

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

GEORGE A. GOEHRING,

Plaintiff-Appellee.

v.

MARK DOUGLAS CARR,

Defendant-Appellant.

No. 95-1250

and

UNITED STATES OF AMERICA,

Defendant.

Appeal from the United States District Court  
for the District of Maryland, at Baltimore.

J. Frederick Motz, Chief District Judge.

(CA-93-4171-JFM)

Argued: November 1, 1995

Decided: September 10, 1996

Before RUSSELL, WIDENER, and HALL, Circuit Judges.

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Dismissed by unpublished per curiam opinion. Judges Russell and  
Hall concur, Judge Widener dissents.

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**COUNSEL**

**ARGUED:** Herbert Better, ZUCKERMAN, SPAEDER, GOLD-  
STEIN, TAYLOR & BETTER, Baltimore, Maryland, for Appellant.  
Charles Gerald Bernstein, BERNSTEIN & SAKELLARIS, Balti-

more, Maryland, for Appellee. **ON BRIEF:** Cyril V. Smith, ZUCK-  
ERMAN, SPAEDER, GOLDSTEIN, TAYLOR & BETTER,  
Baltimore, Maryland, for Appellant.

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Unpublished opinions are not binding precedent in this circuit. See  
Local Rule 36(c).

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## **OPINION**

### **PER CURIAM:**

The defendant, United States Postal Inspector Mark Carr, prosec-  
utes an interlocutory appeal from the order of the district court deny-  
ing his motion for summary judgment of qualified immunity in  
defense of claims of excessive force in violation of the Fourth  
Amendment. We dismiss the appeal.

The plaintiff, George Goehring, brought an action under the Fed-  
eral Tort Claims Act, 28 U.S.C § 2671 et seq., against the United  
States alleging assault, battery, and negligent planning and execution  
of a search warrant. Goehring, in the same complaint, brought a sepa-  
rate action against Carr individually for Bivens type violations of the  
Fourth Amendment.<sup>1</sup> The district court granted the United States'  
motion for summary judgment on the finding that there were no facts  
in the record from which a jury could infer that Carr or any other  
agents acted with actual malice toward the plaintiff as required under  
Maryland law.<sup>2</sup> However, viewing the facts in the light most favor-  
able to the plaintiff, the district court found that there was a genuine  
issue of material fact as to whether a reasonable officer could have  
believed that Carr's use of force (Goehring was shot in the hand and  
forearm) was objectively reasonable under the circumstances. The  
district court therefore denied Carr's motion for summary judgment

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<sup>1</sup> Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

<sup>2</sup> The summary judgment in favor of the United States is not mentioned  
in this appeal even if it is an appealable order.

of qualified immunity for the Fourth Amendment claims against him individually.

As stated, the district court found a genuine issue of material fact as to Carr's motion for summary judgment on the ground of qualified immunity. Therefore the issue on appeal to this court is whether the record contains evidence sufficient to create a genuine issue of material fact. If so, the denial of summary judgment is not immediately appealable. Johnson v. Jones, 63 U.S.L.W. 4552, 132 L.Ed. 2d 238, 115 S.Ct. 2151, 2159 (1995).

Judges Russell and Hall are of opinion that the record supports the conclusion that there is such an issue of material fact, Judge Widener is of opinion that it does not.

This appeal is accordingly

DISMISSED.

Judges Russell and Hall concur, Judge Widener dissents.