

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ORTIZ *v.* JORDAN ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

No. 09–737. Argued November 1, 2010—Decided January 24, 2011

Petitioner Ortiz, a former inmate in an Ohio reformatory, brought a civil rights action under 42 U. S. C. §1983 seeking a judgment for damages against superintending prison officers. On two consecutive nights during her incarceration, Ortiz stated, she was sexually assaulted by a corrections officer. Although she promptly reported the first assault, she further alleged, respondent Jordan, a case manager in her living unit, did nothing to ward off the second sexual assault, despite Jordan’s awareness of the substantial risk of that occurrence. Ortiz further charged that respondent Bright, a prison investigator, retaliated against Ortiz for her accusations by placing her, shackled and handcuffed, in solitary confinement in a cell without adequate heat, clothing, bedding, or blankets. The responses of both officers, she said, violated her right, safeguarded by the Eighth and Fourteenth Amendments, to reasonable protection from violence while in custody.

Jordan and Bright moved for summary judgment on pleas of “qualified immunity.” The District Court, noting factual disputes material to Ortiz’s claims and the officers’ qualified immunity defenses, denied the summary judgment motion. The officers did not appeal that ruling. The case proceeded to trial, and the jury returned a verdict against Jordan and Bright. They sought judgment as a matter of law, pursuant to Federal Rule of Civil Procedure 50(a), both at the close of Ortiz’s evidence and at the close of their own presentation. But they did not contest the jury’s liability finding by renewing, under Rule 50(b), their request for judgment as a matter of law. Nor did they request a new trial under Rule 59(a). The District Court entered judgment for Ortiz. On appeal, Jordan and Bright urged, *inter alia*, that the District Court should have granted their motion for

Syllabus

summary judgment based on their qualified immunity defense. The Sixth Circuit agreed and reversed the judgment entered on the jury's verdict, holding that both defendants were sheltered from Ortiz's suit by qualified immunity.

Held: A party may not appeal a denial of summary judgment after a district court has conducted a full trial on the merits. A qualified immunity plea, not upheld at the summary judgment stage, may be pursued at trial, but at that stage, the plea must be evaluated in light of the character and quality of the evidence received in court. Ordinarily, orders denying summary judgment are interlocutory and do not qualify as "final decisions" subject to appeal under 28 U. S. C. §1291. Because a qualified immunity plea can spare an official not only from liability but from trial, this Court has recognized a limited exception to the categorization of summary judgment denials as non-appealable orders. *Mitchell v. Forsyth*, 472 U. S. 511, 525–526. The exception permits an immediate appeal when summary judgment is denied to a defendant who urges that qualified immunity shelters her from suit. *Id.*, at 527. Such an immediate appeal is not available, however, when the district court determines that factual issues genuinely in dispute preclude summary adjudication. *Johnson v. Jones*, 515 U. S. 304, 313. Here, Jordan and Bright sought no immediate appeal from the denial of their summary judgment motion. Nor did they avail themselves of Rule 50(b), which permits the entry of judgment, postverdict, for the verdict loser if the court finds the evidence legally insufficient to sustain the verdict. Absent such a motion, an appellate court is "powerless" to review the sufficiency of the evidence after trial. *Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.*, 546 U. S. 394, 405. This Court need not address the officers' argument that a qualified immunity plea raising a "purely legal" issue is preserved for appeal by an unsuccessful summary judgment motion even if the plea is not reiterated in a Rule 50(b) motion. Cases fitting that bill typically involve disputes about the substance and clarity of pre-existing law. In this case, however, what was controverted was not the pre-existing law, but the facts that could render Jordan and Bright answerable under §1983, *e.g.*, whether Jordan was adequately informed, after the first assault, of the assailant's identity and of Ortiz's fear of a further assault. Because the dispositive facts were disputed, the officers' qualified immunity defenses did not present "neat abstract issues of law." *Johnson*, 515 U. S., at 317. To the extent that Jordan and Bright urge Ortiz has not proved her case, they were, by their own account, obliged to raise that sufficiency-of-the-evidence issue by postverdict motion for judgment as a matter of law under Rule 50(b). They did not do so. The Sixth Circuit, therefore, had no warrant to upset the jury's decision on their liability. Pp. 6–

Syllabus

11.

316 Fed. Appx. 449, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, in which SCALIA and KENNEDY, JJ., joined.