IN THE SUPREME COURT OF MISSISSIPPI

MICHAEL A. THOMPSON — APPELLANT

VS. — CASE NO. 2007-CA-01621

RIZZO FARMS, INC.,
A MISSISSIPPI CORPORATION — APPELLEE

On Appeal from the Circuit Court of the Second Judicial District of Bolivar County, Mississippi
Circuit Court No. 2003-0094

REPLY BRIEF OF APPELLANT

[Oral Argument Requested]

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I. Statement of the Facts

On the morning of August 28, 2002 at 11:20 a.m, Deputy Michael A. Thompson received an emergency call for backup at the Hyman Lucas Apartments in Renova, Mississippi. (T. 457-458). Thompson was en route to the Hyman Lucas Apartments within thirty (30) seconds of being dispatched. (T. 458-59) Before leaving the parking lot of the Sheriff's Department, Thompson turned on all of his warning lights and his siren. (T. 459). After engaging his lights and siren, Thompson pulled out of the parking lot and proceeded east on Highway 8. (T. 460). Shortly after pulling out of the Sheriff's Department parking lot, Thompson passed Boyle, Mississippi police chief Murry Roark, who was traveling west on Highway 8. (T. 374). At the time Murry Roark passed Thompson, Roark noticed that Thompson's blue lights were blinking. (T. 376). During the conversation between Murry Roark and Thompson, Bolivar County Sheriff's Department dispatcher, Rhonda Jenkins, could hear Deputy Thompson's siren in the background over her radio. (T. 428).

Shortly after passing officer Roark, Thompson, who was only one-half (1/2) to one and one half (1&1/2) miles from the station, checked the passing lane for oncoming traffic. (T. 402, 461). Seeing no oncoming traffic, Thompson accelerated to 65 or 70 miles per hour and pulled into the passing lane. (T. 461). Deputy Thompson began to pass a C.P. House Gas truck and was in the

process of overtaking Rodney Brown's vehicle when Brown turned north into the lane Thompson was occupying. (T. 461). In an effort to avoid hitting Brown in his door, Thompson slammed on the brakes and attempted to go around the front of Brown's vehicle. (T. 461-462). After colliding with Brown's vehicle, Deputy Thompson's vehicle went off into a ditch on the easterly side of Brown's driveway. (T. 463). At 11:23 a.m., after the collision occurred, Deputy Frazier Nash issued a "1025", meaning that no back-up from Thompson was necessary. (E. 5).[1]

Following the accident a number of vehicles stopped at the scene to render assistance. (T. 464). One of the first people on the scene was Bolivar County Undersheriff Charles Anderson. (T. 401). Undersheriff Anderson approached Deputy Thompson's vehicle and got within five to ten inches of Deputy Thompson's face. (T. 404). While Undersheriff Anderson's face was in the vehicle, he noticed the blue dash light laying on the floorboard of the patrol car, and the light was still flashing. (T. 404). Around the same time Undersheriff Anderson arrived on the scene, Conservation Officer, Lee Ellington, stopped to render assistance as well. (T. 390). While Mr. Ellington was inside Thompson's patrol car looking for the release button to the trunk, he too noticed the blue dash light flashing on the floorboard. (T. 392). After he collected various firearms that had been thrown from Thompson's vehicle, Mr. Ellington noticed that the vehicle was smoking. (T. 393). Therefore, he disconnected the battery cable of Thompson's vehicle. (T. 393).[2] As for the siren,

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[1]Rizzo Farms, Inc. argues in its Brief that the collision did not occur until 11:25 a.m., which was two minutes after the "1025" call. Rizzo Farms, Inc. makes this allegation solely on the time listed on the accident report prepared by Trooper Mike Mullins. Trooper Mullins was not present when the collision occurred and would have no way of actually knowing the exact time the collision occurred. (E. 1).

[2]The dash light seen by Ellington and Anderson was connected to the vehicles 12 volt system, a different system than the one used by the vehicle's "wigwag" lights. (T. 354). Therefore, the dash light would have been operable up until the point where Ellington disconnected the battery.

which was mounted right behind the front bumper, it was apparently destroyed during the collision. (T. 344-45).

On August 28, 2002, just moments before Deputy Thompson pulled out of the Sheriff's Department, Rodney Brown, who was acting within the course and scope of his employment with Rizzo Farms, Inc., was driving from the Rizzo Farms, Inc. headquarters on Highway 8 towards his home, which was approximately one mile to the east on Highway 8. (T. 286). Prior to commencing a left hand turn into his driveway, Brown testified that he did not see any vehicles either in front of him or behind him. (T. 290). There are no hills or curves in the road where the accident occurred. (T. 305). Brown testified that he looked into his side mirror and immediately began his turn in one big motion. (T. 291).[3] Further, Brown testified that he would not have made a left hand turn if he had seen a vehicle passing him. (T. 290). Brown acknowledged that it was his obligation to make sure he could make a left hand turn safely before commencing the turn. (T. 294).

Prior to the accident, Jerry Jackson and Tony Jones, who were in a heavy duty one-ton C.P. House Gas pickup truck, were following directly behind Brown's vehicle. (T. 586, 588). Jackson testified that he saw Deputy Thompson in his rear-view mirror before Deputy Thompson passed him. (T. 589). At one point prior to the collision, Deputy Thompson's vehicle was right beside the C.P. House Gas truck in the passing lane. (T. 599). Jerry Jackson testified that Deputy Thompson was "coming up beside my driver's side" when he first noticed Brown's vehicle in front of him slowing down. (T. 600). In addition to the C.P. House Gas truck being behind Brown's vehicle, rural mail carrier, Jeffrey West, who was in his vehicle, was facing Brown's vehicle on the shoulder of the

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[3]This is in direct contradiction to what Brown testified to in his deposition. During Brown's deposition he stated he "didn't have a clue" how much time elapsed between the time he looked in his mirror and the time he began making his turn. (T. 292).

road. (T. 658, 660). Jeffrey West had pulled his vehicle onto the north shoulder of Highway 8 approximately 720 feet from Brown's driveway and was facing west when he observed the accident. (T. 660, 665). When Mr. West observed Deputy Thompson's vehicle, it was directly beside the gas truck and Brown's vehicle was still facing him. (T. 666, 669).

At the trial, Deputy Thompson's expert accident reconstructionist, Brett Alexander, testified that using the "lane change formula", at 70 miles per hour, Deputy Thompson's vehicle would have traveled 324 to 396 feet to change from the eastbound lane to the passing lane. (T. 547). Essentially, one's vehicle cannot be in one lane and automatically in the other lane instantaneously. (T. 548). Further, Mr. Alexander testified that assuming Deputy Thompson was traveling 70 miles per hour and was 80 yards away from the point of impact while Brown was turning into his driveway at 10 miles per hour, Thompson would have been in the passing lane before Brown began making his turn. (T. 552).[4]

During the voir dire of J. Kirkham Povall, one of the attorneys for Deputy Thompson, he prefaced his questions by stating:

> There may be some questions that I ask where I touch on a subject that maybe I don't zero right into the specific information that you have. My wife tells me that all the time that she doesn't understand me sometimes and that I am confusing. So I'm not – I'm subject to doing that today, and I'd like for you – if you think I'm close to asking some information but maybe I'm not hitting exactly on point, it's okay to raise your hand and say does this apply? Is that agreeable? We are all trying to get to the same point, and that is to select a jury that is fair and impartial.

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[4] Rizzo Farms, Inc.'s accident reconstruction expert, James Hannah, was present during the trial and witnessed Brett Alexander's expert testimony. Rizzo Farms, Inc. had the opportunity to call their expert to the stand to rebut Brett Alexander's testimony but chose not to do so.

(T. 159). Deputy Thompson's counsel later during the voir dire posed the following question:

> Thompson has been in law enforcement ten years, as I mentioned, in different capacities working for the people of Bolivar County. Mack Grimmett is the Sheriff. Thinking back, has anyone thought about either yourself or a family member who might have been involved in an incident or a situation where Officer Thompson, either working alone or with someone else in Bolivar County, may have had to, for instance, investigate you or your family member for some kind of alleged problem?

(T. 165) (emphasis added). None of the ultimate members of the jury responded to this question. Id. Deputy Thompson's counsel went on to ask the following question:

> But is there anybody that in the last ten years that Mike has worked been arrested by Mike? That's kind of the base question I need to ask. I'm not asking you what reason. We've all had our problems, me included, but what is it that ---- if there is something, we'd like to know, and if you need to, we can address it in chambers outside the presence of everyone else. Has anyone been in that situation? Okay I had to ask that question. We'll go to something else.

(T. 164-65). No member of the jury panel responded to this question. Id.

During the trial court's voir dire, the Honorable Robert P. Chamberlin went over a list of potential witnesses and asked the venire to respond if they knew each witness or were related to each of the witnesses. (T. 137). Included in the names of the witnesses were the names Charles Gilmer and Frazier Nash, both of whom were Bolivar County Sheriff Deputies along with Deputy Thompson. (T. 145). Judge Chamberlin clearly and unambiguously stated, "I'm going to read these witnesses to you, and I need to ask if you personally know or are related by blood or marriage to any of these witnesses." (T. 137). Judge Chamberlin then read out a list of witnesses, including the name Frazier Nash, a witness for Deputy Thompson. (T. 145). No member of the jury panel responded as knowing Deputy Frazier Nash. (T. 146). Unfortunately for Deputy Thompson, Leon

Hollaman, the jury foreman, failed to disclose that he had been arrested for forgery by Deputy Nash on September 29, 2003. (E. 1276).

Another juror in Deputy Thompson's trial, Rachel Ramiz, admitted during a post-trial hearing that her sister, Jessica Ramiz, had an arrest history with the Bolivar County Sheriff's Department prior to Deputy Thompson's trial. (T. 884). Ms. Ramiz further admitted that her cousin, Terry Ramiz, had been arrested for rape and was held at that Bolivar County Correctional Facility. (T. 887). Coincidentally, Deputy Thompson was the investigator on Terry Ramiz's rape charge. (T. 887).

A third juror in Deputy Thompson's trial, Chedra Bolden, acknowledged during a post-trial hearing that she was the first cousin of Centrea Bolden, who lives in the same apartment complex as her. (T. 891). Ms. Bolden admitted to knowing her cousin "had served time" but denied knowing that Chief Deputy Charles Gilmer, a witness for Deputy Thompson, was the officer who had arrested her cousin on obstruction charges in 2004. (T. 892) (E. 1290). When questioned further, Ms. Bolden acknowledged that she was also related to Jacqueline Bolden, another first cousin. (T. 893). Ms. Bolden admitted that her cousin Jacqueline had been arrested prior to the trial of this case. (T. 893-94).

II. Summary of the Argument

During the trial, Rodney Brown testified that he looked in his rear view mirror prior to beginning the turn into his driveway. Further, Rodney Brown testified that he did not see anything in front or behind him. However, it was undisputed by both sides at trial that not only was Deputy Thompson's vehicle behind him, a C.P. House Gas truck was also behind Mr. Brown, and a rural mail carrier, Jeffrey West, was in front of him. The only logical conclusion is that Brown did not

look prior to beginning his turn. If Brown did not look before beginning his turn, he was negligent as a matter of law. Therefore, the trial court should have granted Deputy Thompson's proposed jury instruction, P-13, and/or Deputy Thompson's motion for directed verdict on Brown's negligence.

After the trial had concluded, Deputy Thompson and his attorneys discovered that certain jurors, who ultimately served on the jury, failed to respond to relevant questions during voir dire. Particularly, certain jurors failed to speak up when asked if they knew certain witnesses for Deputy Thompson or if they or their family members had ever been investigated by Deputy Thompson. Due to these jurors' failure to respond truthfully, Deputy Thompson was not given the opportunity to question them further during voir dire. Following the conclusion of the trial, it was discovered that Leon Hollaman, the jury foreman, had been arrested for uttering a forgery by one of Deputy Thompson's potential witnesses. Further, two more members of the jury had close family members, including one who lived with a juror during the trial, who had either been arrested by Deputy Thompson or by one of his witnesses. Had these jurors been truthful during voir dire they certainly would have been stricken for cause from the venire. Therefore, Deputy Thompson's Motion for New Trial, or in the alternative, Motion for Judgment Notwithstanding the Verdict should have been granted.

Prior to the trial of this case, Deputy Thompson filed a Motion for Partial Summary Judgment on an Issue of Law. Deputy Thompson argued that Rizzo Farms, Inc. should be required to show reckless disregard on Deputy Thompson's part prior to any assignment of comparative negligence. Essentially, to do otherwise would place two separate standards of care on a law enforcement officer responding to an emergency call. Under the Mississippi Tort Claims Act, Rizzo Farms, Inc. certainly would be required to show reckless disregard on the part of Deputy Thompson

if it stepped into the shoes of a plaintiff. Deputy Thompson submits that had this motion been granted, his proof and arguments at trial would have been different at every stage of the proceedings. Therefore, Deputy Thompson's Motion for Partial Summary Judgment should have been granted.

III. Argument

A. The Trial Court Erred in Denying Deputy Thompson's Motion for Directed Verdict and Thompson's Proposed Jury Instruction (P-13) Based Upon Rodney Brown's Negligence.

At trial, Rodney Brown unequivocally testified that prior to commencing his left-hand turn into his private driveway off of Highway No. 8, he did not see any vehicles in front or behind him in the following exchange with Thompson's attorney:

Attorney for Thompson: There's no question, is there, that if there had been a truck and if there had been a police car covering up not one but two lanes that they would have been there where you could see them if you had looked at the right time? Is that a fair statement?

Brown: Right before I made my turn, he was not in my left - - my mirror, my outside mirror, before I made my turn.

Attorney for Thompson: Well, Mr. Brown, you didn't see anything behind you, did you?

Brown: No. I didn't because it wasn't there.

Attorney for Thompson: Nobody was there?

Brown: Not when I looked in my mirror to take my turn **nobody** was there.

(T. 290, 293) (emphasis added).[5] However, if Brown had looked, he would have seen not only

[5] Rizzo Farms, Inc. argues in its Brief that Brown testified that he looked in his sideview mirror and did not remember if he saw the C.P. House Gas truck and further accuses Thompson of "*mis-characterizing*" Brown's testimony in his Brief. (See Appellee Brief at p. 19). Brown's testimony indicates that he did not see anybody in his side view mirror, including the C.P. House Gas truck.

Deputy Thompson's vehicle in the passing lane, but the C.P. House Gas truck directly behind him and Jeffrey West in front of him. As such, he was guilty of negligence as a matter of law in the following respects: 1) in failing to keep and maintain a proper lookout, 2) in failing to yield the right-of-way to the 1997 Ford motor vehicle driven by the Plaintiff, and 3) in violating Section 63-3-707 of the Mississippi Code of 1972, as amended, which requires that no person shall turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety and then only after giving a clearly audible signal by sounding the horn if any pedestrian may be affected by such movement or after giving an appropriate signal continuously to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

Mr. Brown admitted during his testimony that it was his obligation to make sure before he made his left-hand turn that he could do so safely. (T. 294). Mr. Brown also testified that *immediately* after looking in his side mirror, he proceeded to make his turn. (T. 295). However, Brown testified during his deposition that he "didn't have a clue" how much time elapsed between the time he looked in his mirror and began making his turn. (T. 292). Brown simply could not have began turning *immediately* after looking in his mirror because it was undisputed by both sides at trial that not only was Officer Thompson's vehicle behind Rodney Brown's vehicle but a C. P. House Gas truck was also directly behind his vehicle. (T. 461).

It is also undisputed that Jeffrey West, a witness called by the Defendant, was some 720 feet in front of Mr. Brown's vehicle and Mr. Brown stated that he did not see Mr. West's vehicle either. (T. 660, 665). Mr. West testified that he in fact saw the accident occur (albeit from some 720 feet away). (T. 665). He testified that the first time he saw Mr. Thompson's vehicle, said vehicle was in the passing lane on Highway No. 8. (T. 661). At that time it was directly beside the C. P. House

gas truck. (T. 661). Additionally, at the time Mr. West saw Officer Thompson's vehicle, Rodney Brown's vehicle was still facing him. (T. 666). The observations of Mr. West, a witness called by Rizzo Farms, Inc., are consistent with the conclusions reached by Deputy Thompson's expert accident reconstructionist, Brett Alexander. At trial Brett Alexander testified that using the "lane change formula", at 70 miles per hour, Deputy Thompson's vehicle would have traveled 324 to 396 feet to change from the eastbound lane to the passing lane. (T. 547). Essentially, one vehicle cannot be in one lane and then automatically in the other lane instantaneously. (T. 548). Further, Mr. Alexander testified that assuming Deputy Thompson was traveling 70 miles per hour and was 80 yards away from the point of impact while Brown was turning into his driveway at 10 miles per hour, Thompson would have been in the passing lane before Brown began making his turn. (T. 552). Thus, Rodney Brown did not see the vehicles behind him because he simply did not look. If he did not look, he was negligent. He stated he would not have turned if he had seen the cars behind him. (T. 316). Brown offered no explanation as to why he did not see the one-ton, heavy duty C.P. House Gas truck in his rear view mirror. Therefore, his actions were a proximate cause or proximate contributing cause of the accident.

In the case of Campbell v. Schmidt, a wrongful death action arose out of a collision between a southbound motorist and an eastbound truck. Campbell v. Schmidt, 195 So.2d 87 (Miss. 1967). The facts of this case were that Mrs. Schmidt looked right and left when she approached an intersection, but didn't see the other vehicle involved in the accident until it hit her. Id. 195 So.2d at 88. Even though Mrs. Schmidt claimed that she had looked both ways at trial, the Court noted that:

> It is apparent that if the defendant had looked to the west, she would have seen the truck approaching the intersection for some distance. *She is of course charged with seeing that which she should have seen.* But, more than that, under the facts shown here, *the failure to look was negligence as a matter of law.*

Id. at 89. (emphasis added). Therefore, the Supreme Court affirmed the trial court's decision to grant the plaintiff's peremptory instruction on the defendant's negligence. Id. Essentially, even though the defendant testified that she looked, the Court found that she could not have looked if she did not see the approaching vehicle. Rizzo Farms, Inc. argues in its Brief, that the Campbell case is distinguishable from the case *sub judice* because "Brown did not look and then pause for a period of time before proceeding with his turn as in Campbell." (See Appellee's Brief at p. 23). Again, Rizzo Farms, Inc. ignores the fact that Rodney Brown "did not have a clue" how much time elapsed between the time he looked in his mirror and the time he began making his turn. (T. 292). If Brown did actually look in his mirror at some point between the time he left the shop and the time of the collision, it must have been before the C.P. House Gas truck got behind him and long before Thompson approached him from the rear.

Given the cited testimony, there can be no doubt that Rodney Brown was negligent on the day of the subject accident and that his negligence, at least in part, contributed to Mr. Thompson's undisputed and unquestioned injuries. This is so even if Rizzo Farms, Inc.'s witness testimony regarding the lack of flashing lights and siren from Deputy Thompson's vehicle is taken as true. The trial court therefore should have granted Plaintiff's motion for a directed verdict on the issue of Rodney Brown's negligence. (T. 754-55). Further, the trial court should have given Plaintiff's peremptory Jury Instruction, P-13, pertaining to Rodney Brown's negligence. (R.349, T. 694).

B. The Trial Court Erred in Denying Thompson's Motion for New Trial Based on Jury Bias.

During the trial court's voir dire, the Honorable Robert P. Chamberlin went over a list of potential witnesses and asked the venire to respond if they knew the witness or were related to the witness. Judge Chamberlin clearly and unambiguously stated, "I'm going to read these witnesses to you, and I need to ask if you personally know or are related by blood or marriage to any of these witnesses." (T. 137). Included in the names of the witnesses were the names Charles Gilmer and Frazier Nash, both of whom were Bolivar County Sheriff Deputies along with Deputy Thompson. (T. 145). No member of the jury panel responded as knowing either Deputy Gilmer or Deputy Nash. (T. 140, 146).

Following the conclusion of the trial of this matter, it came to the attention of Deputy Thompson and his attorneys that certain members of the jury and certain family members of members of the jury had an arrest history with the Bolivar County Sheriff's Department and/or with Deputy Thompson. Based on the booking records at the Bolivar County Sheriff's Department, Leon Hollaman, the jury foreman, was arrested for forgery by Bolivar County Sheriff's Deputy Frazier Nash on September 29, 2003. (E. 1276). Even though Deputy Nash was listed as a potential witness during the court's voir dire and his name was mentioned throughout the trial, Leon Hollaman did not find it pertinent to disclose that he had been arrested by Frazier Nash, a Bolivar County Sheriff's Deputy. (T. 881).

Once this information was brought to Judge Chamberlin's attention, the case of Odom v. State, 355 So.2d 1381 (Miss. 1978), governed the analysis. In that case the Court set forth that in the instance where a prospective juror fails to respond to a relevant, direct and unambiguous question

presented by counsel on voir dire, although having knowledge of the information sought to be elicited, the trial court should, on a motion for a new trial, determine whether the question propounded to the juror was relevant to voir dire examination, whether it was unambiguous, and whether the juror had substantial knowledge of the information sought to be elicited; if the trial court's determination of these inquiries is in the affirmative, it should then determine if prejudice to the party in selecting a jury reasonably could be inferred from the juror's failure to respond, and, if so, a new trial should be ordered. Odom, 355 So.2d at 1383.

Applying the Odom test to the case *sub judice*: 1) The questions asked by Deputy Thompson's attorney and by Judge Chamberlin during voir dire were relevant, as they were intended to determine whether the jurors had any potential bias or conflict with Deputy Thompson; 2) Judge Chamberlin was both direct and unambiguous when he asked the venire if anyone knew Deputy Frazier Nash or Deputy Charles Gilmer; 3) It is undisputed that none of the ultimate members of the jury responded to these questions during voir dire even though certain members of the jury and their family members had been arrested by Deputy Thompson, Deputy Frazier Nash and Deputy Charles Gilmer prior to Deputy Thompson's trial.

The mere fact that the jury foreman, Leon Hollaman, failed to respond to the court's voir dire when asked if he knew Deputy Frazier Nash, who had arrested him for forgery less than three years earlier, should itself be enough evidence to show the obvious bias of this jury against the Bolivar County Sheriff's Department. In addition, there were two other jurors who had close family members who were arrested by Deputy Thompson and/or Deputy Thompson's witnesses at trial. In his closing argument, counsel for Rizzo Farms, Inc. told members of the jury that they had an opportunity "to

police the police". (T. 813). Given certain jurors' history and knowledge of their family member's arrest histories, they no doubt took this opportunity.[6]

C. The Trial Court Erred in Denying Deputy Thompson's Motion for Partial Summary Judgment on the Issue of Deputy Thompson's Standard of Care.

The Mississippi Tort Claims Act, specifically, Miss. Code Ann. § 11-46-9, provides in pertinent part:

> (1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:
>
> (c) Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury.

Miss. Code Ann. § 11-46-9. See also Smith vs. Brookhaven Police Department, 914 So.2d 180, 183, (Miss. App. 2005).

It is undisputed that in an action by Rodney Brown against the Bolivar County Sheriff's Department, alleging fault on behalf of Deputy Thompson, Mr. Brown, in order to prevail, would have to prove that Mr. Thompson acted in reckless disregard of the safety and well-being of Mr. Brown and/or others. At issue in the present case is whether Mr. Brown must show Mr. Thompson's actions amounted to reckless disregard in order to have the jury apportion fault to Mr. Thompson under comparative negligence principles. Plaintiff avers that this Court must answer the question in the affirmative.

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[6]In its Brief of Appellee, Rizzo Farms, Inc. does not argue that certain members of the Jury were not being deceitful and/or were not biased towards Thompson. Rather, Rizzo Farms, Inc. takes the position that the burden fell upon Thompson to use his status as a Sheriff's Deputy to run background checks on the jury *venire* prior to the trial. (See Appellee Brief at p. 35-37).

Counsel for the Plaintiff can find no Mississippi authority directly on point with the issue presented in this appeal; however, cases from other jurisdictions provide guidance and support the rule that police officers in the course and scope of their employment are held to a different standard of care than the ordinary motorist.

In Smith v. Lamar, a police officer brought an action against a motorist after an accident involving a hot pursuit. Smith v. Lamar, 188 S.E.2d 72, 73 (Va. 1972). The issue in Smith was to what standard was the police officer to be held. Smith, 188 S.E.2d at 74. The Virginia Supreme Court found that the standard of care required of the driver of an emergency police vehicle was that standard of care of a prudent man in the discharge of his officials duties of a like nature under the circumstances. Id. 188 S.E.2d at 75. The Court noted that the standard of care which would customarily be required of an ordinary motorist did not apply to the police officer. Id. The Court reasoned that the same standard of care must apply regardless of whether the operator sues or is being sued. Id. See also Scogin v. Nugen, 464 P.2d 166, 174 (Ka. 1970)(holding that the proper standard of care required of the driver of an emergency police vehicle is the standard of care for a prudent man in the discharge of official duties of a like nature under like circumstances); McKay v. Hargis, 88 N.W.2d 456, 459 (Mi. 1958)(same).

The cases cited by Deputy Thompson stand for the proposition that a police officer engaged in his official duties should be held to the same standard of care whether he is being sued or whether he is a Plaintiff. In this case, it is undisputed that if Deputy Thompson had been sued by Rodney Brown, Mr. Brown, in order to prevail, would have to show that Mr. Thompson acted in reckless disregard for the safety and well-being of Mr. Brown and/or others. It makes perfect sense, therefore, that in order for the Defendant to have the jury apportion fault to Mr. Thompson in this

case, it must likewise show and meet this reckless disregard standard. To hold otherwise would place upon Mr. Thompson two different standards of care while operating a vehicle for the Bolivar County Sheriff's Department. This double standard presents a policy concern as it pertains to law enforcement officers across the State of Mississippi. If law enforcement officers are to be held to the standard of care of an ordinary individual, this could create a chilling effect on the manner in which law enforcement officers respond to emergency calls. Therefore, this Court should reverse and remand this case on the issue of Deputy Thompson's standard of care.

IV. Conclusion

After reviewing all of the relevant testimony at Deputy Thompson's trial, the only conclusion to be reached is that Rodney Brown simply did not look prior to commencing his left hand turn into his driveway. If Brown had looked he would have seen Deputy Thompson's vehicle in the passing lane, the C.P. House Gas truck directly behind him and Jeffrey West's truck facing him. Regardless of Rizzo Farms, Inc.'s contention that Deputy Thompson did not have his lights and siren on, Rodney Brown was negligent as a matter of law if he failed to look prior to commencing his turn.

After reviewing the transcript of the voir dire proceedings and the transcript of certain jurors' testimony following the trial, at least three of the jurors failed to respond to relevant questioning during voir dire. Given the fact that the jury foreman, Leon Hollaman, had been arrested by one of Deputy Thompson's potential witnesses, while jurors Rachel Ramiz and Chedra Bolden had close family members that had an arrest history with Deputy Thompson and/or Deputy Thompson's witnesses, certain members of the jury apparently had an axe to grind with the Bolivar County Sheriff's Department and Deputy Thompson. During Rizzo Farms, Inc.'s closing arguments the

jury was told, "this is your opportunity to police the police." Unfortunately, it appears that the jury attempted to do so.

Prior to the trial, Deputy Thompson filed a Motion for Partial Summary Judgment on the issue of Deputy Thompson's standard of care. Particularly, that Rizzo Farms, Inc. should have been required to show that Deputy Thompson's actions rose to the level of reckless disregard prior to any comparative negligence being assigned. Had the trial court granted Deputy Thompson's motion, his strategy at trial would have shifted significantly.

Therefore, Deputy Thompson respectfully requests that this Court reverse and remand this case for a new trial based on Rodney Brown's negligence and the bias of the jury. Further, Deputy Thompson respectfully requests that this Court reverse and render the trial court's denial of Deputy Thompson's Motion for Partial Summary Judgment on the issue of Deputy Thompson's standard of care.

RESPECTFULLY submitted on this the 26th day of February, 2009.

MICHAEL A. THOMPSON, Appellant

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CERTIFICATE OF SERVICE

I, W. Hunter Nowell, attorney of record for Michael A. Thompson, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **REPLY BRIEF OF APPELLANT** to the following persons:

Edward J. Currie, Jr., Esq.
Frank F. Farmer, Esq.
Currie Johnson Griffin Gaines & Myers, P.A.
P. O. Drawer 750
Jackson, MS 39205-0750

The Honorable Robert P. Chamberlin, Jr.
Circuit Judge, Third District
P. O. Box 280
Hernando, MS 38632

This 26th day of February, 2009.

W. Hunter Nowell

W. HUNTER NOWELL

CERTIFICATE OF FILING

I, **W. Hunter Nowell,** do hereby certify that I have this day mailed by first class U.S. Mail, postage prepaid, the original and three (3) copies of the **REPLY BRIEF OF APPELLANT** to Mrs. Betty Sephton, Mississippi Supreme Court Clerk.

This the 26th day of February, 2009.

W. Hunter Nowell

W. HUNTER NOWELL