

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 08-10057  
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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT NOV 13, 2008 THOMAS K. KAHN CLERK
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D.C. Docket No. 05-01968-CV-IPJ

JON TRISTAN HOLLAND,

Plaintiff-  
Counter-Defendant-  
Appellee,

versus

SCOTT MCDONALD,  
individually and in his official capacity  
as an officer with the Hoover Police Department,  
ROBERT MYER,  
individually and in his official capacity as a  
jailor for the City of Hoover,

Defendants-  
Counter-Claimants-  
Appellants,

TIMOTHY PUGH,  
individually and in is official capacity as a  
jailor for the City of Hoover,  
ED LEACH,  
individually and in his official capacity as an  
officer with the Hoover Police Department,

Defendants-Appellants,

ROBERT BERRY, etc., et al.,

Defendants,

CITY OF HOOVER,  
a municipality organized under the laws  
of the State of Alabama,

Defendant-  
Counter-Claimant.

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

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**(November 13, 2008)**

Before BARKETT and WILSON, Circuit Judges, and POGUE,\* Judge.

PER CURIAM:

This is an interlocutory appeal in which Officers Scott McDonald, Robert Mayer, Timothy Pugh, and Ed Leach (“Officers”), appeal the denial of their motion for summary judgment on the ground that Jon Tristan Holland’s excessive force claim against them is precluded by the defense of qualified immunity.

We have reviewed the record and considered the oral argument of counsel.

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\*Honorable Donald C. Pogue, United States Court of International Trade, sitting by designation.

Based thereupon, and accepting Holland's version of the facts, as we must at this stage, we agree with the district court's comprehensive order that disputed issues of material fact exist regarding the use of excessive force.

**AFFIRMED**