IN THE SUPREME COURT OF MISSISSIPPI

NO.: 2008-CA-01137-SCT

CITY OF LAUREL, MISSISSIPPI — APPELLANT

VS.

CLYDE WILLIAMS, AS PERSONAL/LEGAL GUARDIAN AND NEXT FRIEND OF MICHAEL DeANTHONY WILLIAMS, INDIVIDUALLY AND CLYDE WILLIAMS AS PERSONAL/LEGAL GUARDIAN AND NEXT FRIEND OF MINOR CHILD, MICHAEL DeANTHONY WILLIAMS AND THE MINOR CHILD, DORRIEN ALEXANDER WILLIAMS, BEING THE WRONGFUL DEATH HEIRS OF LISA WILLIAMS, DECEASED — APPELLEE

APPEAL FROM THE CIRCUIT COURT OF
JONES COUNTY, SECOND JUDICIAL DISTRICT

REPLY BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

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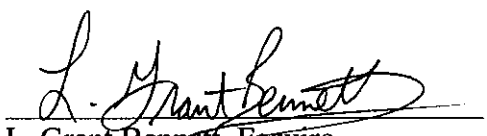
CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. City of Laurel, Mississippi - Appellant.
2. L. Clark Hicks, Jr. - Counsel for Appellant.
3. L. Grant Bennett - Counsel for Appellant.
4. Clyde Williams - Appellee.
5. Michael DeAnthony Williams - Minor child and interested heir.
6. Dorrien Alexander Williams - Minor child and interested heir.
7. J. Michael Horan - Counsel for Appellee.
8. Kevin Horan - Counsel for Appellee.



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STATEMENT REGARDING ORAL ARGUMENT

Local law enforcement agencies respond to domestic disturbances every day. Officers expose themselves to dangers inherent in responding to these calls. The Mississippi legislature enacted a "good faith" immunity defense for these officers shielding them from civil liability in their good faith handling of domestic disturbances. Judge Landrum's decision, for all practical purposes, eviscerates this immunity. Laurel seeks oral argument so that the appellate court may correct clear errors of law made by the trial court.

STATEMENT OF ISSUES

I. Whether Judge Landrum erred by not enforcing the statute which renders police officers immune for any failure, in good faith, to make a domestic related arrest?

II. Whether Judge Landrum erred in ruling the Laurel Police Department acted in "reckless disregard" by failing to prevent Kenneth Wilson from murdering Lisa Williams?

III. Whether Judge Landrum erred by failing to find that the alleged recklessness of the police department was a proximate cause of the death of Lisa Williams?

SUMMARY OF THE ARGUMENT

I. Whether Judge Landrum erred by not enforcing the statute which renders police officers immune for any failure, in good faith, to make a domestic related arrest?

Laurel is not liable in a civil action for the failure of its police officers, in good faith, to make a domestic related arrest. Miss. Code Ann. §§99-3-7(7) and 93-21-27. The record reflects the Laurel police officers acted in good faith. Despite Appellee's assertion to the contrary, Laurel correctly cites to, and relies upon the decision of ***Fair v. Town of Friars Point***, 930 So.2d 467 (Miss. Ct. App. 2006). The Court in ***Friars Point***, devoted an entire section of the decision to discussing the application of §§99-3-7(7) and 93-21-27 in the context of applying officer immunity. For purposes of following legislative intent, correctly interpreting statutory text and promoting *stare decisis*, this Court should also find Laurel is not liable to the Appellees when applying the immunity provisions of Miss. Code Ann. §§99-3-7(7) and 93-21-27 to the facts of this case.

II. Whether Judge Landrum erred in ruling that Laurel Police Department acted in "reckless disregard" by failing to prevent Kenneth Wilson from murdering Lisa Williams?

Laurel's officers did not act in a willful, wanton and wrongful manner with conscious and deliberate indifference to the results of not arresting Wilson. Instead, they acted in a professional and prudent manner by interviewing Williams, Wilson, other occupants of the house and made sure the wishes of Lisa Williams and her cousin, as owner of the house were followed that Wilson leave the house. During their interviews with Wilson, he was calm and cooperative and there was not sufficient evidence of him harming person or property to warrant arresting him. Appellee's argument that §11-46-5(2) conflicts with §11-46-9(1)(c) lacks merit. There is no evidence in the record that the officers acted with any intent, as required by malice, for wrongful conduct to be perpetrated. There is no conflict because nothing in the record demonstrates the

actions of the officers or alleged omissions were in reckless disregard of the safety of Williams under the circumstances presented to them at the time of confronting Wilson and Williams, and inasmuch, their failure to charge Williams with domestic violence was not willful or wanton.

III. Whether Judge Landrum erred by failing to find that the alleged recklessness of the Police Department was a proximate cause of the death of Lisa Williams?

Wilson's actions were the sole proximate cause of Williams' death. Wilson acted completely on his own at the time of Williams' death. Wilson was successfully separated from Williams by the Laurel Police officers. Wilson left the house where Williams was staying prior to her murder. At the time of the officer's response to the first incident, Wilson, Williams and the others in the house were not fighting and the situation presented to the officers was one of relative calm. At the scene of the first call, the officers investigated the reason for the call by interviewing witnesses, separating the couple and interviewing them, and further making a good faith determination that there was not sufficient probable cause to effect an arrest. The second occasion the officers spoke with Wilson, he was again calm and exhibited no emotional outbursts or other threatening behavior. Officer Keller escorted him to the police station to be picked up by his mother. The record reflects that Wilson was indeed picked up by his mother and it was his sole act thereafter of returning to the house where Williams was staying and stabbing her that caused her death. Williams being murdered by Wilson was not foreseeable to the officers under the circumstances presented to them. Any temporal connection with the Police Department and Williams' death is insufficient to establish legal causation in this case and the decision of Judge Landrum should be reversed.

ARGUMENT

I. Whether Judge Landrum erred by not enforcing the statute which renders Police Officers immune for any failure, in good faith, to make a domestic related arrest?

Appellee admits that the applicable statutes in this case include Miss. Code Ann. §§99-3-7(7), 93-21-27 and 11-46-9(1)(c). *See,* Appellee Brief, P. 7. Additionally, Miss. Code Ann. §11-46-9(1)(b) applies which was discussed in Laurel's original Brief and will not be discussed again in the instant Reply Brief. Further, because of the governing application of §§99-3-7(7) and 93-21-27, Miss. Code Ann. §11-46-9(1)(f) also applies. Miss. Code Ann. §11-46-9(1)(f) provides:

> A governmental entity and its employee's acting within the course and scope of their employment or duty shall not be liable for any claim which is limited or barred by the provisions of any other law.

Clearly, when applying the immunity provisions as set forth in Miss. Code Ann. §99-3-7(7), §93-21-27, §11-46-9(1)(c) and §11-46-9(1)(b) Laurel is exempt from any liability, not only under those statutes, but §11-46-9(1)(f) as well. Appellee attempts in his Brief to try and distinguish the application of the ***Town of Friars Point*** decision relied upon by Laurel. *See*, Appellee Brief, P. 8. Contrary to Appellee's argument, the ***Friars Point*** decision does not limit its holding to the "reckless disregard" exemption from liability issue. In fact, the ***Friars Point*** decision devotes an entire section to discussing §99-3-7 as well as the immunity provision provided for in §93-21-27. ***Fair v. Town of Friars Point***, 930 So.2d 467, 470-71 (¶¶7-8, 12) (Miss. Ct. App. 2006).

How much clearer can the Court be when it noted in ¶12 that "the officers enjoy immunity under Miss. Code Ann. §93-21-27 for failing to arrest Dukes?" ***Id.*** at ¶12, P. 471. Appellee's attempt in his Brief to distinguish the ***Friars Point*** decision must fail. It is clear that the decision correctly applied the immunity provision found in Miss. Code Ann. §93-21-27 for the Friar's Point officers' failure to effect an arrest for a domestic related event, and this Court should arrive at the same conclusion in favor of Laurel given the record now before it.

Appellee also argues the time period that elapsed from when the Laurel officers first encountered Wilson to the eventual time of Williams' murder by Wilson is pertinent to distinguishing the instant case from the holding set forth in the ***Friars Point*** decision. This argument is stretched thin and without merit. The issue is not about how much time elapsed between when officers first encountered Wilson until Ms. Williams' death, rather, it is whether or not sufficient facts existed to warrant an arrest based on probable cause under the Domestic Violence statute when first encountering Wilson? In the instant case, there was not based upon the officers investigation, Wilson's and William's demeanor, the fact that no one wished to press charges at the scene, including occupants of the same household where Wilson and Williams were residing, and a multitude of other reasons as set forth in Appellant's original Brief.

In addition to the other reasons set forth above and as previously outlined in Laurel's original Appellant Brief, a review of Exhibit "4" clearly discloses the following that officers encountered when investigating the first call that supports no probable cause to arrest Wilson:

- Williams herself stated that she was "not bleeding" and when questioned about what had happened, she stated "Nothing. I ain't bleeding, that ain't my blood." (R. Ex. 4, at 20:35);
- Williams' son stated only that Williams and Wilson had been arguing and that he "not really see any bleeding or nothing" (R. Ex. 4, at 20:36);
- Wilson stated to the officers that he did not touch Wilson, did not put his hands on her and did not grab her. (R. Ex. 4, at 20:36-37); and,
- When asked by Officer Keller about his hand, Wilson stated "I didn't know it was cut." (R. Ex. 4, at 20:44).

The decision of the Court of Appeals in ***Friars Point***, is an important one recognizing that immunity shall be afforded officers acting in good faith. By reversing Judge Landrum's decision wherein he found Laurel to be liable for the wrongful death of Williams, this Court would promote *stare decisis*, rule according to the intent of the legislature, correctly interpret the plain text of the controlling statutes, and insure our police officers are allowed to do their jobs effectively in good faith without the fear of being sued for using sound judgment and common sense when applying the well-settled law when responding to domestic calls.

The officers acted in good faith when investigating the events involving Wilson and Williams and the Mississippi legislature enacted a "good faith" immunity defense shielding them from civil liability in their good faith handling of domestic disturbances. Miss. Code. Ann. §93-21-27; §99-3-7(7); §11-46-9(1)(b); and, §11-46-9(1)(c). If Judge Landrum's decision is allowed to stand, for all practical purposes this immunity is eviscerated. If this Court upholds Judge Landrum's decision, it will essentially overrule the ***Friars Point*** decision, and result in officers thereafter knowing the "good faith" immunity provision that was specifically granted to protect them by the Mississippi legislature has been rejected by this Court. Does this Court really want to encourage domestic related arrests being made even when there is not sufficient evidence to establish a domestic violence charge? By affirming Judge Landrum's decision, that is exactly the message this Court's holding would send. Certainly, this Court does not want to encourage what could become a flood of unsubstantiated arrests, with an additional flood of civil litigation consisting of abuse of process, malicious prosecution and similar lawsuits to follow. The "good faith" immunity provisions were wise enactments by our Legislature, and given the facts of the instant case, Judge Landrum's decision should be reversed with this Court specifically holding applicable §93-21-27, §99-3-7(7), and §11-46-9(1)(f) that provide for immunity to Laurel.

II. Whether Judge Landrum erred in ruling that Laurel Police Department acted in "reckless disregard" by failing to prevent Kenneth Wilson from murdering Lisa Williams?

Appellee attempts to make an argument that the "reckless disregard" exception from liability and the standard that has been set forth by our Appellate Courts for determining "reckless disregard" cannot be appropriately applied in cases involving "inactions" by an officer." *See*, Appellee Brief, P. 9. This argument is erroneous. Miss. Code Ann. §11-46-9(1)(c) clearly provides that:

> a municipality and its employees acting within the course and scope of their employment or duties shall not be liable for any claim arising out of any act ***or omission*** of an employee of a governmental entity engaged in the performance or execution of duties or activities related 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.

Section 11-46-9(1)(c) recognizes that the reckless disregard exception applies to "omissions" as well as commissions within the plain language of the statute's text.

Appellee has conceded in his Brief the reckless disregard standard, and given that §11-46-9(1)(c) clearly provides for a municipality and its officers to be exempt from any liability even in cases of "omission" where omissions are not in reckless disregard, Appellee's argument on P. 9 of Appellee's Brief is without merit.

Additionally, Appellee argues on P. 6 and 9 of Appellee's Brief that a lesser standard than that applied in the ***Willing v. Estate of Benz*** case was set forth by this Court in the ***Durn*** decision. *See*, Appellee Brief, P. 6 & 9; ***Mississippi Department of Public Safety vs. Durn***, 861 So.2d 990 (Miss. 2003); ***Willing v. Estate of Benz***, 958 So.2d 1240, 1247 (Miss. Ct. App. 2007). However, contrary to Appellee's argument, the Court in ***Durn*** actually discussed a number of different cases together setting forth the standards (each case worded differently the standard)

that was applied in determining "reckless disregard" in each. In fact, the ***Durn*** decision explicitly recognized as follows:

> As quoted from the *Black's Law Dictionary*, "reckless" according to the circumstances, "may mean desperately heedless, wanton or willful, . . ." In the context of this statute, reckless must connote "wanton or willful," because immunity lies for negligence. And this Court has held that "wanton" and "reckless disregard" are just a step below specific intent.

The facts of this case do not demonstrate reckless disregard when applying the standard set forth in the ***Benz*** decision and as recognized in ***Durn***. The Laurel police officer's did not act in reckless disregard of the safety and well being of Williams when responding to the call at Rika Carmichael's house given the facts of record that have been demonstrated to exist at the time of the officer's confronting the situation. The officers' investigated the scene, interviewed witnesses and made sure the wishes of Rika Carmichael and Lisa Williams were satisfied in Wilson leaving the scene. Any potential problem subsided at that time, and the officers' actions were appropriate given the conflicting information they were presented with that would prevent them from making a solid case against Wilson for any type of domestic violence.

The second incident did not involve Williams at all and nothing about the second incident made it foreseeable that Williams' life was in danger. Instead, each time the officers made contact with Wilson he was calm and made no threatening remarks toward Williams or any others staying in the house with her. The officers insured that Wilson was picked up by his mother from the police station and Williams was not in the vicinity of the Police Department when Wilson left with his mother. Nothing about the actions on the part of the Laurel Police Department officers actions demonstrate a conscious indifference to their actions, or willful and wanton conduct sufficient to demonstrate intended harm to befall Williams. Instead, the actions of the officers demonstrated exceptional restraint, level-headedness, professionalism and

common sense and making sure that Wilson and Williams were separated just in case of any potential for escalation of a conflict between them. The Laurel police officers are entitled to immunity under the "reckless disregard" provision of the *Mississippi Tort Claims Act* and for this reason Judge Landrum's decision should also be reversed. Appellee's additional argument that §11-46-5(2) is in conflict with §11-46-9(1)(c) is misplaced, since in this case the totality of the factual circumstances and evidence do not support any malice on the part of the officers acts and/or alleged omissions. Rather, the officers responded to calls that were made to them, investigated complaints, ensured removal of Wilson, and appropriately handled each situation as presented to them while acting in good faith.

III. Whether Judge Landrum erred by failing to find that the alleged recklessness of the Police Department was a proximate cause of the death of Lisa Williams?

Appellee makes no legitimate argument in his Brief regarding the error of Judge Landrum in failing to find alleged recklessness of Laurel's Officers as being a proximate cause of death of Lisa Williams. *See*, Appellant Brief, P. 10. Instead, Appellee makes a broad and unsupported argument that Williams would not have been killed by Wilson if he had been arrested, because, according to Appellee, Wilson would have had time to "cool down." *See*, Appellant Brief, P.10. This stretched argument by Appellee contradicts the facts as presented to the officers as they observe them that night. As can been seen by the video, as well as supported by the officers' testimony at trial, Wilson was already cool and calm when they observed him on both calls they responded to. (T. P. 43; P. 80; R. Ex. 4). Simply put, it was not foreseeable under these circumstances that Wilson would later murder Williams.

Additionally, any argument by Appellee that Wilson would not have murdered Williams if he had been arrested, is nothing more than pure speculation as can readily be seen by the ***Friars Point*** case when the deceased in ***Friars Point*** was killed some thirty-six days after the

perpetrator had indeed been arrested on other charges. ***Fair v. Town of Friars Point***, 930 S.2d 467 (Miss. Ct. App. 2006). While the ***Fair*** decision supports immunity given the good faith efforts of the officers, here, it also provides support that it is only speculation by the Appellee that Wilson would not have eventually murdered Williams even if he had been arrested. Without question, Williams' murder was due to the sole proximate cause of Wilson's actions and not that of the Laurel Police Officers.

CONCLUSION

Appellee's Brief contains portions in its Statement of Facts that are cherry-picked from the Exhibits which were never argued to the Court at the trial of this matter. Additionally, Appellee's Brief contains arguments that are being raised for the first time in an attempt to support Judge Landrum's decision which were never argued at the trial of this matter and which counsel did not bring to the Court's attention at trial. (*See*, Transcript.) Because Laurel is asserting errors of law as to the proper application of the *Mississippi Torts Claim Act* exemptions from immunity as well as the immunities provided for by §§99-3-7(7) and 93-21-27, this Court must review the Court's decision *de novo* and consider all evidence in the record as a whole, and not only limit its review to Appellee's specifically picked portions of the record which Appellee now requests this Court to so do. Looking at the record *de novo*, this Court can clearly see that the officers and Laurel should be afforded immunity when applying Miss. Code Ann. §99-3-7(7), §93-21-27, §11-46-9(1)(b), §11-46-9(1)(c) and §11-46-9(1)(f). This Court should reverse and render the trial court's judgment.

Respectfully submitted, this the 20th day of April, A.D., 2009.

CITY OF LAUREL, MISSISSIPPI

BY: L. Grant Bennett
L. GRANT BENNETT, [redacted]

CERTIFICATE OF SERVICE

I certify that I have served a copy of the **Reply Brief of Appellant** on counsel for all parties by depositing a copy of the **Reply Brief of Appellant** in the United States mail, properly addressed and first class postage prepaid:

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THIS the 20th day of April, A.D., 2009.

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