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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STATEMENT OF CASE

On July 15, 2014, two New Mexico State Police officers went to an apartment complex in Albuquerque to arrest a woman. At the complex, Officers Janice Madrid and Richard Williamson saw a woman, Roxanne Torres, standing near a car. At the time, Torres had used methamphetamine, and was "tripping out." The officers approached Torres, and in response Torres entered her vehicle and turned it on. The officers observed that Torres was making "furtive" and "aggressive" movements. Torres didn't know that Madrid and Williamson were officers. Torres thought she was being carjacked. Torres put the car into drive and the officers drew their guns. When Torres stepped on the gas, both officers fired their guns at the vehicle. Two bullets struck Torres, but she kept driving. Later, Torres stole another car, and drove 75 miles to a hospital in Grants, New Mexico. Torres was later airlifted to a hospital in Albuquerque. At the hospital, Torres was finally arrested the next day on July 16,2014.

SUMMARY OF ARGUMENT

Petitioner was not seized under the analysis of several court cases. A seizure has been defined as the submission to authority or the use of physical force that restrains the person's movement. Petitioner did not submit to authority and was not restraint as she was able to drive off, steal a car, and continue to drive another 75 miles. Furthermore expanding the definition of seizure to include failed attempt will unnecessarily overwork the justice system. It will make the jobs of police officers harder as well due to the scrutiny they will face under petitioners analysis. Lastly the petitioners analysis of California v. Hodari does not apply to our case. First that case did not involve physical force which does occur in our case. Second the petitioner is relying on the common law cited in that case. Common law is merely a guide not binding on this court, especially when case law as recently as 2007 in Brendlin v. California has ruled against the common law definition of seizure.

ARGUMENT

I. Petitioner was not seized

A. There was no show of authority

The Fourth Amendment states that " "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...". The court has established the definition of a seizure and determined it to be "when government actors have, "by means of physical force or show of authority, . . . in some way restrained the liberty of a citizen," Terry v. Ohio, 392 U. S. 1, 19, n. 16 (1968); Brower v. County of Inyo, 489 U. S. 593, 596 (1989)." In order for there to be a seizure by show of authority, the person must submit to that authority as held in Brendlin v. California, 551 U.S 249 (2007) quoting Terry v. Ohio. In today's case, the petitioner did not submit to the officer's authority. Torres instead "freaked out" and drove off after being shot twice by the officers. There was no actual submission by the petitioner to the officers.

B. A seizure is defined as restraint of movement

Furthermore, she was not seized because the officers were not able to restrain her. In Terry v. Ohio the court stated that “It must be recognized that, whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person.” While the officers used physical force by shooting at the petitioner, her freedom was not restrained as she was able to continue to drive, steal a car, and proceed to drive another 75 miles. Brower v. Inyo also determined that there must be intentional governmental termination of movement and physical control of the person. The officers intended to terminate her movement but were ultimately unsuccessful. They had no physical control of the petitioner which means that there was no actual seizure. The court even held this ruling as recently as 2007 in Brendlin v. California. While this case involved detainment during a routine traffic stop the analysis still applies to this case. The court ruled that “stopping an automobile and detaining its occupants constitute a seizure within the meaning of

the Fourth and Fourteenth Amendments." For there to be a seizure under this analysis the person's movement must be restrained. Torres was not restrained in this case as she was able to continue to drive another 75 miles.

This court should uphold the previous decisions that determine a seizure to be an intentional submission to authority as well as the requirement that the seizure must restrain freedom of movement. This standard set by previous cases also supports both the historical meaning along with the publics' definition of the meaning. Published in 1788, *To the Farmers and Planters of Maryland,* written by members of the public stated that "ey find any the least article that you cannot prove the duty to be paid on, seize it and carry it away with them…". It can be implied that in order for a seizure to occur there must be physical control of the person or object because in order for something to be carried away there must be control. Furthermore at the New York Ratification Convention Debates and Proceedings (July 19, 1788), it was stated that "and therefore that all warrants to search suspected places, or seize any

freeman, his papers or property, without information upon oath."

This aligns with the common publics' definition of seizure along with several cases that come from this court. For example, the J. Bouvier Law Dictionary published in 1856 states the definition of a seizure as taking possession. Furthermore Webster, An American Dictionary of the English Language published in 1828 defines seizure as taking possession as well. The common public definition has remained consistent that in order for there to be a seizure an officer must take control of the person.

Ruling in favor of the petitioner would overwork the justice system

If this court were to decide to expand the meaning of a seizure to include failed attempts, the courts would have to sort through all cases that involve the failed use of physical force along with actual seizures. This court would be unnecessarily expanding the fourth amendment. For instance, if an officer attempted to seize a suspect by grabbing their arm but the suspect

was able to get away, under petitioner's rule this would qualify as a seizure and would have to be reviewed if the question of reasonableness arose. This rule would force courts to go over failed seizures when this rule is simply not necessary or productive. Furthermore, this rule would make the jobs of police officers harder. Officers would be under constant scrutiny on how they attempt to seize a suspect which would ultimately lead to them changing the way they handle their jobs. Officers would be hesitant to use physical force to seize a person in fear that even if that attempt failed the suspect could possibly press charges. This would result in officers not effectively doing their jobs correctly and can even discourage others from joining the force. This also puts officers at risk when it comes to a pursuit. Pursuits are often dangerous and if officers become hesitant that could result in a life or death situation. As stated in Hodari "Street pursuits always place the public at some risk..". The petitioner's rule would not only overwork our justice system with complaints about failed seizures but would also negatively affect how police officers handle their jobs. It would also put the public and the police in danger.

II. Common-Law and Hodari are not binding to this court

A. Common law is simply a guide not definitive

The petitioner relies on common law cited in California v. Hodari which is not binding to this court. As held in Tennessee v. Garner, "has not simply frozen into constitutional law those law enforcement practices that existed at the time of the Fourth Amendment's passage." While this Court does look at common law for guidance it does not mean this court has to use common law as the exact rule for the fourth amendment. Furthermore in Anderson v. Creighton, 483 U.s. 635, 644-45, the court said that "common law definitions do not necessarily control the meaning of terms in modern trade laws…" This court has made it clear though several cases that common law is not the definitive law. It is merely a

guide for this court to use and should not overrule this court's decision in Brower, Brendlin, and Terry. Brower, which was decided in 2007, written after Hodari shows that this court has consistently held that the seizure must be successful, which disagrees with petitioners common law definition.

B. Hodari does not apply to this case

Lastly, Hodari does not apply to our case and should not be binding on your decision. Hodari heavily relies on common law and as stated earlier it is not definitive. Hodari also does not have a similar fact pattern in today's case. In Hodari there was no actual physical force that occurred when the seizure took place. Hodari claimed he was seized when he saw the officer begin running towards him. The question was did the seizure occur at the time the drugs were thrown which occurred before Hodari was tackled.

In our case physical force actually occurred when the officers shot at the petitioner. Furthermore Hodari is not a reliable case when it comes to the definition of a seizure. In the majority opinion, the court, using common law, claims that even an unsuccessful seizure is still considered a seizure. The court then states in footnote 2 that, “But neither usage nor common-law tradition makes an attempted seizure a seizure.” The court acknowledges that the common public's definition along with the law does not acknowledge an attempted seizure an actual seizure. The petitioners' reliance on this case fails to acknowledge this clarification. Hodari who heavily relies on common law for its ruling does not mean this court has to follow their ruling. Common law is mere guidance not definitive. Due to the fact that petitioners' use of common law in Hodari is not binding along with the court's clarification in the

footnote, this court should not look at this case when deciding. Instead the Court must look at Terry, Brower, and Brendlin.

CONCLUSION

In conclusion, this court must continue to uphold and follow precedent established in Terry, Brendlin, and Brower that states a seizure is when an officer takes physical control of the person. This definition is followed by the common public's understanding of the term seizure. If this court were to rule in favor of the petitioner we would not only be unnecessarily overworking our justice system it would also negatively impact the job of police officers. This court is not binded to common law and this court has acknowledged, and there is no need to overrule precedent for common law. Lastly the petitioners' reliance on Hodari is not only misguided but wrong. The court even said in that case that attempted seizure is not a seizure. For these reasons the court should affirm the decision of the Tenth Circuit Court of appeals.

Respectfully submitted,

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