

Aleman v. Charlotte

Aleman v. Charlotte was decided on August 16, 2023 by the Fourth Circuit Court of Appeals.

North Carolina: Plaintiff's estate appeals the dismissal of his lawsuit against Police on Fourth Amendment grounds.

Issue:

Whether the officer's shooting of the suspect was objectively reasonable to be granted qualified immunity?

Facts:

Galindo, the plaintiff (suspect), called 911 because, as he explained it, he sought to turn himself in for impending court proceedings and he wanted police officers to pick him up at his apartment. The plaintiff was facing North Carolina charges of misdemeanor assault by pointing a firearm and simple assault, although he had no other known history of criminal activity. The plaintiff had recently been diagnosed with paranoia, without being deemed a danger to himself or others. When asked why he was asking the police to pick him up, his answer was "Because I have a gun in my hand." The plaintiff communicated with 911 entirely in Spanish. When asked by the dispatcher what he was "going to do with the gun," the plaintiff responded with the query, "Are you going to help me or are you not going to help me?" Pressed about his intentions, the plaintiff said that the dispatcher should "tell me if the officers are coming or not so that I can put my firearm there in the front or whatever." The plaintiff first claimed his name was "El Dios Estrella" (which translates to "the Star God"), before giving his name. He complained of police officers and other people "following me," and he said that "I can't take it any longer," and admitting to drinking alcohol that day but denied using drugs. The plaintiff repeatedly asked if someone was going to help him. He stated "Look, I only need the officers to come for me. It's only for me and I will be outside of the apartment," "I only need the police to come for me, for them to take me." He also requested that a responding officer be "someone that speaks Spanish." The plaintiff denied wanting to hurt anyone, stating "I want to turn myself in" and that "I prefer for [the officers] to lock me up." Regarding the firearm, the plaintiff told 911 that the firearm was "in my bag" and that "if you want, I will take it out." The dispatcher then repeatedly instructed the plaintiff to leave the firearm in a safe place and not to have it when the police officers arrived to meet him outside his apartment. Specifically, the dispatcher advised: "leave it in a safe place and when you see the officers, show your hands, I don't want you to have the firearm"; "no please, no, no please do not have the firearm with you"; "please leave it" "for your safety and of everyone's"; "I need you to assure me that you will leave the gun please"; and "I need you to please put that gun somewhere please." Even as the dispatcher gave those instructions, the plaintiff continually indicated that he planned to have his firearm with him when he met the police officers. The plaintiff told the 911 dispatcher "as long as the officers don't shoot me, I will throw them the gun." While reportedly "giggling" during the second 911 call, the plaintiff asserted that the firearm "doesn't have bullets." He then said approximately 11 more times that "I don't have bullets."

Officers arrived and waited for a Spanish-speaking officer to arrive, but then learned that a woman's voice could be heard in the background and were concerned that she was a victim and that the plaintiff sounded delusional. Four officers approached the residence and called for the plaintiff to exit. Immediately after opening the screen patio door, the plaintiff stood in the doorway, facing the primary officer. The plaintiff's left arm was down at his side, and his right arm was similarly at his side but just behind the doorframe. The officer pointed his rifle at the plaintiff's lower body and quickly said "manos"

two more times. Simultaneously, the officer raised his right arm off the barrel of his rifle, demonstrating to the plaintiff to raise his hand. The plaintiff raised his left hand — in which he was holding a pistol — to about waist level. The officer yelled, now in English, “put it down, drop the gun, put it down.” The plaintiff reacted to those English commands by quickly raising his left arm above his shoulder and extending his left hand — still holding the pistol — past the end of the opened screen patio door. The plaintiff’s left arm was then extended about 45 degrees from the center of his body and pointing toward the wall, leaving it about 45 degrees away from the officer. When the plaintiff raised his left arm, he also began to raise his right arm. The four officers shouted over each other, still in English, to “drop the gun” and “put it down.” As they shouted, the plaintiff swiftly raised his right arm and extended it out like his left, above shoulder height and about 45 degrees from the center of his body. The primary officer shot the plaintiff twice, killing him. The officers’ body cameras captured the interaction, although the cameras were on the officer’s bodies, which were behind cover, and therefore showed a partially obstructed view. The plaintiff’s estate sued the officer, alleging an unlawful use of force. The district court granted summary judgment to the defendant officer, determining that — because it was objectively reasonable for the defendant to shoot the plaintiff, in that the plaintiff posed an immediate threat to the officer and others — the officer defendant was entitled to qualified immunity on the Fourth Amendment claim.

Held:

Reversed and Remanded for a New Trial. Regarding the officer’s use of deadly force, the Court wrote: “a reasonable jury could review and interpret the video footage, consider the other evidence, and decide that the plaintiff did not pose an immediate threat to Officer Guerra or anyone else at the moment Guerra shot him... Or a reasonable jury could find that Guerra mistakenly perceived that the plaintiff posed an immediate threat, but that Guerra’s mistake was not reasonable. As such, it very well may be concluded that Guerra used excessive force in contravention of the Fourth Amendment, meaning that he is not presently entitled to qualified immunity under the first prong of the qualified immunity analysis.” Regarding qualified immunity, the Court ruled that it was clearly established that an officer would contravene the Fourth Amendment by using deadly force against a suspect who is holding a firearm in his hand and ignoring commands to drop the weapon, but who is standing still in a position of surrender, is not firing the weapon or aiming it at any person, and is not otherwise making a furtive or threatening movement that would suggest he had an intent to use the weapon to harm the officer or anyone else. Instead, the Court explained, the failure to obey commands by a person in possession of, or suspected to be in possession of, a weapon only justifies the use of deadly force if that person makes some sort of furtive or other threatening movement with the weapon, thereby signaling to the officer that the suspect intends to use it in a way that imminently threatens the safety of the officer or another person.

The Court acknowledged that the officers had good reason to be skeptical of the plaintiff and to treat him as a potential threat to the safety of the officers and others. The Court found the plaintiff’s purported reason for summoning the officers was dubious, he was refusing to disarm himself, and he was otherwise being uncooperative with the dispatcher and sounding delusional.” Moreover, he had admitted to consuming alcohol, was suspected of a previous firearm-related offense, and posed a threat not only of ambush to the officers, but also of domestic violence to the woman inside his apartment. However, the Court criticized the officer’s command of “manos” (“hands”), rather than the more precise “manos arriba” (“put your hands up”), albeit with a physical gesture demonstrating to the plaintiff of what he should do. The Court also complained that when the plaintiff raised his gun, the officers immediately shouted English commands — neither calmly nor non-threateningly — to “drop the gun” and “put it down.” Those commands, unlike the “manos” command, were not accompanied by any

physical gestures that would illustrate what the officers meant. Regarding the lack of a Spanish-speaking officer, the Court noted that the officers entered the event knowing that it should be treated “as a crisis intervention” with a person who “sounded delusional,” and knowing that they therefore needed “to establish an open line of communication” with someone who spoke Spanish and may have understood no English, “Yet they proceeded to confront the plaintiff without the assistance of a Spanish-speaking officer, and they otherwise disregarded their training on how to properly interact with non-English speakers and persons suffering from mental illness.” While the Court acknowledged that the officers did not have to believe the plaintiff, the Court thought that the plaintiff’s assurances that he had no bullets and his statement that he would be carrying the pistol so that he could surrender it, as well as the fact that the plaintiff affirmatively indicated that he intended the officers no harm, weakened the case for probable cause to believe that the plaintiff posed an immediate threat.

Evaluating the videos itself, the Court observed that the plaintiff “assumed a position of surrender,” with both his arms raised above shoulder height and about 45 degrees from the center of his body. The Court also concluded that the plaintiff was holding the pistol upside down, with the grip pinched between his thumb and fingers. The Court found that although he could have fired the pistol while holding it in that position, he could not have done so accurately. The Court also observed that the plaintiff never pointed his pistol toward the officers, and no other person was present. The Court then turned to the plaintiff’s firearm and the role it played in this case. The Court ruled that, even accepting that deadly force was justified at the moment the plaintiff brandished his pistol, the Court ruled that this “justification would have vanished once the plaintiff assumed his position of surrender.” The Court repeated that “deadly force cannot be used simply because a suspect is armed and has ignored commands.” The Court acknowledged “that an officer does not have to wait until a gun is pointed at the officer before the officer is entitled to take action.” However, the Court explained, there must be some basis, other than a suspect’s mere possession of a weapon and failure to obey commands, for the officer to reasonably feel threatened. That is, the suspect must “make some sort of furtive or other threatening movement with the weapon, thereby signaling to the officer that the suspect intends to use it in a way that imminently threatens the safety of the officer or another person.” The Court acknowledged that the video footage did not capture everything that occurred at the shooting scene, rendering it possible that, just before the officer shot him, the plaintiff made threatening movements that the video footage does not show. Thus, the Court concluded, a reasonable jury could instead find that the plaintiff did pose an immediate threat at the moment the officer fatally shot him or that the officer was reasonably mistaken in perceiving an immediate threat. The Court therefore also declined to direct the entry of a judgment in the plaintiff’s favor on his Fourth Amendment claim and remanded the case for a new trial.

Bottom Line:

The failure to obey commands by a person in possession of, or suspected to be in possession of, a weapon only justifies the use of deadly force if that person makes some sort of furtive or other threatening movement with the weapon, thereby signaling to the officer that the suspect intends to use it in a way that imminently threatens the safety of the officer or another person.

Full Case at: <https://www.ca4.uscourts.gov/opinions/212223.P.pdf>