers Madrid and Williamson does not constitute a seizure under the Fourth Amendment. The Fourth Amendment states that “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.” In the case of seizures in accordance with this principle, this court has established a clear precedential line to distinguish what does and does not constitute as such.

Terry v. Ohio 392 U.S. 1 (1968) states that “whenever a police officer accosts an individual and restrains his freedom to walk away, he has ‘seized’ that person.” Additionally, according to United States v. Mendenhall 446 U.S. 544 (1980) this Court should "adhere to the view that a person is `seized' only when, by means of physical force or a show of authority, his freedom of movement is restrained” and if “in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” All of these aforementioned requirements are not fulfilled in the case at hand. While Officers Madrid and Willaimson did perform a clear sign/show of authority in the form of direct orders and eventual gunshots, Ms. Torres still refused to comply with their demands to halt, to the extent at which she was able to evade arrest for an entire day and travel 75 miles away from the site of the incident to do so. Torres also did not even realize that she was being confronted by law enforcement at all, as she was under the influence of methamphetamines, and instead she feared that she was being carjacked and thus felt that she had the right to flee. This current scenario bears resemblance to that of California v. Hodari D. 533 U.S. 27 (2001), in which this Court ruled that despite the fact that the "show of authority" performed by the pursuing officers was an adequate effort to force the Hodari to halt, “since Hodari did not comply with that injunction, he was not seized until he was tackled” and successfully apprehended. Similarly, the use of a roadblock to stop a fleeing perpetrator in the case of Brower v. County of Inyo 489 U.S. 593 (1989) was only deemed a seizure under the Fourth Amendment because the Court decided that the roadblock used was “not just a significant show of authority to induce a voluntary

stop" but was also "designed to produce a stop by physical impact if voluntary compliance does not occur" and an "intentional acquisition of *physical control*." (emphasis added) Again, since the officers did not obtain physical control of Torres nor did she yield to their clear show of authority, the officers' actions of firing gunshots at the fleeing Torres does not constitute as a Fourth Amendment seizure according to the judicial precedent set by this court.

ARGUMENT II: English common law principles concerning arrests do not appropriately apply to contemporary Fourth Amendment standards.

In his initially proposed version of the Bill of Rights, James Madison inscribed, "Article 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," which would soon be developed into what would become the Fourth Amendment. In order to properly interpret Madison and the Founding Fathers' initial intentions and understandings concerning the Fourth Amendment, it is necessary to harken back to English common law in regard to said amendment, as Payton v. New York, 445 US 573 states that, "[a]n examination of the common-law understanding of an officer's authority to arrest sheds light on the obviously relevant, if not entirely dispositive, consideration of what the Framers of the Amendment might have thought to be reasonable." When examining common law cases in which "mere touch" arrests are involved, it is erroneous to consider them as seizures in the manner as cited in the Fourth Amendment, as they are constructive arrests that served an uniquely distinct purpose than the one that applies in today's case and usage in our contemporary society. For instance, in the case of *Anonymous* (1676) 86 Eng. Rep. 197, the court decided that when "[a] bailiff caught one by the hand" through a window and "was such a taking of him, that the bailiff might justify the breaking open of the house to carry him away." By this, the court did not imply that merely touching an individual constitutes as a full arrest or seizure but instead is used figuratively as a hypothetical to

justify and permit law enforcement to force entry when performing their necessary duties. Additionally, in Archbold Treatise, supra, at 896 if a bailiff were to fail to retain an individual until they were "delivered by due course of law," then they were liable for monetary damages and compensation to the plaintiffs. Therefore, while judges designated constructive arrest precedents to permit bailiffs to perform their duties adequately and properly ascertain civil liabilities for bailiffs that failed to perform said duties, these legal notions were not intended to define the terms and conditions that constitute an act as a seizure, as it is referred to in the Fourth Amendment and this case. So, in essence, as California v. Hodari D. 533 U.S. 27 (2001) states, "neither usage nor common-law tradition makes an attempted seizure a seizure," and thus common law tradition cannot and should not be applied to the case at hand.

ARGUMENT III: The portions of the Hodari D. opinion that cite common law principles, which are cited by the Petitioner, are non binding and non precedential dicta.

Another major issue of contention that must be taken into consideration in today's case is the legitimacy of the portion of Justice Scalia's majority opinion in the case of California v. Hodari D. cited by the Petitioners and whether or not this court should consider it as holding precedent or mere dicta. In order to properly address this, one must evaluate the facts and circumstances surrounding the case of Hodari D. and the legal definition of dicta itself according to this court's precedent. Firstly, the definition of what constitutes as dicta is stated in In re Tuttle, 291 F.3d 1238, 1242 (10th Cir. 2002) that defines dicta as "statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case at hand." This definition is affirmed by many other Supreme Court cases like Humphrey's Executor v. United States 295 US 602 (1935) and Central Virginia Community College v. Katz, 546 U.S. 356, 363 (2006), both of which recognize dicta as non binding. Conversely, a binding ratio decidendi statement is only so if it is the legal doctrine and reasoning that is pertinent to the decision, judgement, and facts relating to the case. Regarding the sections of the Hodari D. opinion in question, it addresses common law doctrine concerning Dickensian-era arrests, primarily in

an effort to differentiate them from contemporary legal doctrine and demonstrate that attempted seizures do not apply under Fourth Amendment standards. This discussion surrounding these common law cases and concepts were nonessential and had no substantial bearing upon the ultimate ruling of Hodari D. nor did it relate directly to the facts of the case, and therefore by definition are dicta and should not be considered as binding precedent nor override other precedential and binding standards like those stated by Brower, Mendenhall, and Terry when concerning seizures. Many other lower appellate courts have also already correctly adopted this notion, as in the case of Brooks v. Gaenzle 614 F.3d 1213 (10th Cir. 2010), in which the Tenth Circuit completely dismissed the common law aspects of seizures mentioned in Hodari D. as dicta and instead based its ruling on the standards established by the other aforementioned cases. As the court explicitly states, judicial precedent does not "stand for the proposition that use of deadly force alone constitutes a seizure. Instead, a clear restraint of freedom of movement must occur." The case of County of Sacramento v. Lewis, 523 U.S. 833 (1998) also states that "a police pursuit in attempting to seize a person does not amount to a 'seizure' within the meaning of the Fourth Amendment." Likewise this court should correspondingly further this notion and acknowledge the common law discourse and doctrine mentioned in Hodari as mere obiter dictum and instead adhere to the necessary aspect of control required by other precedential designations of Fourth Amendment seizures established by the likes of Brower, Mendenhall, and Terry.

CONCLUSION

While George Mason stated that "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" in the Virginia Declaration of Rights, a statement that is a core tenant of our legal history, the parameters of what constitutes a seizure as such is crucial for this court to determine. This court has already established a clear precedential line for the evaluation of Fourth Amendment seizures, in that they must require an "intentional acquisition of physical control" to be deemed as such. Therefore, the aspects

of common law doctrine discussed in Hodari D. or that lay reference to common law "mere touch" arrests should be considered obiter dictum and have no bearing on this court and should not be the standard under which seizures are analyzed. It is nonsensical to deem Petitioner Torres to have been seized when the Respondents' gunshots pierced her, since she was able to evade authorities for an extended period of time before being successfully apprehended. Would this court to deem mere attempts of restraining perpetrators using physical force as Fourth Amendment seizures, this court would set a dangerous precedent that would compromise the effectiveness of contemporary law enforcement practices, putting the lives of law enforcement officers and perpetrators themselves at risk, creating unintended loopholes involving the Fourth Amendment's aspect of seizures, and being unnecessary to adequately address the issues concerning the use of excessive force by law enforcement. Instead, we ask that this court reinforce the decisions of the Tenth Circuit Court of Appeals and its own judicial precedent and deem acts of physical force or authority Fourth Amendment seizures only if the individual is successfully apprehended as a result.

PRAYER

It is for these reasons that we pray that the court rules in favor of the Respondents and affirms the decision of the Tenth Circuit Court of Appeals.

Respectfully submitted,

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