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

As per the Fourth Amendment of the United States, "unreasonable search and seizure" has always meant a completed seizure. For a seizure to have had occurred, the accused persons must have been successfully detained and further movement restricted.

On Tuesday July 15, 2014 in the early morning, officers went to Albuquerque, Mexico, to deliver an arrest warrant for Kayenta Jackson. Outside of the apartment complex, petitioner Roxanne Torres was in the parking lot. Noticing that Torres was acting suspiciously, the officers approached her in the lot. Torres, who did not see the police officers' uniforms and therefore was unaware that the people approaching her were police, got in her car, and started to drive away. The officers Madrid and Williamson drew their guns and fired at Torres, hitting her with two bullets. However, Torres kept driving and evaded capture until she was arrested at a hospital the next day.

An unsuccessful attempt to detain a suspect by use of physical force is not seizure. Within the meaning of the Fourth Amendment, physical force must be successful in detaining a suspect to constitute a "seizure," because the term's ordinary meaning does not apply to unsuccessful attempts in restraining someone. In the case of Torres v. Madrid, Roxanne Torres was shot in the back while escaping police. However, she was not apprehended by law enforcement. She was only seized when she was

arrested the following day, after having evaded the authorities for a whole day via a headlong flight. Therefore, the claim that excessive force was used and the police officers were in violation of the Fourth Amendment is invalid, as there was no seizure.

ARGUMENT

I. THERE WAS NO VIOLATION OF THE FOURTH AMENDMENT WITHOUT ANY PHYSICAL UNDERTAKING.

As Torres was fleeing the parking lot, officers Madrid and Williamson managed to shoot her twice. Even while injured, Torres was still able to escape immediate arrest. Beyond firing at Torres from a distance, Madrid and Williamson were not able to make Torres submit to their authority. The Fourth Amendment of the Constitution states:

> "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."

In Brower v. Inyo County (1989), a seizure is defined as "governmental termination of freedom of movement through means intentionally applied." After Torres was shot by Madrid and Williamson, she retained sufficient movement. This is shown through her successful operation of a car away from the scene after she was shot. Torres later stole another car, and drove an additional 75 miles while injured to a hospital. As established in Brower v. Inyo County, a police officer only affects a seizure when physical

force is intentionally applied and the freedom of movement of the person is restricted, there is physical control acquired over the person by the authorities, or the person submits to the authorities, whether that submission occurs voluntarily or involuntarily. Torres's movement was not "terminated," nor did she submit to the authorities, and therefore the officers shooting her could not be considered a seizure. Tennessee v. Garner (1985) established that "whenever an officer restrains the freedom of a person to walk away, they have seized that person." It was ruled based on this reasoning that police officer Elton Hymon had indeed seized Edward Garner, as defined by the Fourth Amendment, through the use of lethal force. Much like Torres, Garner was shot by Hymon, who thought that he was acting suspiciously. Garner was immediately incapacitated by the shot and later died. This constituted a seizure under the Fourth Amendment as his freedom of movement was restricted. The officers who shot Torres may have attempted to seize her and restrict her movement, but they were unsuccessful. Torres did not have her freedom restrained after being shot and was able to drive away. Under this precedent, Torres was not seized.

"To the Farmers and Planters of Maryland" also puts forth a compelling definition of what constitutes a seizure. In the account, those on the ship who had not paid a duty on their personal belongings, they would have their belongings "seize[d] and [carried] away" by excise officers. From this, it can be inferred that the passengers' belongings were successfully taken into

possession by the officers. Had the passengers been able to resist having their belongings taken by the officers, their belongings then would not have been seized. Connecting this principle to Torres v. Madrid, Madrid and Williamson would be the ones doing the seizing, and Torres would be the thing being seized. Unlike the passengers on the ship, Torres was not taken into possession by the officers. The officers attempted to take Torres into custody, but ultimately were not successful in doing so. Thus under this definition of seizure, Torres was not, in fact, seized. Only the next day when she was arrested at the hospital would the definition of seizure as intended by the original meaning apply.

II. HODARI D. DOES NOT APPLY TO THE FINAL OUTCOME OF THIS CASE

Based on the holding from Hodari D., the Petitioner asserts that an unsuccessful use of force is an arrest. Hence, also constituting as a seizure in the context of the fourth Amendment. The Court should reject this notion. In the case of Hodari D., a police chase occured after a juvenile fled after seeing a police vehicle. Hodari D., 499 U.S. at 622-23. Upon seeing a police officer try to get on him, the juvenile threw a bag containing narcotics, and he was ultimately tackled by the officer. *Id.* In *Hodari D.*, the state court affirmed that the juvenile was "seized" the moment the officer was running behind him, even though the officer did not gain control of the juvenile. *Id*.

However, unlike in this Court, *Hodari D.* did not involve any physical force; the question presented before the Court was whether the state court correctly held that the juvenile was seized when he three the drugs away after seeing the officer, disregarding the fact that he was fleeing. Here, the Court affirmed that a "seizure" refers to the act of "laying on hands or application of physical force to restrain movement, even when it is ultimately unsuccessful." *Hodari D.,* 499 U.S. at 626. The Petitioner extensively relies on the aforementioned notion, ultimately neglecting that in *Hodari D.*, a "seizure" does not merely refer to the application of physical force, but also requires an object to be in physical control. *Hodari D.,* 499 U.S. at 624.

In *Brooks,* the plaintiff was arrested after police officers had found him allegedly burglarizing a house. *Brooks*, 614 F.3d at 1215. The officers shot and struck the suspected burglar as he was climbing a fence with the intention of escaping the property. The plaintiff then filed a suit arguing that the shooting was an unlawful seizure. Here, the Court concluded that a seizure "requires restraint of one's freedom of movement and includes apprehension or capture by deadly force." *Brooks*, 614 F.3d at 1219. It is important to note that *Mendenhall, Garner,* and Terry reject the notion that "the use of deadly force alone constitutes a seizure. Instead it is clear restraint of freedom of movement must occur." *Brooks*, 614 F.3d at 1219. Hence, the Tenth Circuit affirmed that, according to *Brower v. County. of Inyo*, the plaintiff was not seized as per the Fourth Amendment, even though a bullet had hit him,

because a violation of the Fourth Amendment requires an intentional acquisition of physical control. *Brooks*, 614 F.3d at 1220. In this case, Brooks was intentionally hit by the bullets, but he was not stopped by them as it was intended, and continued to flee from the authorities. Hence, the Tenth Circuit asserted that authorities did not gain intentional physical control over Brooks.

Like in *Brooks*, the Petitioner here relies on the statement from *Hodari D.* that seizure refers to the "laying on of hands or application of physical force to restrain movement," *Hodari D.,* 499 U.S. at 626, even when the aforementioned is unsuccessful. Like the plaintiff in *Brooks*, the Petitioner here takes Court's language out of context. A seizure occurs with submission to authority, whether that occurs involuntarily or voluntarily. Hence, if a person does not stop, they are not seized.

III. THE OUTCOME OF THIS CASE IS CONTROLLED BY CASES THAT DISCUSS SEIZURE BY PHYSICAL FORCE

Sixteen years later than *Hodari D.*, in *Brendlin v. California*, the Court reaffirmed its holding in *Brower* affirming that "a police officer may make a seizure by a show of authority and without use of physical force, but there is no seizure without actual submission; otherwise, there is at most an attempted seizure, so far as the Fourth Amendment is concerned." *Brendlin*, 551 U.S. at 254. For this reason, in this case, the Tenth Circuit correctly affirmed that a seizure had not occured because the gunshot did not stop the plaintiff from fleeing.

A. The Search Clause Does Not Apply to This Case

This Court accepts that the Fourth Amendment's Search Clause is different from the Seizure Clause. *Segura v. United States*, 468 U.S. 796, 806 (1984). *United States v. Jacobsen* also asserts that a Fourth Amendment search "occurs when an expectation of privacy that society is prepared to consider reasonable is infringed," while a Fourth Amendment seizure of property "occurs when there is some meaningful interference with an individual's possessory interests in that property". *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). Hence, the Seizure Clause, unlike Search Clause, relates to freedom of movement. *United States v. Va Larie*, 424 F.3d 694, 701 (8th Cir. 2005).

CONCLUSION

Under the circumstances of this counter, Petitioner was not seized by the two shots; she was seized only when arrested the following day.

The Court's decision in *Brower v. County of Inyo* provides guidelines for cases such as this, where force is actually applied. Hence, upon application of the aforementioned guidelines, there was no seizure. Hence, "without a seizure, there can be no violation of the Fourth Amendment and therefore no liability for the individual Defendants." *Jones v. Norton*, 809 F.3d 564, 575 (10th Cir. 2015). In this case, the Tenth Circuit's decision was consistent with Brower and the Court's holdings in *Scott, Brendlin*, *Mendenhall*, and *Terry*.

The Petitioner cannot prove that she was seized by Respondents' use of force, especially when she executed a headlong flight and evaded the authorities until the next day. Hence, as per the fourth Amendment, the Petitioner was not seized by Respondents and no Fourth Amendment violation has occurred.

Hence, the Court should respectfully affirm the holding decided by the U.S. Tenth Circuit Court of Appeals.

Respectfully submitted,

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