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
Constitution of Massachusetts (October 25, 1780)

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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 Magna Carta states, "No free man shall be seized...nor will we proceed with force against him, or send others to do so." In this case, the court is asked to decide whether an unsuccessful attempt to detain a suspect by use of physical force is a "seizure" within the meaning of the Fourth Amendment or that must the physical force be successful in physically detaining a suspect to constitute a "seizure." An unsuccessful attempt to detain a suspect by use of physical force is a "seizure" within the meaning of the Fourth Amendment. An arrest has been characterized in California v. Hodari D., 499 U.S. 621, 624 (1991) as, "the quintessential 'seizure of the person' under our Fourth Amendment jurisprudence." Under the common law definition an arrest can be made by means of two ways: by a show of authority that causes the person to submit to that authority or by applying physical force with the intent to restrain. An arrest was successfully made here because the Respondents shot at Ms.Torres with the intent to restrain her, hitting her twice. Although they were not able to take physical control of her, there was clearly an intrusion of Ms.Torres personal security when the bullets stuck and entered her body.

ARGUMENT

The Respondent seized my client once the bullets struck and entered her body. This is a violation of her

Fourth Amendment right which is protected against the state by her Fourteenth Amendment right.

I. The Court Should Recognize The Common Law Definition of Seizure.

The common law definition of seizure is an arrest, "An arrest requires either physical force . . . or, where that is absent, submission to the assertion of authority," according to *California v. Hodari D., 499 U.S. 621, 631 (1991)*. In this case the submission to authority does not apply because our client did not know that they were police officers, therefore she can't submit to authority if the authority figure was never recognized.

The purpose of the Fourth Amendment is to protect the personal security of a person from unreasonable seizure. The thirty-ninth liberty of the Magna Carta written in 1215 states that, "No free man shall be seized...nor will we proceed with force against him." In 1780 the fourteenth amendment of the Constitution of Massachusetts stated, "Every subject has a right to be secure from all unreasonable searches and seizures of his person..." Seven years later this idea was presented into the Articles of Confederation and one year after that it is seen in the New York Ratification Convention Debates and Proceedings stating, "that every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, or his property... or seize any freeman… without… affirmation of sufficient cause...and oppressi[on]". In 1789 the Constitution of the United States showed the same values in the Fourth Amendment as the thirty-ninth

liberty in the Magna Carta. This gives us about an eight hundred year old understanding of the use of the word seizure, which was used in the same context when the Framers of the Constitution wrote it about five hundred and a half years after the Magna Carta was written. Also in Hodari D. 499 U.S. at 626, the case states that the Fourth Amendment doesn't mention attempted arrest, but the common law does when the "attempted arrest" are unreasonable. This therefore goes to that the Framers didn't intend for the Fourth Amendment itself to determine whether an "attempted seizure" is reasonable or not. Thus, another reason for the court to acknowledge the common law definition of seizure.

A. The Respondent Seized Our Client.

The Respondent argues that an "attempted" seizure does not fall within the frames of the Fourth Amendment, meaning that when an officer applies physical force with the intent to restrain an individual's freedom of movement but is not successful, then that is not a Fourth Amendment seizure. According to common law, an arrest is successfully made when the officer applies physical force with the intent to restrain, regardless if the arrestee was able to get away. In our case there was clearly a Fourth Amendment seizure because the officer did use physical force, shooting and striking her with bullets that entered Ms.Torres' body, with the intent to restrain her. Torres being shot was an intrusion of her personal security by means of physical

force. Though the Respondent was not successful in physically stopping Torress, they still applied an unreasonable intrusion on our clients person. Whithead v. Keyes, 85 Mass. 495, 501 (1862), quoted in Hodari D., 499 U.S. at 624; stated "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." This is another example of how seizure is originally used, though this isn't a United States case the court is known to use older cases to help better under the Framers intentions. Another example would be a quote from Hodari D., 499 U.S. at 631, "[T]ouching for the manifested purpose of arrest by one having lawful authority completes the apprehension, 'although he does not succeed in stopping or holding him even for an instant." The Tenth Circuit's precedent states that there must be a restraint of one's freedom of movement in order to constitute a seizure under the Fourth Amendment. This requirement is also clearly satisfied in this case because the bullets that the Respondent fired and hit our client with twice, temporarily paralyzed her arm. Additionally, once the bullets struck into our clients skin that created a seizure, because it intruded her personal security. Since her arm was temporarily paralyzed, there was a seizure according to the Tenth Circuit's requirement for there to be a restrain of one's freedom of movement, which is a temporary seizure and still applies as a seizure and applies to the Fourth Amendment. Overall, it is clear to see that our client was seized by the Respondent.

II. The Seizure Of Our Client Was Unreasonable and Excessive, Therefore Violating Her Fourth Amendment Right

This court has found that "using a buccal swab on the inner tissues of a person's cheek in order to obtain DNA samples is a search," using a heat sensor to basically search someone's home without actually going in, to lead an individual into a roadblock with the intent to stopping them, and kill a person by shooting them are seizures. In Maryland v. King, 569 U.S. 435 (2013), this court found that using a q-tip to take someone's DNA and basically use it against them was an intrusion "into the human body," found quoted in Terry v. Ohio, 392 U. S. 1-25. In Kyllo v. United States, 533 US 27 (2001), this court found that the use of a heat sensor which is basically used as a visual surveillance without a warrant constituted as a violation and an unreasonable search and intrusion of property. In Brower v. County of Inyo, 489 US 593 (1989), this court concluded that the police leading a person into a roadblock with the intent to stop him is an unreasonable seizure, this individual also lost their life because of the impact of crashing into the roadblock. In Tennessee v. Garner, 471 US 1 (1985) and Lytle v. Bexar County, 560 F.3d 404, 410 (2009) the courts found that because each person in the cases was shot and killed that it constituted a seizure. "There can be no question that apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment," quoted from Tennessee v. Garner 471 US 1 at 7. The "intrusiveness of a seizure by means of deadly force is unmatched," also quoting Tennessee v. Garner 471 US 1, 9 (1985). In

comparison to a q-tip and a heat sensor, our client's circumstances are more intrusive to her person than both cases. In comparison to the roadblock and the two cases where the individuals were shot and died from the bullets, our case meets that standard of what happens when the suspect does not die? Why does the suspect have to die to constitute a seizure? What if they had lived? If all thirteen bullets the police fired struck our client would she still be alive? We don't know the answers to these questions, but we do know that the officers had the intent to stop our client and by shooting her the force was excessive and an unreasonable intrusion on her personal security.

CONCLUSION

Our client was clearly seized by the Respondent when the bullets fired entered Ms.Torres' body. Even though they were not successful in taking physical control of her, an arrest has still been recognized as a seizure in this court, under common law, and within historical documents, some even dating back to over eight-hundred years, allowing us to understand the original purpose regarding the use of the word seizure. An arrest is made when an officer uses physical force with the intent to restrain the individual, regardless if they are or were successful in taking control of them. The Tenth Circuit's requirement of a restraint of one's freedom of movement is satisfied due to the fact that our client's arm was temporarily paralyzed. The original

meaning of the word seizure affects the analysis of this case by allowing us to have a better understanding of what the Framers intended, when a suspect does get away. If using the dictionary meaning of the term seizure, like the Respondent would like, then this would mean the police would not be responsible for what they did to our client and she would be thrown out of court. If this definition is used in this court today Your Honor, it will be a disservice to our future with how the police treat our citizens. In light of the foregoing arguments, we ask this Honorable court to reverse the Court of Appeals' judgement and to reinstate the case sending it back to the district court.

Respectfully submitted,

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