

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-40521
(Summary Calendar)

DONALD CLARK, a/k/a Donald Clark,

Plaintiff - Counter Defendant - Appellee,

versus

DONALD BROUSSARD, Police Officer,
Yoakum Police Department;
City of Yoakum,

Defendants - Counter Claimants - Appellants,

and

YOAKUM POLICE DEPT;
DAVID BYARS, Jailer, Lavaca County Jail;
LAVACA COUNTY JAIL; D. DOWNING, M.D.,

Defendants.

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Appeal from the United States District Court
for the Southern District of Texas
(USDC No. V-92-CV-60)
- - - - -

December 6, 1995

Before WIENER, PARKER and DENNIS, Circuit Judges.

PER CURIAM:*

This appeal is taken from the denial of motions for summary judgment based on Broussard's qualified immunity against Clark's 42 U.S.C. § 1983 action. In that action, Clark asserted that

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Broussard used excessive force against him during an escape attempt. As there are disputed material fact issues present here, regarding whether any force used was excessive to the need we have no jurisdiction to hear the interlocutory appeal of the district court's denial of summary judgment on the basis of immunity. See, Johnson v. Jones, 115 S.Ct. 2151 (1995); Feagley v. Waddill, 868 F.2d 1437, 1439 (5th Cir. 1989) (citations omitted).

The appeal of the district court's denial of the motions for summary judgment is DISMISSED. Accordingly, Clark's motion for production of documents is DENIED.