[DO NOT PUBLISH]

In the

# United States Court of Appeals

## For the Eleventh Circuit

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No. 23-12867

Non-Argument Calendar

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TIMOTHY SAID CHAMBLISS,

Plaintiff-Counter Defendant-Appellee,

*versus*

BREVARD COUNTY SHERIFF'S OFFICE,

Defendant,

BREVARD COUNTY SHERIFF,

Defendant-Counter Claimant,

TYLER HARRELL,
individually and as an agent of
Brevard County Sheriff's Office,

Defendant-Appellant.

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Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:22-cv-00044-PGB-RMN

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Before JORDAN, ROSENBAUM, and LAGOA, Circuit Judges.

PER CURIAM:

Tyler Harrell, a deputy with the Brevard County Sheriff's Office, appeals the district court's denial of qualified immunity at summary judgment on Timothy Chambliss's Fourth Amendment excessive-force claim under 42 U.S.C. § 1983. The district court determined that material facts were in dispute and, therefore, the case should be presented to a jury. Harrell appeals, arguing that the court made errors in evaluating the evidence. But because Harrell does not raise a legal question on appeal and seeks review of only the factual sufficiency of the court's determinations that genuine disputes existed—including whether the force used was substantial or *de minimis*, whether Chambliss was a nonviolent or nonthreatening suspect, and whether Chambliss actively resisted just

before the use of force—we lack jurisdiction to hear Harrell's appeal at this time. We therefore dismiss the appeal.

**I.**

The relevant event occurred at around 4 p.m. on March 20, 2019. The district court ably summarized the underlying facts, presented in the light most favorable to Chambliss, and we reproduce that summary here.[1]

> Deputy Harrell was patrolling Peachtree Street in the area near Prospect Park when a man, Chambliss, caught his eye. Morning shift had taken a stolen vehicle report on the northwest side of town. They found the car parked in front of the corner store where Peachtree Street crosses Fiske Boulevard. Store surveillance video captured a blurry glimpse of the suspect: a thin, middle-aged black man, roughly 5'7" tall with protruding front teeth, who frequents the convenience store one block east[,] witnesses said. Deputy Harrell had been roving the area hoping to arrest the guy.
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> The neighborhood was no stranger to crime. The convenience store where the suspect allegedly spent his time, known to Chambliss as "Bald Head,"

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[1] "In determining the facts for summary judgment purposes, we, like the district court, are required to view the evidence in the light most favorable to the plaintiff." *Cottrell v. Caldwell*, 85 F.3d 1480, 1486 n.3 (11th Cir. 1996).

had a history with drug activity and shootings. Deputy Harrell knew as much. Ten years on the beat, stores like Bald Head were a regular stop on his watch. People hanging around out front would often scatter when his marked squad car rolled up.

Chambliss stood amid a group of ten or so people outside the convenience store when Deputy Harrell spotted him. The 5'10" man was wearing a gray hoodie and jeans. Gold slugs capped his front teeth. He looks like the suspect, the deputy thought. Deputy Harrell wanted to identify him for a photo lineup. He started backing into a parking spot out front.

Chambliss was already preparing to leave the store when he saw Deputy Harrell pull into the parking lot. He did not have a valid driver's license. His car was parked out front. Getting behind the wheel in front of the deputy was not a good idea, he surmised. The small amount of marijuana in his front pocket would not help, either. He headed away from the store on foot toward Prospect Park.

Dressed in uniform, Deputy Harrell got out of his patrol car and followed quickly behind. He tried to get [Chambliss's] attention, but Chambliss ignored him. Chambliss made it about a block from the store before he finally turned around and acknowledged him.

> "What's your name?" Deputy Harrell asked. Chambliss gave it to him along with his date of birth. Deputy Harrell said he was lying. He asked to see his identification. Chambliss did not have any on him, he said. Deputy Harrell asked him to walk back to his patrol car so he could run his name. [Chambliss] obliged.
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> Once the two reached the squad car, Deputy Harrell said he smelled marijuana. Chambliss was not surprised. Frequent drug activity often made the storefront smell like marijuana. What did you drop on the ground? Deputy Harrell asked. Nothing, Chambliss said, confused. Deputy Harrell commanded Chambliss to turn around and place his hands on the vehicle, preparing to search him. Chambliss complied. The deputy started at the top with Chambliss's arms and worked his way down. But Chambliss "wiggl[ed]" away from the deputy's hand once he reached into his pockets.
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> Chambliss claims Deputy Harrell then slung him to the ground without warning. Deputy Harrell, on the other hand, contends Chambliss first tried to flee and then fight him, ignoring commands to stop resisting. Regardless, Deputy Harrell got behind Chambliss in a stance where he had "control." A

bystander recorded the next twenty-six seconds of their encounter with a cellphone.

The first shot shows Deputy Harrell crouched behind Chambliss, leaning up against the rear of a white sedan parked one space away from the deputy's patrol car. The camera zooms in. Deputy Harrell has Chambliss in a hold from behind, with his right arm bent around Chambliss's neck and his left hand pulling his prosthetic limb in tighter. He leans forward against his back. The two men fall to the ground—Chambliss face-first onto the concrete with Deputy Harrell on his back straddling him. Three-tenths of a second later, Deputy Harrell pulls his right arm back and swings his prosthetic limb against the back of Chambliss's head.

After the blow, Chambliss remains prone on the ground with his hands crossed on the back of his head. Deputy Harrell adjusts the hand portion of his prosthetic limb, leans forward, and then clasps his radio. "I didn't hit nobody," Chambliss says. "Put your hands behind your back and stay down!" Deputy Harrell commands. Chambliss immediately complies and cannot be heard saying anything else. Deputy Harrell, still straddled across his back, starts putting him in handcuffs. The video ends there.

> Deputy Harrell searched Chambliss incident to arrest but did not find anything on him. He confiscated about 1.5 grams of marijuana from elsewhere at the scene. Chambliss complained that his teeth hurt and that his blood-glucose level was high. The Cocoa Fire Department responded and assessed Chambliss, determining he needed no further medical attention. Deputy Harrell then placed Chambliss into his patrol car and booked him in the Brevard County Jail. Chambliss later agreed to plead no contest to misdemeanor charges of marijuana possession and resisting arrest without violence.

The district court also noted that "Deputy Harrell wears a prosthetic limb made of aluminum, rubber, and carbon fiber on his right arm below the elbow," and that "[h]e weighs about 220 pounds."

**II.**

Chambliss filed a civil rights lawsuit in federal court under 42 U.S.C. § 1983 and state law. In the operative amended complaint, he claimed that Harrell violated his Fourth Amendment right to be free from excessive force (Count I) and committed common law battery under state law (Count II). He also brought § 1983 and state laws claims against Brevard County Sheriff Wayne Ivey and the Brevard County Sheriff's Office for failing to train and retaining Harrell (Counts III, IV, and V). Only the individual claims against Harrell are at issue in this appeal.

The district court denied Harrell's motion for summary judgment raising the defense of qualified immunity. Based on Chambliss's version of events, in the court's view, "an objectively reasonable deputy would not find Chambliss's actions rose to a consequential level of resistance or posed an immediate threat sufficient to justify delivering a blow to the back of his head." The court found that the most resistance Chambliss offered was "wiggling" in response to a search that he "had not been informed . . . was not a consensual ordeal." He otherwise "cooperated," "made no threatening moves," and "was not struggling with Deputy Harrell as he was brought to the ground." The court found that these facts, construed in Chambliss's favor, "establish Chambliss as a nonthreatening suspect of a minor offense who was not resisting arrest when Deputy Harrell struck him." The court noted that Harrell, after delivering the blow to the back of Chambliss's head, "did not hasten to secure Chambliss's hands or seem concerned that he would continue to show resistance."

The district court rejected Harrell's argument that the use of force was "*de minimis*" and therefore insufficient to support a claim for excessive force. The court noted Chambliss's testimony that the blow loosened some of his teeth, which later fell out, and that he suffered headaches following the encounter. And it reasoned that "[a] single blow to the back of the head hard enough to loosen teeth—delivered with a prosthetic made of metal—constitutes a substantial amount of force, particularly when the suspect is not resisting." Accordingly, the court concluded that genuine issues of

material fact precluded summary judgment on whether a constitutional violation occurred.

The district court further determined that the constitutional right at issue was clearly established. The court found that, as of the date of the incident in March 2019, "more than a decade's worth of Eleventh Circuit precedent had clearly established that using substantial force against a nonviolent suspect, accused of only a minor crime and who is not actively resisting arrest, violates the constitution." The court noted, however, that qualified immunity may still apply if at trial the jury finds, through special interrogatories, that Chambliss "actively resisted" Harrell as described in Harrell's deposition.

Finally, the district court determined that, based on Chambliss's version of events, "a reasonable jury could find that Deputy Harrell delivered the blow to the back of Chambliss's head with willful and wanton disregard for his rights." So, it denied statutory immunity under Florida law, in addition to federal qualified immunity.

**III.**

We review *de novo* the denial of qualified immunity at summary judgment, viewing the evidence in the light most favorable to the nonmoving party. *Nelson v. Tompkins*, 89 F.4th 1289, 1295 (11th Cir. 2024). Summary judgment is appropriate if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Patel v. City of Madison, Ala.*, 959 F.3d 1330, 1336 (11th Cir. 2020) (quoting Fed. R. Civ. P. 56(a)). A

genuine dispute exists if a reasonable jury could return a verdict for the nonmoving party. *Id.* at 1337.

The parties also dispute our jurisdiction over this interlocutory appeal. "Our review of jurisdictional issues is *de novo*." *Id.*

**IV.**

We start with the fundamental question of our jurisdiction. Ordinarily, an order denying qualified immunity is immediately appealable as a final, "collateral order." *Hall v. Flournoy*, 975 F.3d 1269, 1274 (11th Cir. 2020). That's because it conclusively resolves the question of whether a government official has immunity from suit, which is "effectively lost if a case is erroneously permitted to go to trial." *Mitchell v. Forsyth*, 472 U.S. 511, 526–27 (1985).

Qualified immunity protects government officials from "the costs of trial and the burdens of broad-reaching discovery, as long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Hall*, 975 F.3d at 1274–75 (cleaned up). If a government official broadly acted within the scope of his discretionary duties, the plaintiff must make two showings: (1) the officer violated a federal statutory or constitutional right; and (2) "the violation contravened clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 1275 (quotation marks omitted). The first inquiry—"what did the officer do and did it violate the law?"—"may be a mixed question of law and fact," while the second is "purely a question of law." *Id.*

Nevertheless, whether we have jurisdiction "to review the denial of summary judgment on qualified immunity grounds depends on the type of issues involved in the appeal." *Nelson*, 89 F.4th at 1295 (quotation marks omitted). Interlocutory jurisdiction exists "when legal questions of qualified immunity are raised—either to determine whether any constitutional right was violated or whether the violation of that right was clearly established." *Hall*, 975 F.3d at 1276; *see Koch v. Rugg*, 221 F.3d 1283, 1296 (11th Cir. 2000) ("The denial of qualified immunity is purely legal where it concerns only the application of established legal principles to a given set of facts, which enables appellate jurisdiction.") (quotation marks omitted). We also may review "evidentiary sufficiency issues that are part and parcel of the core qualified immunity issues, i.e., the legal issues." *Koch*, 221 F.3d at 1296. So, our jurisdiction is not foreclosed just because "there are controverted issues of material fact." *Behrens v. Pelletier*, 516 U.S. 299, 312–13 (1996).

But "jurisdictional issues arise when the *only* question before an appellate court is one of pure fact." *Hall*, 975 F.3d at 1276. "We lack jurisdiction where the only issues appealed are 'evidentiary sufficiency' issues—that is, fact-related disputes about whether the evidence could support a finding that particular conduct occurred." *Nelson*, 89 F.4th at 1295 (quotation marks omitted). As the Supreme Court has put it, "a defendant, entitled to invoke a qualified immunity defense, may not appeal a district court's summary judgment order insofar as that order determines whether or not the pretrial record sets forth a 'genuine' issue of fact for trial." *Johnson v. Jones*, 515 U.S. 304, 319–20 (1995). Without a legal issue, "we

cannot review a trial court's determination of the facts alone at the interlocutory stage." *Hall*, 975 F.3d at 1277.

In *Hall*, we held that we lacked jurisdiction over an appeal from an interlocutory order where the officer "only ask[ed] us to review the factual sufficiency of the district court's decision classifying the dispute at issue—whether the marijuana found in Hall's accessory building was planted—as genuine." 975 F.3d at 1277. In particular, the officers challenged whether the evidence offered by the plaintiff—largely consisting of an affidavit stating that the marijuana was not his and that he generally excluded others from the building where the marijuana was found—was "enough to create a genuine issue of fact about whether [the] officers planted the evidence." *Id.* But the officer had "concede[d]" what was "unequivocal" in our precedent, namely "that a law enforcement officer who plants evidence violates clearly established law." *Id.* As a result, "all we [we]re left with [wa]s the factual review of what happened—was [the plaintiff's] version of events right, or was [the officer's]?" *Id.* Because we were asked only "to review whether the district court was right in determining that there was a genuine dispute about whether the marijuana was planted, and whether a reasonable jury could believe [the plaintiff's] story," interlocutory review was "foreclosed." *Id.* at 1278.

Similarly, in *English*, we recently held that we lacked jurisdiction over an interlocutory appeal when the officers raised only "issues of evidentiary sufficiency" about whether the plaintiff posed an immediate threat of serious physical harm. *English v. City of*

*Gainesville*, 75 F.4th 1151, 1156 (11th Cir. 2023). We noted that the officers "agree[d] that the use of deadly force against a non-resisting suspect who *poses no danger* violates a suspect's Fourth Amendment right to be free from excessive force." *Id.* at 1156. Rather, the "dispute [was] whether English—in fact—posed a danger when the shooting occurred," which meant "the only issues in [the] appeal concern what happened at the scene." *Id.* Because "[t]hose [were] questions of fact, not law," we lacked jurisdiction over the appeal. *Id.*

*Hall* and *English* control our decision here, and we similarly lack jurisdiction. The district court determined that a reasonable jury could find that Harrell used "substantial force"—that is, more than *de minimis* force—against "a nonthreatening suspect of a minor offense who was not resisting arrest when Deputy Harrell struck him." Based on this version of events, the court denied qualified immunity because, in its view, our precedent clearly established that "using substantial force against a nonviolent suspect, accused of only a minor crime and who is not actively resisting arrest, violates the constitution." *See, e.g.*, *Sebastian v. Ortiz*, 918 F.3d 1301, 1311 (11th Cir. 2019) ("*Smith* [*v. Mattox*, 127 F.3d 1416, 1419–20 (11th Cir. 1997),] established that if an arrestee demonstrates compliance, but the officer nonetheless inflicts gratuitous and substantial injury using ordinary arrest tactics, then the officer may have used excessive force."); *Stephens v. DeGiovanni*, 852 F.3d 1298, 1327–28 (11th Cir. 2017) ("We have repeatedly ruled that a police officer violates the Fourth Amendment, and is denied qualified immunity, if he or she uses gratuitous and excessive force against a suspect

who is under control, not resisting, and obeying commands[.]") (quotation marks omitted); *Hadley v. Gutierrez*, 526 F.3d 1324, 1330 (11th Cir. 2008) ("Our cases hold that gratuitous use of force when a criminal suspect is not resisting arrest constitutes excessive force.").

In his briefing on appeal, Harrell does not dispute that the use of substantial force against a nonthreatening and nonviolent suspect accused of a minor crime, who is not resisting arrest, violates the suspect's Fourth Amendment right to be free from excessive force. In other words, his appeal does not concern "the application of established legal principles to a given set of facts." *Koch*, 221 F.3d at 1296.

Instead, like the officer in *Hall*, Harrell's appeal concerns "whether the district court was right in determining that there was a genuine dispute about whether" the force used was substantial, whether Chambliss was a nonviolent or nonthreatening suspect, and whether Chambliss actively resisted just before the use of force. *See Hall*, 975 F.3d at 1277. But we lack jurisdiction to review "simply an argument about the factual inferences the district court drew from a series of circumstances." *Id.* at 1278. So even if we "disagree[d] with the inferences the district court has drawn"—and we express or imply no opinion on that question—"to review that determination now would amount to nothing more than weighing the evidence supporting the district court's summary judgment determination," which is not permitted at the interlocutory stage. *Id.*

While Harrell dresses up his argument as if he were challenging a legal question, Harrell really challenges only the sufficiency of Chambliss's evidence. In particular, Harrell contends that the court legally erred by failing to "view the evidence from the perspective of a reasonable officer on scene." But the remainder of his opening brief merely challenges the sufficiency of the evidence. For instance, the district court found that Chambliss was cooperative and did not resist Harrell before being taken to the ground, other than "wiggl[ing]" in response to a search of his pockets. But Harrell maintains that Chambliss was "reaching in the area of his beltline" and that he "actively and aggressively resisted [Harrell] and took a fighting stance after trying to flee."

Based on his proffered view of what he calls the "undisputed" facts, Harrell asserts he was entitled to qualified immunity. But as we just explained, we lack jurisdiction to conduct merely a "factual review of what happened," *Hall*, 975 F.3d at 1277, or to determine the "facts a party may, or may not, be able to prove at trial," *Koch*, 221 F.3d at 1296 (quotation marks omitted). Because those questions of fact are the only issues Harrell has properly raised in this appeal, we must dismiss the appeal for lack of jurisdiction.[2]

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[2] In his reply brief, Harrell appears to argue that he was entitled to qualified immunity even under the district court's construction of the facts. While we generally have jurisdiction to review such a challenge, we do not consider arguments raised for the first time in a reply brief. *See Hi-Tech Pharm., Inc. v. HBS Int'l Corp.*, 910 F.3d 1186, 1194 (11th Cir. 2018) ("[A]n appellant must directly challenge each of the district court's grounds in his initial brief; challenges that

For these reasons, we lack jurisdiction over Harrell's appeal of the district court's denial of qualified immunity on Chambliss's § 1983 claim for excessive force under the Fourth Amendment. For the same reasons, we also lack jurisdiction over Harrell's appeal of his state-law-immunity claim as well. *See English*, 75 F.4th at 1157 ("[A]s in the qualified immunity context, we lack interlocutory appellate jurisdiction over the denial of summary judgment based on state-law immunity where the appeal turns on issues of evidentiary sufficiency.").

We therefore dismiss this interlocutory appeal for lack of jurisdiction.

**DISMISSED.**

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are merely hinted at or that first appear in a reply brief do not merit consideration.").