

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-2440
Summary Calendar

FREDDIE LEE MYLES,

Plaintiff-Appellant,

versus

JACK HEARD, Et Al.,

Defendants,

D.L. BRISTER and
R.D. MOODY,

Defendants-Appellees.

Appeal from the United States District Court for
the Southern District of Texas
(CA-H-83-2531)

(February 19, 1993)

Before REAVLEY, JONES and EMILIO M. GARZA, Circuit Judges.

REAVLEY, Circuit Judge:¹

Freddie Lee Myles filed a section 1983 claim against two Harris County sheriff deputies for using excessive force against him while he was a pretrial detainee at Harris County Detention

¹Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Center. The district court granted the deputies' motion for summary judgment on the ground that the deputies are entitled to qualified immunity as a matter of law.

The deputies are entitled to qualified immunity if their conduct was objectively reasonable. The objective reasonableness of the deputies' conduct must be measured with reference to the law as it existed at the time of the conduct in question. *King v. Chide*, 974 F.2d 653, 657 (5th Cir. 1992). In our case, the use of force occurred in 1982, at which time *Shillingford v. Holmes*, 634 F.2d 263 (5th Cir. 1981) was the controlling decision for excessive force claims. This court has interpreted *Shillingford* to mean that a plaintiff may not maintain an excessive force action unless he satisfies the following three-part test: (1) the action caused "severe" injury; (2) the action was grossly disproportionate to the need for action under the circumstances; and (3) the action was inspired by malice rather than mere carelessness or unwise excess of zeal. See *King*, 974 F.2d at 657.

The district court in our case concluded that Myles presented no summary judgment evidence showing that he suffered an injury. Consequently, the court ruled that the deputies are entitled to qualified immunity as a matter of law. We do not agree. In Myles's deposition, which was submitted to the district court, he described the incident and his injuries. According to his deposition, the deputies punched and kicked him several times, hit him in the back of the head with a two-way

radio, and kneed him in the groin and shoulder/neck area. Some of this abuse occurred after Myles was handcuffed. When he arrived at the infirmary, his face was bloody and he complained of injuries to his jaw, nose, neck, and back. Other than having the blood cleaned off his face, Myles received no medical treatment. In his deposition, which was more than seven years after the incident, Myles testified that he continues to experience problems with his neck and back as a result of the 1982 incident.

We believe that the deposition testimony creates a fact issue on the 1982 tests of the claim, including the "severe" injury requirement. See *Valencia v. Wiggins*, No. 91-8018, 1993 WL 6868, at *7 (5th Cir. Jan. 18, 1993) (affirming the district court's fact finding of "severe" injury where the plaintiff was rendered momentarily unconscious and received scratches, cuts, and bruises, but did not require medical attention); *Roberts v. Marino*, 656 F.2d 1112, 1114-15 (5th Cir. 1981) (affirming an award of damages to plaintiff who received multiple bruises and scars to the head and body from a police beating); *Shillingford*, 634 F.2d at 266 (permitting plaintiff who suffered a lacerated forehead, which left a scar, to recover damages).

REVERSED AND REMANDED.