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

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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"?

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SUMMARY OF ARGUMENT

The Fourth Amendment of the Constitution was created to deter unreasonable searches and seizures from occurring. The current situation of the world has revealed a lack of structure and accountability within law enforcement. However, the court recognizes that partial leniency must be given to police officers and a stricter scope should be created. Miss Torres claims that Officer Madrid and Williamson used excessive force in trying to detain her, but a problem arises in this statement when it is revealed that Miss Torres had unsuccessfully been detained by the two police officers. This means that Miss Torres' claim is false because she had, in fact, not been seized to begin with. First, the officers did not shoot to stop the petitioner, but rather reasonably in self-defense. The officers had observed Miss Torres' actions leading up to the event and in doing so, led to reasonable suspicion that she would run over the two officers- an imminent danger to their lives. Secondly, the car was not stopped after the shots had been fired. In addition, Miss Torres herself did not stop driving the car after she had been hit by both bullets- an idea that the petitioners have tried arguing through evasion. The full action of a seizure did not occur. Lastly, intent or usual result of officers' actions should not be used at all as it is an unreliable method of justification. Miss Torres was approached by two police officers in uniform, something that qualifies under "show of authority" seizures according to Thomas Clancy when explaining "Yet, Perkins acknowledged that, to satisfy this notice requirement, "[n]o special form of words" was required and conduct could take the place of words. The notice

requirement would be satisfied, for example, by an officer's displaying her badge or by wearing a police uniform" in *What Constitutes an Arrest within the Meaning of the Fourth Amendment* (Clancy, 2003). However, Miss Torres was under the influence of methamphetamine and was unable to recognize so. In addition, since Miss Torres did not stop after she was shot, the intention of the police officers act and usual result did not align with the actual result. This means that they cannot be used because they were found to be incorrect. Officers Madrid and Williamson were unsuccessful in seizing Miss Torres and therefore, under the fourth amendment, cannot count as a seizure.

ARGUMENT

I. The Police Officers intent to shoot was a reaction of self-defense.

While later we will discuss why intent should not be used in deciding whether an event qualifies as a seizure or not, if we were to, the police officers were not trying to seize, or arrest, Miss Torres. In *To the Farmers and Planters of Maryland*, the author explains how in 1788 officers would search individuals and seize items from them for any reason they could find- even going as far to refer to them as scum of mankind. However, the officers in today's had probable cause act in accordance with how they did. The *Respondent's Merits Brief* states that both police officers were in fear for their lives. Miss Torres had entered the vehicle, one that Officer Madrid then went to stand in front of and Officer Williamson was on the side of. However, when Miss Torres stepped on the break the officers recognized that their lives were in immediate danger. A car is reasonably assumed to be able to accelerate fast, so the officers understood that their option were limited. This, along with the fact that the officers observed Miss Torres to be in a state of agitation earlier gave the officers enough probable cause to assume that Miss Torres would run/crush them. Under the statute § 1047.7 use of deadly force, the officers were justified in their reactions. The intent of these police officers was not to harm or detain the individual, but rather to stop them to protect their own lives and others.

A. Would the officers earlier intent to stop Miss Torres count as a seize?

The *Virginia Declaration of Rights* talks about how an officer should be supported by evidence to seize any person(s) and Officer Madrid and Williamson had obtained enough to fit this standard. The two officers had, at first, received input from a third party (allowed under common law) that there was suspicious activity occurring where Miss Torres was found. Once spotted, the officers went to approach. This is reasonably justified, as described by *People v. Rivera*, a stop and inquiry of an individual does not qualify as a seizure. It was not until that Miss Torres exhibited strange appearances and got in the car that the two officers drew their guns and the event detailed above occurred.

II. No limit of movement had occurred

A. The individual was not stopped

While the petitioners have tried to argue that after the 2 shots from the officers hit Miss Torres, she was briefly stopped and therefore seized according to *United States v. Jacobsen*. However, what the petitioners fail to realize is that under their own circumstances, Miss Torres was not seized because she was technically not stopped. *California v. Hodari D.* shows how the individual had been stopped briefly before escaping the officer, but in this instance, Miss Torres had not stopped driving, even momentarily, after the 2 bullets hit her. There was no point of custody because there had not been 1) a moment of touching between Miss Torres or Officer Madrid and

Williamson; or 2) a submission to the officer's show of authority from Miss Torres, as held by the Supreme Court.

B. The car was not stopped

To add on, in her escape, since Miss Torres did not stop driving, the car did not stop either. This would mean that Miss Torres had not been stopped or seized by Officer Madrid and Williamson. In the case, *Henry v. United States*, it demonstrates how the arrest was declared to be occurred when the agents stopped the car using the circumstances of that case. If applied to *Roxanne Torres v. Janice Madrid and Richard Williamson*, it would mean that the two officers failed to seize Miss Torres.

III. Proof of intent and use of usual results should be negated.

A. Intent was not completed

As stated above, the two officer's intent was not to detain or seize Miss Torres but rather as an act of self-defense to stop the car and therefore avoid being hurt. However, intent cannot be relied upon to make a legal conclusion because the result that occurs is not always what was originally intended. While Officer Madrid and Williamson were able to avoid harm, their goal of stopping the car did not occur. Why should intent be relied upon if the result was completely different? In the concurring opinion of the Supreme Court case, *Brower v. County of Inyo*, Justice John Paul Stevens and 3 others argued that the majority's

opinion had used intent which is not applicable to every case of unreasonable search and seizure. Therefore, we can understand that this method should not be enforced or at least applied on a case-by-case basis.

B. Usual result did not occur

Like intent, the usual occurring result of an action is also unreliable. While it is a stronger indicator of whether an action was mean to be a seizure, if the actual result differs from the action- it is now invalid. When officer Madrid and Williamson shot at Miss Torres, it would have usually stopped her from continuing her movement. It is reasonable to assume that when an individual is hit with a bullet that they will not be able to continue moving. While Miss Torres could no longer use her left arm, she was still able to continue and keep going down her path. In common law, it is also often argued that an attempted seizure does not qualify as a seizure. While a seizure was not purposefully attempted, it would have been the intended result- yet it did not occur so it, again, not qualify.

CONCLUSION

The circumstances vary from case to case and that currently the definition of seizure is too broad. The definitions of the two types of seizure: "show of authority" seizure and "physical force" seizure, already create confusion within the courts. The vagueness and differentiation create a multitude of arguments to be made and it must be fixed. The clarification of the word seizure has yet to be done, so how can a choice between successful and unsuccessful be made.

If not fixed and the decision be made to favor successful, officers will no longer be able to continue their duties reasonably due to fear of false charges being made. Officer Madrid and Williamson both had probable cause to act in self-defense, but if their action were found to be considered a seizure, the courts must consider if this would mean every similar act of defense be considered so to?

The word arrest stems from the French word "*arreter*" which means to stop, detain, to hinder, to obstruct. In any part of this story, Miss Torres was not stopped in any way as we have seen by her continuation of her action in the moment. This would mean that a seizure that was unsuccessful would not even follow the roots of the word it is supposed to be, thus making the word unreliable.

Unreliability has been shown to be an issue in many tests for seizure. With probable cause and usual result being the best, they still do not work in every case or create a structured explanation as for what the courts should do. This allows for even further differentiation between what future cases should do

when concluding. The result can then differ from each other as well them and render them useless.

It is not only the duty of the court to protect the citizens of the United States of America, but to also provide a reasonable leniency to the law enforcement officials. Without this balance, police officers would not be able to carry out their jobs. While it is not the duty of the Supreme Court to fix the law, this is not a matter of legislation but rather contradicting precedents throughout the court system: district, circuit, appellate, supreme- a problem that the Supreme Court of the United States does have power over and the authority to solve.

Respectfully submitted,

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