IN THE
SUPREME COURT OF THE UNITED STATES

ROXANNE TORRES

Petitioner

v.

JANICE MADRID AND RICHARD WILLIAMSON

Respondent

BRIEF FOR PETITIONER

Brandon Fantine

Elizaveta Frolova

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Question Presented

Is an unsuccessful attempt to detain a suspect via the vehicle of physical force constitute a “seizure” under the Fourth Amendment or must the attempt to detain be successful in order to constitute a “seizure”?

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Cases

Terry v. Ohio 392, U.S 1, 19 n. 16 (1968)

United States v. Mendenhall, 446 U. S. 544 (1980)

Brower v. County of Inyo, 489 U.S. 593 (1989)

California v. Hodari D., 499 US 621 (1991)

United States v. Castleman, 134 S. Ct. 1405 (2014)18 U.S.C

Carpenter v. United States, 585 U.S. (2017)

Constitutional provisions

U.S. Const. amend. IV

Other Authorities

J. Otis, *Arguments Against Writs of Assistance (1761)*

N. Webster, An American Dictionary of the English Language 67 (1828)

2 J. Bouvier, A Law Dictionary 510 (6th ed. 1856)

Webster's Third New International Dictionary 2057 (1981)

J. Locke, Second Treatise of Government (1689)

Statement of the Case

In 2014, New Mexico Police Officers Richard Williamson and Janice Madrid, went to serve out an arrest warrant on an individual, not Roxanne Torres, at an apartment complex. Once the officers arrived at the apartment complex, they saw Torres with another individual, and approached the two. The individual ran inside and Torres ran to her car. The officers went after Torres and stood on the sides of her vehicle with their guns pointed at her. Torres did not know that the officers were police--since they had failed to identify themselves--and thought they were carjackers. With this in mind, Torres began to drive away in hopes of protecting herself and her vehicle. Before Torres had pulled forward an inch, both officers began to fire at her, shooting 13 shots with 2 bullets penetrating Torres' back. The officers shot these shots with the intent that it would prohibit her from moving or evading them. Torres however, was able to continue driving and drove to a hospital where she was later arrested.

Statement of the Argument

The seizure of a person is not based solely in physical assertions or the successful detaining of a criminal suspect. Rather, it is based in an intent to seize through direct or indirect physical means, or a show of authority. Whether or not a suspect was successfully detained has no bearing on the existence of a seizure. These parameters are based in the common law of seizures, precedents that are supported by the intentions of the Constitutional Framers and are therefore binding. As it pertains to Ms. Torres, when Officers Madrid and Williamson fired and made contact with Ms. Torres' body, they seized her, even if the shooting did not successfully cause Ms. Torres to be detained.

Argument I

An unsuccessful attempt to detain a suspect does constitute a seizure under the Fourth Amendment.

The unsuccessful attempt to detain Roxanne Torres by use of a physical force is in fact a seizure within the definition of the Fourth Amendment. The Fourth Amendment states: "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." Using the specific language of the amendment and common law precedents, it can be simply discerned that the shooting in this case constituted a seizure.

Almost everything requires intent, shooting a gun included. Shooting a firearm at an individual in a law enforcement capacity requires specific intent: both the intent to shoot someone with a firearm and the intent to hinder their movement. as stated in *United States v. Castleman, 134 S. Ct. 1405 (2014)18 U.S.C*. In *California v. Hodari D., 499 US 621*, the court unanimously agreed that if a police officer uses physical force on a person with the intent to restrain them, the person has been seized by the officer(s). Whether or not the force was direct or indirect does not matter, only the intentions determine the existence of force. As it pertains to this case, the Respondent intended to shoot Ms. Torres to immobilize her, thus constituting a use of physical force.

In *Terry v. Ohio 392, U.S 1, 19 n. 16 (1968)*, the court found that a seizure can occur by means of physical force or show of authority. Both versions of an attempted seizure were demonstrated by the Respondent: the shooting of Ms. Torres was an application of physical force and the drawing of said weapons along with the officers positions on the sides of Ms. Torres' car being the show of authority. The *Terry v. Ohio 392, U.S 1, 19 n. 16 (1968)* was further elaborated on by the court in *Brower v. County of Inyo, 489 U.S. 593 (1989)* (citing *United States v. Mendenhall, 446 U. S. 544 (1980)*) by stating that seizure can occur if a reasonable person felt as though they cannot leave; a conclusion that could be reached via the presence of several officers, the display of a weapon, or the use of language or tone of voice by the officers. Considering multiple of these criteria were met, those being the presence of multiple

officers and the drawing of a weapon, Torres was indeed not free to leave, and would have been seized at that moment in any other circumstance. However, Ms. Torres had fled the scene due to a miscommunication between the Respondents and Ms. Torres. *California v. Hodari D., 499 US 621* established a separate test for when a suspect flees the scene after not being free to leave: the court must analyze if physical force was ever applied to restrict the liberty of said subject.

Physical force can be either direct or indirect, as established in *United States v. Castleman, 134 S. Ct. 1405 (2014)18 U.S.C.*. Direct force is simple: punching, kicking, scratching, grabbing or other skin-to-skin contact. Indirect force however, is a large umbrella that includes all other forms of force, including any sort of contact with a firearm. Specifically, being shot with a bullet would be considered an indirect application of physical force. The test established in *California v. Hodari D., 499 US 621* requires four prongs to be met in order to constitute a seizure: (i) A reasonable person would not have felt free to leave in the specific situation, (ii) the suspect fled anyways, (iii) physical force was applied in an attempt to detain the suspect, and (iv) the force limited the liberties of the suspect. Taking all four prongs into account, each is met, constituting a seizure. First, as previously established, a reasonable person in the same situation as Ms. Torres would not have felt free to leave. In a similar vein, because Ms. Torres left the scene, the second prong was met. Since the connection between bullet and skin is an indirect application of physical force, when Ms. Torres was shot, the third requirement of this test was satisfied. To determine whether or not the final portion of this test was completed, the court must analyze when Ms. Torres was arrested. Because she was shot, Ms. Torres had no choice but to go to the hospital, where she was soon arrested. Stemming from the shooting, her liberties were restricted because she had to put herself in a position to be arrested, the quintessential restriction of liberties. Therefore, the test established in *California v. Hodari D., 499 US 621* is fully satisfied, meaning Ms. Torres was seized at the time of the shooting.

Respondents will argue that since Torres was able to flee from the scene she was not seized; there was an unsuccessful detention. However, an unsuccessful attempt to detain Roxanne Torres by use of a physical force (the shooting) is in fact a seizure due to the intent of the Respondents. The Respondents

shot Torres with the intent to cause her vehicle to stop moving. *California v. Hodari D., 499 US 621*, states that the time or duration of the seizure does not matter, if the intent to seize the individual was unreasonable. Meaning, if the intent to detain (seize) was unreasonable, no matter whether or not Ms. Torres was actually detained, the moment the application of physical force was used to restrict her liberties constitutes a seizure.

The Terry Test, as created by the court in *Terry v. Ohio 392, U.S 1, 19 n. 16 (1968)*, states that reasonable suspicion based on specific facts (not a hunch or assumption) that a suspect poses a significant harm to others is needed to justify the detention of a suspect. As it pertains to this case, the Respondent did not conform to the Terry Test as their suspicions were merely hunches; there were no articulable facts that would lead a reasonable person to the conclusion that Ms. Torres posed a significant threat to her community. Considering this, the precedent for the length of a seizure and its intent established in *California v. Hodari D., 499 US 621* is once again relevant. Although the seizure lasted only a second, it is still considered seizure when physical force is applied since the Respondent acted unreasonably in their intent. Anything coinciding with the attempt to detain being a failure is negated by this and Ms. Torres was therefore seized when she was shot by the Respondent.

Argument II.

The Common Law definition of a seizure transitively upholds the foundational meaning of a seizure under the Fourth Amendment and is therefore binding.

Although the common law clearly dictates what can and cannot be considered a constitutional seizure, the binding nature of these precedents are uncertain. However, the common law definition of a seizure is fully grounded in historical precedent, and thereby upholds the intentions of the constitutional framers and is thus fully binding in this specific issue and all others that are similar in fashion. As written in the Fourth Amendment, a "seizure" is explicitly undefined. The only definition that is explicitly given is that of determining the legality, or the reasonableness, of a seizure. Moreover, the actual definition of 'seizure' is just simply "the taking possession of" something (*California v. Hodari D., 499 US 621* citing

2 N. Webster, An American Dictionary of the English Language 67 (1828); 2 J. Bouvier, A Law Dictionary 510 (6th ed. 1856); Webster's Third New International Dictionary 2057 (1981)). Therefore, the only way to determine the legal reach of what was considered a seizure at the time of ratification is to look at the direct inspiration behind the Fourth Amendment: the British writs of assistance.

In James Otis' *Arguments Against Writs of Assistance (1761)*, Otis discusses how the aforementioned documents threaten "his right to his life, his liberty, [that] no created being could rightfully contest… nor was his right to his property less incontestable." (J. Otis, *Arguments Against Writs of Assistance (1761)*) These writs of assistance gave police officers the sole power to search and seize. Transitively, the power to seize is therefore one that threatens not only the property rights of the people, but their general freedoms and right to life as well. Although this describes what seizures threaten, it does not fully describe what a seizure is.

In order to determine this, the notion that seizing is related to infractions upon the 'three god-given rights' and the textual definition of a seizure must be combined. By doing so, it seems as though a seizure would be the act of taking possession of someone's life, liberties, or property, all three of which were considered fundamental rights (*J. Locke, Second Treatise of Government (1689)*). If this is to be taken literally, a seizure would only occur when someone else takes physical possession of a human life, the rights of another person, or another person's property. Ultimately, this raises a new issue in what would be considered the removal of another's right to life and bodily autonomy [liberty] ; an example of this conundrum in practice would be having to decide whether a murderer can be charged with the seization of a victim along with murder of said person due to the murderer seizing the victim's "right to life". Even three hundred years ago, a murder did not constiute the seization of the right to life or liberty. However, it can be assumed that a person's rights could have been restricted in two other scenarios: during legal arrests and while being sold into slavery. Any lawfully performed arrest would restrict the physical freedoms of the arrestee, thereby restricting their liberties and being considered a form of seizure during the mid-eighteenth century. Likewise, being sold into bondage also restricts the amount of freedoms one has, making it another form of seizure.

All of this just goes to prove one thing: the original meaning of the Fourth Amendment is in line with Justice Scalia's opinion in *California v. Hodari D., 499 US 621*. Within *Hodari D., 499 US 621*, Justice Scalia wrote:

> "To constitute an arrest, however—the quintessential "seizure of the person" under our Fourth Amendment jurisprudence—the mere grasping or application of physical force with lawful authority, whether or not it succeeded in subduing the arrestee, was sufficient."

Within this ruling in *Hodari D., 499 US 621*, it is clearly established that any legal form of an arrest is considered a seizure. The ruling also goes a step further in identifying what definition the court uses to signify an arrest: the common law definition. The respondent's position is that this ruling and the determination that the 'common law arrest' is a form of seizure both violate the original definition of seizure under the Fourth Amendment. However, based on James Otis' *Argument Against Writs of Assistance*, a speech that directly inspired what protections the Fourth Amendment would guarantee, it is clear that Otis and those he inspired wanted to protect the people from the seizures allowed under these 'general warrants', chief among those being arrests. How an arrest is defined is not an issue at hand in today's case, so the most reliable definition of an arrest is what must be used; this definition is the common law definition Justice Scalia cited in *Hodari D., 499 US 621*. Therefore, it must be in line with the founder's opinions that the fourth amendment protects against unreasonable arrests, no matter the current definition.

However, should this common law definition of an arrest that specifies how all arrests, no matter their success, still constitute an arrest be objected to, historical ideals must again be analyzed. Not once does Otis provide the distinction between the fruitful and fruitless writs of assistance. *All* writs of assistance place "the liberty of every man in the hands of every petty officer" (J. Otis, *Arguments Against Writs of Assistance*); *all* grant law enforcement the power to seize, *all* writs of assistance will limit the freedoms of the people. By insinuating this, Otis' argument establishes that the use of writs of assistance encroached upon the freedoms of the people and constituted a seizure during the mid-eighteenth century, regardless of whether or not someone would successfully lose their life, property, or liberties. This brings

up an interesting flaw in the Respondents argument: when created, the Fourth Amendment and its prior history does not imply that there are specific requirements for an action to constitute a seizure, chief among the missing requirements being how the success of an attempted seizure has no bearing on whether or not a seizure did in fact occur. This is incredibly pertinent to this case as Otis' argument, one that would come to provide a basis for the Fourth Amendment, does not specify whether a seizure of liberties [an arrest] needs to be successful or not to still be considered a seizure of the liberties.

Further supporting the upholding of using the common law to determine what constitutes a form of seizure is the principle that "At the founding, searches and seizures were regulated by a robust body of common-law rules" (*Carpenter v. United States, 585 U.S.*). This statement wholeheartedly supports the idea that what constitutes a seizure has always been based in the common law, so the fact that the common law is being used to define an arrest, or a type of seizure, is consistent with how the constitutional framers wanted the courts to approach the issue of search and seizure. An arrest is a seizure, so the failed attempt at arresting Ms. Torres is a seizure under the common law definition of an arrest and thereby a Fourth Amendment violation.

Prayer

It is for these reasons we pray that you rule in favor of the Petitioner, Ms. Roxanne Torres, and reverse the lower courts' rulings.