

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 PETITIONER/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”?

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
SUMMARY OF	
ARGUMENT.....	1
ARGUMENT.....	3
I. Origins of the Law.....	3
II. The precedent set by the Supreme Court determines that Petitioner Roxanne Torres was seized the moment she was shot.....	6
A. The common law of the court establishes that a seizure occurs when an officer uses physical force on a suspect, with	

the intent to restrain, regardless of if the
suspect flees.....6

III. The court must uphold the precedent that
applied physical force constitutes a seizure.....9

A. The search and seizure clause was
intended by the founders to protect
individuals from the immediate
intrusion of their private persons,
property, and
possessions.....9

B. The 4th amendment exists to preserve
the right of the people to be secure in
their persons from abuse by the
police. The 4th amendment exists to
preserve the right of the people to be
secure in their persons from abuse by
the police.....10

CONCLUSION.....12

APPENDIX.....14

TABLE OF AUTHORITIES

1. *California v. Hodari D*
499 U.S. 621 (1991).....1, 2, 7, 8, 12

2. *Katz v. United States*
389 U.S. 347 (1967).....9

3. *Graham v. Connor*
490 U.S. 386 (1989).....8

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2011,
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SUMMARY OF ARGUMENT

The Supreme Court should constitute an attempted seizure as a seizure under the 4th amendment because both the founders intent and the common law of the court classify a seizure under the 4th amendment as applied physical force by an officer, regardless of the success of the suspect's detainment. John Adams and James Madison, both founding fathers and heavy influencers of the 4th amendment, intended for the amendment to follow the precedent set by British common law which consistently determined that applied force was all that was necessary to constitute a seizure. Following the drafting of this amendment, United States judicial precedent has remained consistent with the original intent of the framers with cases such as

California v. Hodari D. (1991). In the past before the fourth amendment, the concept and ideas of English Common Law was very vague and very uncertain on many things. However overtime the ideas and judgements have become less vague and more narrow as with *California v Hodari D., (1991)* in which we can see the laws having become more narrow and more specific as to the judgements that the fourth amendment holds. The moment in which the bullets fired from the officer hit Roxanne Torres, she was seized upon according to the fourth amendment and common law which states that if physical force is used to seize a person, whether or not the attempt is successful it is classified as a seizure.

ARGUMENT

I. Origins of the Law

The origins of the 4th Amendment lie in English Common Law dating back to the 17th century. The law allowed any government official the right to break into a citizen's home and seize any documents, contraband, or goods they deemed worthy of prosecution. The law was vague at best on the best way for the government to enact this power over the people.

A. Common Law in Practice

AA. Original Argument-Judicial review

The origins of the 4th Amendment reside in Great Britain's Common Law. In July of 1762, a newspaper was published that Great Britain considered treason. The name of this newspaper was the *North Briton* written by John Wilkes. This newspaper talked

about the faults and wrongs in the government and King George III. The most famous of these newspapers was the 45th issue which criticized a recent speech by King George III who spoke about the amount of generosity given to France in order to make peace. The King and his ministry saw this as treason and sent out men to go and find John Wilkes and anyone else who had helped in the production of the *North Briton*. A man named Lord Halifax who was the secretary of state then issued a general warrant in hopes of finding the source of the writings, and after a while he gained information that Wilkes was the writer of *North Briton* and also that a man named Leach who owned a printer was supposedly printing the newspaper. Lord Halifax went on to illegally seize and imprison 49 people during this investigation. Mr Leach who had his house broken and brought into custody with no reasonable warrant

was interrogated by Halifax until they realized that he did not print the 45th issue and set him free. A court was held by Judge Pratt in which they argued that Halifax had no warrant for a search and seizure because the warrant had no one's specific name and gave them the right to commit a search and seizure on whoever they believed was suspicious and was therefore illegal. The other side stated that the warrant was legal because although there were no names they had a description of who they were looking for. Leach's defense then stated that Leach did not fit the description of the warrant because they had only known the offence that was committed and nothing more to their argument, they then continued by stating that the seizure of all of his papers would have negated the statement that they were going based on description as many of those writings had nothing to do with the 45th issue and were older.

These events inspired James Madison to write the 4th amendment and from this example we can see that a seizure occurs when you make physical contact with someone or their effects (*Wilkes v. Wood (1763)*)

II. The precedent set by the Supreme Court determines that Petitioner Roxanne Torres was seized the moment she was shot.

A. The common law of the court establishes that a seizure occurs when an officer uses physical force on a suspect, with the intent to restrain, regardless of if the suspect flees.

According to the common law of arrests, an arrest occurs on two occasions; when a suspect submits to police authority and their freedom

of movement is restricted and when there is an apparent application of physical force with the intent to restrain. In this case, the moment that the bullets entered Roxanne Torres' body, was the moment that she was seized because the officers had shot with the intent to restrain her from fleeing the scene. In *California v. Hodari D. (1991)* the court confirmed that under the Fourth Amendment, the common-law definition of arrest is upheld, agreeing that "the mere grasping or application of physical force with lawful authority, whether or not it succeeded in subduing the arrestee, was sufficient," and the Supreme Court reaffirmed this statement a numerous amount of times throughout the case. Again, in *California v. Hodari D., (1991)* the court confirms the common law definition

of arrest by stating that, “[A]n arrest requires *either* physical force ... *or*, where that is absent, *submission* to the assertion of authority.” A suspect may either show a submission to authority, in order to be arrested or a suspect must have had physical force carried out upon them in order to be seized under the Fourth Amendment, which Petitioner Roxanne Torres was seized when struck by the bullets even though the search warrant was for someone else. The fact that Roxanne Torres fled the scene, acting incoherently led police to believe Torres was the one they were there to arrest. The Fourth Amendment’s protections are clear in cases such as *Graham v. Connor (1989)* where it is stated the 4th amendment, “provides an explicit textual source of constitutional

protection against physically intrusive governmental conduct.” A bullet entering one’s body is a prime example of intrusive governmental conduct. A seizure did in fact occur in this situation. The “attempt” was successful even though the suspect allegedly tried to use her car to cause bodily harm to the officers, ultimately fleeing the scene. Accordingly, after she crashed the car, she later exited the car, and laid face down on the pavement awaiting the arrest.

III. The court must uphold the precedent that applied physical force constitutes a seizure.

A. The search and seizure clause was intended by the founders to protect individuals from the immediate intrusion

of their private persons, property, and possessions.

The unreasonable search clause of the 4th amendment classifies a search as the immediate entry of the home, not the confiscation of items. This was to protect individuals from unwarranted breaking and entering of their home, as evidenced in the decision of *Katz v. United States (1967)*. In this case Katz had his phone wiretapped by the government and argued that this was a violation of his 4th amendment right to privacy. In a 7-1 vote the court defined a search as “an intrusion into an area covered by a reasonable expectation of privacy.” By this definition of a search we can conclude that the search of a private residence occurs at the moment of entry, not after the confiscation of

items. This idea is further supported by the decision in *United States v. Jones*(2012) which determined in a unanimous decision that the warrantless placement of a tracking device on a vehicle owned by Jones was a violation of his 4th amendment rights, and was an unconstitutional search. In this case the search occurred at the moment of the placement of the tracking device, not after data had been collected. Following the same reasoning, the founders intended for a seizure to occur at the moment of physical contact to the body, not after the individual has been arrested or has property confiscated.

B. The 4th amendment exists to preserve the right of the people to be secure in their persons from abuse by the police.

Just as the search clause of the 4th amendment exists to protect us from unreasonable entry of our homes, the seizure clause exists to protect us from an unreasonable violation of our bodies. Seizure of the individual occurs at the moment of applied physical force to the body, not after detainment. For example, when a bullet enters the body of an individual it can cause them serious and immediate harm, even before detainment. However, the founders still intended for such an individual to have protection from authority without the restriction of movement.

CONCLUSION

In conclusion, when an officer applies physical force to a suspect, whether or not they are successful at detaining them, a seizure has occurred within the meaning of the Fourth Amendment. In this scenario, Roxanne Torres was shot at by the police and hit twice. The petitioner, Roxanne Torres, was seized the moment that the bullet hit her body. As seen in previous court cases, when physical force is applied to someone, or submission to a police officer there has been a seizure. One of these cases was *California v. Hodari D. (1991)* where the Supreme Court officially ruled that a seizure occurs when physical force is applied or if the suspect is detained. This precedent shows Torres had been seized the day of the incident.

Protecting the people from harm and ensuring the most safety to all citizens has always been a concern

in the making of the constitution and the nation. This is seen when James Otis, who was the Advocate General in 1761, goes against the *Writs of Assistance* saying when you let officers search and seize someone who is not specifically identified in a warrant, it can give too much power to officers (Howell's State Trials 1765). However, in this case the police had reason to believe, at the time, Torres was who they were looking for based on her actions that night. Common law also shows that physical touch of a person is considered to be a seizure. In this Supreme Court Case, the officers had seized Roxanne Torres when the bullets hit her in the back as she was driving away. As soon, as the bullets hit Torres, there had been physical force applied classifying the action as a seizure.

Respectfully submitted,

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[02/22/21]