

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10755

JOHNNY RAY MCGINNIS,

Plaintiff-Appellee,

versus

OFFICER ROMEO RODRIGUEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(3:88 CV 2576 P)

(April 6, 1995)

Before REYNALDO G. GARZA, HIGGINBOTHAM, and PARKER, Circuit Judges.

PER CURIAM:*

The district court denied Officer Rodriguez's motion for summary judgment, persuaded that there were fact issues presented by the defense of qualified immunity. In this excessive force case brought by a prisoner, the circumstances of the altercation are disputed. Under the plaintiff's version, the defendant engaged in an unprovoked and unnecessary assault. The officer's version is

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

that he used only the force necessary to restrain McGinnis when McGinnis became violent.

We agree that these questions of fact must be resolved and dismiss the appeal.

DISMISSED.