

Supreme Court Police Cases 2020-21

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By: Lisa Soronen, State and Local Legal Center, Washington, D.C.

The State and Local Legal Center (SLLC) files Supreme Court amicus curiae *briefs on behalf of the Big Seven national organizations representing state and local governments.*

*Indicates a case where the SLLC has filed an *amicus* brief.

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. 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 claimed she only saw the officers had guns. She thought she was being car jacked and drove away. She claimed 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 since 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." Citing to an English case from 1828, the Court "independently" concluded that "the common law rule identified in [*California v. Hodari D.* (1991)] 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.'"

In a four-page opinion the U.S. Supreme Court held unanimously in *Caniglia v. Strom** that police community caretaking duties don't justify warrantless searches and seizures in the home.

During an argument with his wife, Edward Caniglia put a handgun on their dining room table and asked his wife to "shoot [him] now and get it over with." After spending the night at a hotel Caniglia's wife couldn't reach him by phone and asked police to do a welfare check. Caniglia agreed to go to the hospital for a psychiatric evaluation after officers allegedly promised not to confiscate his firearms. The officers went into his home and seized his guns regardless. Caniglia sued the officers for money damages claiming that he and his guns were unconstitutionally seized without a warrant in violation of the Fourth Amendment. In *Cady v. Dombrowski* (1973), the Court held that a warrantless search of an impounded vehicle for an unsecured firearm didn't violate the Fourth Amendment. According to the Court in that case "police officers who patrol the 'public highways' are often called to discharge noncriminal 'community caretaking functions,' such as responding to disabled vehicles or investigating accidents." The First Circuit ruled in favor of the police officers in *Caniglia* extending *Cady*'s "community caretaking exception" to the warrant requirement beyond the automobile and to the home. Justice Thomas, writing for the Court, rejected the First Circuit's extension of *Cady*. Justice Thomas noted the *Cady* opinion repeatedly stressed the "constitutional difference" between an impounded vehicle and a home. "In fact, *Cady* expressly contrasted its treatment of a vehicle already under police control with a search of a car 'parked adjacent to the dwelling place of the owner.'"

In *Lange v. California*, the U.S. Supreme Court held that pursuit of a fleeing misdemeanor suspect does not always justify entry into a home without a warrant. Rather, "[a]n officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency." All nine justices agreed with the result. Arthur Lange drove by a California highway patrol officer while playing loud music and honking his horn. The officer followed Lange and put on his overhead lights, signaling Lange to pull over. Lange kept driving to his home which was about 100 feet away. The officer followed Lange into the garage and conducted field sobriety tests after observing signs of intoxication. A later blood test showed Lange's blood-alcohol content was three times the legal limit. Lange argued that the warrantless entry into his garage violated the Fourth Amendment. California argued that pursuing someone suspected of a misdemeanor, in this case failing to comply with a police signal, always qualifies as an exigent circumstance authorizing a warrantless home entry. The California Court of Appeals agreed. The Supreme Court, in an opinion written by Justice Kagan, rejected a categorical approach. Instead, in instances of a misdemeanants' flight, "[w]hen the totality of circumstances shows an emergency—such as imminent harm to others, a threat to the officer himself, destruction of evidence, or escape from the home—the police may act without waiting." The Court noted that "when it comes to the Fourth Amendment, the home is first among equals." In *United States v. Santana* (1976), the Court upheld a warrantless entry into a home of a fleeing felon but said nothing about fleeing misdemeanants. And misdemeanors vary widely and may be minor. In *Welsh v. Wisconsin* (1984), the "Court has held that when a minor offense alone is involved, police officers do not usually face the kind of emergency that can justify a warrantless home entry." Likewise, "[t]hose suspected of minor offenses may flee for innocuous reasons and in non-threatening ways." Finally, the Court pointed out that "[t]he common law did not recognize a categorical rule enabling such an entry in every case of misdemeanor pursuit."

In a *per curiam* (unauthored) opinion in *Lombardo v. City of St. Louis, Missouri* the U.S. Supreme Court ordered the Eighth Circuit to decide again whether police officers used excessive force when restraining Nicholas Gilbert on his stomach for 15 minutes and if so whether the officers should receive qualified immunity. Gilbert was arrested for trespassing in a condemned building and failing to appear in court for a traffic ticket. Officers tried to handcuff Gilbert after it appeared he was trying to hang himself in his cell. Gilbert was only 5'3" and 160 pounds but he struggled with multiple officers. Ultimately, they were able to handcuff Gilbert and put him in leg irons. They moved him face down on the floor and held his limbs down at the shoulders, biceps, and legs. At least one officer placed pressure on Gilbert's back and torso. Gilbert tried to raise his chest, saying, "It hurts. Stop." After 15 minutes of struggling in this position, Gilbert's breathing became abnormal and he stopped moving. The officers rolled Gilbert over and checked for a pulse. Finding none, they performed chest compressions and rescue breathing. Gilbert was pronounced dead at the hospital. Gilbert's parents sued the officers claiming they violated the Fourth Amendment by using excessive force. A federal district court ruled the officers were entitled to qualified immunity because they did not violate a constitutional right that was clearly established at the time. The Eighth Circuit ruled in favor of the officers, holding they did not apply unconstitutionally excessive force. According to the Supreme Court the Eighth Circuit cited the correct factors in determining whether the use of force was reasonable. However, it was "unclear whether the court thought the use of a prone restraint—no matter the kind, intensity, duration, or surrounding circumstances—is per se constitutional so long as an individual appears to resist officers' efforts to subdue him." The Eighth Circuit also described as "insignificant" the fact that Gilbert was handcuffed and leg shackled when officers kept him in the prone position for 15 minutes. According to the Supreme Court these details matter because "St. Louis instructs its officers that pressing down on the back of a prone subject can cause suffocation," "well-known police guidance recommend[s] that officers get a subject off his stomach as soon as he is handcuffed because of that risk," and that "guidance further indicates that the struggles of a prone suspect may be due to oxygen deficiency, rather than a desire to disobey officers' commands." According to the Court: "Having either failed to analyze such evidence or characterized it as insignificant, the court's opinion could be read to treat Gilbert's 'ongoing resistance' as controlling as a matter of law. Such a *per se* rule would contravene the careful, context-specific analysis required by this Court's excessive force precedent."

In an 8-0 decision in *City of Chicago v. Fulton*,* the U.S. Supreme Court held that the City of Chicago didn't violate the Bankruptcy Code's automatic stay provision by holding onto a vehicle impounded after a bankruptcy petition was filed. The City of Chicago impounds vehicles where debtors have three or more unpaid fines. Robbin Fulton's vehicle was impounded for this reason. She filed for bankruptcy and asked the City to return her vehicle; it refused. The Seventh Circuit held the City violated the Bankruptcy Code's automatic stay provision. The Supreme Court unanimously reversed. When a bankruptcy petition is filed, an "estate" is created which includes most of the debtor's property. An automatic consequence of the bankruptcy petition is a "stay" which prevents creditors from trying to collect outside of the bankruptcy forum. The automatic stay prohibits "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." The Bankruptcy Code also has a "turnover" provision which requires those in possession of property of the bankruptcy estate to

"deliver to the trustee, and account for" that property. The Supreme Court held that "mere retention" of a debtor's property after a bankruptcy petition is filed doesn't violate the automatic stay. According to Justice Alito, "[t]aken together, the most natural reading of . . . 'stay,' 'act,' and 'exercise control'—is that [the automatic stay provision] prohibits *affirmative acts* that would disturb the status quo of estate property as of the time when the bankruptcy petition was filed." However, the Court conceded it did not "maintain that these terms definitively rule out" an alternative interpretation. According to the Court, "[a]ny ambiguity in the text of [the automatic stay provision] is resolved decidedly in the City's favor" by the turnover provision. First, reading "any act . . . to exercise control" in the automatic stay provision "to include merely retaining possession of a debtor's property would make that section a blanket turnover provision," rendering the turnover provision "largely superfluous." Second, the turnover provision includes exceptions that the automatic stay provision doesn't include. "Under respondents' reading, in cases where those exceptions to turnover . . . would apply, [the automatic stay provision] would command turnover all the same."

In *United States v. Cooley* the U.S. Supreme Court held unanimously that an Indian tribe police officer may temporarily detain and search a non-Indian on a public right-of-way that runs through an Indian reservation, based on a suspected violation of state or federal law. A tribal officer approached a vehicle stopped on a public right-of-way within the Crow Reservation to offer assistance. The officer ordered Joshua James Cooley, who appeared to be a non-Indian, out of the car and conducted a pat down search after he noticed two semiautomatic rifles lying on the front seat. While waiting for backup to arrive, the officer saw in the vehicle a glass pipe and plastic bag that contained methamphetamine. A federal grand jury indicted Cooley on gun and drug violations. The Ninth Circuit suppressed the drug evidence holding the tribal officer had no authority to investigate "nonapparent" violations of state or federal law by a non-Indian on a public right-of-way crossing the reservation. The tribal officer in this case didn't ask Cooley whether he was non-Indian. The Supreme Court reversed the Ninth Circuit and held that tribal police officers may detain and search non-Indians traveling on public rights-of-way running through a reservation. Justice Breyer wrote the majority opinion. He noted that in *Montana v. United States* (1981), the Court articulated the "general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." But that general rule has two exceptions including "when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." According to the Court, this exception "fits the present case, almost like a glove." "To deny a tribal police officer authority to search and detain for a reasonable time any person he or she believes may commit or has committed a crime would make it difficult for tribes to protect themselves against ongoing threats."

In a very brief, unauthored opinion the Supreme Court denied qualified immunity in *Taylor v. Riojas* to a number of correctional officers who confined Trent Taylor to a "pair of shockingly unsanitary cells" for six days. Trent Taylor claimed the first cell he was confined in was covered in feces "all over the floor, the ceiling, the window, the walls," and even inside the water faucet. The second, frigidly cold cell, "was equipped with only a clogged drain in the floor to dispose of bodily wastes." The Fifth Circuit held that Taylor's confinement conditions violated the Eighth

Amendment's prohibition on cruel and unusual punishment. The Fifth Circuit granted the officers qualified immunity because "[t]he law wasn't clearly established" that "prisoners couldn't be housed in cells teeming with human waste" "for only six days." The Supreme Court reversed the Fifth Circuit's grant of qualified immunity because "no reasonable correctional officer could have concluded that, under the extreme circumstances of this case, it was constitutionally permissible to house Taylor in such deplorably unsanitary conditions for such an extended period of time."