

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

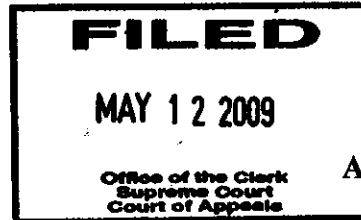
**CASE NO.2008-CA-01602**

**AARON CRAIG MELTON**

**APPELLANT**

**VS.**

**LAWRENCE COUNTY SHERIFF'S  
DEPARTMENT**



**APPELLEE**

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**REPLY BRIEF OF APPELLANT AARON CRAIG MELTON**

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**Respectfully Submitted,**

**R. AYRES HAXTON (MSB # [REDACTED])  
R. AYRES HAXTON, ATTORNEY at LAW, PA  
226 N. President Street  
Post Office Box 2929  
Jackson, Mississippi, 39207  
Telephone: (601) 714-3008  
Facsimile: (601) 767-5120**

**ATTORNEY FOR APPELLANT**

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

AARON CRAIG MELTON

APPELLANT

v.

NO. 2008-CA-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 Court may evaluate possible disqualification or recusal.

1. Plaintiff/Appellant Aaron Craig Melton;
2. Defendant/Appellee Lawrence County Sheriff's Department
3. Defendant ,Patsy R. Smith  
44 Lee Hedgpeth Road  
Monticello, MS 39654
4. Lawrence County Deputy Sheriff David Sanders  
Lawrence County Sheriff's Dept  
1565 F.E. Sellers Hwy.  
Monticello, MS 39654
5. Honorable Prentiss Harrell  
P.O. Box 488  
Purvis, MS 39475
6. R. Ayres Haxton  
P.O. Box 2929  
Jackson, MS 39207
7. Jacqueline H. Ray  
Page, Kruger & Holland, P.A.  
P.O. Box 1163  
Jackson, Mississippi 39215-1163
8. April D. Taylor  
P.O. Box 1526  
Prentiss, MS 39474

  
R. Ayres Haxton

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## **SUMMARY OF THE ARGUMENT**

The plaintiff/appellant, Craig Melton, contends that the trial court judge was correct in finding that no single issue raised by the defendant/appellee supports summary judgment in this lawsuit, but disagrees that those same issues when considered cumulatively outweigh the courts findings.

The Defendant has repeatedly misstated the findings of the trial court. The Plaintiff calls this Courts attention to those misstatements.

While the appellant admits its mistake in failing to name Lawrence County as a defendant, the Plaintiff relies on recent case law clarifying MRCP 15(c) to support its motion to amend its complaint and remedy its mistake.

The Plaintiff substantially complied with § 11-46-11 of the Mississippi Tort Claims Act and he certainly provided the information necessary for the Defendant to carry out a pre-complaint investigation.

The Defendant has failed to address the two prong test to determine Discretionary Function Immunity. Deputy Sander's decision to arrest Craig Melton does not pass the second prong, public policy function test, required by the Mississippi Supreme Court.

The actions of Lawrence County Sheriff's Deputy, David Sanders represent reckless disregard for the safety and well-being of Craig Melton, an admittedly innocent person with no previous criminal record and waive a defense of police protection immunity.

Inmate Immunity does not apply here because the Plaintiff was not an inmate when the tortuous behavior of the defendant occurred. The Lawrence County Sheriff's

Department is responsible for Deputy David Sanders' reckless disregard for the safety and well-being of Craig Melton.

Sworn testimony of the defendants demonstrates that Deputy Sanders did not have probable cause to arrest Craig Melton. Probable cause for an officer to arrest is an issue of fact.

Sworn testimony of the plaintiff and defendants demonstrate that Deputy Sanders' conduct rose to the level of intentional infliction of emotional distress. The Plaintiff has shown through sworn testimony a genuine issue of material fact exists regarding the tort of intentional infliction of emotional distress.

No law has been cited to support the "cumulative weight" theory of summary judgment.

## ARGUMENT

### **I. THE TRIAL COURT FOUND THAT NO SINGLE ISSUE RAISED BY THE DEFENDANT SUPPORTS SUMMARY JUDGMENT**

The Defendant sets out 6 false premises in its "Statement of the Issues" and reiterates those statements in its "ARGUMENT". The letter to Plaintiff's counsel from the official court reporter dated September 28, 2008 is part of the record in this appeal. (R at 307). That letter states that on the day of the hearing on the Defendant's motion for Summary Judgment and the Plaintiff's Motion to Amend his Complaint, there were no oral arguments or statements on the record made by any party to the lawsuit nor by Judge Prentiss Harrell. (R at 307). On September 2, 2008, Judge Harrell entered his Order. (R at 285 and 286). That Order enumerates eight issues raised by the Defendant, Lawrence County Sheriff's Department, in its brief submitted to the Court and states the following: "the court **finds** 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." (emphasis added). (R at 285 and 286). The Court then grants summary judgment. However, in its brief, "Statements" designated A through E, the Defendant makes reference to five nonexistent findings. In fact, the Court did not find that **A**. The Lawrence County Sheriff's Department is not a legal entity capable of being sued. The Court did not find that **B**. The Plaintiff's Notice of Claim Letter failed to comply with Miss Code Ann. §11-46-11. The Court did not find that **C**. The Lawrence County Sheriff's Department is entitled to immunity pursuant to the Mississippi Tort Claims Act. The Court did not find that **D**. There was probable cause for the arrest of the Plaintiff. And, the Court did not find that **E**. The acts complained of by the Plaintiff do not rise to the level of intentional infliction of emotional distress. In addition to the

foregoing misrepresentations, the Defendant, in its heading **A.** states that the Court did not allow the Plaintiff to amend his complaint pursuant to M.R.C.P. 15 (c). In fact the Court did not address the Plaintiff's Motion to Amend, other than to say in its order that along with all the other issues raised by the Defendant, that issue does not as a single issue support summary judgment. Finally, in the first sentence under heading **F.** the Defendant quotes the following language from Judge Harrell's order "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." The Defendant leaves out the Judge's first three words in that sentence which are "the court finds". The Defendant goes on to say in Section F of its brief; "the trial court judge, did not, in fact, make" the finding that is in his Order. The Defendant makes no explanation for this mysterious erroneous statement. Of course, as Plaintiff stated in his initial brief, this Court reviews the application of the Mississippi Tort Claims Act as well as a grant of summary judgment de novo. The Plaintiff could not leave this Court with the impression that he agreed with the Defendant's statements regarding Judge Harrell's findings.

**II. THE TRIAL COURT MADE NO FINDING THAT THE LAWRENCE COUNTY SHERIFF'S DEPARTMENT IS NOT A LEGAL ENTITY CAPABLE OF BEING SUED AND IT DID NOT RULE ON THE PLAINTIFF'S MOTION 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 Plaintiff concedes that under current Mississippi case law rather than styling the Complaint:



LAWRENCE COUNTY SHERIFF'S DEPARTMENT  
AND PATSY R. SMITH

DEFENDANTS

He should have styled the Complaint:

LAWRENCE COUNTY, d/b/a LAWRENCE COUNTY  
SHERIFF'S DEPARTMENT AND PATSY R. SMITH

DEFENDANTS

The Plaintiff was made aware of his mistake when the Defendant first pointed it out in its Motion for Summary Judgment filed June 2, 2008. (R at 105). The Plaintiff made a diligent effort in addressing his mistake by filing and briefing his *Motion For Leave to Amend* eight days later on June 10, 2008. He cited, *Mieger v. Pearl River County*, 2006-CA-01379-COA (Miss. App. 1-8-2008), a case virtually identical to the case at bar. The Plaintiff has addressed *Mieger* in his Brief, as has the Defendant and will not reiterate his defense of *Meiger* except to point out that the Defendant in its brief arguing that this Court "ran afoul of existing Supreme Court precedent" stated that "the majority failed also to take into consideration the expiration of the statute of limitations." This statement strains credulity. It suggests that in making its holding in *Meiger*, the Majority of this Court did not read and consider the dissent in *Mieger*, which included three paragraphs on the statute of limitations and cited the same case, *Curry v. Turner*, 832 So.2d 508, which was cited by the Defendant here. As of the writing of this brief the defendant in *Meiger* was denied a rehearing and this Court's holding is good law. Like *Mieger* all of the Rule 15(c) prerequisites for relation back were met and since the Amended Complaint can relate back to the original complaint it is not barred by the statute of limitations.

**III. THE TRIAL COURT MADE NO FINDING THAT THE PLAINTIFF'S  
NOTICE OF CLAIM LETTER FAILED TO COMPLY WITH MISS CODE  
ANN, § 11-46-11.**

The defendant states in its brief that "Melton left out information, which was known to him, which was critical to any pre-complaint investigation regarding his allegations." In fact, Deputy Sanders, who was named in the notice letter, went to the Lawrence County residence that was named in the notice letter, arrested Craig Melton in his Lawrence County residence, named in the notice letter and haled them to the Lawrence County Jail which was named in the notice letter, where Craig Melton was made to strip and subsequently jailed which was described in the notice letter. (R. at 224). It is hard to ascertain what additional critical pre-complaint information could be needed to investigate the allegations. In addition to the foregoing information, like the notice letter in *Lee v. Memorial Hospital At Gulfport*, 2007-CA-01762-SCT (Miss. 12-11-2008), the notice letter here stated the amount of monetary damages the Plaintiff would seek, in this case \$250,000. (R. at 224). *Id.* at ¶ 12. Those damages are sought as a result of Melton's unlawful arrest, strip search, and overnight incarceration as stated in the notice letter. (R. at 224). The name of the Plaintiff, the date of the incarceration and the name of the arresting Officer identifies the incident so that the Sheriff's department could conduct a "review of the matter" as in *Lee*. (R. at 224). *Id.* Here, like *Lee*, the notice letter included his attorney's letterhead and in addition to the information provided in *Lee*, the Melton notice letter provided his county of residence at the time the claim was made. (R. at 224). *Id.* The Plaintiff attempted to substantially comply as he understood the law to require in January of 2007 and he certainly provided the information necessary for the Defendant to carry out a pre-complaint investigation.

**IV. THE TRIAL COURT MADE NO FINDING THAT THE LAWRENCE COUNTY SHERIFF'S DEPARTMENT IS ENTITLED TO IMMUNITY PURSUANT TO THE MISSISSIPPI TORT CLAIMS ACT.**

### **A. Police Protection Immunity**

Deputy David Sanders entered the home of Craig Melton, arrested him, haled him to the Lawrence County Jail where he was made to strip naked, dress in prison clothing, and held until the following day.( R at 245 ln. 3, 153 ln. 2. and 155 ln.19). No affidavit had been sworn against Craig Melton. No warrant had been issued for his arrest. (R. at 138). No determination of probable cause had been made by a judge. (R. at 138). And no crime was in progress. (R. at 138). Deputy Sanders was repeatedly told by the owner of the vehicle and Melton's supervisor that Craig Melton had permission to have possession of the automobile in question and that no crime had been committed. R. at 37,232,235,237,and 238) As stated in the Plaintiff's initial brief, the acts of David Sanders represent reckless disregard for the safety and well-being of Craig Melton an admittedly innocent person with no previous criminal record who had recently undergone heart surgery. (R. at 158 ln.21).

### **B. Discretionary Function Immunity**

The Defendant has failed to address the two prong test to determine Discretionary Function Immunity. As discussed in the Plaintiff's initial brief, Deputy Sanders' decision to arrest Craig Melton does not pass the public policy function test as required by the Mississippi Supreme Court in *Jones v. Miss. Dep't of Transp* , 744 So. 2d 256, and *Suddith v. Southern Miss.*, 977 So. 2d 1158.

### **C. The Defendant is not protected by Inmate Immunity.**

The Plaintiff has addressed the issue of inmate immunity in its initial brief.

**D. The Lawrence County Sheriff's Department is responsible for Deputy David Sanders reckless disregard for the safety and well-being of Craig Melton.**

The Plaintiff has addressed this issue above in sub paragraph A. and in its initial brief.

**V. THE TRIAL COURT MADE NO FINDING THAT THERE WAS PROBABLE CAUSE FOR THE ARREST OF THE PLAINTIFF.**

The Fifth Circuit Court of Appeals stated in *Mesa v. Prejean*, 543 F. 3d 264 (2008) “probable cause for her arrest – a fact question for the jury-” reiterating the fact that the determination of probable cause to make an arrest is a genuine issue of material fact. In *Mesa v. Prejean* a police officer’s arrest of a citizen was called into question as is Deputy Sanders here. The facts in the record as presented by the Plaintiff show an absence of probable cause. At best the existence of probable is a genuine issue of material fact as in *Prejean* and not subject to summary judgment.

**VI. THE TRIAL COURT MADE NO FINDING THAT THE ACTS COMPLAINED OF BY THE PLAINTIFF DO NOT RISE TO THE LEVEL OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.**

The Defendant cites *Robinson v. Hill City Oil Co., Inc.* 2007-CA-00320-COA ... In *Robinson*, a legal arrest was made based on the testimony of the victim of grand larceny which was recorded on a video camera. *id.* In *Robinson* a finding was made after a hearing on the facts of the case that the conduct of the Defendant did not rise to the level of intentional infliction of emotional distress. *Id.* The behavior of Deputy Sanders is a genuine issue of material fact. In the case at bar there has been no finding of fact by the trial judge. There has been no hearing on the actions of the defendant. Here there was no accusation by a victim that a crime had taken place and unlike *Robinson* here there was no finding of probable cause. Unlike *Robinson*, here, the Plaintiff was arrested with the full knowledge of the arresting officer that he had committed no crime. In its brief, the defendant describes a number of findings made by the Supreme Court of

Mississippi in its determination in *Foster v. Noel*, 715 So. 2d 174, based on issues of fact in that case. The Defendant apparently agrees that the determination of the tort of intentional infliction of emotional distress is a fact dependant determination. Here there is a genuine issue of material fact.

In *Robinson* at ¶ 26 , this court cited *Funderburk v. Johnson*, 935 So.2d 1084 saying: “the standard for a claim of intentional infliction of emotional distress is very high in Mississippi, **focusing specifically on the defendant’s conduct and not the plaintiff’s emotional condition.**” (emphasis added). When compared with *Foster v. Noel*, where the Court upheld a damage award, the conduct of the defendant here is more egregious. David Sanders didn’t misidentify the Plaintiff as was the case in *Foster*. He intentionally arrested Craig Melton for theft of Patsy Smith’s vehicle after being told by her repeatedly that the vehicle had not been stolen and that the Plaintiff had permission to have the vehicle in his possession and that no crime had been committed. Deputy Sanders has admitted having the foregoing information yet he insisted on having the Plaintiff strip searched and incarcerated over night. At any point after Deputy Sanders arrived at the home of Craig Melton he could have defused the situation by sending Patsy Smith home with her car. However, the Defendants, chose to wantonly and recklessly pursue an admittedly innocent man presumably to teach him a lesson.

The Plaintiff has produced sworn testimony of Deputy Sanders and co-defendant Patsy Smith that, viewed in the light most favorable to the non-moving party, shows that the Defendant has failed to demonstrate there is no issue of material fact regarding the Plaintiff’s claim of intentional infliction of emotional distress. However, even if this Court disagrees with the Trial Court’s finding that summary judgment is not supported

with regard to the single issue of intentional infliction of emotional distress, the claims of false arrest and false imprisonment remain to be litigated.

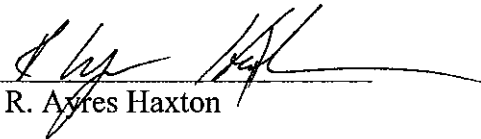
**VII. THE INDIVIDUAL ISSUES IN THIS CASE DO NOT AGREGATE TO SUPPORT AN ORDER OF SUMMARY JUDGMENT**

In its initial brief the Plaintiff stated that he could find no law to support the "cumulative weight of multiple issues" theory articulated by the trial court Judge. The Defendant has cited no law to support the cumulative weight theory of Summary Judgment.

**CONCLUSION**

For the forgoing reasons, Craig Melton asks this Court to reverse the judgment of the Circuit Court of Lawrence County.

Respectfully Submitted  
Craig Melton

By:   
R. Ayres Haxton

R. AYRES HAXTON (MSBN 1 [REDACTED])  
R. AYRES HAXTON, ATTORNEY AT LAW, PA  
Attorney for the Appellant  
Aaron Craig Melton  
P.O. Box 2929  
Jackson, MS 39207  
Telephone: 601-714-3008  
Facsimile: 601-767-5120

**CERTIFICATE OF SERVICE**

I, R. Ayres Haxton, do hereby certify that I have this day mailed or hand delivered a true and correct copy of the above and foregoing document to:

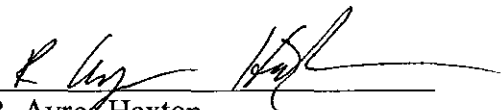
Mrs. Betty W. Sephton, Clerk  
P.O. Box 249  
Jackson, MS 39205

Jacqueline H. Ray, Esq.  
Page, Kruger & Holland, P.A.  
P.O. Box 1163  
Jackson, MS 39215-1163

April D. Taylor, Esq.  
P.O. Box 1526  
Prentiss, MS 39474

Hon. Prentiss G. Harrell  
Lawrence County Circuit Judge  
P.O. Box 488  
Purvis,, MS 39475

This the 12<sup>th</sup> day of March, 2009.

  
\_\_\_\_\_  
R. Ayres Haxton



## Fifteenth Circuit Court District

JEFFERSON DAVIS, LAMAR, LAWRENCE,  
MARION & PEARL RIVER COUNTIES

MELISSA L. MAGEE, CSR, RPR  
OFFICIAL COURT REPORTER  
P.O. Box 433  
Mt. Olive, MS 39119  
(601) 797-9251

CSR #1173

FILED  
LAWRENCE COUNTY, MISSISSIPPI

SEP 30 2008

*James S. Brister*  
JAMES S. BRISTER, CIRCUIT CLERK

September 28, 2008

R. Ayres Haxton  
P.O. Box 2929  
Jackson, MS 39207

In Re: Melton v Lawrence Cty Sheriff's Dpt

Mr. Haxton,

I have reviewed my stenographic notes, as well as my audio from the courtroom, and I have no hearings, motions, etcetera on the abovementioned matter.

I am notifying the Supreme Court of same by copy of this letter.

Thank you,

*m magee*

Melissa L. Magee, CSR, RPR, RMR  
Official Court Reporter

cc: Supreme Court Clerk  
Lawrence County Circuit Clerk

301 RE 13



**CERTIFICATE OF SERVICE**

I, R. Ayres Haxton, do hereby certify that I have this day mailed or hand delivered a true and correct copy of the above and foregoing document to:

Mrs. Betty W. Sephton, Clerk  
P.O. Box 249  
Jackson, MS 39205

Jacqueline H. Ray, Esq.  
Page, Kruger & Holland, P.A.  
P.O. Box 1163  
Jackson, MS 39215-1163

April D. Taylor, Esq.  
P.O. Box 1526  
Prentiss, MS 39474

Hon. Prentiss G. Harrell  
Lawrence County Circuit Judge  
P.O. Box 488  
Purvis,, MS 39475

This the 12th day of March, 2009.

  
\_\_\_\_\_  
R. Ayres Haxton