Supreme Court Rules Against Police Officers in Fourth Amendment Case

By Lisa Soronen, Executive Director of the State and Local Legal Center

In a 5-3 decision in Torres v. Madrid the U.S. Supreme Court held that a person may be "seized" by a police officer per the Fourth Amendment even if the person gets away. The State and Local Legal Center (SLLC) filed an amicus brief in this case arguing for the opposite result.

In this case, police officers intended to execute a warrant in an apartment complex. Though they didn't think she was the target of the warrant, they approached Roxanne Torres in the parking lot. Torres got in a car. According to Torres, she was experiencing methamphetamine withdrawal and didn't notice the officers until one tried to open her car door.

Though the officers wore tactical vests with police identification, Torres claims she only saw the officers had guns. She thought she was being car jacked and drove away. She claims the officers weren't in the path of the vehicle, but they fired 13 shots, hitting her twice. Torres drove to a nearby parking lot, asked a bystander to report the attempted carjacking, stole another car, and drove 75 miles to a hospital.

Torres sued the police officers claiming their use of force was excessive in violation of the Fourth Amendment's prohibition against "unreasonable searches and seizures." The officers argued, and the lower court agreed, that Torres couldn't bring an excessive force claim because she was never "seized" per the Fourth Amendment as she got away.

The rule the Supreme Court adopted in this case, as articulated by Chief Justice Roberts, is the "application of physical 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."

In California v. Hodari D. (1991), the Supreme Court stated 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." The Chief Justice acknowledged that despite this language, Hodari D. didn't answer the question in this case, which involves officer use of force. Hodari D. involved police officer "show of authority" which doesn't become an arrest until the suspect complies with the demand to stop.

Citing to an English case from 1828, the Court "independently" concluded that "the common law rule identified in Hodari D.—that the application of force gives rise to an arrest, even if the officer does not secure control over the arrestee—achieved recognition to such an extent that English lawyers could confidently (and accurately) proclaim that '[a]ll the authorities, from the earliest time to the present, establish that a corporal touch is sufficient to constitute an arrest, even though the defendant do not submit.'"

Citing to the SLLC amicus brief Chief Justice Roberts explicitly rejected the brief's argument that the common law doctrine recognized in Hodari D. is just "a narrow legal rule intended to govern liability in civil cases involving debtors."

Justices Thomas and Alito joined Justice Gorsuch's lengthy dissent chastising the majority for "lean[ing] on (really, repurpose[ing]) an abusive and long-abandoned English debt-collection

practice." The dissent also opined the majority was wrong about common law; an "arrest" at common law "ordinarily required possession."

Elizabeth B. Prelogar (now Acting Solicitor General), Allegra Flamm, Barrett J. Anderson, and Jeanne Detch, of Cooley, wrote the SLLC amicus brief, which the following organizations joined: National Association of Counties, National League of Cities, US Conference of Mayors, International City/County Management Association, International Municipal Lawyers Association, and National Sheriffs Association.