

IN THE SUPREME COURT OF THE UNITED STATES

ROXANNE TORRES

Petitioner

Vs.

JANICE MADRID and RICHARD WILLIAMSON

Respondent

Brief for Petitioner

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 physical force be successful in detaining a suspect to constitute a “seizure”?

Jacqueline Aleman
Daniel Sawyers

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Statement of the Case

In 2014, Roxanne Torres was involved in an incident with police officers where she was operating a vehicle under the influence of methamphetamine and, in the process of trying to get away, endangered the two officers pursuing her. In the process, one of the officers shot and injured her. In October 2016, she filed a civil-rights complaint in federal court against the two officers, claiming excessive force and conspiracy to engage in excessive force. The court concluded that the officers were entitled to qualified immunity. In the court's view, the officers did not seize Torres at the time of the shooting, and without a seizure, there could be no Fourth Amendment violation. The U.S. Court of Appeals for the Tenth Circuit agreed with the court's ruling. Torres petitioned the Supreme Court for a writ of certiorari, and the Supreme Court granted review in December of 2019.

Statement of the Argument

Under the Fourth Amendment a person has a right to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." This court set precedent regarding the fourth amendment in *California v. Hodari*: where this court unanimously recognized that when a government officer inflicts physical force on a person with the intent to restrain them, that person is seized within the meaning of the Fourth Amendment, regardless of whether that restraint is successful. This definition of a seizure has been reestablished and upheld within this court numerous times, and is in conformity with the traditional common law definitions of arrest and seizure. Viewing this court's past precedent and the affirmation of the Fourth Amendment as applied in this case, it is clear that an unconstitutional seizure occurred in regards to Roxanne Torres.

Argument one: The original meaning of the Fourth Amendment has been established as this court's precedent, as represented in Hodari, where this court looked at the common law definitions of search and seizure, and with respect to seizures of persons, the common law of arrest.

When looking at whether or not a seizure took place, the 10th circuit court reflexively applied the definition of a seizure to be solely dependent on whether or not the suspect succeeded in avoiding capture. This however directly contradicts previous rulings and the definition of a seizure according to common law. The appropriate definition of seizure should focus on the state action rather than any actions or reactions of the person or persons being seized, as the Fourth Amendment functions as a prohibition on particular state actions. The definition and use of the word “detain” and “arrest” at the time of the common law that will be referred to are interchangeable. According to *California v. Hodari D.*, at the time the constitution was adopted, an arrest was the “quintessential seizure of a person.” Furthermore, according to Samuel L. Johnson's dictionary of the English language (sixth edition) , which was published in 1785, the definition of an arrest included “any seizure or taking of power.” Under this understanding, all seizures are arrests, so the common law definition of arrest informs the definition of seizure.

Both common law and contemporary holdings from courts have long established that a seizure does indeed take place when a use of force is present. Looking at common law, in the case of *Genner v. Sparkes*, a bailiff, was attempting to make an arrest (at the time interchangeable with detention), however the plaintiff evaded the attempt by fleeing to his house. The court held that no arrest was made at the time due to the fact that the bailiff never touched the plaintiff. The court stated that “if the bailiff had touched him (the plaintiff), then that would have been an arrest.” The only possible discrepancy in the application of this case is the

difference in force used against the subject. Torres in this case was injured by a firearm whereas the plaintiff in Sparkes would have been subject to an arrest if the bailiff “touched” them. The general reasoning in these two cases are mutual in that the use of force whether it be a gunshot wound, or simply touching, was used in order to gain control of the suspect. Looking at the holdings of contemporary law, this court should still come to the conclusion that a detaining took place regardless of the fact that the petitioner was able to flee the scene. In the case of *California v. Hodari D.*, an officer attempted to make contact with the petitioner, however the petitioner fled the scene at the time of initial contact and was later fully apprehended after they threw away evidence. The petitioner in this case moved for the evidence to be suppressed, however, this court in its ruling determined that since there was no actual seizure at the time the evidence was thrown, the Fourth Amendment claim was invalid. The court used common law to apply a test in which in order for a seizure to be present, there must either be “the application of physical force, however slight, or, where that is absent, submission to an officer's show of authority to restrain the subject's liberty.” *California v. Hodari D.* It is important to note that in applying this test, the court made it clear that both prongs are not required, simply if there is no application of physical force, the only other way for a seizure to be present is if the petitioner was submissive to the officer’s “show of authority.” The present case fulfils the first prong as the use of the firearm is clearly an application of force and thus the existence of a seizure in this case is supported by *California v. Hodari D.*

Argument two: Past precedent shows that this court has long recognized that, at its core, the Fourth Amendment protects against unreasonable government intrusion with personal security, including invasive physical touch. Protection of a person, that is, being the body, is

violated the moment a police officer applies physical force to a person's body, regardless of whether they're still mobile after the attempted action to restrain the person.

This court has set a precedent in its previous rulings that a Fourth Amendment seizure occurs when an officer applies physical force with the intent of restrain- regardless of its success in halting an individual. In the case *Brower v. Inyo County* the court held that a seizure occurs when governmental termination of a person's movement is effected through means intentionally applied which is consistent with the language, history, and judicial construction of the Fourth Amendment. The violation in *Brower* occurred because Caldwell clearly intended to continue driving, and the police actions- the barrier being instrumentally put in place- intended to forcibly stop his car. The intentions of Officers Madrid and Williamson was to stifle Torres's movement at all costs. The shooting conducted by the officer in this case is analogous to the barrier that was meant to halt the suspect in *Brower*.

As set in The *Bill of Rights* , “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.” This further supports the idea in which the intent to stop a fleeing subject should not use deadly force unless it is necessary to prevent the escape of a fleeing felon and the officer has probable cause to believe that the suspect poses a significant threat of violence to the officer or the community. Roxanne Torres was not an immediate threat to the community, nor did she appear to be armed at any point. As held by this court in *Tennessee v. Garner* the use of deadly force on an unarmed fleeing felon is unconstitutional. The respondent's definition of a seizure is that it only occurred partially when the bullets first made contact with Torres, however Justice Scalia's conclusion in

Hodari differentiates by stating that under the Fourth Amendment, seizure traditionally meant "taking possession" of the person or thing being seized. However, he noted that "at common law, the word connoted not merely grasping, or applying physical force to, the animate or inanimate object in question, but actually bringing it within physical control." Since Torres made contact with the bullet she was still "within physical control" intended by the police officer. Ruling in favor of the respondents sets a dangerous precedent for this court that a suspect must submit to the physical force of an officer before constituting a seizure. This court has shown numerous times that the shooting of a fleeing unarmed suspect is unconstitutional, and that seizures can be defined as a laying on of hands or application of physical force- whether done by an individual or inanimate object- to restrain movement, even when it is ultimately unsuccessful. By looking at past precedent and ruling of this court as seen in *Brower* and *Garner*, the court can constitute that a seizure did occur within the common law conclusion espoused by Justice Scalia, and that it was unconstitutional in that the Roxanne Torres posed no immediate harm to other in the community, nor was she armed.

Argument 3: Construing an unnecessary force claim to be dependent upon something as trivial as the successfulness of a seizure at the time the force was applied, bars any accountability of officers facing repercussions that would otherwise be prescribed had the suspect not been successful in fleeing.

This court should take into account the dangerous precedent set by drawing an arbitrary line that bars Fourth Amendment claims against being viewed in its whole simply due to the fact that the petitioner was able to escape initial contact with police due to a misapplication of a seizure definition. If this precedent were set, police officers would be permitted to apply any force, necessary or not, to a suspect as long as the suspect is able to flee the scene. As stated in

Terry v. Ohio, “The danger in the logic which proceeds upon distinctions between a "stop" and an "arrest," or "seizure" of the person, and between a "frisk" and a "search," is twofold. It seeks to isolate from constitutional scrutiny the initial stages of the contact between the policeman and the citizen. And, by suggesting a rigid all-or-nothing model of justification and regulation under the Amendment, it obscures the utility of limitations upon the scope, as well as the initiation, of police action as a means of constitutional regulation.” The case later states that “by suggesting a rigid all-or-nothing model of justification and regulation under the Amendment, it obscures the utility of limitations upon the scope, as well as the initiation, of police action as a means of constitutional regulation.” Simply put, constitutional regulation meant to protect people from any violations of the Fourth Amendment would not be applicable within the grey area presented under the respondents’ definition of a seizure.

It should also be considered that this grey area of accountability is not one that would rarely be tested, fleeing from the police is a common act and under the respondents’ definition of a seizure, any force no matter the circumstances present would not invoke a Fourth Amendment claim so long as the suspect is successful in fleeing the scene, which again is not a rare circumstance. It can be reasonably assumed that a suspect is more likely to flee a scene once the application of deadly force becomes present therefore further expanding the respondents’ proposed gap in the Fourth Amendment's protections. Furthermore, under the respondents’ misguided definition of the Fourth Amendment, existing case law that has held that police officers may not use deadly force upon a fleeing suspect in all cases would be challenged again, so long as the suspect succeeds in fleeing the scene. Without the power of citizens to bring a constitutional claim, this prohibition would have no teeth.

In the case of *Tennessee v. Garner*, the petitioner was fleeing the scene of a suspected crime. The court held that “Apprehension by the use of deadly force is a seizure subject to the Fourth Amendment’s reasonableness requirement. To determine whether such a seizure is reasonable, the extent of the intrusion on the suspect’s rights under that Amendment must be balanced against the governmental interests in effective law enforcement. This balancing process demonstrates that, notwithstanding probable cause to seize a suspect, an officer may not always do so by killing him.” *Tennessee v. Garner*. Although the petitioner was apprehended in this specific case, this court clearly had an intent to limit the cases in which deadly force would be authorized. This intention of the court would be completely negated had the suspect left the scene after the use of deadly force. The founding fathers had a very clear intent to protect the people against unreasonable searches and seizures as shown in the New York Ratification Conventions Debates and Proceedings where it was recorded that “Every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, or his property” and the Bill of Rights which opens with “the right of the people to be secure in their persons”. This intent to protect which was very deliberate by the founding fathers would become ineffective if there is no recourse for cases where the police go beyond their permitted actions..

Conclusion

The Fourth Amendment protects individuals from unreasonable searches and seizures. In today’s case it can be confirmed that a seizure occurred under the definition provided by common law which established by past precedent beginning with *Hodari* states that a seizure occurs when there is an attempt to detain an individual regardless if it is successful or not. Ruling in favor of the respondents regarding the way they define seizure would set a dangerous and contradicting precedent for courts and citizens. Secondly, the seizure in today’s case is unconstitutional due to officers’ seeking deadly force upon an unarmed suspect- which this court should find

unreasonable under the circumstances of this case. It is clear that a Fourth Amendment violation of the petitioner's "persons" occurred under the unnecessary and unreasonable actions taken by officers in today's case.

Prayer

It is for these reasons we pray the court rule in favour of the Petitioner, Roxanne Torres, and reverse the decision of the lower court.