

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-21054  
Summary Calendar

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MARK ANTHONY THIBODEAUX,

Plaintiff-Appellee,

versus

HARRIS COUNTY, TEXAS, ET AL.,

Defendants,

ROLF D. NELSON, Deputy;  
JOE BRENT HALM, Deputy,

Defendants-Appellants.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-98-CV-2817  
- - - - -

July 6, 2000

Before HIGGINBOTHAM, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:

Mark Anthony Thibodeaux file suit against appellants Deputy Rolf D. Nelson and Deputy Joe Brent Halm under 42 U.S.C. § 1983 for use of excessive force when affecting an allegedly wrongful arrest of him. Appellants filed a motion for summary judgment on the basis of qualified immunity. The district court refused to grant that motion, and this appeal followed.

District court orders denying summary judgment on the basis of qualified immunity are immediately appealable under the collateral order doctrine, notwithstanding their interlocutory character, when based on a conclusion of law. See Mitchell v.

Forsyth, 472 U.S. 511, 530 (1985). Such orders are not immediately appealable, however, if they are based on sufficiency of the evidence. See Johnson v. Jones, 515 U.S. 304, 313 (1995). Because there is a significant fact-related dispute with regard to the circumstances surrounding Thibodeaux's detention and arrest, this court does not have jurisdiction to review the denial of the appellants' motion for summary judgment based on qualified immunity. Accordingly, the appeal is DISMISSED FOR LACK OF JURISDICTION.