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

APPEAL FROM THE CIRCUIT COURT OF LAWRENCE COUNTY

BRIEF OF APPELLANT AARON CRAIG MELTON

Respectfully Submitted,

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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
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STATEMENT REGARDING ORAL ARGUMENT

The Appellant believes that oral argument would not aid the resolution of the appeal before this Court. The jurisprudence concerning the issues of the instant case has been ably examined and ruled upon by this Court and the Mississippi Supreme Court, and oral argument is not needed to further illuminate the issues. However the Appellant stands ready to aid the Court in any way it feels is necessary.

STATEMENT OF THE ISSUES

I. Did the Plaintiff fail to comply with Miss. Code Ann.§ 11-46-11 when submitting his notice of claim;

II. Is the Lawrence County Sheriff's Department entitled to sovereign immunity or Police Protection Immunity pursuant to the Mississippi Tort Claims Act;

III. Is the decision of the Lawrence County Deputy Sheriff to arrest the Plaintiff protected by the Discretionary Immunity Function;

IV. Is the Plaintiff's recovery of damages barred by inmate immunity;

V. Is the determination of probable cause an issue of material fact;

VI. Is the issue of intentional infliction of emotional distress an issue of material fact;

VII. Is the Lawrence County Sheriff's Department a legal entity capable of being sued and if not is the Complaint susceptible of being amended pursuant to MRCP Rule 15(c);

VIII. Does the cumulative weight of the issues raised support an order of summary judgment?

STATEMENT OF CASE

On July 29, 2006, Patsy R. Smith called Nations Cadillac in Brookhaven, Mississippi and made arrangements through Nations employee, Plaintiff, Craig Melton with the approval of the Nations service manager, Terri Smith, that Craig Melton, would pick up her 2002 Cadillac Seville from her home in Monticello, Mississippi, on Sunday July 31, 2006, test drive, make necessary repairs, and return the car to Patsy Smith on Monday, August 1, 2006. Craig Melton picked up the keys to the car from Patsy Smith and told her that he would be driving the car in rural Lawrence County on Sunday afternoon and drove the car away from Patsy Smith's home in her presence at about 12:00 noon on Sunday. Later Sunday afternoon Patsy Smith contacted Deputy Sheriff David Sanders, who was living with Ms. Smith's granddaughter and asked his assistance in locating the car. Patsy Smith did not tell Deputy Sanders the car was stolen but explained to him why Craig Melton was in possession of her car. Deputy Sanders proceeded to Craig Melton's home and without first securing a sworn affidavit or warrant, entered the home and arrested Mr. Melton on a charge of "joy riding." Mr. Melton reiterated to Deputy Sanders the circumstances under which he picked up Patsy Smith's automobile. Deputy Sanders immediately called Terri Smith, the Nations Cadillac service manager, who confirmed Mr. Melton and Patsy Smith's explanation. Deputy Sanders then arrested Craig Melton, took him to the Lawrence County jail where he was stripped naked, searched and incarcerated until the next afternoon. Craig Melton was charged with "joy riding" and a trial date was set for September 12, 2006, at 10:00. On the morning of September 12, 2006, when the County Prosecutor, Damon Ready, declined to prosecute the charge against Craig Melton, Patsy Smith undertook the

prosecution. Ms. Smith called Deputy Sheriff David Sanders who testified against Craig Melton. After hearing the testimony of the witnesses, all charges were dropped against the Plaintiff, Craig Melton.

The Plaintiff filed his Complaint on May 29, 2007, naming the Lawrence County Sheriff's Department and Patsy R. Smith as defendants and claiming false arrest, false imprisonment and intentional infliction of emotional distress against both defendants and malicious prosecution against Patsy R. Smith.

Defendant Lawrence County Sheriff's Department filed its motion for summary judgment on June 2, 2008. Lawrence County Circuit Judge Prentiss Harrell entered his Order granting summary judgment in favor of the Defendant Lawrence County Sheriff's Department. Plaintiff Craig Melton appeals the judgment of the Circuit Court of Lawrence County.

SUMMARY OF THE ARGUMENT

The defendant, Lawrence County Sheriff's Department has raised eight issues to support its motion for summary judgment. In his order, Judge Harrell enumerates those eight issues and agrees with the Plaintiff that no single issue supports an order of summary judgment, however he goes on to say " the cumulative weight of the multiple issues convinces the court that summary judgment is appropriate." The Plaintiff has found no law to support the "cumulative weight" holding and argues that the Defendant has failed to meet the burden of showing there is no genuine issue as to any material fact.

The Defendant first argues erroneously that the Plaintiff's §11-46-11 notice letter fails the substantial compliance standard. Second, the Defendant argues that because the actions of Deputy Sanders were intentional torts they were not in the course and scope of his employment thus rendering the Sheriff's department immune, but in a third argument it claims that the intentional torts committed by Deputy Sanders did not constitute reckless disregard of the safety and well-being of the Plaintiff and created no waiver of liability under §11-46-9(1)(c). In a fourth argument it cites the discretionary function exemption but fails to meet the second prong (public policy test) regarding Deputy Sanders decision to arrest the Plaintiff. In a fifth argument it argues the *factual* issue of probable cause for the warrantless arrest by Deputy Sanders. A sixth argument raises the issue of "inmate immunity" even though the alleged torts occurred during the arrest prior to the plaintiff ever being an inmate. Seventh it argues that the intentional torts that placed Deputy Sanders' actions outside the course and scope of his employment were *in fact* not serious enough to implicate the tort of intentional infliction of emotional distress, but it does not address the problem that the determination is a factual determination and

therefore would not support summary judgment . Finally it points out that the Plaintiff erroneously sued the Sheriff's department rather than Lawrence County. The Plaintiff timely filed and briefed a rule 15c motion to amend the complaint but due to the Order of Summary Judgment the Complaint has not yet been amended.

ARGUMENT

I. Standard of Review

> ¶ 8. This Court reviews the application of the Mississippi Tort Claims Act ("MTCA") de novo. ***City of Jackson v. Brister***, 838 So. 2d 274, 278 (Miss. 2003). This Court also applies a de novo standard of review to a grant of summary judgment. ***Progressive Gulf Ins. Co. v. Dickerson & Bowen, Inc.***, 965 So. 2d 1050, 1052 (Miss. 2007) (citation omitted). Pursuant to Rule 56 of the Mississippi Rules of Civil Procedure, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Miss. R. Civ. P. 56(c). The court views the evidence in the light most favorable to the nonmoving party. ***Univ. of Miss. Med. Ctr. v. Easterling***, 928 So. 2d 815, 817 (Miss. 2006). "The moving party bears the burden of demonstrating there is no genuine issue of material fact." ***Id.***

Lee v. Memorial Hosp. At Gulfport, 2007-CA-01762-SCT (Miss. 12-11-2008)

II. Plaintiff's Notice of Claim Letter Meets the Statutory Guidelines of §11-46-11.

The Mississippi Supreme Court requires substantial compliance with the notice requirements of Section 11-46-11 (2). Id. at ¶ 9. The Notice of Claim Letter in this case was mailed to Lawrence County Sheriff, Joel Thames, Lawrence County Chancery Clerk, Kevin Rayborn and Lawrence County Board of Supervisors President, Billy Joe Boutwell on January 17, 2007, giving notice that Craig Melton was making claims for false arrest and false imprisonment against the Lawrence County Sheriff's Department.(R at 224). The letter contains the following short plain statement of the facts on which the claim is based, including the circumstances which brought about the injury and the extent of the injury: "Craig Melton was arrested for automobile theft by Deputy Sheriff, David Sanders, taken to the Lawrence County Jail, made to strip naked, searched and

incarcerated overnight without a sworn affidavit accusing him of violating the law and with no probable cause, without the issuance of an arrest warrant."(R at 224). The notice letter provides the time and place, overnight on July 30-31, 2006 at the Lawrence County Jail. It names the persons known to be involved, the amount of money damages, the residence of the person making the claim at the time of the injury and the time of filing the notice.(R at 224). The Plaintiff submits that the claim notice meets the standard of substantial compliance set by the Mississippi Supreme Court in *Reaves Ex Rel. Rouse v. Randall,* 729 So. 2d 1237 (Miss. 1998). The Defendant has cited *Suddith v. Southern Miss.*, 977 So. 2d 1158 where no notice letter was sent to the defendant. *Suddith* cites *South Cent. Regional Med. Center v. Guffy*,930 So.2d 1252 (Miss. 2006) where no notice letter was sent to the Defendant. In *Reaves* Justice Mills, who was one of the authors of the MTCA explained the notice provision:

> The purpose of the Act is to insure that governmental boards, commissioners, and agencies are informed of claims against them. Such notice encourages entities to take corrective action as soon as possible when necessary; encourages pre-litigation settlement of claims; and encourages more responsibility by these agencies.

Reaves, 729 So. 2d 1237 at 1240 ¶ 9. In the case at bar the purpose of the notice requirement was met, a notice letter was timely sent to the proper entities and it substantially complied with § 11-46-11 as established by *Reaves* and reiterated in *Lee v. Memorial Hosp.*

III. The Lawrence County Sheriff's Department is not entitled to sovereign immunity or Police Protection Immunity pursuant to the Mississippi Tort Claims Act.

Section 11-46-9(1)(c) of the Mississippi Tort Claims Act states, (1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim: .....

(c) Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection *unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury;* (emphasis added).

Section11-46-9(1)(c) specifically addresses the facts of this case. Deputy David Sanders acted in reckless disregard of the safety and well-being of Craig Melton. Craig committed no crime. Patsy Smith has said repeatedly that she did not tell David Sanders that Craig Melton had committed any crime. In her Sworn, hand written, Answer to the Complaint Patsy Smith said " I NEVER One time said the car was stolen. I ask for help to locate the car so I could get it back." (Emphasis hers)(R at 37, line. 18) In her deposition Patsy Smith testified "I didn't think the car was stolen" at page 19 line 24.(R at 232). She said again at page 23 line 8 and page 25 line 8 she did not tell David Sanders the car was stolen.(R at 235 and 237). At page 24 line 8 she said she did not tell David Sanders that Craig Melton had committed any crime.(R at 236). Patsy Smith did not tell David Sanders that Craig Melton was driving the car without her permission. Page 25 line 9.(R at 237). At page 36 line 18 Patsy Smith said, "I never said Craig stole the car."(R at 238). At the time of his arrest no one had accused Craig Melton of any crime. Deputy Sanders knew Craig had permission to have the car and that Craig was an employee of Nations Cadillac charged with the task of picking up the car and seeing to

repairing it.(R at 244). It is evident from the facts of this case and the County Prosecutor's unwillingness to prosecute (Sanders depo pg 27 line 11) and Deputy Sanders' sworn statement in his deposition (Sanders depo pg. 33 line 14) that no crime was committed. (R at 248 and 143). Yet Craig Melton who had recently had open heart surgery and is on medication for his condition (Melton depo pg. 17 line 21), (R at 158), was humiliated, strip searched, incarcerated over night without his medication, and his name was placed in the local newspaper for being arrested for "joy riding".(R. at 153 line 2 and 155 line 1)

The Mississippi Supreme Court addressed 11-46-9(1)(c)in *Foster v. Noel*, 715 So. 2d 174 (Miss. 1998) at page 179 ¶ 27, citing *Turner v. City of Ruleville* saying "Under the Tort Claims Act, a detention is unlawful if, in fact, it was done in reckless disregard of the person's safety and well-being. In *Turner,* this Court held that reckless disregard is synonymous with willfulness and wantonness and that it includes an element of intent to harm." The Court went on to say at Paragraph 31 " Concerning Yazoo City's liability in this matter, we conclude there was ample evidence that Officer Luckett officially as an officer with the Yazoo City Police Department acted in reckless disregard for Noel's safety and well-being by failing to investigate before obtaining a warrant for her arrest." Id at 179 ¶ 31.

Foster v. Noel also addressed the Defendant's argument that MTCA § 11-46-5 protects it from liability saying at page 180:

> ¶ 32. Furthermore, Yazoo City finds no refuge in Miss. Code Ann. § 11-46-5(2) which provides in pertinent part:
>
> 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 to 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 other than traffic violation.
>
> Here, Noel sued Yazoo City for false arrest, not slander or any of the other torts mentioned in the above statute. Furthermore, she sued the police department of Yazoo City. For whatever reason, Noel did not include Luckett as a party to her lawsuit. That decision was entirely within her discretion. Regardless, Luckett acted on behalf of Yazoo City and in his official capacity as a police officer when he filled out the forms and included Noel's name as the shoplifter. Thus whether Luckett's conduct rose to slander *per se* is irrelevant for present purposes because that issue — that tort — is not before this Court .

Id at 180 ¶ 32. The Court's decisions in *Foster* make it clear that Lawrence County Sheriff's Department's argument that the malice component of false arrest and false imprisonment immunizes it from the actions of its sworn officer in his official capacity is inapplicable. The Defendant's argument that MTCA § 11-46-7(2) provides it refuge also fails. § 11-46-7(2) addresses the individual liability of a governmental employee not the employer and it uses the identical language that is used in § 11-46-7(2) which the Court in Foster v. Noel disregarded.

Under Section 11-46-9(1)(c) and Foster v. Noel liability is determined by the behavior of the arresting officer. That behavior is an issue of fact. The Plaintiff submits that in this case the facts are clear that Deputy Sanders acted in reckless disregard of the safety and well being of Craig Melton. However, even if more evidence is necessary for the Court to make this factual determination, summary judgment is inappropriate. There is clearly an issue of material fact as to whether Deputy Sanders, while acting within his scope of employment, acted in reckless disregard of the safety and well-being of Craig

Melton, an admittedly innocent person. Deputy Sanders seems to have been motivated more by his relationship with Patsy Smith's granddaughter, his live-in girlfriend, than he was by a desire to enforce the law.(R at 234 line 19 and 246 at line 17).

IV. The decision by a Lawrence County Deputy Sheriff to arrest the Plaintiff is not protected by the Discretionary Immunity Function

In its motion for summary judgment, the defendant cited *Suddith v. Southern Miss.*, 977 So. 2d 1158. (Miss. App. 2007) The *Suddith* Court addresses the issue of discretionary function immunity as it is applied under the MTCA citing a long line of cases and saying: "In order to determine whether governmental conduct is discretionary, this court employs the public policy function test articulated by the Mississippi Supreme Court in *Jones v. Miss. Dep't of Transp* , 744 So. 2d 256, 260 (¶ 11). *Suddith* at 1179 (¶ 48). First the court must determine whether the act involved "an element of choice or judgment." *Id.* at 260 (¶ 10). If it does, the court must decide "whether the choice involved social, economic, or political policy." *Id.; see also Stewart v. City of Jackson*, 804 So.2d 1041, 1047(¶ 11) (Miss. 2002). The second prong of the test protects only those discretionary acts or decisions based upon public policy considerations. *Dotts v. Pat Harrison Waterway Dist.*, 933 So.2d 322, 327(¶ 15) (Miss.Ct.App. 2006).

In its argument for summary judgment, the Defendant did not address the second prong of the discretionary conduct test. Instead it cites *Barrett v. Miller*, 599 So. 2d 559,567(Miss. 1992), and *Newton v. Black*, 133 F.3d 301, 307 (5th Cir. (Miss.) 1998), to support its argument. Both cases address probable cause as it relates to a judge issuing a search warrant and *Barrett* addresses immunity as it relates to employees not the governmental entity that employed them. *Barrett* at 567. *Newton* cites to *Barrett* and is a

42 U.S.C.§(s) 1983 case unrelated to probable cause. *Newton* at 302. These two cases **predate** *Jones v. Miss. Dep't of Transp. Jones* establishes the modern test for determining whether immunity exists under the discretionary function exemption. Deputy David Sanders' arrest and detention of Craig Melton did not involve social, economic, or political policy. His arrest of Craig Melton at Craig's home without a warrant and without any indication that a crime was in progress was the reckless act of a police officer in the course and scope of his employment. No discretionary function exemption is implicated.

V. The Defendant Is Not Protected By Inmate Immunity

The facts in this case show and it is undisputed that Craig Melton was not an inmate nor had he ever been an inmate in any correctional facility at the time that Lawrence County Deputy David Sanders entered his home, placed him under arrest and transported him in handcuffs to the Lawrence County Jail.(R at 243-245). The Defendant cites to cases involving plaintiffs who were incarcerated prior to the alleged negligent acts of the defendant governmental entities. Craig Melton was not an inmate at the time Deputy Sanders illegally arrested and detained him.

VI. The Existence of Probable Cause to Arrest Craig Melton Is An Issue Of Material Fact

The Plaintiff has shown through deposition testimony and the Defendant, Patsy Smith's Answer to the Complaint in this lawsuit that substantial evidence exists that Deputy David Sanders did not have probable cause to arrest Craig Melton at his home on July 30, 2006 or any other time. In her deposition, Patsy Smith repeatedly denies telling Deputy Sanders that her car had been stolen.(R at 37,232,235,237 and 238). She denies

telling him that Craig Melton had committed any crime. She told David Sanders that Craig Melton was an employee of Nations Cadillac service department who she had called. The record shows that the service manager at Nations verified that Craig Melton was an employee of Nations Cadillac by speaking with Deputy David Sanders immediately before the arrest.(R at 244 at line 16 and 245 at line 21). Craig Melton was at home and the car was in plain sight when he was arrested.(R at 242 line 1 and 243 line 8). It was subsequently verified that no crime had been committed. (Sanders depo. Pg. 24 ln. 15)(R at 247 line 15 and 143 line 14). David Sanders stated that Craig Melton was held for questioning yet he was not questioned after he spent the night and following morning in jail.(R at 158 line 1). The Lawrence County Prosecutor refused to prosecute Craig Melton. (Sanders depo. Pg. 27 ln. 11)(R at 248). The Plaintiff has shown through sworn denials providing a credible basis that an issue of fact exists regarding probable cause for Craig Melton's arrest. The Defendant continues to state that Deputy Sanders had probable cause to arrest Craig Melton for the felony offense of car theft when Patsy Smith and the representative of Nations Cadillac verified that Craig Melton had authority to have the car in his control. Craig Melton's authority to be in possession of the car negates the claim of felony car theft. Miss Code of 1972, §97-17-42(1). At the time of Craig Melton's arrest he was in the living room of his home.(R at 243 line 8). The car was where it was suppose to be, in plain sight, and Deputy Sanders was aware that Craig Melton was acting at the direction and with the permission of the owner, Patsy Smith.(R at 242 line 1).

VII. A Finding Of Intentional Infliction Of Emotional Distress Is An Issue Of Material Fact.

In its argument for summary judgment, the Defendant denies that the actions of Deputy David Sanders rose to the level of conduct required to establish a claim for intentional infliction of emotional distress and goes on to support its argument by arguing that the facts presented to Deputy Sanders supported his decision that probable cause existed to arrest the Plaintiff.(R at 172-173) The defendant is basing its argument on an issue of material fact, Deputy Sander's actions, by bootstrapping on another issue of material fact, the existence of probable cause for the arrest. The moving party bears the burden of demonstrating there is no genuine issue of material fact. The undisputed facts in the case at bar show that a sworn officer took Craig Melton out of his home, had-cuffed him, haled him to jail, strip searched him, and locked him in a cell until the next afternoon. Craig Melton had never been arrested before that night. It has been admitted that he broke no law. He was simply trying to do a favor for a stranger on his day off. Craig Melton's treatment is more than, as the Defendant argues, an "inconvenience and an annoyance."(R at 173) Most law-abiding hard, working, innocent citizens like Craig Melton are never wrongly arrested, strip searched, placed in jail overnight and listed in the local newspaper as a suspect in a crime. The treatment Craig Melton received is not an everyday affair for most people. It was a dangerous, unnecessary, degrading humiliating ordeal for Craig Melton. It is for the fact finder to determine whether the treatment Craig received at the hands of Deputy Sanders rises to the standard of intentional infliction of emotional distress after he hears all of the facts of the case. It is not a question of law subject to summary judgment. The Defendant first argues that the conduct of Deputy Sanders is outside the scope of his employment because it is intentional and malicious.(R at 164 line 3). Then it argues that Deputy Sanders'actions

did meet the elements of intentional infliction of emotional distress but were simply an "inconvenience and annoyance".(R at 173 line 3). In Foster v. Noel, the Plaintiff was arrested by a police officer with a warrant for her arrest and held for ninety minutes until her sister bailed her out. *Foster v. Noel*, 715 So. 2d 174 (Miss. 1998) at page 176 ¶3 and ¶60. On examination of the facts in that case, the fact finder determined that the behavior of the Yazoo City Police Department did in fact rise to the level of intentional infliction of emotional distress and the Mississippi Supreme Court upheld that factual determination. Id. In the case at bar the actions of the Defendant were far more egregious.

VIII. While the Lawrence County Sheriff's Department is not a legal entity capable of being sued, the Complaint is susceptible of being amended pursuant to MRCP Rule 15(c).

MISSISSIPPI RULE OF CIVIL PROCEDURE 15(c)

MRCP 15(c) governs relation back of amendments to pleadings and states:

> Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. 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 complaint, the party to be brought in by 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. An amendment pursuant to Rule 9(h) is not an amendment changing the party against whom a claim is asserted and such amendment relates back to the date of the original pleading.

In *Mieger v. Pearl River County,* 2006-CA-01379-COA (Miss. App. 1-8-2008) the Court of Appeals addressed the issue of relation back as allowed by rule 15(c) saying:

> ¶. Mississippi Rule of Civil Procedure 4(d)(6) states that service shall be made upon a county "by delivering a copy of the summons and complaint to the president or clerk of the board of supervisors." Mieger served the clerk of the board of supervisors with a notice of claim letter on November 30, 2004 — well before the expiration of the statute of limitations on February 7, 2006. We find that the notice of claim letter put the proper county official on notice that, except for the mistake of naming the wrong party, the action would have been brought against the county.

The case at bar is identical to *Mieger*. In the case at bar, the Plaintiff, pursuant to §11-46-11 (MS Code Ann.1972) mailed the notice of claim letter required by the Mississippi Tort Claims Act (MTCA) to Lawrence County Chancery Clerk, Kevin Rayborn and Lawrence County Board of Supervisors, President Billy Joe Boutwell on January 17, 2007, giving notice that he was making claims for false arrest and false imprisonment against the Lawrence County Sheriff's Department. *See* Plaintiff's Notice of Claim Letter attached to this Motion as Exhibit "A"(R at 224). Like *Mieger,* here notice was timely. The conduct, transaction, or occurrence giving rise to the complaint occurred on July 30, 2006, making the January 17, 2007 Notice of Claim letter fall well before the expiration of the July 29, 2007, statute of limitations. (R at 224) Thus, like *Mieger* all of the Rule 15(c) prerequisites for relation back were met. In *Meiger* the

Court reversed and remanded the Circuit Court's ruling and allowed the amended complaint to relate back.

The Plaintiff concedes that recent case law states that in a case involving a sheriff's department the proper party to be sued is the county. In the case at bar the Plaintiff timely filed his motion to amend his complaint pursuant to Rule 15(c) of the Mississippi Rules of Civil Procedure and briefed that motion for the Court prior to the Court's order of summary judgment.(R at 254-258). Rule 15(c) provides that an amended pleading relates back to the date of the original pleading if certain criteria are met. The claim in the amended pleading must: 1. Arise out of the conduct, transaction, or occurrence set forth in the original pleading. 2. An amendment changing the party relates back if that party has received notice such that it will not be prejudiced in maintaining its defense and it knew or should have known that, but for a mistake concerning the identity of the proper party the action would have been brought against that party. The conduct, transaction, or occurrence set forth in the original pleading is not changed in the amended pleading.

The Plaintiff put Lawrence County on notice well within the time provided by Rule 4(h) by sending the Notice of Claim Letter, sent to Lawrence County Chancery Clerk, Kevin Rayborn and Lawrence County Board of Supervisors, President Billy Joe Boutwell on January 17, 2007, giving notice that Craig Melton was making claims for false arrest and false imprisonment against the Lawrence County Sheriff's Department.(R at 224). Lawrence County has not been prejudiced. It has been ably defended by competent counsel from the time of the serving of the Complaint in this action.

XI. The cumulative weight of the multiple issues raised does not render summary judgment appropriate.

In its order entered August 27, 2008 the Lawrence County Circuit Court enumerated the seven issues discussed above and 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." (R at 285,286)

The Plaintiff agrees with the Court that no single issue supports summary judgment but argues that each issue must stand on its own and that the fact that seven complex issues were raised produces no cumulative effect in favor of summary judgment. The Defendant has raised both issues of law and genuine issues of material fact. On the issues of law, the Court did not rule that the notice letter failed to meet the statutory guidelines. It did not rule that the Lawrence County Sheriff's Department was protected by sovereign immunity, it did not rule that Deputy Sanders' actions were protected by discretionary function immunity or inmate immunity. The behavior of Deputy Sanders as it relates to sovereign immunity, probable cause and intentional infliction of emotional distress is a genuine issue of material fact and precludes summary judgment. *Univ. of Miss. Med. Ctr. v. Easterling* at 817.

CONCLUSION

The sworn testimony of the Defendants in this case show that they knew that Craig Melton was guilty of no crime yet he was arrested, strip searched, incarcerated over-night, deprived of necessary heart medication, his name was placed in the local newspaper like a common criminal, months later he was haled into court and prosecuted

by these same defendants. The case was dismissed. The Plaintiff has established a *prima facie* case for the claims he has brought against the Lawrence County Sheriff's Department. The allegations of the complaint must be taken as true. The Defendant has not met its burden of showing that there is no genuine issue of material fact. The Order of Summary Judgment should be set aside and this Court should allow the Complaint to be amended so that this case can proceed to trial without further delay.

Respectfully Submitted,

Aaron Craig Melton

By: _____
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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:

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Hon. Prentiss G. Harrell
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This the 23rd day of February, 2009.

R. Ayres Haxton