IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

F. CHARLES PHILLIPS — APPELLANT

VERSUS — NO. 2007-CA-00227-F

MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY
AND MISSISSIPPI HIGHWAY SAFETY PATROL
AND JOSEPH W. SEALS AND THOMAS E. LITTLE — APPELLEES

APPELLANT'S REPLY BRIEF

APPEAL OF FINDINGS OF FACT AND CONCLUSIONS OF LAW
FROM THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI
CAUSE NO. CI-04-0278

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ORAL ARGUMENT REQUESTED

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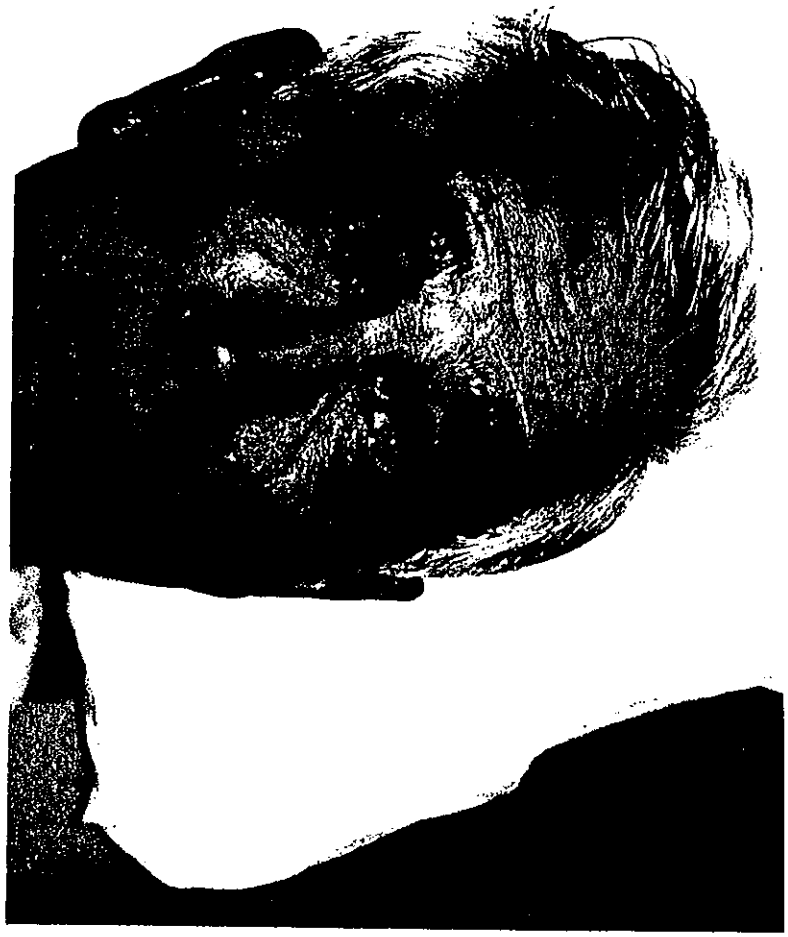

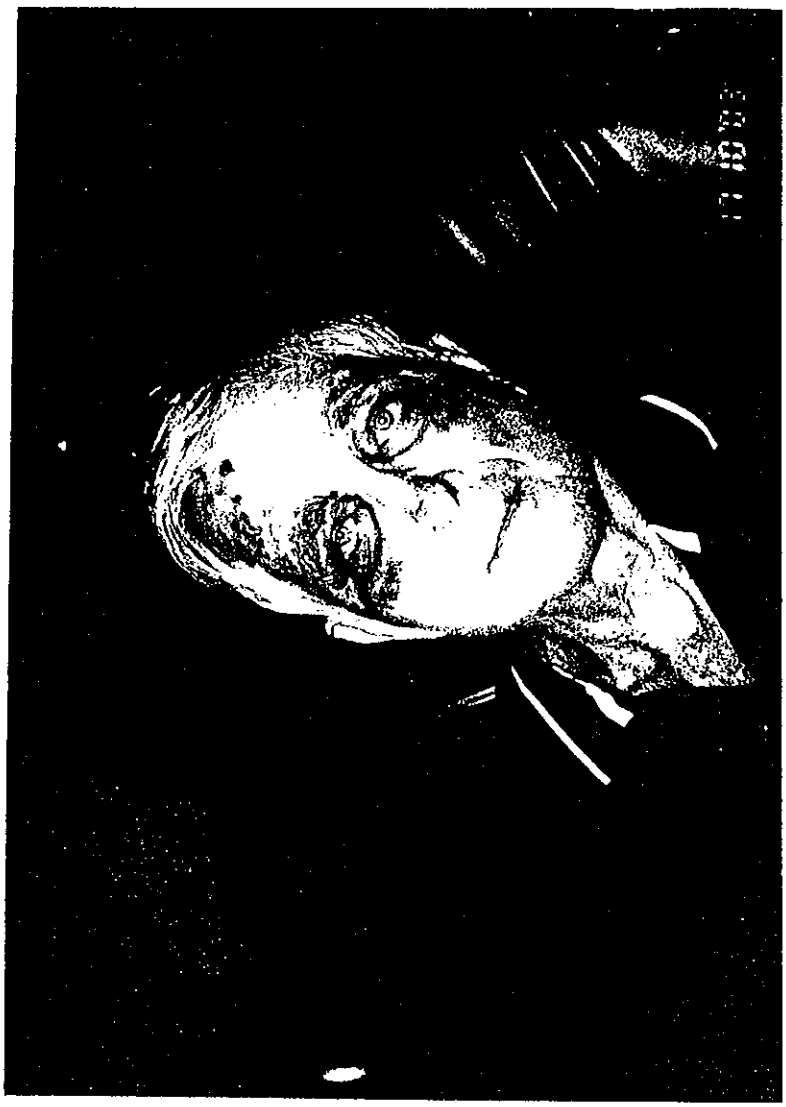

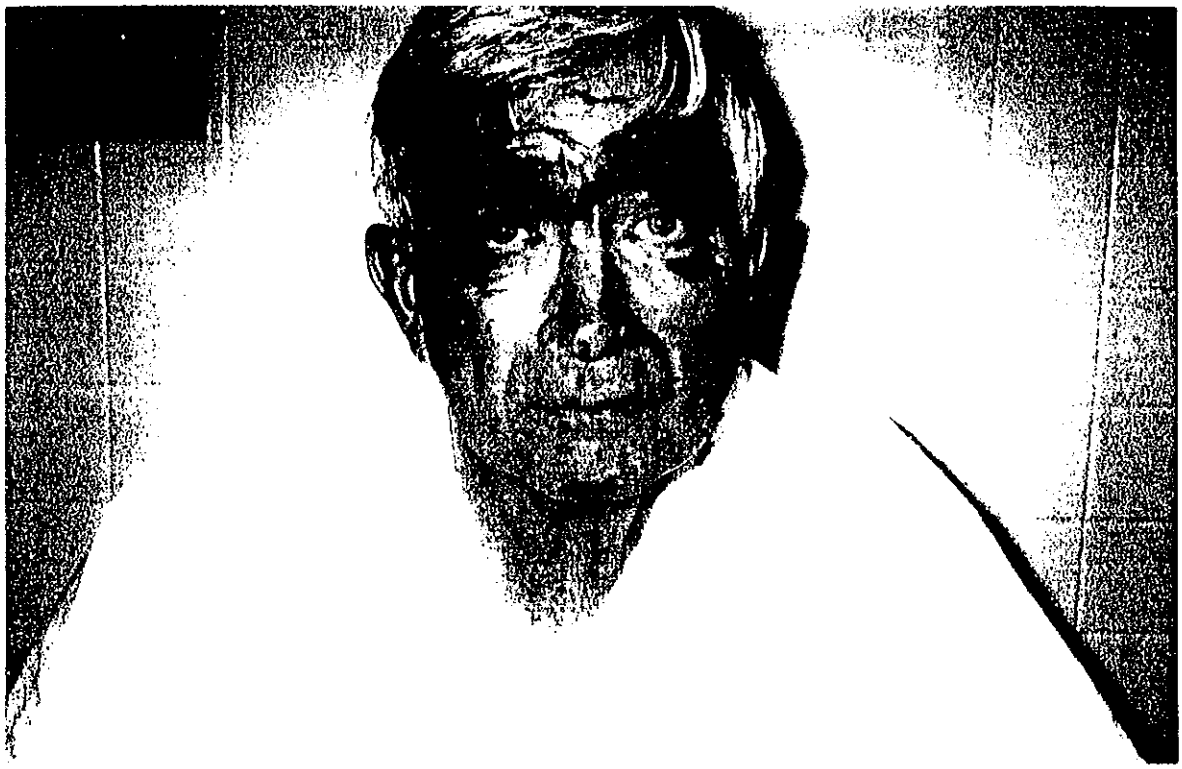

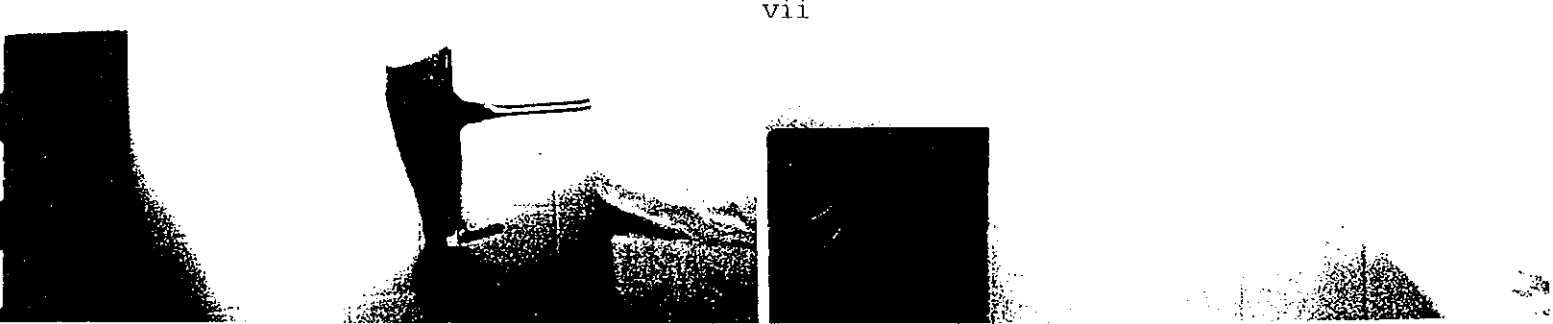

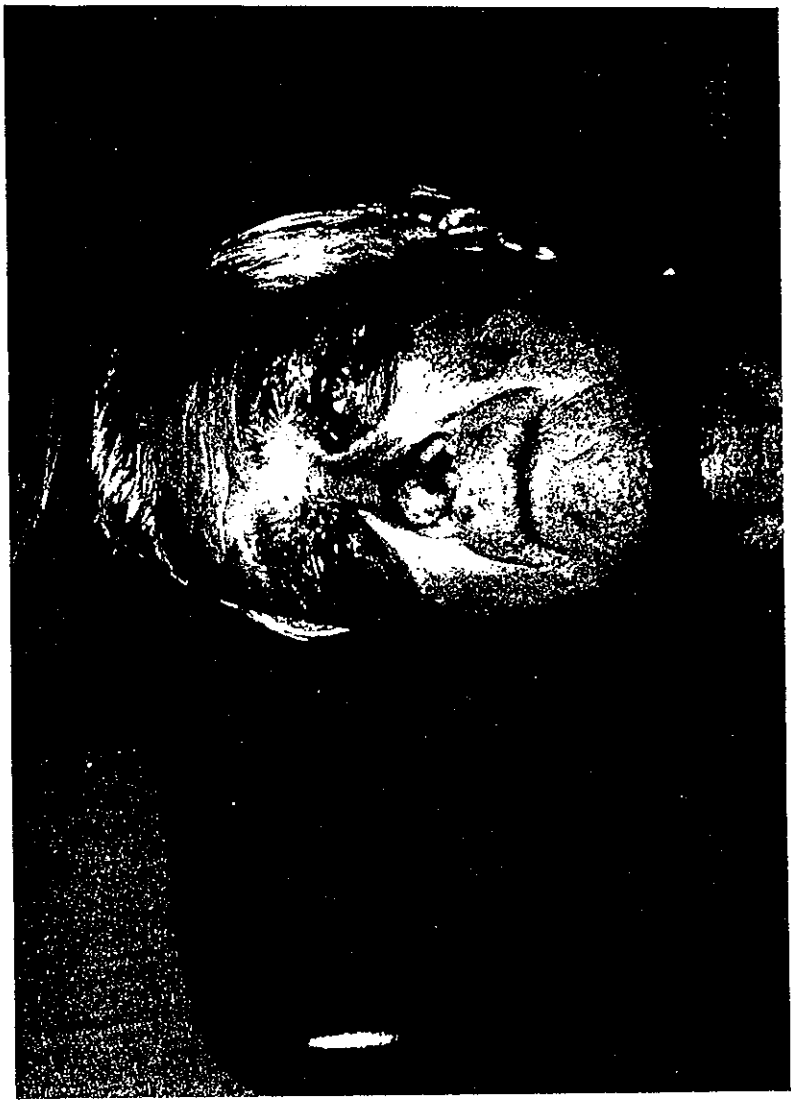

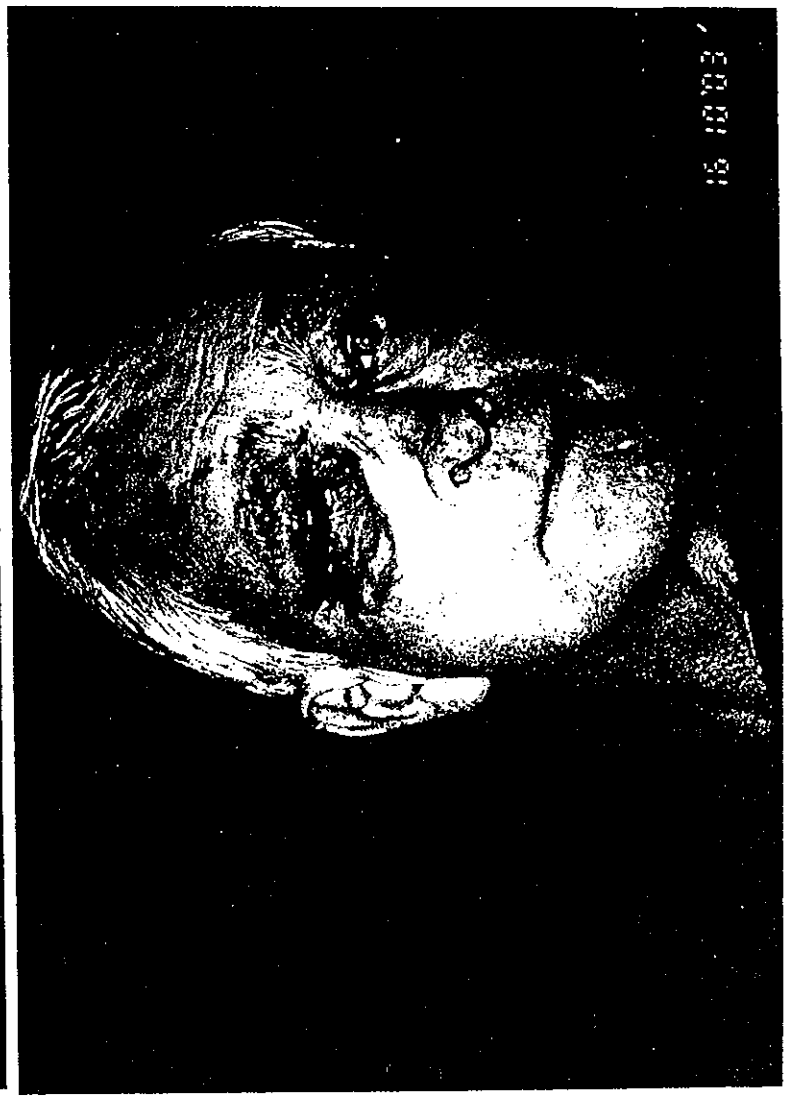

Reply to Appellee's Statement of Facts

First, there is no evidence or testimony to the effect that at the time of Mr. Phillips' injuries he or the Mississippi Highway Patrolmen who injured him, Joe Seals and Thomas Little, were involved in a "hot pursuit" (Appellee's Brief p. 1) as the Appellee's Statement of Facts would lead anyone reading their brief to believe. (TT p.13, pp. 60-61) In fact, Seals and Little were never involved in the pursuit of Tyrone Jackson. (TT p. 99, 118, Appellee's Brief pp. 21, 22)

The facts at the time of Mr. Phillips injuries were that Officer Rayborn of the Mississippi Highway Patrol (MHP) was engaged in the pursuit of Mr. Jackson. That pursuit was winding down due to the Jackson vehicle having blown two or more of its tires after it ran across a bed of nails laid out by the Hattiesburg Police Department (HPD) at the intersection of Highway 49 and Edwards Street. (Defendant's Exhibit 9 and 10) The testimony was that Officer Seals and Little never even saw Mr. Jackson's vehicle until after they had stopped, beat up Mr. Phillips and then got back in their vehicles and proceeded further south on Highway 49 and then east on Highway 98. (TT p.21) At that time all they saw was Tyrone Jackson in custody and being lead to a patrol car. (TT p. 99) It is interesting, that when law enforcement did encounter the real suspect, there apparently was a dangerous situation that was handled completely different than the incident had been handled with Mr. Phillips. There was no arm-bar takedown; there was only abrasions to Mr. Jackson, who was transported directly to Forrest General Hospital, (Defendant's Exhibit 11) even though he had no injury. (TT p. 99, Defendant's Exhibit 8)

Second, the Appellee places special emphasis that Mr. Phillips was monitoring the pursuit through his personal police scanner or hand-held radio. This is a minor deviation from the real facts, but the testimony was that Mr. Phillips was aware of the situation and monitoring through equipment issued by the Forrest County Sheriff's Office. (TT p. 164)

Third, the Appellee states: "Phillips had no way of communicating with either the HPD or the MHP." While this is true, the Appellee fails to state that the MHP also had no way of communicating directly with the HPD or the Forrest County Sheriff's Office. Mr. Phillips however was in contact with the Forrest County Sheriff's Office dispatcher Jeffrey A. Byrd who was advised and aware of Mr. Phillips' involvement in the chase by radio transmission from Mr. Phillips. (TT pp. 165, 166-168) This transmission came at a point in time that the vehicle being pursued was at the intersection of Highway 49 and Eddy Street in Hattiesburg, Mississippi. (TT 164) Beyond that, Mr. Phillips testified that he rode past eight to ten law officers as he followed the chase on Highway 49. None of those officers made the same mistake as Officers Seals and Little and even remotely thought that he was the suspect or attempted to stop his vehicle because it bore any resemblance to the vehicle being pursued.

The next mistake in the statement of facts involves the precise moment that the late-arriving Seals says that he requested Officer Rayborn to conduct a "rolling roadblock".

The Statement of Facts states: "[H] e (Seals) radioed Rayborn about performing a "rolling roadblock maneuver." (TT p. 21) The Defense Exhibit 10, a transcript of the

MHP radio traffic from October 15, 2003 does not mention the words "rolling roadblock".

The transcript lists the following radio traffic:

MHP: Hattiesburg, J-42 (J-42 is Seals' call sign)

J-42 (Seals): "39, you still southbound?"

(J-39 is Officer Rayborn's call sign - this is Officer Seals asking for Officer Rayborn's location.)

J-42: (sic)(probably should have been J-39) "10-4, I'm behind you. Hattiesburg Police won't get out of my way."

(That apparently was Seals speaking directly to Rayborn and advising that he is coming up from the rear and apparently has not made visual contact with Officer Rayborn).

J-39 (Rayborn directly to Seals): "10-4. We're coming up on ah 21 Truck Stop. He's losing his front tire. I think he's lost probably both front tires now."

(This is Rayborn telling Seals and the rest of the MHP his, Rayborn's, and the suspect's location and further transmitting the information that the vehicle being pursued has lost two tires).

J-42 (Seals): "J-42 (Identifying himself), Hattiesburg (to the HPD). Put me here with 39 (Rayborn)."

(Apparently at this point Officer Seals has made visual contact with Officer Rayborn).

MHP: "10-4, J-42"

J-39 (Rayborn): "One of ya'll come around and try to get in front of him."

The record shows that at this point in time Officer Rayborn was already ahead of or in front of the vehicle being driven by Mr. Phillips. (TT p. 21) There is no logical reason for Rayborn to request one of his assisting officers to try to get in front of a vehicle that he is already ahead of unless there is another vehicle in front of Rayborn that he is referring to, which of course was the situation.

Exhibit D-10 continues:

J-42 (Seals): "Don't let him exit. Don't let him exit."

(Apparently this is Seals directly to Rayborn).

Then Rayborn responds:

J-39 (Rayborn): "Alright. He's getting off on 98 eastbound side 98 eastbound side. He's on the rims on the front."

This should have been all that Office Seals needed to hear to know that Rayborn and the suspect were ahead of him and that the Ford Explorer he, Seals, ultimately became involved with was not the vehicle being chased by Rayborn or being driven by the suspect. The Highway 98 eastbound exit off of Highway 49 is at least a quarter mile beyond where Officer Seals stopped and assaulted Mr. Phillips.

Again, there is no mention of a "rolling roadblock" by Seals to anyone, much less to Officer Rayborn. Officer Little never mentioned Rayborn in relation to a rolling roadblock. (TT p. 139) This statement is completely wrong and when Rayborn continued southbound on Highway 49, (TT p. 22, p. 36) in complete disregard for the vehicle being driven by Phillips, Officer Seals should have known that the vehicle being

driven by Phillips was not the suspect's vehicle. Instead, Seals made the assumption that Rayborn was conducting a "rolling roadblock" although he was never requested (Defense Exhibit 10) to do so (TT p. 77) and was still engaged with the "real" suspect. (Appellee's Brief p. 22) This action by the pursuing officer (Rayborn) along with all of the other information supplied by various law enforcement agencies and known to all other law enforcement on October 15, 2003 should have been enough to indicate to any reasonable person that Phillips was not the suspect.

Next the Appellee, in its statement of facts relates all of the mistakes allegedly made by Phillips in this pursuit. Mr. Phillips would however argue that his involvement in this pursuit was minimal and did nothing to impede the stop of the "real" suspect by other law enforcement. (TT p. 99) The Appellee's statement of facts fails to point out this as a fact. The "real" suspect, Mr. Jackson, was stopped and arrested without any incident or injury to him or to the law enforcement involved. (TT p. 99) It could be argued that Mr. Phillips involvement alleviated the possibility of injury to Mr. Jackson, because apparently had Officers Seals and Little caught him first, he, Mr. Jackson would have been assaulted under these circumstances. As it was, Mr. Jackson only suffered abrasions to his knee and shin and was still transported to Forrest General Hospital. (TT p. 99, Defendant's Exhibit 8)

Phillips involvement in the pursuit was minimal and had no effect on the eventual outcome of the pursuit of Mr. Jackson.

The Hattiesburg Police Department (HPD) chose not to engage in the pursuit within the city limits of Hattiesburg other than to safeguard certain major intersections and requested other law enforcement not to engage in the pursuit in the City of

Hattiesburg. (Defendant's Exhibit 9 and 15) Their purpose apparently in this regard was to channel the suspect out of the city to a location where there was less danger to the motoring traffic. The MHP chose to do otherwise and engaged and continued the chase regardless of the traffic situation and the fact that the channeling by the HPD ultimately lead the suspect to a less congested area south of and out of the city. Nevertheless, the MHP criticized the HPD action, which was proper in this case and lead to a peaceful surrender of the suspect and resulted in no injuries to the suspect (TT p. 99) or the law enforcement (except Mr. Phillips) and the public.

Mr. Phillips Involvement in the Pursuit.

Mr. Phillips, after hearing of the pursuit and seeing the pursuit, was at the intersection of Highway 49 and Eddy Street across from the Cloverleaf Mall in Hattiesburg stopped at the red traffic light. (TT p. 168) At that time Mr. Phillips saw the vehicle driven by Mr. Jackson and the vehicle being driven by Trooper Rayborn approaching through his rear-view mirror. (TT p. 165) Mr. Phillips was in the (proper) right hand lane of the southbound four-lane Highway 49. Mr. Phillips veered to his right out of the traffic lane. (TT p. 165) Nothing Mr. Phillips did at that point could have been interpreted as hindering a pursuit or causing confusion, because Jackson followed by Trooper Rayborn kept going through the intersection. (TT p. 165)

At that time Mr. Phillips got on his radio and advised his dispatcher that he was getting involved in the pursuit. (TT p. 165) The dispatcher replied back and said, "keep me advised." (TT p. 166). Mr. Phillips was behind Trooper Rayborn some distance but could see the emergency lights of Rayborn's vehicle and was able to report Rayborn's

and Jackson's location as they went through various intersections. (TT p. 164, pp. 254-255)

After reporting that the pursuit had passed the multi-purpose center south of the Hattiesburg, Mr. Phillips was advised by radio dispatch to cease his involvement in the pursuit. (TT p. 168) Mr. Phillips did so at that time.

During this whole incident involving Mr. Jackson that is all that Mr. Phillips did. There was never any indication from any law enforcement agency that his actions impeded the pursuit of Mr. Jackson. In fact, there was only one vehicle that ever pursued Mr. Jackson and that was MHP Trooper Rayborn.

Mr. Phillips' involvement did not confuse Rayborn who maintained a visual contact with the suspect and remained in pursuit until the suspect was stopped on Highway 98 eastbound. This action by Mr. Phillips apparently did not confuse the HPD who either ignored him or did not know he was radioing the location and managed to lay out a bed of nails or spikes at the intersection of Highway 49 and Edwards Street in order to disable the vehicle being driven by Jackson and no other vehicles (including Trooper Rayborn's vehicle that was closest to the Jackson vehicle). (Defendant's Exhibit 9) In fact, the only law enforcement officers to pay any attention to Mr. Phillips on the evening of October 15, 2003 were Seals and Little, who ignoring all of the information relative to the suspect, decided that Mr. Phillips had to be the suspect. They were wrong, although they only admitted they made a mistake and Mr. Phillips suffered as a consequence of their mistake.

Reply to Appellee's Summary of Argument.

Appellee states that Judge Helfrich "determined that while the actions of Troopers Seals and Little may have amounted to a 'mistake' their actions certainly did not amount to reckless disregard or even 'negligence'". (Appellee's Brief p. 13) That statement is a misrepresentation of Judge Helfrich's ruling. Instead Judge Helfrich stated: there was an issue of fact that supported a conclusion that there was "simple negligence". (Record Transcript p. 293)

Reply to Appellee's Contention that – Trial Court Did Not Err in Finding Trooper Seals and Little Did Not Act in Reckless Disregard of the Safety and Well-Being of Phillips.

Appellant will rely on its Brief is this regard and to the effect that he does not agree with the Trial Court's ruling and believes that the Trial Court did err in finding Trooper Seals and Little did not act in reckless disregard to the safety and well-being of Mr. Phillips.

Reply to Appellee's Meaning of "Reckless Disregard".

Appellant, did not argue that the standard for finding reckless disregard requires intentional conduct on the part of Officers Seals and Little as Appellee suggests in its brief. Instead, the Appellant argued that taking the totality of the circumstances that the mistake of Seals and Little amounted to *at least* reckless disregard for the well being and safety of Mr. Phillips and in some instances was intentional. (Appellant's Brief pp. 15, 31) In particular, the MHP relied on its straight-arm bar maneuver, which testimony showed allows the officer to do with the victim anything they want. (TT pp. 88-89) In this instance, Seals chose the most callous and extreme use of the maneuver and this

resulted in the injuries to Mr. Phillips. This action was intentional and as such went above the standard required to show reckless disregard.

Reply to Appellee's Argument of "Reckless Disregard" in Context of Arresting Wrong Suspect.

Mr. Phillips was never the suspect of any crime committed on or before or after October 15, 2003. Seals and Little made a mistake that amounted to reckless disregard, and subsequently chose to refer to Mr. Phillips as a suspect. In their minds, he was the only suspect, (TT p. 100, p. 102) despite all of the broadcast information that clearly distinguished him from Mr. Jackson. They disregarded all of this and more information and should not be immune from their mistake.

Mayes v. Pearl River County, 758 So.2d 391 (Miss. 1999) and *City of Jackson v. Perry*, 764 So.2d 373 (Miss. 2000) were cited by Appellant for the principal that far less action or inaction on the part of law enforcement has been found to be reckless disregard for the safety and well-being of the injured party.

Appellant agrees with Appellee that the case of *Foster v. Noel* is relevant and cited it as an example of reckless disregard in the context of injuries occurring to the wrong or mistaken suspect. (Appellant's Brief pp. 20-21).

Appellant also cited Appellee's other relevant case, *City of Greenville v. Jones*, but distinguished it. (Appellant's Brief pp. 18-20). The differences there were that the mistake in identity was made by "civilians" and then relied on by law enforcement. (Appellant's Brief pp. 18-20)

Reply to Appellee's Contention that – Conduct of Troopers Seals and Little Did Not Amount to Reckless Disregard for the Safety and Well-Being of Charles Phillips.

Appellant will rely on its Brief is this regard and to the effect that he does not agree with the Trial Court's ruling and believes that the Trial Court did err in finding Trooper Seals and Little did not act in reckless disregard to the safety and well-being of Mr. Phillips.

Reply to Appellee's Contention that Mr. Phillips Acted in Reckless Disregard of the Safety and Well-Being of the Law Enforcement Officers and of the General Public.

The Hattiesburg Police Department (HPD), although criticized by Officer Seals, (TT p. 18) by choosing not to engage Mr. Jackson in the City of Hattiesburg, followed the prudent course with regard to the safety of the general public driving on Highway 49 on the evening of October 15, 2003. The HPD, knew who they were looking for, they had a description of Mr. Jackson and Mr. Jackson's vehicle. The HPD knew Mr. Jackson's birth date and where he lived. The HPD chose to safeguard major intersections and channel Mr. Jackson through the City of Hattiesburg and then disable his vehicle once Mr. Jackson reached a less congested portion of Highway 49. (TT p. 4256)

Despite their efforts to safeguard the general public, the HPD could not control the MHP's pursuit of Mr. Jackson. The DVD from Officer Seal's vehicle shows that it was he (and probably Officers Rayborn ahead of him and Little behind him) that tore through the City of Hattiesburg with a rage. Officer Seals continuously cursed the general public that happened to be on the road that night (TT pp. 16-17, pp. 61-62, p. 74) as he, at an excessive rate of speed and not in close or hot pursuit of anyone, drove to catch up with Officer Rayborn. It took Officer Seals at least 20 minutes to catch Rayborn and Jackson. There is no testimony as to how fast those two were traveling, not to mention Officer Little who was further behind and later arriving than Seals. Had these

three, Rayborn, Seals and Little heeded that precaution of the HPD, by channeling Mr. Jackson out of town, there would have been only one vehicle traveling at a high rate of speed (Jackson's), if any at all, and the result would have been the same. Mr. Jackson would have hit the nail bed at the intersection of Highway 49 and Edwards Street with or without Rayborn, Seals and Little in pursuit.

To suggest that Mr. Phillips minimal involvement caused Rayborn, Seals and Little to race through Hattiesburg and endanger the general public is ridiculous. They did this on their own out of a compulsion to feed their own egos. Maybe they were mad because their supper had been interrupted, maybe they were frustrated because of other reasons (TT p. 17), but they were not mad at, frustrated by or otherwise hindered by Mr. Phillips and could not cite his involvement as a reason for their complete failure to cooperate with other law enforcement agencies on October 15, 2003.

Appellee correctly states that Mr. Phillips did absolutely nothing to help the situation from the standpoint of the MHP. The Hattiesburg Police Department in cooperation with the Forrest County Sheriff's Office had the situation under control and had asked the MHP to not chase Jackson through Hattiesburg. Instead, the MHP's ego would not allow them to consider that HPD was following the correct procedure in this situation. The MHP was looking for a trophy and did not want to lose this one.

The Appellee is absolutely wrong when it states: "in fact, [Mr. Phillips] hindered law enforcement efforts to stop the actual suspect vehicle in question". The fact is that the actual suspect vehicle was stopped within a short time after Mr. Phillips was stopped, (II p. 99) through no involvement of Seals and Little. (TT p. 151) Had Seals and Little and probably Rayborn stayed at Backyard Burger, Mr. Jackson would have still been

apprehended at probably the same location in probably the same time period and Mr. Phillips would not have been mistaken for a 35 year-old black man driving a 1992 Ford Explorer and beaten up by Seals and Little. Seals and Little and Rayborn would not have needlessly endangered the general motoring public in Lamar and Forrest County with their reckless pursuit and would be full and happy. Instead though, they chose to tear out after something that ultimately was taken care of by others in a more professional and efficient manner. (TT p. 99)

Next the Appellee blames Mr. Phillips for Seals and Little being detained because he did not immediately identify himself as a Reserve Force Deputy with the Forrest County Sheriff's Department at the scene. (TT p. 102) Again, the Appellee is mistaken. Seals and Little detained themselves by not paying attention to the radio broadcasts through the MHP radio network (Defense Exhibit 10, TT p. 104) that told everyone involved who and what they should be on the lookout for. They had already made the decision to quit "backing up" Rayborn by stopping the wrong vehicle. They had not been any assistance up to that point and were never any assistance in the final stop of Mr. Jackson. (TT p. 99, p. 118, p. 151) Beyond that, Seals and Little were so intent on arresting a "dangerous" suspect that they did not give Mr. Phillips any time to tell them whom he was until after Seals jerked open Mr. Phillips car door, threw him to the ground, jumped on his back, ground his face in the asphalt or gravel, twisted him around, finished handcuffing him and then released him without knowing who he was. (TT pp. 175-176) Likewise, Seals and Little never asked for identification or who he was. (TT p. 24, p. 171) They jumped on him and alleviated any threat to themselves so quick that Mr.

Phillips had no time to tell and with them both sitting on his back and beating him had no ability to tell them. (TT p. 172)

Appellant agrees that by engaging in the pursuit he placed himself at risk. That is what a law enforcement officer does every day. However, Mr. Phillips completely disagrees with Appellee's contention that he placed his fellow officers and the private citizens at risk. Even Mr. Jackson, a private citizen did not get hurt in this pursuit and he was the one that started it.

Even if it were true that Mr. Phillips was completely wrong in involving himself in this pursuit, the MHP should not be allowed to treat people the way that Mr. Phillips was treated. Their conduct was a reckless disregard for the well-being and safety.

Reply to Appellee's Argument that the Trial Court did not Err in Finding that Mr. Phillips was Engaged in Criminal Activity at the Time of his Injuries.

Mr. Phillips was not arrested or charged with any offense as a result of his involvement on October 15, 2003. (TT p. 23, p. 24, p. 123, p. 126, p. 171, p. 172)

Mr. Phillips would agree with Appellee's cite to *Bridges*: if the officer has probable cause to arrest and *proceeds to do so* (Emphasis added), then a requisite nexus between criminal activity and the action causing injury is met. *Bridges v. Pearl River Valley Water Supply,* 793 So.2d 584, 588 (Miss. 2001).

The difference in this case is that there was no probable cause to stop Mr. Phillips and even if there had been, Officers Seals and Little *did not proceed to do so*.

Mr. Phillips was not charged with or arrested for any offense or criminal activity as a result of his involvement on October 15, 2003. (TT p. 23, p. 24, p. 123, p. 126, p. 171, p. 172) By the ruling in *Bridges*, there can be no nexus and immunity cannot be

claimed under the Mississippi Tort Claims Act because of criminal activity by Mr. Phillips.

Appellee incorrectly states that *City of Jackson v. Perry* stands for the principal that "felony violations as well as misdemeanor traffic offenses are criminal activities within the meaning of the statute." (Appellee Brief p. 29, citing *City of Jackson v. Perry*, 764 So.2d 373, 378-379 (Miss. 2000). In that case Perry was arrested and beaten by law enforcement that attempted to claim immunity through MTCA because they claimed Perry was driving without a license at the time of his injuries. *City of Jackson v. Perry*, 764 So.2d at 378-379. Driving without a license, a traffic violation, is not specifically designated as a crime in the Mississippi Code. *Id.* Although there is a general provision providing a penalty for any violation...this offense and other misdemeanor traffic violations are not considered criminal. *Id.*

Phillips activities that left him beaten and bloody on the side of Highway 49 on October 15, 2003 were not criminal within the meaning of MTCA.

Further any speeding violations that occurred, miles and minutes prior to the assault by Seals and Little, or deviance from Forrest County Sheriff Office Procedures, even if considered criminal activities, would be merely fortuitous (in hindsight to MHP) and are not a causal connection between Seals' and Little's conduct on October 15, 2003. As Appellee correctly cites: Only in circumstances where the victim is not involved in criminal activity or the criminal activity is merely fortuitous and is not a causal connection between the officer's conduct and the criminal activity will the governmental entity be found liable. *Bridges*, 793 So.2d at 588 (citing *City of Jackson v. Perry*, 764 So.2d 373 at 378-379.

Seals and Little never saw or charged Phillips with speeding. Likewise, Seals and Little did not know who Phillips was at the time of the stop and at the time of Phillips' injuries, much less that he was in violation of, if at all, FCSO procedures at the time they mistook him for Tyrone Jackson. The only criminal activity they had on their mind at the time of Phillips' injuries was an alleged domestic violation that allegedly occurred in Covington County, which cannot be attributed to Mr. Phillips by their mistake in identity.

The Supreme Court gave an example of fortuitous criminal activity in *Perry*, that the Appellee quoted in its Brief. *Perry*, 764 So.2d at 379.

The Appellant offers another example of fortuitous criminal activity:

> Driver A (Jackson) drives a white 1992 Ford Explorer and is sought for a domestic violation that had occurred within the last two hours in another county.
> Driver B (Phillips) drives a white 2003 Ford Escape and has no criminal history and is not sought for any criminal activity or violation.
> Driver B happens to be in the vicinity of Driver A at the time law enforcement arrive to arrest Driver A.
> Driver B is assaulted.
>
> One cannot attribute Driver A's criminal activity to Driver B just because they had similar vehicles and were on the same highway.

That the application of fortuitous criminal activity that the Appellee seeks to apply in this case, which additionally would have to incorporate Judge Helfrich's standard of Driver B being unlucky or being "in the wrong car, at the wrong place and at the wrong time." (Record Excerpt Findings of Fact and Conclusions of Law – Conclusion, p. 292) The Appellee is not entitled under these circumstances to immunity based on any allegation that Mr. Phillips was engaged in criminal activity, whatsoever, much less criminal activity on the part of Mr. Jackson, for whom Seals and Little mistook him.

The Appellee is correct in that if the officer has probable cause to arrest and proceeds to do so, there is a requisite nexus between the criminal activity and the action causing the injury. In this case the Appellee does not allege, suggest or intimate that there was a probable cause because there was never an arrest. The Appellee admits to a mistake in identifying the correct vehicle. This mistake lead to a traffic stop and beating. The Appellee argues that Mr. Phillips was resisting arrest after he was thrown to the ground, but the facts clearly show and were testified to by Seals and Little and the Appellee's expert that Seals had Mr. Phillips under control the whole time. Seals testified that he never heard Little tell Mr. Phillips "quit resisting". (TT p. 108)

Seals ran to Mr. Phillips' vehicle, and then he jerked the door open and extracted Mr. Phillips from the vehicle with the requisite and expert-approved maneuver and threw him to the ground. (TT p. 170-172, p. 25, p. 40) Seals then stood over Mr. Phillips and gave him a command: "give me your hands. (TT p. 25) There was no response and Seals said he gave a second command: "give me your hands." Mr. Phillips stated to Seals that he could not because, as Seals stated, Mr. Phillips was lying on one of his hands (TT p. 25) A few seconds later Seals requested Little to give him Mr. Phillips right hand and Little advised that he could not give him (Seals) Mr. Phillips right hand (TT p. 29) Seals said he made the request again and this time Officer Little had to roll Mr. Phillips on to his side in order to extract the right hand from under Phillips' body. The left hand had been cuffed during this time.

Reply to Appellee's Contention that – Phillips' Injuries Did Not Occur After He Was Handcuffed.

There is no question or argument that Mr. Phillips' injuries occurred at the time he was extracted from the vehicle had his left hand cuffed and was thrown to the ground. (TT p. 31, p. 34, p. 41, p. 46, p. 47, p. 87, p. 88, p. 94, p. 110, p. 128) It was at this time that the Appellees admit that they increased their force and applied more injuries because that felt a threat of resisting arrest (which is now alleged) from a 68-year-old man whose back both of them were sitting on. (TT p. 26, p. 27, p. 41, p. 90) (Seals 6'0" and 225 lbs. TT p. 12 and Little 6'1" and 240 lbs TT p. 118) It was at this time that Seals and Little escalated the force they used in getting Mr. Phillips completely handcuffed (Appellee's Brief page 31). The Appellees argue that there is no credible evidence that Seals and Little continued to apply force after the handcuffs were placed. (TT p. 174) The only people that know what happened after the handcuffs were placed until Mr. Phillips regained consciousness were Little and Seals. Seals testified that he saw Little's hands up near the back of Mr. Phillips' neck (TT p. 91) but for some period of time did not know what Little was doing to Mr. Phillips.

Seals testified that he did not know when the injuries occurred. (TT pp. 94-95) Conveniently for Seals and Little there is no video or audio coverage of their encounter with Mr. Phillips that would show conclusively exactly how and when Mr. Phillips was injured. (TT p. 83)

Reply to – Resisting Arrest is Criminal Activity and Phillips Resisted Arrest.

The *Appellee* cannot address the fact that there was no arrest to resist and no charges for any offense alleged by Appellee or for any tacit offense adopted by the trial court from Appellees Statement of Facts and Conclusions of Law.

Reply to Appellee's Contention that – Force Used by Troopers Seals and Little Was Not Excessive.

Appellant will rely on its Brief is this regard and turn this Court's attention to the photographs entered into evidence at the trial of this matter and testified to as being representative of the injuries Mr. Phillips sustained on the evening of October 15, 2003. (Plaintiff's Exhibits P1 and P2, TT pp. 323-324)

Conclusion

This incident was not Charles Phillips' fault. The injuries he received were not because he was minimally involved in a pursuit on October 15, 2003. The injuries (TT p. 131-132) he received and the fault can be placed only on the admitted mistake of Officers Seals and Little. (TT p. 155) That mistake, as outlined in Appellant's principal brief, amounted to reckless disregard of the well-being and safety of Mr. Phillips at a time that he was not engaged in any criminal activity.

The Mississippi Highway Patrol and Officers Seals and Little were wrong. No one, even the "real" suspect, deserved to be treated the way that Charles Phillips was treated on October 15, 2003. The MHP never has admitted being wrong or suggested any regret for what happened to Mr. Phillips. (TT p. 103) All the MHP admits is that there was a mistake. (TT p. 111, Record Transcript p. 292) Mr. Phillips' injuries should be compensated for. The Appellant asks that this Court consider the totality of the circumstances and reverse the Judgment of the Circuit Court of Forrest County, Mississippi and render its judgment accordingly.

Certificate of Service

I, Scott Phillips, Attorney for the Appellant, F. Charles Phillips, do hereby certify that I have this day sent a true and correct copy of the above and foregoing Appellant's Reply Brief to:

Supreme Court of Mississippi
Ms. Betty Sephton
Supreme Court Clerk
Post Office Box 117
Jackson, Mississippi 39205

And a true and correct copy of the Appellant's Reply Brief to the following:

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Hon. Bob Helfrich
Circuit Court Judge, 12th Judicial District
Post Office Box 309
Hattiesburg, Mississippi 39403

This the 15th day of October 2007.

Scott Phillips