

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 08-10764  
Non-Argument Calendar

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT AUGUST 4, 2008 THOMAS K. KAHN CLERK
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D. C. Docket No. 05-01150-CV-2-MHT-TFM

DANIEL BRYAN KELLEY,

Plaintiff-Appellee,

versus

RICKY OWENS, individually and in his official  
capacity as Sheriff of Coosa County,  
AL BRADLEY, individually and in his official  
capacity as Deputy Sheriff of Coosa County,  
TERRY WILSON, individually and in his official  
capacity as Deputy Sheriff of Coosa County,  
WENDY ROBERSON, individually and in her official  
capacity as Deputy Sheriff of Coosa County,

Defendants-Appellants.

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Appeals from the United States District Court  
for the Middle District of Alabama

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**(August 4, 2008)**

Before DUBINA, CARNES and BARKETT, Circuit Judges.

PER CURIAM:

This is an appeal from the district court's order denying defendants/appellants' motion for summary judgment based on qualified immunity. Plaintiff/Appellee Daniel Bryan Kelley ("Kelley") filed a complaint in the United States District Court for the Middle District of Alabama against defendants/appellants Ricky Owens, Terry Wilson, Al Bradley, and Wendy Roberson, alleging various violations of his constitutional rights based on the treatment he received during his incarceration in the Coosa County, Alabama, Jail between November 13, 2003, and January 16, 2004. In a memorandum opinion and order filed on February 1, 2008, the district court granted in part and denied in part the parties' motion for summary judgment. Specifically, the district court permitted Kelley to proceed with his conditions of confinement claims against Sheriff Owens and Sergeant Roberson, excessive force claim against Jailer Bradley, and failure to intervene claim against Administrator Wilson.

"A district court's denial of summary judgment based on qualified immunity is reviewed *de novo*, construing all facts and making all reasonable inferences in the light most favorable to the nonmoving party." *Tinker v. Beasley*, 429 F.3d 1324, 1326 (11th Cir. 2005). "Generally, when there are [disputed] issues of fact

. . . qualified immunity must be denied because the court, at this stage of the proceedings, must view the facts most favorable to the plaintiff.” *Travers v. Jones*, 323 F.3d 1294, 1296 (11th Cir. 2003).

In the present case, the district court found that the evidence presented a jury question as to whether defendants Owens and Roberson violated Kelley’s constitutional rights when they punished him by confining him under unconstitutional conditions. Moreover, the district court concluded that the record evidence, if found to be true, would support a conclusion that Bradley violated Kelley’s constitutional right to be free from the malicious use of force. Finally, the district court found that Wilson violated Kelley’s constitutional rights when he failed to intervene and stop Bradley from injuring him.

After reviewing the record, and reading the parties’ briefs, we agree with the district court’s conclusion that issues of fact precluded a finding of summary judgment based on qualified immunity for the defendants.<sup>1</sup> Accordingly, we affirm the district court’s order denying summary judgment to the defendants based on qualified immunity.

AFFIRMED.

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<sup>1</sup>The district court’s denial of summary judgment based on the claim of qualified immunity because genuine issues of material fact existed is an immediately appealable order because “[t]he district court’s determination that genuine issues of material fact preclude summary judgment is itself a conclusion of law.” *McDaniel v. Woodard*, 886 F.2d 311, 313 (11th Cir. 1989).