

October 27, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

---

No. 03-20072

---

GABRIEL GOFFNEY; JOYCE JONES,  
As Next Friend of Gabriel Goffney,

Plaintiff-Appellees,

versus

THOMAS JAMES CARR; ET AL.,

Defendants,

THOMAS JAMES CARR; GARY GENE PARKER;  
DAVID WAYNE HENNESSY; TOMMY EUGENE  
KISER; VICTOR J. ZIGMONT; JOHN LOUIS  
MORRISON; DENNIS L. BARKER,

Defendants-Appellants.

---

Appeal from the United States District Court  
for the Southern District of Texas, Houston Division  
USDC No. H-00-CV-3083

---

Before JOLLY and WIENER, Circuit Judges, and WALTER, District  
Judge.\*

PER CURIAM:\*\*

On February 22, 1998, in Harris County, Texas, Gabriel  
Goffney, an individual with a history of mental illness, phoned 911  
and informed the dispatcher that there was a man standing outside

---

\*District Judge, United States District Court for the Western  
District of Louisiana, sitting by designation.

\*\*Pursuant to 5<sup>th</sup> 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this opinion should not be published and is not precedent except  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 for in 5<sup>th</sup> CIR. R. 47.5.4.

his house with knives. He then acquired two knives from the house, went outside, and waited for the police to arrive. Exactly what happened next is disputed by the parties, but the incident ended with Goffney being shot several times by officers at the scene. Goffney subsequently sued Harris County and various individual deputies alleging the use of excessive force, abuse of legal process, and malicious prosecution.

After a period of discovery, the individual defendants moved for summary judgment on the grounds of qualified immunity. The district court denied that motion, finding that there were contested issues of material fact regarding whether the deputies' actions were objectively reasonable in the light of the facts and circumstances at the time of the incident in question. The defendants sought interlocutory appeal of this denial.

We find that we lack jurisdiction to hear this interlocutory appeal. Although this court "can review a district court's conclusion that an issue of law is material," we lack jurisdiction to review whether a factual dispute is "genuine." Reyes v. City of Richmond, Tex., 287 F.3d 346, 350 (5<sup>th</sup> Cir. 2002). Thus, "orders that resolve a fact-related dispute of evidence sufficiency, i.e. which facts a party may, or may not, be able to prove at trial are not immediately appealable and must await final judgment." Cantu v. Rocha, 77 F.3d 795, 802 (5<sup>th</sup> Cir. 1996). The defendants give lip service to this correct legal standard; however, their argument that they are entitled to qualified immunity clearly rests on a

portrayal of contested issues of fact in a light that is not most favorable to the plaintiff. In this way, they are asking this court to review the district court's finding that the factual dispute between the parties on the issue of qualified immunity is genuine - something we lack the jurisdiction to do. Accordingly, the appeal is DISMISSED.