The Supreme Court has held that excessive force violates the Fourth Amendment's prohibition against "unreasonable searches and seizures." The question in *Torres v. Madrid* [2] is whether police have "seized" someone who they have used force against who has gotten away.

In this case police officers approached Roxanne Torres thinking she may be the person they intended to arrest. At the time Torres was "tripping" from using meth for several days. She got inside a car and started the engine. One of the officers repeatedly asked her to show her hands but could not see her clearly because the car had tinted windows.

When Torres "heard the flicker of the car door" handle she started to drive thinking she was being carjacked. Torres drove at one of the officers who fired at Torres through the wind shield. The other officer shot at Torres as well to avoid being crushed between two cars and to stop Torres from driving toward the other officer.

Torres was shot twice. After she hit another car, she got out of her car and laid on the ground attempting to "surrender" to the "carjackers." She asked a bystander to call the police but left the scene because she had an outstanding warrant. She then stole a car, drove 75 miles, and checked into a hospital.

Torres claims the police officers used excessive force against her in violation of the Fourth Amendment. The Tenth Circuit disagreed.

For the Fourth Amendment to be violated a "seizure" must have occurred. The federal circuit courts of appeals are split regarding whether an attempt to detain a suspect by physical force must be *successful* for a "seizure" to occur.

In a previous case the Tenth Circuit held that "a suspect's continued flight after being shot by police negates a Fourth Amendment excessive-force claim." This is so, because "a seizure requires restraint of one's freedom of movement." Therefore, an officer's intentional shooting of a suspect isn't a seizure unless the "gunshot . . . terminate[s] [the suspect's] movement or otherwise cause[s] the government to have physical control over him."

As a practical matter states and local governments must pay money damages when police officers are successfully sued for use of excessive force unless qualified immunity applies (meaning only a plainly incompetent police officer would have thought at the time that the use of force was reasonable).

By:
Thursday, December 19, 2019 at 11:11 AM
Tags:
*Fourth Amendment* [3]*Supreme Court* [4]*excessive force* [5]*police shooting* [6]*search and seizure* [7]*Policy Area* [8]*Public Safety* [9]*Crime* [10]