

United States Court of Appeals
For the Eighth Circuit

No. 13-3610

Connie Berry, Individually and as Administrator of the Estate of Eric W. Berry; J.
W. Berry, Co-administrator of the estate of Eric Berry

Plaintiffs - Appellees

v.

Brandon Davis, an individual; The City of Fort Smith

Defendants - Appellants

Appeal from United States District Court
for the Western District of Arkansas - Ft. Smith

Submitted: August 13, 2014

Filed: August 18, 2014

[Unpublished]

Before BYE, SMITH, and KELLY, Circuit Judges.

PER CURIAM.

In this 42 U.S.C. § 1983 action involving a Fourth Amendment claim of excessive use of force, Brandon Davis and the City of Fort Smith, Arkansas, appeal

the district court's¹ interlocutory order denying their motion for summary judgment based on qualified immunity. Upon careful de novo review, we agree with the district court that the existence of a genuine issue of material fact precluded qualified immunity. See Nance v. Sammis, 586 F.3d 604, 609 (8th Cir. 2009) (denial of qualified immunity is reviewed de novo; denial of qualified immunity will be affirmed if genuine issue of material fact exists as to whether reasonable officer could have believed his actions were lawful); see also Plumhoff v. Rickard, 134 S. Ct. 2012, 2019-20 (2014) (court of appeals had interlocutory jurisdiction where officers contended their conduct did not violate Fourth Amendment and, in any event, did not violate clearly established law). Accordingly, we affirm.

¹The Honorable Robert T. Dawson, United States District Judge for the Western District of Arkansas.