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By **Daigle Law Group**

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On March 25, 2021, the United States Supreme Court (SCOTUS), in the matter of *Torres v. Madrid*,¹ clarified the meaning of “seizure” under the Fourth Amendment and whether a seizure occurs when officers use force that does not result in the actual restraint of the individual. In this case, the question before the court was “whether a seizure occurs when an officer shoots someone who temporarily eludes capture after the shooting.” SCOTUS held that the application of force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person. A more detailed analysis and discussion of this case is provided below.

Facts

On July 15, 2014, four New Mexico State Police officers, wearing tactical vests marked with police identification, arrived at an Albuquerque apartment complex to serve an arrest warrant for a woman accused of white-collar crimes, and also “suspected of having been involved in drug trafficking, murder, and other violent crimes.” When officers arrived at the complex, they observed Roxanne Torres (“Torres”) and a companion standing near a vehicle in the parking lot. Officers determined neither Torres nor her companion were the subjects of the arrest warrant. As Officers Madrid and Williamson approached the vehicle, Torres – who was experiencing methamphetamine withdrawal – got in the driver’s seat of the vehicle. Although the officers vests were clearly signified their positions as police, Torres claims she only observed their weapons and thought it was a car-jacking. Torres “hit the gas to escape them.” Neither officer was standing in the path of Torres’ vehicle, but both fired their weapons into the vehicle, firing 13 total shot, two of which struck Torres in the back and temporarily paralyzed her left arm.

Torres, using her right arm to steer, exited the parking lot and drove a short distance, where she stopped in a parking lot. Torres told a bystander to report an attempted car-jacking, and then stole another vehicle idling nearby and drove 75 miles to Grants, New Mexico. Torres was ultimately arrested for aggravated fleeing from a law enforcement officer, assault on a peace officer, and unlawfully taking a motor vehicle.

Torres later filed for damages against Officers Madrid and Williams under 42 U.S.C. § 1983, claiming that the officers applied excessive force, making the shooting an unreasonable seizure under the

Fourth Amendment. The District Court granted summary judgment for the officers, and the Court of Appeals for the Tenth Circuit affirmed on the grounds that “a suspect’s continued flight after being shot by police negates a Fourth Amendment excessive-force claim.” The United States Supreme Court granted certiorari.

SCOTUS Opinion

As we are well aware, the Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.’ This case concerns the ‘seizure’ of a ‘person,’ which can take the form of ‘physical force’ or a ‘show of authority’ that ‘in some way restrain[s] the liberty’ of the person.² SCOTUS stated that the question before it was “whether the application of physical force is a seizure if the force, despite hitting its target, fails to stop the person.”

To interpret the meaning of the term “seizure,” SCOTUS has historically looked to the common law of arrest, “the quintessential ‘seizure of the person’ under our Fourth Amendment jurisprudence.” In the case of *California v. Hodari D.*,³ the Court explained that the common law treated “‘the mere grasping or application of physical force with lawful authority’ as an arrest, ‘whether or not it succeeded in subduing the arrestee.’” SCOTUS stated, “put another way, an officer’s application of physical force to the body of a person ‘for the purpose of arresting him’ was itself an arrest – not an attempted arrest – even if the person did not yield.” Under *Hodari D.* SCOTUS explained that “[a]n arrest requires either physical force . . . or, where that is absent, submission to the assertion of authority.” SCOTUS further stated that courts throughout the country continue to hold that “an arrest required only the application of force – not control or custody . . .”

SCOTUS stated that it saw no basis for “drawing an artificial line between grasping with a hand and other means of applying physical force to effect an arrest.” It further stated, “the required ‘corporal seising or touching the defendant’s body’ can be readily accomplished by a bullet as by the end of the finger.” SCOTUS reiterated that the focus of the Fourth Amendment is “the privacy and security of individuals, not the particular manner of arbitrary invasion by governmental officials.”

SCOTUS stressed, however, that not every physical contact between “a government employee” and a member of the public becomes a Fourth Amendment seizure, and that a seizure required the use of force “with intent to restrain.” Accidental force, or force applied for some other purpose, does not qualify as a seizure under the Fourth Amendment.

SCOTUS cautioned that the rule announced in this case is narrow. The Court stated, “In addition to the requirement of intent to restrain, a seizure by force – absent submission – lasts only as long as the

application of force. That is to say the Fourth Amendment does not recognize any ‘continuing arrest during the period of fugitivity.’”

Applying the analysis to the facts of the case before it, SCOTUS found that the officers’ shooting applied physical force to Torres’ body and that the officers intended to restrain her from driving away. SCOTUS concluded that the officers “seized Torres for the instant that the bullets struck her.” The Court declined, however, to make a determination regarding the reasonableness of the seizure, the damages caused by the seizure, or the officers’ entitlement to qualified immunity – leaving those decisions to the Court of Appeals on remand.

Takeaways

As stated above, SCOTUS’ decision does not include any analysis as to whether the officers’ use of force employed against Torres was reasonable, or any determination of any damages. The decision encompasses the finding that for there to be a seizure through a use of force, there must be an intent to restrain. Furthermore, it is not necessary for the officers to successfully restrain the subject for it to be considered a “seizure.” Here, the officers intended to stop Torres from leaving the parking lot by shooting at her vehicle, which constituted an intent to “seize” here. Therefore, even though the officers’ seizure of Torres was not successful, and she was able to flee in a vehicle, the shots fired at her vehicle which struck her person, constituting force “to the body of her person,” is considered a seizure under the Fourth Amendment.