No. 19-292

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In the Supreme Court of the United States

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ROXANNE TORRES, PETITIONER,

v.

JANICE MADRID AND RICHARD WILLIAMSON, RESPONDENTS.

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On Writ of Certiorari to the
U.S. Court of Appeals for the Tenth Circuit

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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 the use of physical force be successful in detaining a suspect to constitute a “seizure”?

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SUMMARY OF ARGUMENT

The petitioner was NOT seized, within the meaning of the fourth amendment, because the police officer's attempted use of deadly force to halt the petitioner failed. Every precedent set forth by the United States Supreme Court holds that for a seizure of a person to occur, the person must either voluntarily or involuntarily have their movement restricted to a stop.

ARGUMENT

During a police investigation in Albuquerque, New Mexico, two officers, Janice Madrid and Richard Williamson, approached the petitioner, Roxanne Torres. The petitioner, having her mind impaired by the use of methamphetamine, thought the approaching officers were carjackers. As a result of her confusion, Torres put the car in drive. Both officers pulled out their guns and fired at the car. Torres was hit by two bullets but continued her escape nonetheless. Later on in the night Torres stole another car and drove herself to a hospital in Grants, New Mexico. She was flown to another hospital in Albuquerque where she was then arrested. Torres sued Madrid and Williamson for violating her Fourth Amendment rights. She claims that the officers used "excessive force" to seize her.

There are multiple instances where the court has held that for a seizure to occur, there needs to be a restriction of movement. *Terry v. Ohio, 392 U.S. 1 (1968)*. was the supreme court case that established the stop and frisk as part of the "special needs search" category of search and seizures. (The term "special needs search" is present in Justice Scalia's dissenting opinion in *Maryland v. King, 569 U.S. 435 (2013)*. It is used as an umbrella term for any search or seizure that is considered to be reasonable and does not require a warrant, usually because the safety benefits far outweigh the intrusiveness. This includes government inspections of property for safety hazards and frisks among other things.) Terry v. Ohio's decision relies upon the rationale that a detective is justified in frisking a person for weapons upon reasonable suspicion that the suspect is armed and dangerous.

However, before the court delved into its primary finding, the court had to answer the question if the suspects were seized at all. What the court said in Terry v. Ohio, 392 U.S. 1 (1968) can be of great use to this case in defining what it means to be seized. In Terry, a detective stopped a group of suspicious men. The court said that "Whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person." 392 U.S. 1, 16. Although the petitioner wasn't necessarily walking, the fact that the petitioner could, and did drive away, suggests that the petitioner was not seized. To be seized, a person must be stopped.

This concept is further illustrated in *Brower v. County of Inyo, 489 U.S. 593 (1989)*. In that case, a suspect fleeing by car crashed and was stopped by a police barricade. The suspect died and the suspect's heirs sued for use of excessive force. The Supreme court concluded that the use of a police barricade to successfully stop a suspect does constitute a seizure. Although Brower extends the reach of what actions on behalf of the police constitute a seizure, the opinion never abandons the requirement that the stop must be successful. As said by Justice Scalia in the majority opinion. "We think it enough for a seizure that a person is stopped by the very instrumentality set in motion or put in place in order to achieve that result." In the case of Torres v. Madrid, the suspect was not stopped by the very instrumentality set in motion to achieve a seizure. The officers tried to seize, and therefore restrain the petitioner's freedom to move, by shooting her. The act of shooting the petitioner did not stop her, as shown by the fact that she managed to drive herself to a hospital, and therefore there was no seizure under the 4th amendment.

In *California v Hodari, 499 U.S. 621 (1991)* it was found that there are two types of seizures: either by show of authority or by use of physical force. In this case, when the officers pulled out their weapon and pointed it at Ms. Torres would count as a “show of authority.” However, considering the fact that she still didn’t cooperate at the time there was no seizure. Hodari also said 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. Yet even this common law definition of seizure is not set in stone.

According to Scalia’s findings “From the time of the founding to the present, the word "seizure" has meant "taking possession,”...For most purposes at common law, the word connoted not merely grasping, or applying physical force to, the animate or inanimate object in question, but actually bringing it within physical control. A ship still fleeing, even though under attack, would not be considered to have been seized as a war prize.” Similarly, even if Torres is under attack by a police officer’s bullets, simply being hit means nothing if there is no taking possession of the person that is attempting to be seized. In simple terms, there is no seizure if there is no taking possession.

Furthermore, there is nothing to suggest that the founding fathers intended for the seizure of a person to include the use of force without taking possession of a person’s ability to move. As said in the New York Ratification Convention Debates and Proceedings. (July 19, 1788):

> “[E]very freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, or his property; and therefore that all warrants to search suspected places, or seize any freeman, his papers or property, without information upon oath,....ought not to be granted.”

Seizures of person, papers, and property are all in the same category of protection under the 4th amendment. Therefore if there is a uniting category or group of characteristics pertaining to one, it can be reasonably assumed to have similar characteristics pertaining to the other two. That characteristic comes in the form of an excerpt in “To the Farmers and Planters of Maryland (Apr 1, 1788)”.

> “Nay, they often search the clothes, petticoats, and pockets of ladies or gentlemen (particularly when they are coming from onboard an East India ship), and if they find any the least article that you cannot prove the duty to be paid on, seize it and carry it away with them”

Finding articles, or papers, and carrying them away is a characteristic of a seizure according to this excerpt. In other words, the transferring of possession from one person to another can be interpreted as seizure. When the same concept is applied to a person, it can be concluded that seizing a person requires taking possession of that person. This interpretation is not only found in the text of our founding fathers, but also in the precedent set forth in previous cases

For example in *Brendlin v. California, 551 U.S. 249* the court found that stopping a car to seize one person, also seizes everyone else inside the car. The majority opinion, written by Justice Souter, states very clearly in the first sentence that “A person is seized by the police and thus entitled to challenge the government’s action under the Fourth Amendment when the officer, “ ‘by means of physical force or show of authority,’ ” terminates or restrains his freedom of movement, *Florida v. Bostick, 501 U. S. 429, 434 (1991)*”. As previously stated, restricting freedom of movement, whether voluntarily or involuntarily, is a required element of a seizure. In *Bredlin,* the court makes clear that driving a car is an extension of this freedom; and forcing a stop of the vehicle is a seizure. In the words of the majority opinion, “[W]e have long acknowledged that stopping an automobile and detaining its occupants constitute a seizure” ; *United States v. Hensley, 469 U. S. 221, 226 (1985)*. Therefore when applied to this case it's even more evident that the petitioner, Torres, was not seized under the fourth amendment. Torres’s vehicle, acting as an extension of her freedom of movement, was not stopped even after she was struck by a bullet. Petitioner might claim that mere use of force is enough to constitute a seizure “but there is no seizure without the actual submission otherwise there is at most an attempted seizure.”.

The entire scenario for a reform of the 4th amendment definition of seizure would lead to confusing and unjust outcomes. Everyone is sympathetic for the prudential argument that having a gunshot constituted as seizure would lead to more cops being successfully sued for use of excessive force, especially minorities. However, it's neither the courts role to try and solve a problem through bench legislation nor is it even wise for the court to solve this problem by these means. ‘Solving’ the issue of overly protective qualified immunity by destroying the definition of seizure is not a viable solution. Under this new proposed doctrine, a suspect in a gunfight who gets hit by an officer's bullet would be seized. This is confusing to the idea of seizure. There would need to be additional questions raised that would have even more absurd answers. Is the defendant seized during the entirety of the wound being present? This means that if a wounded suspect gets hit by a car, then the officer is also responsible for the car accident and as well as the initial injury. This is absurd. If the defendant is instead only seized for the brief penetration of the bullet, does this mean the officer is only responsible for damage done during those split seconds? It's absurd to think that an officer would be responsible for the damage of a defendant’s muscle tissue, but not for the death caused by a loss of blood. In order for seizure, and excessive force to make any sense in today’s construct it is essential for a seizure to bear the requirement of possession of the person. It's simply absurd to think a person is seized as they are running away. It's absurd to think the petitioner was seized by the officer’s bullets as she was driving away to steal another car and drive herself to the hospital.

CONCLUSION

A seizure requires possession of a person. Their freedom to move must be restricted. Torres was not seized, because her ability to move herself, as well as the car, clearly convey that her freedom to move was not restricted. Furthermore the common law and founding father interpretation of seizure never conveys that an element of possession is somehow optional. Lastly, while the merits of changing the meaning of seizure are valid, the rewriting of definition of the word would cause more harm than it seeks to cure. Considering the arguments set above, we pray this court rule in favor of the respondent and affirm the lower court's decision.

Respectfully submitted,

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