IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 93-8103

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CELIA GONZALES, as Next Friend
of Celestino Jasso,

Plaintiff-Appellant,

versus

DAVID BEATTY, Individually and
as Officers of the City of Midland
Police Department, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the
Western District of Texas
(MO-92-CV-116)

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(February 18, 1994)

Before JOHNSON, GARWOOD and JOLLY, Circuit Judges.*

PER CURIAM:

This is a suit under 42 U.S.C. § 1983 by plaintiff-appellant Celia Gonzales (Gonzales), as next friend of Celestino Jasso (Jasso), against two individual police officers of the City of Midland, the chief of police of the City, and the City itself,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

seeking damages for personal injuries sustained following a stop and subsequent arrest of Jasso. All defendants filed motions for summary judgment, the individual officers raising, *inter alia*, the defense of qualified immunity. The district court in a well-considered opinion granted the motions for summary judgment and dismissed the suit. Gonzales appeals. We affirm.

Under the undisputed facts reflected by the record, the individual officers were entitled to qualified immunity. Their initial contact with Jasso was simply a *Terry* stop. *Terry v. Ohio*, 88 S.Ct. 1868 (1968). Such a stop requires no more than reasonable suspicion or some minimum level of objective justification. *See United States v. Sokolow*, 109 S.Ct. 1581, 1585 (1989). For purposes of qualified immunity, the issue then is whether a reasonable officer could believe that the information available to the officers met that test. *See Anderson v. Creighton*, 107 S.Ct. 3034 (1987). Under this test, we hold that as a matter of law a reasonable officer could so believe. After the initial stop, Jasso ran away from the officers. Since the officers saw him run away, and since they were reasonable in believing they had made a justified *Terry* stop, they were also reasonable in believing that they had probable cause to arrest Jasso under Texas Penal Code § 38.04. *See Hunter v. Bryant*, 112 S.Ct. 534 (1991).

While the claim of excessive force in effecting the arrest may present a somewhat close question, considering all the summary judgment evidence before the district court, its conclusion that there was no evidence from which a jury could find that the

officers were not entitled to qualified immunity on this issue is likewise correct. Here, Jasso resisted arrest by attempting to slam the door shut on the officers and trying to use it as a shield to keep them at bay. The injury to his arm occurred as they were trying to force him away from the door, but thereafter nothing untoward happened. Gonzales and her grandson testified essentially that they did not believe the officers were trying to hurt Jasso, and Gonzales thought his injury was just an accident. Indeed, there is no evidence that it was not. As the Supreme Court recognized in *Graham v. Connor*, 109 S.Ct. 1865, 1872 (1989), for these purposes, "allowance" must be made "for the fact that police are often forced to make split second judgmentsSQin circumstances that are tense, uncertain, and rapidly evolvingSQabout the amount of force that is necessary in a particular situation." Perhaps the officers made a mistake, but the evidence contains no basis upon which to find that at the time in question no reasonable officer would have thought the force used was not excessive.

The arresting officers were entitled as a matter of law to qualified immunity, and summary judgment for them was proper.

As to the chief of police, who had no personal involvement whatever in the incident in question, and the City of Midland, summary judgment was likewise appropriate. There was no summary judgment evidenceSQas distinguished from unverified allegationsSQof any previous incidents involving police misconduct or excessive force. Further, the City of Midland's summary judgment evidence showed that there was proper training for the officers. There was

no rebuttal summary judgment evidence. Certainly there was no showing that either the City of Midland or the chief of police was guilty of any conscious indifference. *See City of Canton v. Harris*, 109 S.Ct. 1197 (1989). *Respondeat superior* liability is simply not available under section 1983. *Id*.

Accordingly, the district court's judgment is

AFFIRMED.