

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2659
Summary Calendar

JAMES HARRISON,

Plaintiff-Appellee,

versus

J. R. CHOATE, ET AL.,

Defendants,

B. A. COX and A. WYATT,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-92-658)

(October 10, 1994)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Two Sheriffs' Deputies, Cox and Wyatt, have filed an appeal from the district court's denial of qualified immunity. The underlying lawsuit involves allegations of excessive force made by a man who was apparently intoxicated at the time of arrest, out of control with anger, and extremely violent and uncooperative with

* Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

these and other officers. Unfortunately, for these officers, the County has committed a serious procedural error in what might otherwise have been a meritorious appeal. Appellants failed to include the plaintiff's opposition to their motion for summary judgment in the record on appeal. The failure to follow the dictates of Federal Rule of Appellate Procedure 10(b)(2) is especially grievous, given that the district court specifically relied on the materials included in Harrison's opposition to deny summary judgment. The appellants themselves refer to those materials in their brief.

This court cannot rule on the issues raised by appellants without having access to the affidavits and whatever other evidence was presented in Harrison's opposition to their summary judgment motion. We do not, in other words, review the grant or denial of summary judgment based on the trial court presentation of one side alone. Because appellants failed to designate the relevant portions of the record for use by this reviewing court, we must dismiss their appeal. See Richardson v. Henry, 902 F.2d 414, 416 (5th Cir. 1990), cert. denied, 498 U.S. 1069 (1991).

Appeal **DISMISSED**.