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 RESPONDENTS

BELLA XIA
Counsel of Record
The Baldwin School
701 Montgomery Ave
Bryn Mawr, PA 19010
(215) 921-1360
bxia@baldwinschool.org

SCARLET XING
The Baldwin School
701 Montgomery Ave
Bryn Mawr, PA 19010
(484) 681-3920
sxing@baldwinshool.org

Feb. 22nd, 2021

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

TABLE OF AUTHORITIES

CASES

TREATISES, ARTICLES, AND OTHER AUTHORITIES

STATEMENT OF ARGUMENT

On July 15, 2014, the respondents observed the petitioner Ms. Roxanne Torres "tripping out" in her car, which for the respondents was a sign of drug use. Consequently, the respondents approached Ms. Tores's car and announced their identities as police officers. At this moment, Ms. Torres exhibited "furtive" and "aggressive" movement in an attempt to evade the respondents by starting her engine. Both respondents found Ms. Torres's action poses a serious threat to their lives, especially owing to her currently unstable mental state. They therefore drew their guns and fired at the vehicle, but Ms. Torres managed to keep driving for an entire day. In the meantime, she stole another car and drove as far as 75 miles to a hospital. She was later arrested on July 16, 2014. Petitioner sued under 42 U.S.C.§ 1983 that the shooting was an unreasonable seizure in violation of the Fourth Amendment. Both the district court and the U.S. Court of Appeals for the Tenth Circuit correctly held that there was no "seizure" for the purpose of the Fourth Amendment.

The present case concerns itself with the extent of constitutional rights of the Fourth Amendment of the U.S. constitution, which stated 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." Since its founding, this clause is commonly used to protect the right of the people against any searches and seizures that were unreasonably imposed on them without probable reasons.

The counsel for the petitioner argued that Ms. Torres was seized while driving for more than 75 miles, stealing another car in the mid-way, and while continuing to move freely around New Mexico State for an entire day. This argument is evidently insufficient in itself and contrary to the fact presented. The fact of this case is pure and simple: that there is never the presence of a "seizure," because Ms. Torres was never confronted with a termination or restraint of her freedom of movement by the respondents.

ARGUMENT

I. THE LOWER COURTS WERE CORRECT IN DECIDING THE ABSENCE OF "SEIZURE" UNDER THE FOURTH AMENDMENT

A. There Is No "Seizure" Present Under Its Definition In Brendlin v. California

When deciding the presence of "seizure," the standard provided in Brendlin v. California offers a comprehensive test that incorporates the court's decision in Brower v. County of Inyo, Florida v. Bostick and California v. Hodari D. In the opinion of Brendlin v. California, Justice David Souter wrote that ""A person is seized … when officers, by physical force or a show of authority, terminate or restrain the person's freedom of movement through means intentionally applied." This decision won unanimous support from the honorable justices at the time, proving that the standard is highly consistent with the court's view on the definition of "seizure."

Two segments from the definition above were found to be inapplicable in the present case. First, Ms. Torres was never restrained from her freedom of movement at any point of the course of interaction between her and the respondents. Considering the fact that Ms. Torres managed to engage in heavy

driving as well as committing another crime in which she stole a car during the time interval between her escaping from the respondents and her being finally arrested at the hospital, it would be not only unlikely, but quite unreasonable, to argue that Ms. Torres' subsequent actions were done in a state in which her freedom of movement was either terminated or restrained, as the definition of a seizure above would suggest.

B. The Application of "Common Law Arrest" Under California v. Hodari Does Not Dictate The Case's Outcome

Second, no precedent criminal cases were found where gun bullets were applied as a "means" for "terminate or restrain [a] person's freedom of movement," and there is an inherent difference between the use of physical force to grab or take hold on a person and the use of gun bullets. In judging whether the use of guns constitutes a "means" to restrain a person's movement under Fourth Amendment, it is necessary to return to the understanding of "seizure" in relation to common law arrest in the majority opinion in California v. Hodari D. In the opinion delivered by Justice Scalia, the precedent Whitehead v. Keyes from 1862 was cited as an explanation of "arrest," which stated that "[A]n 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." The specific movement involved in the definition of arrest, that is, the laying of hands to inhibit a person's movement, is quite different from the use of bullets in the present case.

California v. Hodari D. did hold that the Fourth Amendment encompassed the common-law definition of arrest. But again, it's important to note that the common-law definition of arrest, as outlined in Whitehead v. Keyes from 1862 which the opinion of Hadari D. cited, does not apply to the current case. Whitehead v. Keyes's specific wording for "arrest" is the act of "laying his hand on him for the purpose of arresting him." In the present case, no direct contact was present between Ms. Torres and the respondents. The only physical force present in this case was indirect contact using gun bullets, which was clearly not included in the common law definition of arrest. Therefore, it is logical that according to the definition of "seizure" decided in California v. Hodari D. which included the realm of common-law arrest, the respondents' use of guns towards the vehicle did not constitute a "seizure."

C. The Original Intent of the Fourth Amendment in Colonial Time Does Not Apply to This Case

Since its establishment, as the majority opinion for Carpenter v. The United States suggested, the Fourth Amendment has been used as a means to "[seek] to secure 'the privacies of life' against 'arbitrary power.'" This "arbitrary power," further elicited by Justice Scalia in his dissent opinion for Maryland v. King, was directly related to the term "Writs of Assistance," which was a part of the British legislation granting any officer or messenger the power 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. Scalia's understanding was echoed in various primary legal sources from the founding era. Several earliest state legislatures, including the Final Draft of the Virginia Declaration of Rights in 1776, Constitution of Massachusetts in 1780, records of NY Ratification Convention Debates and Proceedings in 1788, all related their clause offering the people "a right to be secure from all unreasonable searches and seizures of his person, his papers, or his property" with the application of "general warrants" under Writs of Assistance ("NY Ratification Convention Debates and Proceedings, July 19, 1788").

Therefore, the founders had understood seizure as the act of actually detaining a person or taking him under custody. As emphasized many times in the respondents' argument, Ms. Torres' freedom of

movement has never been restrained throughout her encounter with the respondents, not to mention any actual detaining or taking under custody. The original public meaning of the Fourth Amendment was not intended for the present case, where there was no abuse of physical force as such by the crown in the colonial era, but instead only two police officers observing an illegal action and in an instant attempting to balance their safety with the criminal's individual rights. The respondents made a reasonable decision in shooting Ms. Torres' vehicle, and no "seizure" under the original public meaning occured.

II. EVEN UNDER THE HYPOTHETICAL PRESENCE OF "SEIZURE," THE RESPONDENTS' ACTIONS SHOULD BE JUDGED AS "REASONABLE"

It is important to emphasize that no "seizure" occurred in the present case and thus no reasonableness test is necessary to be applied. But if, under a hypothetical scenario with facts quite different from the present case, the police officers did require a reasonableness test, the shooting, considering the particular circumstance of the police officers, was nevertheless "reasonable" under the "reasonableness test" developed in Graham v. Connor. The main question posted in the reasonableness test is "whether the officers' actions

are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." In the opinion delivered by Chief Justice Rehnquist, the reference to a three-part determination is also applicable to determine the reasonableness of the police officer's action in the particular circumstances of the present case. The three elements to be considered are "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." At the instance of the petitioner starting her engine, she fitted into the latter two categories, that she posed an immediate threat to the safety of the respondents and that she was actively resisting the arrest by flight.

The second point, the threat to the safety of the respondents, is critical in the present case as well. This element was judged as extremely important in other cases like Terry v. Ohio and Mullenix v. Luna. In the majority opinion of Terry v. Ohio, Chief Justice Warren clearly articulated the right of the police officer to secure their individual safety, especially in securing that "the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him" because "[c]ertainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties." This opinion was echoed in Mullenix v.

Luna, where the court granted Mullenix qualified immunity because the subject of his shooting, Leija, was judged as being "a sufficient threat" to the lives of Mullenix and other police officers and thus justified the "objective reasonableness" of Mullenix's act.

Additionally, even though Ms. Torres' crime at issue, namely her drug use, was of low severity when viewed independently, it nevertheless boosted the risk of life that the respondents confronted since Ms. Torres's unclear state of mind would possibly lead to unimaginable and unconstrained actions. Consequently, in the instance, considering the risk that Ms. Torres posed on the respondents and her obvious attempt to escape, it is clear that any reasonable, sensible police officer would do the same thing as the respondent, which is to shoot at Ms. Torres's vehicle.

CONCLUSION

To conclude, the respondents, police officer Janice Madrid and Richard Williamson never violated the Fourth Amendment's protection on individuals against unreasonable seizure because there was never a seizure in this case. The petitioner, Ms. Torres was never restrained from the freedom of movement, and the physical force applied by the respondents through shooting was never considered in criminal cases as a means for such restraint. In 2019, the U.S. Court of Appeals for the Tenth Circuit rejected Ms. Torres's appeal on the basis that there was no "seizure." The Respondent respectfully requests that this Court affirm the lower court's decision.

Respectfully submitted,

BELLA XIA
COUNSEL OF RECORD
The Baldwin School
701 Montgomery Ave
Bryn Mawr, PA 19010
(215) 921-1360
bxia@baldwinschool.org

SCARLET XING
The Baldwin School
701 Montgomery Ave
Bryn Mawr, PA 19010
(484) 681-3920
sxing@baldwinshool.org

Feb. 22nd, 2021