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

TABLE OF AUTHORITIES

SUMMARY OF ARGUMENT

The petitioner affirms that an unsuccessful attempt to detain a suspect by use of physical force is a "seizure" within the meaning of the Fourth Amendment for two main reasons. First, using the doctrine of original intent, we can establish that the Constitution must be interpreted according to the Framers' original intent while crafting the document. The Fourth Amendment was written with the intent of representing common law, and according to common law, a "common law arrest" is interchangeable with a "seizure" mentioned in the Fourth Amendment. A common law arrest comprises the obtaining of custody over the suspect by a police officer with the intent by the officer to do so. Regardless of whether the suspect escaped, if a police officer uses physical force to "obtain custody" over a suspect and intends to detain them, the action is a common law arrest regardless of whether the suspect escapes. Therefore, Torres' arrest must be unconstitutional by the Fourth Amendment because it fulfills both aspects of the common law arrest definition; the police officers used excessive physical force to "obtain custody" of Torres, and the police officers intended to do so. Our second argument revolves around the principle of "stare decisis." According to "stare decisis," justices must look at previous court precedent to make rulings that most logically align with prior precedent. It is of natural consequence that the decision in Torres must similarly align with Supreme Court precedent. However, a Respondent ruling on this case would contradict prior precedent.

ARGUMENT

On July 15, 2014, two police officers pursued a woman, Roxanne Torres, who had been using methamphetamine and was “tripping out.” The officers noticed her making "furtive" and "aggressive" moments and pursued Torres, while Torres, without the knowledge that the men were police officers, thought she was being carjacked. When Torres attempted to speed away, both officers fired their guns at her vehicle. In 2016, Torres sued both police officers for violating her Constitutional rights under the Fourth Amendment, claiming that the men used "excessive force" in seizing her. But the district court claimed that there was no seizure, therefore her rights were not violated. The US Court of Appeals for the Tenth Circuit affirmed in 2019, stating that Torres was not seized by the officers' use of force because the gunshot did not restrain her "freedom of movement".

Torres petitioned the Supreme Court for a writ of certiorari in 2019, to which the Supreme Court granted review. This case raises the question for the Court: 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”?

We the Petitioner agree that an unsuccessful attempt to detain a suspect by use of physical force is a “seizure” within the meaning of the Fourth Amendment for two reasons. First, using the doctrine of original intent, we can demonstrate that a "seizure" equates to a "common law arrest," and the latter includes arrests in which the suspect escapes, therefore making Torres' arrest unconstitutional. Secondly, we prove that a Respondent ruling on this case would contradict prior precedent, specifically the rulings in *California v. Hodari D., 499 U.S. 621 (1991)*, and *Brower v. County of Inyo, 489 U.S. 593 (1989).*

Our first main argument is that a seizure is covered within common law. Since Torres' arrest would violate common law, it consequently violates the Constitution. The basis of this claim is rooted in three major lines of argumentation: (1) The definition of the Fourth Amendment; (2) The doctrine of original intent obligates us to use common law in deciding how to define "seizure;" and (3) Any common law arrest is a "seizure," therefore making the gunshots fired at Torres a "seizure".

The Fourth Amendment to the Constitution of the United States reads "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." The word "search" and "seizure" are quoted in the Fourth Amendment, both established to protect one's privacy under the US constitution. Since we assert that Torres was seized, this claim will naturally argue about the language established in the Fourth Amendment.

Common law is the basis for the United States' judicial system, and has informed its functions considerably from the Constitutions' creation to modern day. Therefore consequently common law informed the Framers' intentions while drafting the Fourth Amendment. Since the doctrine of original intent holds that we must consider the Framers' original intent of creating amendments, we must consider common law in deciding how to define "seizure" as it was used by the Framers at the time of writing the Fourth Amendment.

In the supreme court case *California v. Hodari D., 499 U.S. 621 (1991),* this Court considered whether at the time Hodari D, the defendant, dropped the drugs, he had been "seized" within the meaning of the Fourth Amendment. To do this, they looked to common law. Additionally, expert sources

affirm this interpretation. Looking at the William and Mary Bill of Rights Journal, it highlights that "to understand the Supreme Court's current Fourth Amendment doctrine, it is critical to understand the common law." Therefore we must look to common law in this case to define a "seizure."

Any common law arrest is a "seizure," therefore making the gunshots fired at Torres a "seizure." This assertion is made since the sources collected by Hodari D. confirm that, using common law, an arrest could be affected by the "slightest physical contact." The Court elaborated on this definition of a common law arrest, stating that "'an officer effects a [common law arrest] 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.'"

We once again look to the doctrine of original intent and historical sources to confirm this interpretation. In *A Dictionary of the English Language (1755)*, Samuel Johnson defines the term "arrest" as including "to seize by a mandate from a court or officer of justice" and to "seize, to lay hands on." Applying this principle of common law to the Fourth Amendment, clearly Torres' arrest was a violation of the Amendment because there was no "mandate" obtained by the police officers.

Furthermore, the officers used excessive physical force, gunshots, to "lay hands" on her. Even though the police officers did not permanently stop Torres, their use of excessive physical force through gunshots did constitute a seizure.

Additionally, a verdict in favor of the Respondent would overturn precedent, and go against the principle of stare decisis that this court holds high in regard. Aside from defining a "seizure," common law also outlines stare decisis, the principle of relying on past precedent to inform rulings on cases. As Justice Stephen Breyer states in *Randall v. Sorrell 548 US 230 (2006)*, "Stare decisis avoids the instability and unfairness that accompany disruption of settled legal expectations. For this reason, the rule of law demands that adhering to our prior case law be the norm." The constitutional question today must be decided in a manner that best aligns with previous precedent. The Petitioner can clearly fulfill this obligation while Respondent arguments fail to do so.

Hodari D. clearly concludes that “The word ‘seizure’ readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful.” As the gunshots were a clear application of physical force, the shooting of Torres was clearly a seizure.

Any contrary arguments directly contradict Hodari D's precedent.

Furthermore, the precedent set in Brower V. Inyo also agrees with a Petitioner ruling. The Court held that a Fourth Amendment violation occurs when the police intentionally acquire physical control of a person or possessions. In the case, the violation occurred because Caldwell clearly intended to continue driving, and the police actions intended to forcibly stop his car. Similarly, in Torres, Torres clearly intended to keep driving, and the gunshots fired by the police intended to forcibly stop her movement. Although it was not ultimately successful, the police still had the intent of acquiring physical control of Torres, therefore making the gunshots a "seizure" under the Fourth Amendment.

Ultimately, application of the common law rule here also promotes the aims of the Fourth Amendment. By all accounts, the Amendment is designed to shield the "security of individuals against arbitrary invasions by governmental officials." *Carpenter v. United States, 138 S. Ct. 2206, 2213 (2018) (quotation marks omitted).* But unless this Court applies the common law's broad definition of "arrest" here, law enforcement officers who lack a valid justification will be able to shoot or otherwise

physically harm individuals with no constitutional accountability—so long as those individuals successfully escape the officers' violence. That result would significantly weaken the Amendment's value in protecting individual liberty from unjustified government intrusions, therefore requiring that the Court issue a Petitioner verdict in this case.

CONCLUSION

The Fourth Amendment to the Constitution exists so that people are protected from violations of their privacy through unreasonable searches and seizures. Without the Amendment, police officers would be able to arrest anyone without probable cause and endanger one's privacy in the absence of a warrant. In interpreting the meaning of the Fourth Amendment, an unreasonable "seizure" must retain the meaning that the Framers first intended it to have, according to the doctrine of original intent. Doing so, a "seizure" is equivalent to a "common law arrest" which occurs, with the "slightest physical contact" (See *California v. Hodari D., 499 U.S. 621 (1991)).* even if a suspect eventually escapes detainment. Therefore, an arrest using excessive physical contact is unreasonable, regardless of whether the attempt was successful or not. Implying otherwise would set a dangerous precedent that officers of the law could justifiably use excessive physical force on any citizen without cause, as long as the attempt is unsuccessful. This alternative clearly violates the inherent right to privacy and liberty of any person, as they must not be harmed by "unreasonable seizures" in any case. In order to preserve the original meaning of the Fourth Amendment, we must follow its public intentions at the time of conception, illustrated by common law. The principle of stare decisis confirms this interpretation of a "seizure." Stare decisis states that we must look at similar previous cases in order to decide present ones, and rule with a similar verdict to synonymous cases. This principle is crucial because it allows the law to remain stable and maintains its

integrity by applying the law equally to different groups when they are in similar circumstances. Therefore, applying stare decisis to this case, we must have a verdict that most closely follows verdicts in previous cases that also considered the definition of a "seizure" within the Fourth Amendment. Both California v. Hodari D., 499 U.S. 621 (1991) and Brower v. County of Inyo, 489 U.S. 593 (1989) agree with a Petitioner verdict by agreeing that common law should be used in defining a "seizure" and that a "seizure" occurs based on intent, thus if the police officers intended to seize Torres, and Torres intended to continue driving, the gunshots constituted excessive physical force or a "seizure." An opposite ruling would confuse precedent and complicate future rulings, clearly unfavorable under stare decisis. Thus, because a "seizure" is a "common law arrest" and therefore occurs whether or not the suspect escapes, and because precedent supports this conclusion, the Petitioners affirm that an unsuccessful attempt to detain a suspect by use of physical force is a "seizure" within the meaning of the Fourth Amendment.

Respectfully submitted,

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