

March 3, 2004

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 03-10771
Summary Calendar

KEVIN BERNARD JOHNSON,

Plaintiff-Appellee,

versus

NFN NWANKO, Jailer, 1st Watch, Dallas County Sheriff's
Department; NFN SHIDERLY, Jailer, 1st Watch, Dallas County
Sheriff's Department,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(3:02-CV-01736-BF-R)

Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Defendants appeal the denial of summary judgment; they claimed qualified immunity. Denial of qualified immunity is immediately appealable only when based on issues of law, rather than on genuine issues of material fact. See *Palmer v. Johnson*, 193 F.3d 346, 350 (5th Cir. 1999). "[I]f the district court concludes that the summary judgment record raises a genuine issue of material fact with respect to whether the defense of qualified immunity is

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

applicable, then that decision is not immediately appealable...."
Id. at 351.

The denial of qualified immunity was based on starkly differing versions of the facts surrounding the altercation between plaintiff and defendants, which were offered through competent summary judgment evidence. The denial was based on genuine issues of material fact as to the threat perceived by defendants, the need for the application of force, the relationship between the need and amount of force used, and the extent of plaintiff's injuries. Accordingly, we lack jurisdiction over this interlocutory appeal. See *Palmer*, 193 F.3d at 351.

DISMISSED