

June 25, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-40777  
Summary Calendar

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DONALD WAYNE HULL,

Plaintiff-Appellee,

versus

R. FORD; Etc.; ET AL.,

Defendants,

MR. BOLECH, Corrections Officer III, Garza West Unit,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:05-CV-43  
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Before JOLLY, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Ben Bolech appeals from the district court's denial of his motion for summary judgment on the grounds of qualified immunity. Ben Bolech filed the motion in response to a 42 U.S.C. § 1983 complaint filed by Donald Wayne Hull when he was Texas prisoner # 623637.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

In his complaint alleging excessive use of force, Hull stated that Bolech stabbed him three times in the right leg with an ink pen and that he sustained three lacerations to his leg as a result of Bolech's actions. The district court denied Bolech's motion for summary judgment on the ground that a genuine issue of material fact exists regarding the need and amount of force used by Bolech. Bolech does not contest the district court's finding in this regard. Rather, he argues that he was entitled to qualified immunity because Hull's injuries are de minimus.

A showing of some type of injury, more than de minimus, is necessary to assert an excessive force claim. Williams v. Bramer, 180 F.3d 699, 703 (5th Cir. 1999). In order to determine whether injuries caused by excessive force are de minimus, the context in which the force was used must be examined. Id. "[T]he amount of injury necessary to satisfy our requirement of 'some injury' and establish a constitutional violation is directly related to the amount of force that is constitutionally permissible under the circumstances." Id. at 703-04 (quoting Ikerd v. Blair, 101 F.3d 430, 434 (5th Cir. 1996)). Because a genuine issue of material fact exists regarding the need and amount of force used by Bolech, the injuries cannot be determined to be de minimus simply by evaluating the physical nature of the injury. Accordingly, the judgment of the district court is AFFIRMED.