

FILED

February 11, 2005

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 04-40664

SHANIKWA JOHNSON

Plaintiff - Appellee

VERSUS

MARK WATERS, Etc; ET AL

Defendants

MARK WATERS, Deputy Constable

Defendant - Appellant

Appeal from the United States District Court
For the Eastern District of Texas
6:03-CV-318

Before JOLLY and DAVIS, Circuit Judges, and ENGELHARDT*, District Judge.

PER CURIAM:**

In this appeal from denial of qualified immunity, we agree with the district court that questions of fact are presented as to whether the defendant Constable Waters used excessive force in

*District Judge of the Eastern District of Louisiana, sitting by designation.

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

seizing the plaintiff. Because genuine issues of material fact are presented we have no jurisdiction to consider this appeal.

Appeal dismissed.