Torres v. Madrid

(2021) __ U.S. __ [2021 WL 1132514]

Issue

Does a "seizure" occur when an officer fires shots at a suspect?"

Facts

Four New Mexico state police officers went to an apartment complex in Albuquerque to execute a warrant for the arrest of a woman for white collar crimes. The officers were wearing "tactical vests marked with police identification," When they arrived, they saw Roxanne Torres standing in the parking lot next to a Toyota. Although the officers were aware that Torres was *not* the wanted suspect, they approached the Toyota, at which point Torres got behind the steering wheel. Then, when one of the officers tried to open the door, she "hit the gas."

Two of the officers then fired 13 rounds at the car, two of which struck Torres in the back, temporarily paralyzing her left arm. She later stole a car and drove to Grants, New Mexico where she was hospitalized and later arrested for aggravated fleeing from a law enforcement officer, assault on a peace officer," and car theft. She said she thought the officers were armed carjackers. When the trial court ruled that the officers were entitled to qualified immunity, she sought review by the U.S. Supreme Court.

Discussion

As noted, the issue in this case was whether the officers' act of firing at Torres constituted a "seizure" under the Fourth Amendment. If not, the officers would have been entitled to qualified immunity under federal law.

Before now, the law was fairly straightforward: The seizure of a person can result only if the person submitted to the officers' authority. As the Supreme Court observed in the 1991 case of *California v. Hodari D.*,[1] the term "seizure" "does not even remotely apply to the prospect of a policeman yelling 'Stop, in the name of the law!' at a fleeing form that continues to flee." And so, because Ms. Torres was the quintessential "fleeing form that continues to flee," the officers would have been given qualified immunity under *Hodari*. So the Court decided to change the law.

In a split decision, the majority ruled that a person who flees from officers is nevertheless seized if officers applied physical force with the intent to detain. And because firing a weapon at a fleeing person constitutes physical force, and because the officers did so with the apparent intent to detain Torres, the Court ruled that the officers were not entitled to qualified immunity. This means the case will go to trial.

Comment

The question arises: Does the term "physical force" include mere touching? The Court said no unless the touch "objectively manifests an intent to restrain." Furthermore, it said that, "while a mere touch can be enough for a seizure, the amount of force remains pertinent in assessing the objective intent to restrain. A tap on the shoulder to get one's attention will rarely exhibit such an intent." POV

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[1] (1991) 499 US 621, 626.