

1. 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”?

2. Statement of the Case

On July 15, 2014, two New Mexico Police officers went to an apartment complex in Albuquerque to make an arrest. In the parking lot, Officers Janis Madrid and Richard Williamson witnessed Roxanne Torres speaking to another person. The officers decided to make contact with Torres to see if she was the woman they were meant to arrest. They exited their vehicle and approached Torres. Both officers were wearing tactical vests with police badges, which clearly identified them as police officers. Officer Williamson approached the drivers-side window, while Officer Madrid stood by the drivers-side front tire of the car. Officer Williamson repeatedly asked Torres to show her hands, but Torres did not follow the instructions. Both officers observed Torres making “furtive” and “aggressive” movements in her car. They accurately inferred that this was the result of Torres using the substance methamphetamine.

At this time, Torres put the car into drive. Given their position close to and, in the case of Officer Madrid, slightly in front of the car, the officers perceived this as a threat to their life and safety. In fear for her life, Officer Madrid raised her firearm and fired shots through the windshield as the car began to approach her aggressively. Likewise, Officer Williamson, who was afraid of being crushed between Torres’s car and the one in the next spot, fired through the drivers-side window. He was fearing for Officer Madrid’s safety as well as his own. Even after

two of these bullets struck Madrid, she did not slow or stop her vehicle. In fact, she continued to accelerate.

After colliding her car with another vehicle, Torres asked a bystander to call the police. As she had an outstanding arrest warrant, Torres decided not to remain on the scene, but rather stole another vehicle and continued to flee. She continued to drive for over 75 miles to Grants, New Mexico, and checked herself into the hospital. It was not until she was airlifted to another hospital that Torres would finally be apprehended by the police. Torres ultimately pled no contest to three crimes: fleeing from the police, assault of an officer, and stealing a vehicle.

Over two years later, on October 21, 2016, Torres filed a civil rights complaint against Officers Madrid and Williamson. The district court ruled that no seizure occurred, and as such Torres had no Fourth Amendment claim. In 2019, the U.S. Court of Appeals for the Third Circuit affirmed this decision, observing that, “despite being shot, Torres did not stop or otherwise submit to the officers’ authority.” For the reasons described in this brief, the U.S. Supreme Court should affirm the ruling of the Tenth Circuit.

3. Statement of Argument

Officers Madrid and Williamson did not “seize” Torres as defined in the Fourth Amendment. Torres was not physically restrained or under the control of the officers when she fled the scene.

4. Argument

- a. In accordance with the rulings of the lower courts, Torres was not seized at the time the shots were fired.

- i. Under *Brendlin v. California*, the officers did not affect a seizure

1. A seizure is effected when an officer has restrained someone's movement.
 2. In *Brower*, the Court ruled that a seizure occurs when "there is a governmental termination of freedom of movement through means intentionally applied". Additionally, this is the standard adhered to in *Brendlin*, which states that a seizure occurs when officers "terminate or restrain a person's freedom of movement".
 3. In this case, after Ms. Torres was hit by the gunshots, she did not pause or hesitate in her flight, instead accelerating the car. After this, she drove 75 miles and was not apprehended until the next day. In no way did the police infringe upon Ms. Torres's freedom of movement.
- ii. The common law definition of an arrest under *California v. Hodari D.* does not dictate the outcome of this case
1. According to *Whitehead v. Keyes*, "an officer effects an arrest of a person whom he has authority to arrest, by laying his hand on him for the purpose of arresting him, though he may not succeed in stopping and holding him."
 2. According to this definition, Ms. Torres's first interaction with the police is not an arrest for two reasons. First, the officers never laid their hands on Ms. Torres. Secondly, even if you can argue that the gunshots fulfill that requirement, the officers did not fire their guns for the purpose of

arresting Ms. Torres. They fired their weapons in self-defense because their safety was threatened by Ms. Torres's unpredictable actions.

3. Yes.
 4. Justice Scalia stated 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." This definition falls under the category of seizures by the 4th amendment. Common law arrest requires that physical control, not just physical harm, is needed for a seizure to be enacted. Torres was able to leave, making her not seized under the 4th amendment.
 5. Though it is argued in the dissent by Justice Paul Stevens that seizure takes place when an officer conveys a citizen is not free to leave, a citizen could be unsure of this. Torres was under the influence of methamphetamine and the officers were out of uniform, which caused her to believe she was being carjacked. It was not clear to her that she was not free to leave from officers even though the shots they fired were meant to convey this message.
- iii. The original intent of the Fourth Amendment does not apply to this case
1. The original public meaning is that there must be evidence to suggest there is a valid reason to search or seize.

2. The phrase “unreasonable seizures” of the 4th amendment is repeated again in the Massachusetts Declaration of Rights. It states “Every subject has a right to be secure from all unreasonable searches, and seizures of his person, his houses, his papers, and all his possessions.” This original understanding lacks the reasonableness tests created in later precedents, but using the Virginia Declaration of rights, evidence is needed for a reasonable search.
3. It states, “[G]eneral warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or 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.”
 - a. The original interpretation of the 4th amendment suggests it to be egregious to seize without proper evidence. In this case, there was clear evidence of use of an illegal substance to the officers, making the officers actions acceptable under the 4th. As long as there can be provided this evidence, it is a reasonable search or seizure. Evidence was provided in this case of Torres’s furtive and aggressive movements. Though there was no physical evidence of

methamphetamine itself, her erratic movements were evidence enough.

b. Even if a seizure did occur, the officers' actions were objectively reasonable

When Torres put the car in drive, Officers Madrid and Williamson were in close proximity to the car. Officer Williamson was situated directly between Torres's car and another parked vehicle. Officer Madrid was standing directly in front of Torres's front tire. Because of their locations and Torres's addled mental state, unpredictable behavior, and refusal to submit to their authority, the officers thought their lives were in danger. They believed the only way to ensure their safety would be to shoot at Torres.

In *Graham v. Connor*, it is stated that an officer's actions should be evaluated from a standard of reasonableness. However, *Graham* states their actions should also be evaluated with the knowledge that the officers had in the split-second when they had to react. At this moment, the officers knew that Ms. Torres was high on drugs, and making "furtive" and "aggressive" movements. They knew that, even after they identified themselves as police, Ms. Torres was uncooperative. And they knew that Ms. Torres put her car into drive and that she would be able to use the car as a weapon against them. With this knowledge, their actions were reasonable. For the officers to not take action against Ms. Torres would be to ask them to unnecessarily risk their safety. *Terry v. Ohio* recognized that it would be unreasonable to force officers to take such risks.

Additionally, *Graham* gives a list of factors that should be taken into account when determining the reasonableness of an officer's actions. One of these factors is whether the suspect poses a threat to the officers or to others. Ms. Torres was a threat to the officers, but also to others around her. She clearly wasn't thinking properly, and the officers had no way of knowing if she would use the car as a weapon against a civilian. Even if this was not her

intention, she endangered everyone else on the road while driving while high. Additionally, *Graham* says that we should take into account whether or not the suspect was a flight risk. In this case, Ms. Torres putting her car into drive is clearly a sign that she planned on being uncooperative and leaving the scene.

The reasonableness of the officer's actions is also supported by *Mullenix v. Luna*. This case is very similar to the one at hand, as both Mr. Leija and Ms. Torres were intoxicated and using their vehicles as a possible threat to officers and others. *Mullenix* ruled that an officer shooting Mr. Leija was reasonable due to the life threat Mr. Leija posed to the officer's safety. Due to the similarity between the two cases, that is a precedent that should apply here.