

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 07-11151
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT OCTOBER 5, 2007 THOMAS K. KAHN CLERK
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D.C. Docket No. 06-00362-CV-4-RH-WCS

SUZANNE HARRELL,

Plaintiff-Appellee,

versus

JAMES GOODMAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

(October 5, 2007)

Before BLACK, MARCUS and COX, Circuit Judges.

PER CURIAM:

James Goodman appeals the district court's denial of his motion for summary judgment grounded upon qualified immunity. He contends that his actions did not

violate the Constitution, but even if they did, the law was not so clearly established as to make it obvious that his actions violated federal law.

The facts are disputed. We exercise our discretion to accept the district court's recitation of the facts for summary judgment purposes. *See Gonzalez v. Lee County Hous. Auth.*, 161 F.3d 1290, 1294 (11th Cir. 1998).

Having considered the briefs and the relevant parts of the record, we find no reversible error in the district court's determination that, viewing the facts in the light most favorable to Harrell, the use of deadly force was unwarranted and violated clearly established law. Summary judgment was properly denied because the factfinder could conclude that Harrell did not "pose[] a threat of serious physical harm, either to the officer or to others." *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S. Ct. 1694, 1701 (1985). Thus, the use of deadly force was not justified. And, Harrell's state court convictions do not establish Goodman's qualified immunity defense for the reasons stated by the district court. (R.1-23 at 8, 9.)

The issue of qualified immunity remains in the case and will have to be addressed at trial. We decide only that Goodman is not due summary judgment on this record.

AFFIRMED.