IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

AARON CRAIG MELTON — APPELLANT

V. — CAUSE NO. 2008-TS-01602

LAWRENCE COUNTY SHERIFF'S DEPARTMENT — APPELLEE

Appealed from the Circuit Court of Lawrence County, Mississippi

BRIEF OF APPELLEE

ORAL ARGUMENT REQUESTED

PREPARED BY:
J. LAWSON HESTER [M[redacted]
JACQUELINE H. RAY [[redacted]]
PAGE, KRUGER, & HOLLAND, P.A.
Post Office Box 1163
Jackson, Mississippi 39215-1163
Telephone #: (601) 420-0333
Facsimile #: (601) 420-0033
ATTORNEYS FOR APPELLEE

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

AARON CRAIG MELTON — APPELLANT

V. — CAUSE NO. 2008-TS-01602

LAWRENCE COUNTY SHERIFF'S DEPARTMENT — APPELLEE

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 judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Aaron Craig Melton, Appellant
2. Lawrence County Sheriff's Department, Appellee
3. Patsy R. Smith, Defendant (no appeal was taken from any adjudication of claims against Ms. Smith)
4. J. Lawson Hester, Jacqueline H. Ray and the law firm of Page, Kruger & Holland, P.A., attorneys for Appellee
6. April D. Taylor, counsel for Defendant, Patsy R. Smith
7. R. Ayres Haxton, counsel for Appellant
8. Hon. Prentiss G. Harrell

THIS, the 29th day of April, 2009.

J. LAWSON HESTER
JACQUELINE H. RAY

J. LAWSON HESTER [redacted]
JACQUELINE H. RAY [redacted]
PAGE, KRUGER, & HOLLAND, P.A.
Post Office Box 1163
Jackson, Mississippi 39215-1163
Telephone #: (601) 420-0333
Facsimile #: (601) 420-0033
ATTORNEYS FOR APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

I. STATEMENT REGARDING ORAL ARGUMENT

The Appellee hereby requests oral argument in the instant matter pursuant to Rule 34 of the Mississippi Rules of Appellate Procedure. The facts of this case are such that oral argument would assist in the presentation of the matter to the Court.

II. STATEMENT OF THE ISSUES

A. Whether the Trial Court Erred in Finding that the Lawrence County Sheriff's Department is not a Legal Entity Capable of Being Sued and by Not Allowing Plaintiff to Amend his Complaint Pursuant to M.R.C.P. 15(c).

B. Whether the Trial Court Erred in Finding that the Plaintiff's Notice of Claim Letter Failed to Comply with Miss. Code Ann. §11-46-11.

C. Whether the Trial Court Erred in Finding that the Lawrence County Sheriff's Department is Entitled to Immunity Pursuant to the Mississippi Tort Claims Act.

D. Whether the Trial Court Erred in Finding that there was Probable Cause for the Arrest of the Plaintiff.

E. Whether the Trial Court Erred in Finding that the Acts Complained of by Plaintiff do not Rise to the Level of Intentional Infliction of Emotional Distress.

F. Whether the Trial Court Erred in Finding that Summary Judgment is Appropriate on all Issues

III. STATEMENT OF THE CASE

Sheriff Joel Thames was served with a Notice of Claim letter on January 17, 2007, and was served with the Complaint on June 24, 2007. The only named Defendant is the Lawrence County Sheriff's Department. The basic allegations are that the Plaintiff, Aaron Craig Melton ("Melton") was arrested without a valid warrant or a sworn affidavit. Plaintiff makes a claim for recovery of damages against the Lawrence County Sheriff's Department for intentional infliction of emotional distress. A Motion for Summary Judgment was filed on behalf of the Lawrence County Sheriff's Department and same was granted on August 29, 2008. Plaintiff subsequently appealed the ruling of the Lawrence County Circuit Court.

On July 29, 2006, Patsy R. Smith, a Monticello resident, arranged with Nations Cadillac in Brookhaven, for Nations' employee, Craig Melton, also a Monticello resident, to pick up her car from her home on Sunday, July 30, 2006, in order to take it to the dealership for repairs on the following Monday. (R. 146-147). Melton picked up the car from Smith around noon (several hours earlier than planned), and told her it would be parked on Lee Street until he left for work the next morning. (R. 147-148). Later that day, Smith went to Lee Street to check on her car and it was not there. (R. 149).

Smith contacted Deputy David Sanders of the Lawrence County Sheriff's Department (who was off duty at the time) and told him she was afraid her car was not going to be returned to her. (R. 135, 150). Sanders, thinking that the car had been stolen or was in the process of being stolen, confirmed that the Monticello Police Department was unable to look into the matter right away, so he signed back in for duty with the sheriff's department and had a bulletin sent out to area law enforcement to be on the lookout for the car. (R. 134-135; 141-143). Later that evening, Scott Stormo, with the Monticello Police Department, contacted Deputy Sanders and they drove to

Melton's house once the car had been spotted. (R. 241-242). Melton and Randall Olivier were both present. (R. 243). Because Sanders was familiar with Olivier's criminal history and he thought a crime was being committed, both men were transported to the jail for questioning. (R. 138-139; 142-143).

Upon arrival at the jail, Deputy Sanders asked the jailer, Robert Satterly, to begin processing Melton. (R. 139). Satterly booked Melton into the Lawrence County Jail at approximately 8:00 p.m. As a part of standard jail procedure, Satterly did a visual search of Melton as he changed into a prison-issue uniform. (R. 140, 153-155). At no time did Satterly touch Melton during the search. (R. 154-155). It was ultimately determined that no felony had been committed as Melton had not actually stolen Smith's car. (R. 143). Melton was released without incident several hours after being picked-up by Deputy Sanders. (R. 158).

IV. SUMMARY OF THE ARGUMENT

The ruling of the trial court dismissing the Lawrence County Sheriff's Department on the basis of summary judgment should be upheld. The Lawrence County Sheriff's Department is not a legal entity capable of being sued. *Brown v. Thompson*, 927 So.2d 733, 737 (Miss. 2006). It is the responsibility of the Plaintiff to determine the necessary parties to be named as defendants. By waiting until long after the expiration of the statute of limitations and two (2) weeks before trial to ask permission to amend his Complaint, Melton has not acted with diligence in pursuing this cause of action. Such leave to amend is not granted automatically, but lies within the Court's discretion. *Pratt v. City of Greenville,* 804 So.2d 972, 976 (Miss. 2001). Respectfully, to allow him to amend his Complaint at this juncture would be at odds with Miss. R. Civ. P. 15(c) and Miss. Code Ann. § 15-1-35. Defendant, the Lawrence County Sheriff's Department, has respectfully requested that Plaintiff's Motion to Amend Complaint be denied. Further, based on the one year statute of

limitations for false arrest/false imprisonment and the tolling provisions set forth in Miss. Code Ann. § 11-46-11, the Appellant's claim is time-barred. Appellee offers the remaining arguments without waiver of its position that the Lawrence County Sheriff's Department is properly dismissed pursuant to Rule 12 of the Mississippi Rules of Civil Procedure as it is not a legal entity capable of being sued.

The Appellee is also entitled to summary judgment based on the exemptions provided for in the Mississippi Tort Claims Act. The Appellee, in the investigation of a potentially stolen vehicle, was engaged in police protection under Miss. Code Ann. § 11-46-9(1)(c) at the time of the incident giving rise to Appellant's claims. In order to breach Appellee's immunity under this statute, Melton must prove that the Lawrence County Sheriff's Department acted with reckless disregard towards his safety and well-being. Appellant has not and cannot establish any act committed with reckless disregard on the part of the Appellee. The actions of the Lawrence County Sheriff's Department that gave rise to Appellant's claims were discretionary, thus also invoking immunity under Miss. Code Ann. § 11-46-9(1)(d). *See Barrett v. Miller*, 599 So.2d 559, 567 (Miss. 1992) (holding that the determination of probably cause is a discretionary function). *See also Newton v. Black*, 133 F.3d 301, 307 (5th Cir. (Miss.) 1998).

The Appellant cannot set forth sufficient facts or laws to succeed on his claims of false arrest/false imprisonment. "[I]f the plaintiff's arrest is supported by probable cause the claim [for false arrest] must fail." *Hudson v. Palmer*, 977 So.2d 369, 382 (Miss.App. 2007) (citing *Croft v. Grand Casino Tunica, Inc.*, 910 So.2d 66 (Miss.App. 2005)). Further, the detainment of Melton for only a few hours in the Lawrence County Jail was not devoid of probable cause, nor was it performed falsely or unlawfully or with malice or reckless disregard. *See City of Mound Bayou v. Johnson*, 562 So.2d 1212, 1218 (Miss. 1990). The Lawrence County Sheriff's Department did not

seek out the Appellant with malicious intent, but acted in good faith when determining that probable cause existed for the arrest/detainment of Melton.

Melton's claim of intentional infliction of emotional distress is not supported by law or the factual record. The acts of the Lawrence County Sheriff's Department in determining the existence of probable cause to interrogate/arrest the Appellant based on the allegedly stolen vehicle and the subsequent interrogation/arrest do not rise to the level of outrageous, malicious or atrocious conduct which is required to establish a claim for intentional infliction of emotional distress. *See Franklin Collection Service, Inc., v. Kyle*, 955 So.2d 284, 290 (Miss. 2007); *Diamondhead Country Club and Property Owners Association, Inc. v. Montjoy*, 820 So.2d 676, 684 (Miss.App. 2000).

Appellee, the Lawrence County Sheriff's Department, respectfully submits that its dismissal based upon summary judgment should be upheld as to all the Appellant's claims.

V. ARGUMENT

A. WHETHER THE TRIAL COURT ERRED IN FINDING THAT THE LAWRENCE COUNTY SHERIFF'S DEPARTMENT IS NOT A LEGAL ENTITY CAPABLE OF BEING SUED AND BY NOT ALLOWING PLAINTIFF TO AMEND HIS COMPLAINT PURSUANT TO M.R.C.P. 15(c).

1. The Lawrence County Sheriff's Department is not a Legal Entity Capable of Being Sued

The Lawrence County Sheriff's Department is the only named Defendant in the instant action. As admitted by Plaintiff in his brief, under the Mississippi Tort Claims Act, the Lawrence County Sheriff's Department is not a legal entity capable of being sued. As such, under prevailing caselaw, dismissal of the sheriff's department and this action is appropriate. *See Brown v. Thompson*, 927 So.2d 733, 737 (Miss. 2006) (holding that a sheriff's department is not an entity subject to civil suit under the Tort Claims Act and that the plaintiff should have named the county as a defendant in a suit instead). *See also Clanton v. DeSoto County Sheriff's Dept.*, 963 So.2d 560, n.1

(Miss.App. 2007) (indicating that DeSoto County should have been added as a necessary party under the Mississippi Tort Claims Act and, that if the sheriff's department had made this argument, the claim against them would have been dismissed). The District Court in *Tubb v. Lee County*, 2007 WL 2902994 *1 (N.D. Miss.), relied on *Brown* in holding that as the Lee County Sheriff's Department has no separate legal existence from Lee County, a claim against the sheriff's department is tantamount to a claim against Lee County. As the plaintiff in *Tubb* did not state a claim against Lee County, dismissal was appropriate. *Id. See also Ivey v. McClendon*, 2006 WL 980782 *1 (S.D. Miss.) (holding that under state law the sheriff's department "is an extension of the county rather than separate legal entity that may be named as a party in an action;" thus the plaintiff cannot maintain an action against the sheriff's department). Based on the foregoing, the Lawrence County Sheriff's Department was properly dismissed at the trial court level pursuant to Rule 12 of the Mississippi Rules of Civil Procedure as it is not a legal entity capable of being sued.

2. The Plaintiff Should Not be Allowed to Amend His Complaint

In the case *sub judice*, not only is dismissal of the Lawrence County Sheriff's Department appropriate, but the Appellant should be barred from amending his Complaint to include a cause of action against Lawrence County. The Plaintiff's claims against the Lawrence County Sheriff's Department are false arrest, false imprisonment and intentional infliction of emotional distress. (R. 8, 10). According to the proposed Amended Complaint, these exact same claims will be made against Lawrence County, Mississippi, if Plaintiff is allowed to amend his Complaint. (R. 200, 202). False arrest, false imprisonment and intentional infliction of emotional distress are all subject to a one year statute of limitations. Miss. Code Ann. § 15-1-35. The alleged claims accrued no later than July 31, 2006, upon Melton's release from jail. The filing of the Notice of Claim on January 17, 2007 (one hundred-seventy days into the one year statute of limitations), would have tolled the

statute of limitations for one hundred-twenty (120) days. Miss. Code Ann. § 11-46-11(3). After the expiration of the one hundred-twenty (120) days, on May 17, 2007, the remaining one hundred ninety-five (195) days of the statute of limitations would begin to elapse.[1] Thus, as of November 28, 2007 (or at the very latest, February 26, 2008), the one year statute of limitations for claims stemming from the July 31, 2006 incident expired. ***"[I]f an amended complaint is filed after the statute of limitations has run-regardless of when the motion to amend was made-the statute of limitations bars suits against newly named defendants."*** *Curry v. Turner,* 832 So.2d 508, 511 (Miss. 2002) (emphasis added). In the case *sub judice*, the motion to amend was made ***after*** the expiration of the statute of limitations, so an amended complaint would necessarily be filed ***after*** the running of the statute of limitations as well. The Supreme Court has recognized "that the courts of this state have no power to extend statutes of limitations beyond their terms." *Long v. Memorial Hosp. at Gulfport,* 969 So.2d 35, 44 (Miss. 2007); *Shewbrooks v. A.C. & S., Inc.,* 529 So.2d 557, 564 (Miss. 1988). As such, any amendment to include Lawrence County, Mississippi, would be moot as the purported claims against the county are time-barred.

In addition, the Plaintiff failed to file a motion for leave to amend his Complaint to add Lawrence County, Mississippi, as a Defendant until June 10, 2008 – just two (2) weeks prior to trial and months after the expiration of the applicable statute of limitation. Despite his contentions, Miss. R. Civ. P. 15(c) does not afford Plaintiff the ability to amend his Complaint at this late date. According to Miss. R. Civ. P. 15(c),

> . . . An amendment changing the party against whom a claim is asserted relates back ***if*** the foregoing provision is satisfied ***and,*** within the period provided by Rule 4(h) for service of the summons and

[1] According to Miss. Code Ann. § 11-46-11(3), the Plaintiff would have been given an additional 90 days to file his action, unless there were more than 90 days remaining prior to the expiration of the statute of limitations. In this instance, even if the Plaintiff had been given an additional 90 days, the statute of limitations would have expired on February 26, 2008.

> complaint, the party to be brought in by the amendment:
> (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining the party's defense on the merits, ***and***
> (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party . . .

(emphasis added). When an amended complaint purports to add a new defendant, as here, there are two additional requirements: notice to and knowledge by the defendant who would be named. *Ralph Walker, Inc. v. Gallagher,* 926 So.2d 890, 894-95 (Miss. 2006). "These two additional requirements must be met within the Rule 4(h) time period, or 120 days of the original complaint." *Bedford Health Properties, LLC v. Estate of Williams ex rel. Hawthorne,* 946 So.2d 335, 345 (Miss. 2006) (citing *Brown v. Winn-Dixie Montgomery, Inc.,* 669 So.2d 92, 94 (Miss.1996) (internal citations omitted)).

Although received by Lawrence County, the Notice of Claim dated January 17, 2007, did not name Lawrence County, Mississippi, as Defendant or as a potential Defendant. (R. 188). The Complaint which was filed on May 29, 2007, ***and only served on the Lawrence County Sheriff's Department,*** also failed to name Lawrence County, Mississippi, as a Defendant. Miss. R. Civ. P. 4(h) allows for a party to be served with a complaint within one hundred-twenty (120) days of it being filed with the court. This time period would have expired on May 17, 2007, over a year prior to Plaintiff's Motion to Amend Complaint. In order for Lawrence County to be charged with knowledge of the lawsuit, it must have or should have known that an action would be brought against it within the 120 days unless a mistake existed as to the parties' identities. *Bedford Health Properties, LLC,* 946 So.2d at 345. Lawrence County had no formal notice of the action at any point between the filing of the Notice of Claim on January 17, 2007 and the Motion to Amend Complaint which was filed on June 10, 2008. There is no indication in the record that Lawrence County had

knowledge of the filing of the lawsuit, nor can it be assumed that the county had knowledge. *See Ralph Walker, Inc.*, 926 So.2d at 895-96 (holding that Rule 15(c)(1) was not met where the plaintiff could not show, apart from sheer speculation, that Walker had any notice within 120 days after the filing of the complaint that he would be or should have been named as a defendant). Axiomatically, there is no possible way the late addition of Lawrence County, Mississippi, as a defendant could relate back to the filing of the original complaint.

Furthermore, it cannot be said that the county was aware of any mistake in the identity of the defendants ultimately named in the lawsuit filed by the Plaintiff. The Plaintiff's Motion to Amend his Complaint and his brief to this Court plainly indicate that he did not know that the Lawrence County Sheriff's Department is not a legal entity capable of being sued and that Lawrence County should have been named as a defendant. Melton did not make a mistake when he filed his Complaint, he clearly had no intention of naming Lawrence County as a Defendant prior to the sheriff's department filing a motion for summary judgment which brought the exclusion of the county to his attention. The purpose of Rule 15(c)(2) "is to allow some leeway to a party who made a mistake, so long as the party does what is required within the time period under the rule." This Court in *Campbell v. Davis*, 2009 WL 514208, *3 (Miss.App.), held there where the plaintiff was aware of the proper party's identity and failed to timely file suit against him, the amended complaint was barred by the statute of limitations. Here, as in *Campbell*, there was no mistake concerning the county's identity – at all times Melton was aware that the actions underlying this case occurred in Lawrence County and at the Lawrence County Jail. *See also Wilner v. White*, 929 So.2d 315, 323 (Miss. 2006). Melton simply failed to make a reasonably diligent effort to add Lawrence County as a defendant in a timely manner in compliance with the dictates of Rule 15(c). Thus, the requested amendment does not relate back to the filing of the original Complaint and the Plaintiff should be

barred from amending his Complaint in keeping with the ruling of the lower court.

Lastly, with all due respect the Court of Appeals, in determining *Mieger v. Pearl River County*, ran afoul of existing Supreme Court precedent. *Id.*, 986 So.2d 1025 (Miss.App. 2008). The fact that the county received a copy of the Notice of Claim is irrelevant. Rule 15(c) specifically states that the party to be added ***must*** have received notice of the action within 120 days after the filing of the Complaint. The Notice of Claim was filed months prior to the actual Complaint. The Notice of Claim did not specify that action would be (or even might be) taken against Lawrence County. (R. 188). Lawrence County was never served with a copy of the Complaint; consequently, Lawrence County had no knowledge that suit had been undertaken. The filing of a Notice of Claim does not automatically lead to the filing of a Complaint. *See Ralph Walker, Inc.*, 926 So.2d at 895-96 (where the Supreme Court held that notice ***must*** be given within 120 days of the filing of the complaint). *See also Bedford*, 946 So.2d at 345.

Additionally, the Court of Appeals in *Mieger* addressed Miss. Rule Civ. P. 15(c), but the majority failed to also take into consideration the expiration of the statute of limitations. As discussed previously, in this situation, the one year statute of limitations expired on November 28, 2007 (or at the very latest, February 26, 2008). The Supreme Court has determined that when an amended complaint is filed after the statute of limitations has run, there can be no suit against a newly named defendant. *Curry*, 832 So.2d at 511. Further, according to the Supreme Court, "courts of this state have no power to extend statutes of limitations beyond their terms." *Long*, 969 So.2d at 44; *Shewbrooks*, 529 So.2d at 564. It logically follows that even if this Court should determine that the elements of Rule 15(c) have been met by the Plaintiff, the one year statute of limitations still serves as a bar to the addition of a new defendant.

Without waiver of its arguments that the Lawrence County Sheriff's Department is not a legal

entity capable of being sued, and without waiver of its course and scope defenses, the following additional arguments, including those premised upon the exemptions of the Mississippi Tort Claims Act (Miss. Code Ann. § 11-46-9), are set forth hereafter.

B. WHETHER THE TRIAL COURT ERRED IN FINDING THAT THE PLAINTIFF'S NOTICE OF CLAIM LETTER FAILED TO COMPLY WITH MISS. CODE ANN. §11-46-11.

In bringing a claim pursuant to the Mississippi Tort Claims Act, according to Miss. Code Ann. § 11-46-11(2) (Rev.2002), a notice of claim must contain "a short and plain statement of the facts upon which the claim is based," including the circumstances that brought about the injury, the extent of the injury, the time and place the injury occurred, the names of the persons involved, the amount of money damages sought, the residence of the person making the claim at the time of the injury, and the claimant's residence at the time of filing the notice. *Id.* At the time this action was instituted, "the failure to provide any information regarding even one of the categories described in section 11-46-11(2) prevent[ed] a finding of 'substantial compliance.'" *Suddith v. University of Southern Mississippi*, 977 So.2d 1158, 1178 (Miss. 2007) (quoting *S. Cent. Reg'l Med. Ctr.* v. *Guffy*, 930 So.2d 1252, 1258 (Miss. 2006). The Supreme Court's holding in *Lee v. Memorial Hosp. at Gulfport*, 2008 WL 5174311 (Miss.) has modified this standard. Substantial compliance with the MTCA is still required, but the determination of what constitutes substantial compliance is a legal, fact-sensitive determination. *Id.* at *4 (citing *Carr v. Town of Shubuta*, 733 So.2d 261, 263 (Miss. 1999).

The Notice provided by the Appellant is not in substantial compliance with the statute as discussed in *Lee*. No description of the circumstances surrounding the alleged injury is contained in the Notice, the extent of Melton's injury/ies are not give, no residential address is given and the names of all persons involved has been omitted. The purpose of the notice of claim is to "inform[]

the municipality of the claimant's intent to make a claim" and a substantially compliant notice should "contain[] sufficient information which reasonabl[y] affords the municipality an opportunity to investigate the claim." *Parker v. Harrison County Board of Supervisors*, 987 So.2d 435, 439 (Miss. 2008) (internal citations omitted). In *Lee*, the notice of claim lacked information as to the persons involved in the complained of incident and Lee's address at the time of the incident. *Lee*, supra at *4. The Court held that Lee could not fully comply with the statute because she did not know the names of the persons who cared for her when the injury occurred, she did, however, fully describe the circumstances which brought about her injuries and the exact nature of her injuries. *Id.* *See also Webster v. D'Iberville City Council* 2009 WL 921143, *2 (Miss.App.) (upholding summary judgment for the City where Webster's notice of claim failed to include the extent of the injury suffered, the names of all persons involved, the monetary damages sought and plaintiff's residential address). At the time he filed his Notice of Claim, the Appellant knew the names of the persons involved in his arrest, as well as the circumstances giving rise to any injuries, his address and the specific nature of any injuries. In the current situation, Melton left out information, which was known to him, which was critical to any pre-complaint investigation regarding his allegations. The Lawrence County Sheriff's Department maintains that Melton's omission of the information required by Miss. Code Ann. § 11-46-11(2) causes the Appellant's Notice of Claim to be fatally deficient and dismissal of the purported claims therein is appropriate pursuant to *Lee* and *Webster, supra*, as was earlier determined by the trial court.

C. WHETHER THE TRIAL COURT ERRED IN FINDING THAT THE LAWRENCE COUNTY SHERIFF'S DEPARTMENT IS ENTITLED TO IMMUNITY PURSUANT TO THE MISSISSIPPI TORT CLAIMS ACT.

In this situation, the Mississippi Tort Claims Act provides the exclusive remedy against a governmental entity and its employees for acts or omissions which give rise to a suit. *Estate of*

Williams v. City of Jackson, 844 So.2d 1161, 1164 (Miss. 2003). Miss. Code Ann. §11-46-9 states that a governmental entity and its employees acting within the course and scope of their employment shall not be liable for any claim based upon an act or omission enumerated therein. "The purpose of Miss. Code Ann. § 11-46-9 is to 'protect law enforcement personnel from lawsuits arising out of the performance of their duties in law enforcement, with respect to the alleged victim.' " *Maldonado v. Kelly,* 768 So.2d 906, 909 (Miss. 2000) (quoting *City of Jackson v. Perry,* 764 So.2d 373, 376 (Miss. 2000)). If an act or omission in question falls under any subsection of Miss. Code Ann. §11-46-9, then the governmental entity, in this case the Lawrence County Sheriff's Department, is exempt from liability. In addition, the Mississippi Court of Appeals has held that "[i]f any subpart of Mississippi Code Annotated § 11-46-9(1) applies, immunity exists." *Fair v. Town of Friars Point*, 930 So.2d 467, 471 (Miss.App. 2006). *See also Love v. Sunflower County Sheriff's Dep't*, 860 So.2d 797, 801 (Miss. 2003) (in which this Court ruled that immunity pursuant to any section of §11-46-9(1) acts as a bar to an exemption of liability under any other section of §11-46-9(1)). In keeping with caselaw construing this statute, there can be no liability for the Lawrence County Sheriff's Department pursuant to Miss. Code Ann. § 11-46-9. In this instance, as correctly determined by the lower court, multiple immunities under the MTCA apply to bar the Appellant's ability to recover.

1. Appellant's Claims are Barred by the Police Protection Exemption of the MTCA

The actions of the Deputy Sanders, in his capacity as an employee of the Lawrence County Sheriff's Department, are covered by the police protection exemption - Miss. Code Ann. § 11-46-9(1)(c) provides as follows:

> A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim . . . [a]rising 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[.]

The claims asserted by Craig Melton against the Lawrence County Sheriff's Department should be barred by the above-cited law enforcement exemption of Mississippi's Tort Claims Act. An investigation of the possible theft of a car and subsequent interrogation and/or arrest of a suspect by a sheriff's deputy is considered a form of police protection. *See* Miss. Code Ann. §§ 19-25-67 and 19-25-19. *See also Hayes v. Univ. of Southern Miss.*, 952 So.2d 261, 265 (Miss.App. 2006) (holding that even the training of police officers falls under the umbrella of police protection). Thus Melton's claim should be barred by sovereign immunity as he did not and cannot establish that this defendant acted with reckless disregard for his safety.

The police protection exemption provides immunity for law enforcement officers, even in the absence of criminal activity by the victim (i.e. the Appellant), unless the officer acted with reckless disregard to the safety and well-being of the victim. *Chapman v. City of Quitman*, 954 So.2d 468, 474 (Miss.App. 2007) (citing *Mississippi Department of Public Safety v. Durn,* 861 So.2d 990, 994 (Miss. 2003). Thus, to even theoretically challenge the Appellee's sovereign immunity under sub-section 11-46-9(c), the Melton must, but in this instance cannot, prove that the Lawrence County Sheriff's Department acted with reckless disregard to his safety and well-being. Miss. Code Ann. § 11-46-9(1)(c). Reckless disregard "usually is accompanied by a conscious indifference to consequences, amounting almost to a willingness that harm should follow." *Reynolds v. County of Wilkinson, State of Miss.*, 936 So.2d 395, 398 (Miss.App. 2006) (quoting *Maye v. Pearl River County,* 758 So.2d 391, 394 (Miss.1999)). In the present case, the Appellant cannot adduce evidence of intent to harm other than conclusory statements in the Complaint referring to "atrocious and utterly intolerable" acts of the Lawrence County Sheriff's Department. Melton has submitted

absolutely no evidence of the sheriff's department's intent or motivation to cause him harm. As a matter of law, Miss. Code Ann. §§ 19-25-67 and 19-25-19 provided for the Appellee's actions, and those actions are exempt from any waiver of sovereign immunity pursuant to Miss. Code Ann. § 11-46-9. The Appellant did not and cannot provide sufficient evidence to support his claims, and no trial is necessary. In keeping with the holding of at the trial level, the Lawrence County Sheriff's Department is entitled to judgment as a matter of law on Appellant's claims pursuant to the police protection exemption from the waiver of sovereign immunity.

2. Appellant's Claims are Barred by the Discretionary Function Exemption of the MTCA

The actions of Deputy Sanders, and thus the Lawrence County Sheriff's Department, should also be covered under Miss. Code Ann. § 11-46-9(1)(d) which provides for governmental immunity in instances in which a governmental entity or employee thereof exercises discretion in the performance of his job. The Mississippi Tort Claims Act provides that "[a] governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim . . . [b]ased upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused[.]" Miss. Code Ann. § 11-46-9(1)(d). *See Barrett v. Miller*, 599 So.2d at 567 (holding that the determination of probable cause is a discretionary function). *See also Newton v. Black*, 133 F.3d at 307.

The plain language of Miss. Code Ann. § 11-46-9(1)(d) states that immunity exists even if a governmental entity abuses its discretion. The Mississippi Supreme Court, at one point, held that the governmental entity had a duty to use ordinary care. *See L.W. v. McComb Separate Municipal School District*, 754 So.2d 1136, 1141-42 (Miss. 1999). Later, in *Collins v. Tallahatchie County*,

876 So.2d 284, 289 (Miss. 2004), the Court expressly rejected the earlier precedent and stated that § 11-46-9(1)(d) does not impose or carry with it a duty of ordinary care. Therefore, even if the Appellee allegedly failed to use ordinary care in its decision to arrest Craig Melton, it is protected from liability by the discretionary function exemption of the Mississippi Tort Claims Act. Thus, even taking the Appellant's allegations as true, the Lawrence County Sheriff's Department is entitled to summary judgment, and the lower court's ruling should be upheld.

3. Appellant's Claims are Barred by the Inmate Exemption of the MTCA

Appellant's claims against the Lawrence County Sheriff's Department are not recoverable pursuant to the provisions of the Sovereign Immunity Act, codified at Miss. Code Ann. § 11-46-1 *et seq.* and the exemptions to the waiver of sovereign immunity set forth in Miss. Code Ann. § 11-46-9(1)(m). Miss. Code Ann §11-46-9(1)(m) provides an exemption from the waiver of immunity for Appellee herein for claims of

> ***of any claimant who at the time the claim arises is an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution, regardless of whether such claimant is or is not an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution when the claim is filed.***

Miss. Code Ann. §11-46-9(1)(m) (Supp. 2000 (emphasis added). In *Sparks v. Kim*, 701 So.2d 1113 (Miss. 1997), the Mississippi Supreme Court held that this exception to the waiver of sovereign immunity "effectively cuts off a prison inmate's right to bring a negligence . . . action against the State or its employees . . ." *Id.* at 1114. In order to determine whether §11-46-9(1)(m) applies, it must only be established that the claimant is an inmate. This fact, in the matter *sub judice* is beyond rational dispute. Melton, having been arrested and booked into the Lawrence County Jail was an inmate (detainee) when these claims arose for purposes of the Tort Claims Act.

The courts have, through their rulings, given some parameters helping to define who qualifies

as an inmate. In *Liggans v. Coahoma County Sheriff's Dep't*, this Court held that the exemption set forth in Miss. Code Ann. §11-46-9(1)(m) applied to an inmate who had been charged with an offense, but not convicted. *Id.*, 823 So.2d 1152, 1155 (Miss. 2002). In finding that the inmate was barred from making a claim pursuant to §11-46-9(1)(m), no distinction was made between a convicted inmate and a non-convicted inmate. *Id.* More recently in *Love v. Sunflower County Sheriff's Dep't*, a detainee, who was arrested but never charged, was in the process of bonding out of jail when he was injured by another inmate. *Id.*, 860 So.2d at 799. This Court ruled that this detainee was to be considered an inmate for purposes of Miss. Code Ann. §11-46-9(1)(m). *Id.* at 801. Melton's clear status as an inmate was appropriately interpreted by the lower court to act as a bar to any claims brought against the Lawrence County Sheriff's Department under the MTCA.

4. The Lawrence County Sheriff's Department Cannot be Held Responsible for Acts (if any) of Deputy Sanders Which Were Outside the Course and Scope of His Employment

In the subject case, the Appellant states that the complained of actions by Deputy David Sanders were undertaken "in the course and scope of his employment with the Lawrence County Sheriff's Department . . ." ***However, the torts complained of – false arrest, false imprisonment and intentional infliction of emotional distress all require malice as a component thereof.*** *Hudson v. Palmer*, 977 So.2d at 382; *Franklin Collection Service, Inc., v. Kyle*, 955 So.2d 284, 290 (Miss. 2007). In instances where an employee's conduct constituted fraud, malice, libel, slander, defamation, or any criminal offense other than a traffic violation, such conduct will not be considered as action in the course and scope of employment and the governmental body cannot be liable. *See* Miss. Code Ann. § 11-46-5(2) (Rev.2002). *See also Dunston v. Mississippi Dept. of Marine Resources*, 892 So.2d 837, 841 (Miss.App. 2005). In addition, Miss. Code Ann. § 11-46-7(2) states:

> An employee may be joined in an action against a governmental entity in a representative capacity if the act or omission complained of is one for which the governmental entity may be liable, but no employee shall be held personally liable for acts or omissions occurring within the course and scope of the employee's duties. *For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense.*

(emphasis added). Thus, based on Miss. Code Ann. § 11-46-5(2), § 11-46-7(2) and the claims as alleged in the Complaint, in the event there was malicious conduct on the part of Deputy Sanders or any other employee of the sheriff's department, there can be no recovery by Appellant against Appellee, the Lawrence County Sheriff's Department.

D. WHETHER THE TRIAL COURT ERRED IN FINDING THAT THERE WAS PROBABLE CAUSE FOR THE ARREST OF THE PLAINTIFF.

"[T]o sustain a claim of false arrest a plaintiff must show that the defendant caused him to be arrested falsely, unlawfully, maliciously, and without probable cause." *Hudson*, 977 So.2d at 382. However, where probable cause exists for an arrest, a suit for false arrest will not lie against a law enforcement officer. *Id*; *Van v. Grand Casinos of Miss., Inc.*, 767 So.2d 1014, 1019-20 (Miss. 2000). *See also Mayweather v. Isle of Capri Casino, Inc.*, 996 So.2d 136, 141 (Miss.App. 2008). This is true even when the defendant is subsequently tried and found "not guilty." *Page v. Wiggins*, 595 So.2d 1291, 1294 (Miss. 1992). With regard to any allegation of false arrest/false imprisonment, the Appellant bears the burden of proof to establish that the arrest or detainment, was in fact and law, unlawful. *See Croft v. Grand Casino Tunica, Inc.*, 910 So.2d 66, 75-76 (Miss.App. 2005); *Nassar v. Concordia Rod and Gun Club, Inc.*, 682 So.2d 1035, 1039 (Miss. 1996). Here, the Appellant, Craig Melton, cannot establish that the brief detainment in the Lawrence County Jail was devoid of

probable cause or that it was performed falsely or unlawfully or with malice or reckless disregard. See *City of Mound Bayou v. Johnson*, 562 So.2d at 1218. "[I]f the plaintiff's arrest is supported by probable cause the claim [for false arrest] must fail." *Hudson, supra* (citing *Croft*, 910 So.2d at 74).

Appellant argues that he was arrested, held and questioned without probable cause. "[A]n arrest without a warrant is valid if the arresting officer has 'probable cause to believe a felony has been committed, and probable cause to believe the suspect to be arrested committed the felony.'" *Qualls v. State,* 947 So.2d 365, 371 (Miss.App. 2007) (quoting *Abram v. State,* 606 So.2d 1015, 1025-26 (Miss.1992)). When discussing probable cause in the context of a warrantless arrest, the Mississippi Supreme Court has stated that "[t]he officer involved is charged to make a practical, commonsense decision whether, given the totality of the circumstances, there is a fair probability that the person proposed to be arrested or searched is involved in substantial criminal activity." *Bell v. State,* 963 So.2d 1124, 1132 (Miss. 2007) (quoting *Alexander v. State,* 503 So.2d 235, 239 (Miss.1987)). *See also Phinizee v. State*, 983 So.2d 322, 328 (Miss.App. 2007).

The Lawrence County Sheriff's Department did not seek out the Appellant with malicious intent, but acted in good faith based on the facts/allegations of the Co-Defendant, Patsy Smith. Whereas Smith may not have actually used the word "stolen" when she called Deputy Sanders about her car, she clearly told him she was afraid her car was not going to be returned to her because she had seen Melton riding around in it after he had told her it would remain parked. (R. 135, 148, 150). When Smith called Deputy Sanders for assistance, Melton no longer had permission to possess the vehicle as Smith had requested that it be returned to her. (R. 149). At the time Melton was taken into custody, Deputy Sanders believed he may have committed a felony, or have been in the process thereof, as defined in Miss. Code Ann. § 97-17-42(1), by stealing Smith's vehicle. (R. 141-43). The fact that it was later determined that Melton did not, in fact, commit a felony does not negate the

probable cause relied upon by Deputy Sanders. See *Loveless v. City of Booneville*, 972 So.2d 723, 731-32 (Miss.App. 2007) (citing *Harrison v. State,* 800 So.2d 1134, 1138-39 (Miss. 2001) (holding that even if the officer's belief that that the Plaintiff was violating a noise ordinance was based on an erroneous conclusion of law or fact, such mistake does not necessarily render the probable cause defective, as long as the officer's "probable cause [was] based on good faith and a reasonable basis then it is valid.")).

Deputy Sanders had the requisite probable cause prior to taking the Appellant into custody. Craig Melton was not falsely arrested or imprisoned and summary judgment should be granted for Appellee, the Lawrence County Sheriff's Department on this issue.

E. WHETHER THE TRIAL COURT ERRED IN FINDING THAT THE ACTS COMPLAINED OF BY THE PLAINTIFF DO NOT RISE TO THE LEVEL OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

To the extent the Appellant alleges intentional infliction of emotional distress, this claim is not supported by law or the factual record. "Meeting the requisites of a claim for intentional infliction of emotional distress is a tall order in Mississippi." *Speed v. Scott,* 787 So.2d 626, 630 (Miss. 2001). This Court has held,

> In order to prevail in a claim for intentional infliction of emotional distress, the alleged conduct must be so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency. It must be regarded as atrocious and utterly intolerable in a civilized community. *Brown v. Inter-City Federal Bank for Saving,* 738 So.2d 262, 264 (Miss.Ct.App.1999). Liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppression, or other trivialities. *Id.* It is the nature of the act itself as opposed to the seriousness of the consequences which gives impetus to legal redress. *Id.*

Diamondhead Country Club, 820 So.2d at 684. "The standard is whether the defendant's behavior is malicious, intentional, willful, wanton, grossly careless, indifferent or reckless." *Franklin Collection*

Service, Inc., v. Kyle, 955 So.2d at 290 (quoting *Leaf River Forest Prods., Inc. v. Ferguson*, 662 So.2d 648, 659 (Miss.1995)). The acts complained of by Melton in this matter simply do not rise to the level of outrageous or atrocious conduct required to establish a claim for intentional infliction of emotional distress. Deputy Sanders made the determination based on the facts presented to him that probable cause existed to interrogate/arrest the Appellant. (R. 134-135). Then, without malice or the intent to cause harm, Deputy Sanders acted within the laws of the State of Mississippi as he proceeded to interrogate/arrest Melton. It was not until after the arrest that Melton's place of employment was contacted in an attempt to verify his story. (R. 239, 244).[2] This is hardly conduct that is regarded as atrocious and utterly intolerable in a civilized community. *See Richard v. Supervalu, Inc.*, 974 So.2d 944, 951 (Miss.App. 2008) (holding that there can be no recovery for intentional infliction of emotional distress where probable cause for an arrest exists). The fact that Melton was inconvenienced and annoyed as a result of being in custody for only a few hours does not rise to the level necessary for legal redress to be proper. *See Brown v. Inter-City Federal Bank for Saving*, 738 So.2d 262, 264 (Miss.App. 1999). There is no further allegation that the Lawrence County Sheriff's Department engaged in any conduct sufficient for an imposition of liability.

The instant circumstances can be readily distinguished from *Foster v. Noel*, upon which Plaintiff relies. In *Foster*, the investigating officer was found to have acted intentionally and with reckless disregard when he obtained an arrest warrant for Noel (a female) despite the fact that he had been plainly told that two men were the shoplifters. *Foster*, 715 So.2d 174, 179 (Miss. 1998). In upholding the damages award, the Supreme Court found that (1) the fact that Officer Luckett acted with "flagrant disregard" to the information given to him about the shoplifters; (2) the fact that the plaintiff, Noel, lost consciousness and had to be taken to the hospital; and (3) the fact that Noel

2 Sanders indicated that the service manager was called "after we got here." In this instance, "here" was the

provided proof that several people had read about the incident in the newspaper and questioned her as to its accuracy, collectively provided a basis for the damages awarded. *Id.* at 183-84. In the current case, Melton has not proved that the sheriff's department acted intentionally or with reckless disregard, nor has he alleged or shown any other grounds which would allow him to recover damages in this instance.

In *Robinson v. Hill City Oil Co., Inc.*, this Court recently upheld the trial court's decision not to award the plaintiff, who was wrongfully imprisoned for 110 days, damages for his claim of intentional infliction of emotional distress where there was no correlation between the intentional actions of the defendants and the plaintiff's claimed injury. *Id.*, 2008 WL 2894668, *6 (Miss.App.). *See also Lancaster v. Stevens*, 961 So.2d 768, 773 (Miss.App. 2007) (holding that "a citizen's encounter with legal process is a source of great anxiety," but the only damages recoverable for emotional distress are those which do not directly stem from the involvement with the legal process itself. *Id.* (citing *Singleton v. Stegall*, 580 So.2d 1212, 1247 (Miss. 1991)). *See also Blake v. Wilson*, 962 So.2d 705, 714-15 (Miss.App. 2007) (holding that where Blake produced no evidence "that the officers' actions were outrageous or evoked revulsion," summary judgment for the defendants was proper on the issue of intentional infliction of emotional distress). *See also Morgan v. Greenwaldt*, 786 So.2d 1037, 1044 (Miss. 2001) (holding that the simple fact that plaintiff did not like the actions of the hospital staff was not sufficient to give rise to damages for her claim of intentional infliction of emotional distress where plaintiff could not shoe that the staff intentionally and maliciously tried to harm her).

Appellant's allegations are *per se* insufficient to establish intentional infliction of emotional distress. In the present case, Melton cannot recover damages for intentional infliction of emotional

---

Lawrence County Sheriff's Department as that is where Deputy Sanders' deposition was taken.

distress as he has not met the burden of proving that Deputy Sanders acted with reckless disregard to his rights. Deputy Sanders had probable cause to arrest Craig Melton as he was suspected of committing a felony (see section "D" *supra*). The record establishes that the Lawrence County Sheriff's Department did not act in an atrocious or outrageous manner. The Court of Appeals has held that in a situation in which there was probable cause for the arrest of the plaintiff and the arrest was the only basis for plaintiff's claim of intentional infliction of emotional distress, there could be no liability imposed. *Croft v. Grand Casino Tunica, Inc.*, 910 So.2d at 75. The Appellant cannot establish that any conduct of the Appellee on July 30 or 31, 2006, constituted outrageous or atrocious behavior, and therefore, judgment as a matter of law in favor of the Lawrence County Sheriff's Department on the Appellant's claim of intentional infliction of emotional distress should be upheld.

F. WHETHER THE TRIAL COURT ERRED IN FINDING THAT SUMMARY JUDGMENT IS APPROPRIATE ON ALL ISSUES

The Appellant states that the lower court found "that while there is no single issue that supports summary judgment in this matter, the cumulative weight of the multiple issues raised convinces the Court that Summary judgment is appropriate." While it is true that the Order says this, the trial court judge, did not, in fact, make any finding in this regard. (R. 285-86). The Order was prepared the counsel for the Appellant. (R. 286). However, no matter what the language of the order, a *de novo* review of the issues presented in this case clearly shows that summary judgment is appropriate on all issues.

VI. CONCLUSION

The appellant has failed to prove that he is entitled to relief from the Order and Judgment of Dismissal executed by this Court on February 16, 2006. The appellant has not set forth any grounds through which grant of summary judgment may be set aside and is only attempting to relitigate a matter that has already been judicially settled in direct conformity with Mississippi jurisprudence.

WHEREFORE, PREMISES CONSIDERED, Defendant, Lawrence County Sheriff's Department respectfully requests that Appellant's appeal be denied and that the lower court's award granting Appellee's Motion for Summary Judgment be affirmed.

RESPECTFULLY SUBMITTED, this the 29th day of April, 2009.

LAWRENCE COUNTY SHERIFF'S DEPARTMENT,
Defendant

By: Its Attorneys

PAGE, KRUGER & HOLLAND, P.A.

J. LAWSON HESTER
JACQUELINE H. RAY

J. LAWSON HESTER [MSB# [redacted]
JACQUELINE H. RAY [MSB# [redacted]]
PAGE, KRUGER, & HOLLAND, P.A.
Post Office Box 1163
Jackson, Mississippi 39215-1163
Telephone #: (601) 420-0333
Facsimile #: (601) 420-0033
ATTORNEYS FOR APPELLEE

CERTIFICATE OF SERVICE

I, Jacqueline H. Ray, do hereby certify that I have this day served via U. S. Mail a true and correct copy of the above and foregoing to the following:

Hon. Prentiss G. Harrell
Lawrence County Circuit Court Judge
Post Office Box 488
Purvis, MS 39475

R. Ayers Haxton, Esq.
Post Office Box 2929
Jackson, MS 39207

April D. Taylor, Esq.
Post Office Box 1526
Prentiss, MS 39474

This, the 29th day of April, 2009.

JACQUELINE H. RAY