

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-2223

AZUCENA ZAMORANO ALEMAN, individually and as Administrator of the
Estate of RUBEN GALINDO CHAVEZ,

Plaintiff – Appellant,

v.

CITY OF CHARLOTTE; DAVID GUERRA, individually and officially,

Defendants – Appellees,

and

COURTNEY SUGGS, individually and officially,

Defendant.

Appeal from the United States District Court for the Western District of North Carolina, at
Charlotte. Robert J. Conrad Jr., District Judge. (3:19-cv-00491-RJC-DCK)

Argued: December 7, 2022

Decided: August 16, 2023

Before KING and RICHARDSON, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed in part, vacated in part, and remanded by published opinion. Judge King wrote
the majority opinion, in which Senior Judge Keenan joined. Judge Richardson wrote a
dissenting opinion.

ARGUED: S. Luke Largess, TIN FULTON WALKER & OWEN, Charlotte, North Carolina, for Appellant. Lori R. Keeton, LAW OFFICERS OF LORI KEETON, Charlotte, North Carolina; Roger A. McCalman, OFFICE OF THE CITY ATTORNEY, Charlotte, North Carolina, for Appellees. **ON BRIEF:** Brian R. Hochman, Bradley W. Butler, BUTLER, QUINN & HOCHMAN, PLLC, Charlotte, North Carolina, for Appellant. Clarence E. Matherson, Jr., OFFICE OF THE CITY ATTORNEY, Charlotte, North Carolina, for Appellee City of Charlotte.

KING, Circuit Judge:

This civil action on appeal from the Western District of North Carolina arises from the September 2017 fatal police shooting of Ruben Galindo Chavez (who used the surname “Galindo”) during an encounter with officers of the Charlotte-Mecklenburg Police Department. The action was initiated by plaintiff Azucena Zamorano Aleman — Galindo’s girlfriend and the mother of his child — both as the administrator of Galindo’s estate and in her individual capacity. The plaintiff’s five causes of action include a 42 U.S.C. § 1983 claim against defendant David Guerra, the police officer who fired the lethal shots, for use of excessive force in violation of Galindo’s Fourth Amendment rights, plus the following state law claims: a claim against Guerra for assault and battery; claims against both Guerra and the City of Charlotte for wrongful death caused by negligence and for negligent infliction of emotional distress; and a claim against the City alone for negligent police officer training.

After amassing an assortment of evidence during discovery, including video footage from body cameras worn by the officers present at the shooting scene, the parties filed cross-motions for summary judgment. For reasons outlined in its Order of September 2021, the district court awarded summary judgment to the defendants on each of the plaintiff’s claims. *See Aleman v. City of Charlotte*, No. 3:19-cv-00491 (W.D.N.C. Sept. 30, 2021), ECF No. 50 (the “Opinion”). The court therein determined that — because it was objectively reasonable for Officer Guerra to shoot Galindo, in that Galindo posed an immediate threat to Guerra and others — Guerra is entitled to qualified immunity on the Fourth Amendment claim. For the same reason, the court awarded summary judgment to

Guerra and the City on the assault and battery, wrongful death, and negligent infliction of emotional distress claims. Citing a lack of sufficient evidence, the court also awarded summary judgment to the City on the negligent training claim.

The appeal now being pursued by the plaintiff presents several close questions on the facts and applicable law, against a backdrop of tragic and dangerous circumstances. As we recently acknowledged in another fatal police shooting case, “[i]t is not lost on us that we issue this decision from the calm of a courthouse” and that, “[u]nlike us, [the defendant officer] could not press pause or rewind before determining whether [the decedent] posed an imminent threat.” *See Franklin v. City of Charlotte*, 64 F.4th 519, 539 (4th Cir. 2023). Upon careful consideration of the video footage and the other evidence in the record, we are satisfied to affirm the district court’s summary judgment award to the City on the negligent training claim. On the other hand, we vacate the award of qualified immunity to Officer Guerra on the Fourth Amendment claim, as well as the related summary judgment awards to Guerra and the City on the balance of the state law claims. Rather than directing the entry of judgment in favor of the plaintiff on any of those claims, we remand for further proceedings as to all of them.

I.

A.

The plaintiff initiated this action in August 2019 in a state court in Mecklenburg County, North Carolina, and the defendants removed the matter in September 2019 to the Western District of North Carolina. Of the plaintiff’s five causes of action, four were

asserted on behalf of Galindo's estate: the Fourth Amendment and assault and battery claims against Officer Guerra; the wrongful death claim against Guerra and the City of Charlotte; and the negligent training claim against the City. The plaintiff alleged the remaining cause of action — the negligent infliction of emotional distress claim against Guerra and the City — on her own behalf.

The parties engaged in extensive discovery proceedings, securing not only the video footage from the body cameras worn by Officer Guerra and the other police officers present at the shooting scene, but also copies of relevant 911 dispatch records, depositions of Guerra and his colleagues, and records of the officers' interviews during the Charlotte-Mecklenburg Police Department's internal investigation of the shooting. In addition, the parties presented expert witnesses on the reasonableness of Guerra's actions and the adequacy of the City's police officer training.

By their respective summary judgment motions, Officer Guerra and the City requested judgment as to all the plaintiff's claims. The plaintiff's cross-motion for summary judgment sought only a partial judgment, on the Fourth Amendment, assault and battery, and negligent infliction of emotional distress claims.

1.

As the plaintiff has highlighted in the summary judgment proceedings, the record reflects that at the time of the September 2017 shooting, Galindo was a 30-year-old

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