

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 01-11397

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BRUCE HUNTER,

Plaintiff-Appellee,

VERSUS

DWAYNE BISHOP; ET AL,

Defendants,

DWAYNE BISHOP,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
(00-CV-933)

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September 27, 2002

Before DeMOSS, STEWART, and DENNIS, Circuit Judges.

PER CURIAM:\*

Defendant Dwayne Bishop, a Dallas city police officer, appeals the district court's denial of his motion for summary judgment on

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\*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

qualified immunity grounds of Plaintiff Bruce Hunter's suit alleging violations of 42 U.S.C. § 1983. Hunter's suit alleges that Bishop unlawfully detained him; arrested him for assault without probable cause; used excessive force during the arrest; maliciously prosecuted him; and otherwise violated his 1st and 4th Amendment rights under the U.S. Constitution. Hunter also brings Texas state law claims alleging assault, battery, false arrest and false imprisonment.

We lack jurisdiction to hear an appeal of a denial of summary judgment on qualified immunity grounds, where the issue is "nothing more than whether the evidence could support a finding that particular conduct occurred...." Behrens v. Pelletier, 516 U.S. 299, 313 (1996). Here, the district court denied Defendant's motion for summary judgment on grounds that genuine issues of material fact exist as to what occurred between Defendant and Plaintiff which must be resolved before the court could determine whether Defendant is immune from suit. Because this determination was merely one of "evidentiary sufficiency," we lack jurisdiction to hear Defendant's appeal.

Defendant's appeal is DISMISSED.