IN THE SUPREME COURT OF MISSISSIPPI

No. 2010-TS-01470

CHARLIE HONEYCUTT — APPELLANT

VERSUS

TOMMY M. COLEMAN, ATLANTA CASUALTY COMPANIES, ATLANTA CASUALTY COMPANY, AND AMERICAN PREMIER INSURANCE COMPANY — APPELLEES

APPEAL FROM THE CIRCUIT COURT OF LOWNDES COUNTY, MISSISSIPPI SIXTEENTH JUDICIAL DISTRICT

BRIEF OF APPELLEE, TOMMY M. COLEMAN

ORAL ARGUMENT IS **NOT** REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

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

1. Charlie Honeycutt, Plaintiff/Appellant;
2. Joseph E. Roberts, Jr., Esq., counsel for Plaintiff/Appellant;
3. Pittman, Germany, Roberts & Welsh, LLP, counsel for Plaintiff/Appellant;
4. Tommy M. Coleman, Defendant/Appellee;
5. John W. Crowell, Esq., counsel for Tommy M. Coleman;
6. Nichols, Crowell, Gillis, Cooper & Amos, PLLC, counsel for Tommy M. Coleman;
7. Atlanta Casualty Companies, Defendant/Appellee;
8. Atlanta Casualty Company, Defendant/Appellee;
9. American Premier Insurance Company, Defendant/Appellee;

10. Thomas Y. Page, Esq., counsel for Atlanta Casualty Companies, Atlanta Casualty Company & American Premier Insurance Company;

11. Jeffrey L. Carson, Esq., counsel for Atlanta Casualty Companies, Atlanta Casualty Company & American Premier Insurance Company;

12. Page, Kruger & Holland, PA, counsel for Atlanta Casualty Companies, Atlanta Casualty Company & American Premier Insurance Company;

13. James T. Kitchens Esq., Circuit Court Judge, Lowndes County, Mississippi, Sixteenth Judicial District.

SO CERTIFIED on this the 15 day of June, 2011.

John W. Crowell, MB[redacted]
Attorney for Tommy M. Coleman, Appellee

STATEMENT REGARDING ORAL ARGUMENT

The trial court's Order Granting Summary Judgment in favor of Appellee, Tommy M. Coleman, should be affirmed without the necessity of oral argument.

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I. STATEMENT OF ISSUES

Whether the circuit court properly granted summary judgment on behalf of Officer Tommy Coleman ("Officer Coleman") based on the one-year statute of limitations provided in the Mississippi Tort Claims Act ("MTCA"), Miss. Code Ann. § 11-46-11(3).

II. STATEMENT OF THE CASE

A. NATURE OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION IN THE COURT BELOW.

Coleman is satisfied with the Appellant's statement regarding the nature of the case, the course of proceedings, and the disposition in the court below. Accordingly, pursuant to Mississippi Rules of Appellate Procedure 28(b), Officer Coleman chooses not to re-address this material.

B. FACTS.

This case arises out of a motor vehicle accident that occurred on May 15, 1994. At the time of the accident, Charlie Honeycutt ("Honeycutt") was a passenger in a vehicle being operated by Matthew Blaxton ("Blaxton") on Highway 45 in Columbus, Lowndes County, Mississippi. (R. at 9). The accident occurred at the intersection of Highway 45 and Waverly Road when Blaxton's vehicle turned left at a flashing yellow light in front of Officer Coleman. (R. at 9, 91). Officer Coleman was employed by the Mississippi Department of Public Safety as a Mississippi State Trooper, and was in his highway patrol car heading north and proceeding straight through the flashing yellow light when Blaxton's southbound vehicle

turned left in front of him resulting in a collision[1]. The accident occurred at 12:38 a.m. on a Sunday morning. (R. at 123).

Officer Coleman had been assigned and was working the 4:00 p.m. (Saturday) to 1:00 a.m. (Sunday) shift, and had just concluded a road block detail in Lowndes County around 12:15 a.m. (R. at 90). Officer Coleman was patrolling back home to Clay County when Blaxton turned left in front of him and collided with him. At the time of the accident, Charlie Honeycutt ("Honeycutt") was 16 years old, and did not reach the age of majority until July 26, 1998. (R. at 26). Honeycutt filed his complaint against Officer Coleman on April 16, 2001, almost three years after having reached the age of majority. (R. at 8).

Officer Coleman provided the following deposition testimony which remains undisputed:

> Q. What time did you leave the road block?
> A. It was some time between, I guess, 12:15, around 12:15 that Sunday morning.
> Q. When you left the road block, where did you go?
> A. I was proceeding to go home, patrolling back home.

(R. at 90; (Deposition of Tommy M. Coleman, p. 12, lines 13-17)) . . .

> A. - - I am still on duty. You are on duty all the time until you go home and go 10-7 out of that car, you are on duty. . . . I was scheduled from 4:00 to 1:00 o'clock in the morning. Even though this accident happened within that time period, I am still on duty until I get home and say I am 10-7 out of that car. If anything happened between, say, Columbus or whatever, I am still on duty. I am required to work it.

(R. at 93-94; (Deposition of Tommy M. Coleman, p. 24, lines 20-25; p. 25, line 1))

> Q. Could you explain to us what you mean by patrolling your way home?

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[1]Blaxton apparently received a citation for failure to yield right of way. (R. at 97).

A. Once you leave the detail - - usually when we have details like this, you patrol your way home because you run up on a lot of - - most of the time when you leave a detail, you are going to either end up writing a ticket or run up on a drunk or whatever. That's why they tell you to patrol your way back to your home and that is exactly what I was doing.

Q. So at the time of the collision that is the subject of this lawsuit, you were still acting within the course and scope of your employment?

A. Yes, I was.

Q. You were still on duty?

A. Yes.

Q. And that was the shift from 4:00 p.m. until 1:00 a.m.?

A. Yes sir.

Q. And at all times during that shift, you are subject to call from headquarters?

A. Yes sir, from the substation, right. Yes sir.

(R. at 97-98; (Deposition of Tommy M. Coleman, p. 38, lines 19-25; p. 40, lines 13-17, 24; p. 41, line 1))

In addition to his deposition testimony, Officer Coleman submitted the following affidavit testimony:

> On May 15, 1994, the date of the collision which is the subject of this litigation, I was assigned a patrol car, which I use to go to and from work.
>
> While operating the patrol vehicle provided by the State of Mississippi, I am at all times subject to call regardless of destination and required to intervene in any matter requiring police action which I might observe.
>
> At the time of the collision I had left a road block and was on my way home, in uniform, and still within the course and scope of my employment.
>
> Pursuant to the State of Mississippi policy, patrol officers are on duty, subject to call, and subject to the control, direction, and supervision of the State of Mississippi while operating patrol vehicles provided by the State of Mississippi, regardless of the officer's immediate destination.

(R. at 36-37). Officer Coleman also submitted the Affidavit of David Humphries ("Humphries"), the District Captain of Troop G at the time of the accident. In his affidavit, Humphries stated:

> At the time of the collision out of which the incident lawsuit arose, Officer Tommy Coleman was within the course and scope of his employment as a patrol officer with the State of Mississippi.
>
> Pursuant to State of Mississippi policy, patrol officers are on duty, subject to call, and subject to the control, direction, and supervision of the State of Mississippi while operating patrol vehicles provided by the State of Mississippi, regardless of the officer's immediate destination. . . .
>
> Providing officers with patrol officers for use in going to and from their homes and job assignments furthers the State of Mississippi's interest in maintaining a ready and rapid response to law enforcement needs as they arise. . . .
>
> At the time of the collision out of which this lawsuit arises, Officer Coleman was subject to the direction, control, and supervision of the State of Mississippi, and was operating the patrol vehicle under the course and scope of his employment.

(R. at 38-39).

Prior to the court entering summary judgment in favor of Officer Coleman, Honeycutt never offered any evidence to rebut the deposition and affidavit testimony that Officer Coleman presented in support of his summary judgment motion. In fact, at the hearing on the Motion for Summary Judgment, counsel for Honeycutt and the trial court had the following exchange:

> BY MR. MCCOOL: . . . In the accident report, it says that Trooper Coleman had just been released from detail, and we don't - - of course Leslie v. City of Biloxi has made it pretty clear that if an officer is in his patrol car that he is still within the course and scope of his employment. I don't expect you to overrule that case here today, your Honor, and that's not what I'm arguing. . . .
>
> BY THE COURT: Counselor, you are not disputing then that Trooper Coleman was in his - - there's no dispute he was in his highway patrol vehicle and he had been released from a roadblock and may very well have been on his way home? Those facts are not in dispute, are they?
>
> BY MR. MCCOOL: No, sir, I do not dispute those facts.

> BY THE COURT: Okay. Is there any evidence that y'all gathered during the course of discovery process that indicated that Trooper Coleman was engaged in some kind of frolic and detour, if you will, in the highway patrol car or something that would have taken him outside of being involved in his [official] capacity?
>
> BY MR. MCCOOL: No, your Honor.
>
> BY THE COURT: So I guess the way I think of this in my mind is if Trooper Coleman had seen me coming back from Starkville at that point in the morning and he had not had an accident and I was driving at an excessive high rate of speed, would he be able to pull me over?
>
> BY MR. MCCOOL: Yes, your Honor, I believe he probably would.

(T. T., pp. 7 and 8).

Accordingly, based on the undisputed facts, the trial court granted summary judgment finding that "Coleman was acting within the course and scope of his employment with the Mississippi Highway Patrol, and that the plaintiff's claims against Officer Coleman are therefore barred by the one-year statute of limitations set forth in Miss. Code Ann. § 11-46-11(3)." (R. at 136).

III. SUMMARY OF THE ARGUMENT

The trial court properly applied the MTCA and its one-year statute of limitations to the claims against Officer Coleman. Honeycutt does not contend that he complied with the one-year statute of limitations prescribed under the MTCA, and there are no disputed facts regarding how the accident occurred.

Instead, Honeycutt argues that the trial court erred as a matter of law in applying the MTCA and its one-year statute of limitations. Honeycutt argues that Officer Coleman's alleged failure to slow down as he approached the flashing yellow light at the intersection where the accident occurred was a criminal offense in violation of Miss. Code Ann.

§ 63-3-505 which states, "[t]he driver or operator of any motor vehicle must decrease speed when approaching and crossing an intersection." Honeycutt concludes that by committing this "criminal offense," Officer Coleman was acting outside the course and scope of his employment at the time of his collision, and is therefore not entitled to the protections of the MTCA, including its one-year statute of limitations.

Contrary to Honeycutt's argument, the Mississippi Supreme Court has consistently held that the MTCA is the exclusive route and provides the exclusive remedies for filing suit against governmental entities and its employees. Honeycutt's effort to circumvent the application of the MTCA by arguing that Officer Coleman was not acting within the course and scope of his employment must also fail. Miss. Code Ann. § 11-46-5(3) creates a rebuttal presumption that any act or omission of an employee within the time and place of his employment is within the course and scope of his employment. Moreover, Miss. Code Ann. § 11-46-5(2) states that an employee shall not be considered as acting within the course and scope of his employment if the employee's conduct constituted fraud, malice, libel, slander, defamation, or any criminal offense **other than traffic violations**. In other words, the MTCA specifically excludes traffic violations from the types of criminal offenses which may otherwise remove an employee from the course and scope of his employment, and therefore the provisions and protections of the MTCA. See Jackson v. Hodge, 911 So. 2d 625 (Miss. App. 2005) (holding MTCA specifically excepts traffic violations from criminal offenses that would constitute acts which lie outside course and scope of employment.)

IV. ARGUMENT

A. The Tort Claims Act Is The Exclusive Remedy For Honeycutt's Tort Claims Against Officer Coleman

In the present case, there is no factual dispute, and summary judgment in favor of Officer Coleman was proper. Honeycutt does not contend that he complied with the one-year statute of limitations prescribed under the MTCA. To the contrary, Honeycutt argues that he did not bring his claim under the MTCA, and that the trial court erred as a matter of law by applying its one-year statute of limitations to his tort claims against Officer Coleman. Though Honeycutt's complaint was for personal injuries that he alleges were caused or contributed to by the negligence of Officer Coleman (R. at 9), he simply argues that his claims against Officer Coleman were not brought under the MTCA, and therefore should not be governed by it. (Brief of Appellant, pp. 28-29).

Contrary to Honeycutt's position, the Supreme Court has made it very clear that the MTCA is the exclusive route for filing suit against governmental entities and its employees. In City of Jackson v. Sutton, 797 So. 2d 977 (Miss. 2001), an injured motorist and the family of a deceased motorist filed a complaint against a police officer who had completed an accident report earlier on the same day in which the same driver was involved in the fatal accident. Sutton, 797 So. 2d at 977. The plaintiffs contended that a proper investigation and interrogation of Richard Allen following the original incident would have revealed Allen's two prior DUI convictions and an outstanding arrest warrant. Id. at 978. The plaintiffs also contended that Officer McClendon failed to administer a sobriety test to Allen, interrogate him regarding his leaving the scene of the prior accident that day, or to seize his car. Id. The plaintiffs contended that this failure on the part of Officer McClendon ultimately resulted in

Allen's collision with another car later that day, seriously injuring April Gibson and killing Barbara Sutton. Id.

Gibson and the Suttons filed a complaint alleging that Officer McClendon had violated their rights under the Mississippi Constitution. Sutton, 797 So. 2d at 978. The defendants filed a motion for summary judgment arguing that the Mississippi Tort Claims Act was the exclusive avenue by which relief could be sought. Id. at 979-80. The trial court denied the summary judgment stating that the plaintiffs could proceed based on their claims under the Mississippi Constitution, and an order was subsequently entered by the Supreme Court granting the defendants' permission for an interlocutory appeal. Id.

On appeal, Gibson and the Suttons argued that they were denied their state constitutional rights without due process by Officer McClendon's alleged violations of investigatory and training procedures, resulting in a violation of Article III, Section 14 of the Mississippi Constitution. Id. They also assert claims based on Article II, Section 24 of the Mississippi Constitution which states that "all courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial or delay." Id. In response, the City of Jackson and McClendon argued that the plaintiffs' only right or path to pursue their claim was through the Mississippi Tort Claims Act, and that the plaintiffs expressly chose not to follow that path. In support of this position, they cited Lang v. Bay St. Louis/Waveland Sch. Dist., 764 So. 2d 1234 (Miss. 1999), wherein the Mississippi Supreme Court stated:

> The MTCA provides the exclusive civil remedy against a governmental entity and its employees for acts or omissions which give rise to a suit. Miss. Code

> Ann. § 11-46-7(1)(Supp. 1998); L. W. v. McComb Separate Mun. Sch. Dist., 754 So. 2d 1136, 1146 (Miss. 1999). Any claim filed against a governmental entity and its employees must be brought under this statutory scheme. Id.

Sutton, 797 So. 2d at 980 quoting Lang, 764 So. 2d at 1236.

The Sutton Court noted that "statutes contained in the act support the assertion that the Tort Claims Act is the exclusive route for filing suit against a governmental entity and its employees." Id. at 980. The Sutton Court then pointed out that Miss. Code Ann. § 11-46-7(1) details the exclusiveness of the act wherein it provides:

> The remedy provided by this chapter against a governmental entity or its employee is exclusive of any other civil action or civil proceeding by reason of the same subject matter against the governmental entity or its employee or the estate of the employee for the act or omission which gave rise to the claim or suit; and any claim made or suit filed against a governmental entity or its employee to recover damages for an injury for which immunity has been waived under this chapter shall be brought only under the provisions of this chapter, notwithstanding the provisions of any other law to the contrary.

Id. at 980 citing Miss. Code Ann.§ 11-46-7(1).[2] Based on the clear language of the Tort Claims Act itself, the Sutton Court reversed the trial court and rendered judgment in favor of Officer McClendon based on the plaintiffs' failure to make a timely claim under the Tort Claims Act stating:

> "The case law is clear that the Mississippi Tort Claims Act is the only route by which the plaintiffs could file suit against the City of Jackson and Officer McClendon. Accordingly, it was error for the trial court to deny the City of Jackson and Officer McClendon's Motion for Summary Judgment."

Id. at 981.

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The Mississippi Supreme Court noted that while there is a provision for making a claim against a governmental employee outside of the Tort Claims Act, it is limited to declaratory actions and not intended for claims that involved money damages. City of Jackson v. Sutton, 797 So. 2d 980 citing Fordice v. Thomas, 649 So. 2d 835, 840 (Miss. 1995).

It is abundantly clear that the MTCA provides the exclusive civil remedy for claims against a governmental entity or governmental employee acting within the course and scope of their employment. It is with this issue that Honeycutt takes exception. He contends that Coleman, though still in uniform, in his patrol car, and on call during his assigned shift, was acting outside the course and scope of his employment because of his alleged failure to slow down as he approached a flashing yellow light at the intersection where the accident occurred.

B. At All Relevant Times, Officer Coleman Was Acting Within The Course And Scope Of His Employment.

Honeycutt does not dispute that Officer Coleman had just finished a road block detail and was patrolling his way home during his assigned shift when the subject accident occurred. Therefore, the trial court properly found that Officer Coleman was acting within the course and scope of his employment at the time of the collision and granted summary judgment.

1. There is a rebuttable presumption that Officer Coleman was acting within the course and scope of his employment.

In Singley v. Smith, 844 So. 2d 448 (Miss. 2003), the Mississippi Supreme Court reviewed a trial court's grant of summary judgment in favor of Smith, finding that Smith was acting within the course and scope of his employment and that Singley's claims were therefore barred by the one-year statute of limitations set forth in the MTCA. Upon review, the Singley court noted that the decision of a trial judge sitting without a jury can only be reversed when the findings of the trial court are manifestly wrong or clearly erroneous. Singley, 844 So. 2d at 451 (citing Amerson v. State, 648 So. 2d 58, 60 (Miss. 1994)). "A

circuit judge sitting without a jury is accorded the same deference as a chancellor. His or her findings will not be overturned if supported by substantial evidence." Id. citing Maldonato v. Kelly, 768 So. 2d 906, 908 (Miss. 2000).

On appeal, Smith argued that the Singleys had to overcome a rebuttable presumption under Miss. Code Ann. § 11-46-5(3) which provides that it shall be a rebuttable presumption that any act or omission of an employee within the time and place of his employment is within the course and scope of his employment. Id. at 451-52 citing Miss. Code Ann. § 11-46-5(3). With this being an issue of first impression, the Supreme Court held that proof by a preponderance of the evidence is necessary to overcome the presumption, and that the plaintiff must prove his case by producing evidence that is most consistent with the truth and that which accords best with reason and probability, and that which has a greater persuasive and convincing source. Id. citing Gregory v. Williams, 35 So. 2d 451, 453 (Miss. 1948).

After again noting that it will only reverse a trial court sitting without a jury when the findings of the trial judge are manifestly erroneous or clearly wrong, the Singley court found that the trial court had correctly ruled that Smith was acting within the course and scope of his employment and that the plaintiff's claims were therefore barred by the MTCA statute of limitations. Singley, 844 So. 2d at 452. In reaching its conclusion, the Singley court stated:

> The sole issue before this court is whether the findings of the trial judge were manifestly erroneous or wrong. Amerson v. State, 648 So. 2d at 60. Under the Mississippi Tort Claims Act it is rebuttably presumed that when an employee is covered by that act, any act or omission within the time and the place of such employment is to be considered to be within the course and scope of such employment. Miss. Code Ann. § 11-46-5(3).

> The trial court correctly looked at the totality of the circumstances to examine the nature of the wrongful act, the employment character, and the time and place where the act occurred. See Horton v. Jones, 44 So. 2d 397 (Miss. 1950). . . . To determine whether Smith was acting within the course and scope of his employment, the trial court again properly looked to the totality of the circumstances. Horton, 44 So. 2d at 397. Specifically, it examined the nature of the wrongful act, the character of the employment, and the time and place where the act was committed. Id. In Horton we further pointed out that:
>
> > Even though the conduct of the servant was unauthorized, it is still in the scope of his employment, it is of the same general nature of, or incidental to, the conduct authorized. In order for the master to escape liability, it must be shown that the servant, when the wrongful act was committed, had abandoned his employment and gone about some purpose of his own, not incident to his employment.
>
> Id. at 399 . . .
>
> Although not employed to be negligent, this does not mean that the wrongful act is outside the scope of his employment. Horton, 44 So. 2d at 399.

Singley, 844 So. 2d at 452-53.

The Singley court also relied on language from Big "2" Engine Rebuilders v. Freeman, 379 So. 2d 888 (Miss. 1980), wherein the Mississippi Supreme Court defined "in the course of employment" as "whenever the injury resulted from activity, which is in its overall contours, actuated (partly) by a duty to serve the employer or reasonable incident to the employment." Singley, 844 So. 2d at 453 citing Big "2" Engine Rebuilders v. Freeman, 379 So. 2d at 890.

In the present case, there is no question that Officer Coleman was acting within the time and place, and therefore the course and scope of his employment at the time of the accident. He had just concluded working a road block, and was undisputedly patrolling his way home when the accident occurred. He was in his patrol car, in full uniform, and still

working within his assigned shift. The accident occurred at 12:38 a.m. and his scheduled shift was not over until 1:00 a.m. Accordingly, the trial court properly found that Officer Coleman was acting within the course and scope of his employment at the time of the accident and that the MTCA's one-year statute of limitations barred Honeycutt's claims.

2. The MTCA specifically excludes traffic violations from criminal offenses that would constitute acts that lie outside the course and scope of employment.

With no evidence to create a disputed fact, Honeycutt argues as a matter of law that Officer Coleman was participating in "criminal conduct" at the time of the collision, thereby removing him from the course and scope of his employment. Honeycutt relies on Miss. Code Ann. § 11-46-7 which provides, in pertinent part:

> For purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and the 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.

Miss. Code Ann. § 11-46-7[3]. Honeycutt then recites Miss. Code Ann. § 63-3-505 which provides in pertinent part "The driver or operator of any motor vehicle must decrease speed when approaching and crossing an intersection . . . ," to support his contention that Officer Coleman committed a criminal offense when he drove his vehicle at 35 miles per hour, and allegedly failed to decrease his speed prior to entering the intersection. Though Officer Coleman submits that the alleged failure to comply with a statute which requires drivers to

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Interestingly, though Honeycutt contends that the Tort Claims Act should not apply at all in this case, he relies on provisions of the Tort Claims Act and its application in support of his contention that Officer Coleman was acting outside the course and scope of his employment.

slow down when approaching an intersection is not the type of "criminal offense" contemplated by the Legislature when it drafted § 11-46-7(2). This Court need not look far to glean the Legislature's intent and the meaning of "criminal offense" under the MTCA because § 11-46-5(2) specifically states:

> For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and the 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 **other than traffic violations.**

Miss. Code Ann. § 11-46-5(2) (emphasis added). This section very clearly identifies the type of conduct that would take a government employee outside the course and scope of his employment, and specifically excludes traffic violations from these "criminal offenses."

The precise issue raised and argued by Honeycutt in this matter has already been addressed in Jackson v. Hodge, 911 So. 2d 625 (Miss. App. 2005). In Hodge the plaintiffs were involved in an automobile collision with Hodge when Hodge ran a stop sign. Hodge was an employee of a governmental entity at the time of the accident. Hodge, 911 So. 2d at 626. The Jacksons tried to negotiate a settlement with Hodge for almost three years prior to filing suit. Id. After suit was filed, Hodge filed a Motion for Summary Judgment, claiming that she had been employed by a governmental entity (Singing River Mental Health Services) and that Jackson's claim was time barred by the MTCA. The trial court granted Hodge's summary judgment motion, and the Mississippi Court of Appeals affirmed the trial court and provided the following analysis which is precisely on point and applicable to the present matter and Honeycutt's argument raised on appeal:

> The Jacksons argue that the circuit court erred in granting Hodge's motion for summary judgment because, as a matter of law, Hodge is not entitled to

protection under the Mississippi Tort Claims Act. According to the Jacksons, Hodge is not entitled to immunity under the Mississippi Tort Claims Act because Hodge was not acting in the course and scope of her employment when she ran a stop sign. The Jacksons claim that Hodge could not be acting in the course and scope of her employment when she ran a stop sign because the act of running a stop sign is a criminal offense.

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 constitute fraud, malice, libel, slander, defamation or any criminal offense.

So, the Jacksons are correct when they assert that an employee of the State of Mississippi who commits a criminal offense does not act within the course and scope of his employment. However, the question of whether running a stop sign constitutes "any criminal offense" is resolved by other provisions of the Mississippi Tort Claims Act. According to Section 11-46-5(2) of the Mississippi Code:

> 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 *other than traffic violations*.

Thus, the Mississippi Tort Claims Act specifically excepts traffic violations from "any criminal offense" that would constitute those acts that lie outside the course and scope of employment. That is, a government employee who commits a traffic violation does not act outside the course and scope of his or her employment. Accordingly, there is no issue of material fact that Hodge, by running a stop sign, was not acting outside the course and scope of her employment with Singing River Mental Health Services. It * is undisputed that the Jacksons did not comply with the one year statute of limitations that accompanies actions under the Mississippi Tort Claims Act. Miss. Code Ann. § 11-46-11(3) (Rev. 2002). As such, the circuit court correctly granted Hodge's motion for summary judgment.

Hodge, 911 So. 2d at 627.[4]

Most recently in the case of City of Jackson v. Harris, 44 So. 3d 927 (Miss. 2010), the Mississippi Supreme Court addressed the issue of whether a police officer was acting within the course and scope of his employment when his "conduct constituted speeding and running a red light, traffic offences that are misdemeanors (and, as such "criminal offences") under our code." City of Jackson v. Harris, 44 So. 3d at 933. In Harris, a motorist was killed when the police officer entered an intersection against the red light at an excessive speed, with no emergency lights or siren activated. Id. at 929. After the circuit court awarded the wrongful death beneficiaries $500,000 in compensatory damages, the City of Jackson appealed arguing that the MTCA waives immunity under certain circumstances, but that no waiver exists for an employee's conduct that amounts to a criminal offense under Miss. Code Ann. § 11-46-7(2). Id. at 933. The City argued that the officer could not have been acting within the course and scope of his employment if his actions constituted culpable negligence/manslaughter. Id. To the contrary, the wrongful death beneficiaries argued that Miss. Code Ann. § 11-46-5(2) specifically waives immunity for traffic violations that

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Interestingly, the Jacksons argued that they had no way of knowing that Hodge was a government employee prior to filing suit. Id. Hodge's job duties with Singing River Mental Health Services included driving patients around to help see to their personal needs. Id. at 626. At the time of the accident, Hodge was dressed in normal clothes driving her brother's unmarked vehicle returning a patient to the patient's home after helping the patient run some errands. Id. at 626, 627.

In the case at bar Officer Coleman was driving his highway patrol vehicle and was in uniform at the time of the accident. There was no reason for anyone to question whether Officer Coleman was an employee of the state or whether he was acting in any manner other than within the normal course and scope of his employment.

constitute criminal offenses. Id. After reciting the two statutes, the Harris Court stated as follows:

> We find that the City of Jackson is liable for Middleton's conduct under the plain language of § 11-46-5(2). While § 11-46-7(2) provides immunity for "criminal offenses," § 11-46-5(2) specifically excludes "traffic offenses" from this immunity. Middleton's guilty plea to culpable negligence manslaughter does not change the fact that Middleton caused Harrison's death by violating the traffic laws of the state. Middleton's conduct constituted speeding and running a red light, traffic offenses that are misdemeanors (and, as such, "criminal offenses") under our code. . . . It is undisputed that Middleton was not operating his vehicle in response to an emergency or in pursuit of a suspect, but that he was traveling to the hospital to provide insurance information to an injured driver.

Harris, 44 So. 3d at 933.[5]

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[5] The Harris Court went on to note that in governmental liability cases involving police officers that have committed traffic offenses resulting in motor vehicle accidents, liability is analyzed under another provision of the MTCA, § 11-46-9(1)(c). Id. Section 11-46-9(1)(c) provides:

> (1) A governmental entity and its employee 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 the 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 the injury.

Miss. Code Ann. § 11-46-9(1)(c).

Because Honeycutt's claims are barred by the statute of limitations, there is no issue as to whether Officer Coleman's conduct meets the reckless disregard exception to immunity.

Harris and Hodge make it clear that an officer is not acting outside the course and scope of his employment simply because his conduct amounts to a minor traffic violation.[6] The matter before this Court today is whether Officer Coleman was acting within the course and scope of his employment so as to render the provisions of the MTCA applicable to Honeycutt's claims. The MTCA specifically excludes traffic violations from "criminal offenses" that would constitute conduct outside the course and scope of an employee's employment, and both the Mississippi Supreme Court and the Court of Appeals have so interpreted the MTCA. Therefore, the trial court properly applied the Mississippi Tort Claims Act and its one-year statute of limitations to the plaintiff's claims against Officer Coleman.

V. CONCLUSION

The subject accident occurred in May of 1994, when Honeycutt was 16 years old. He turned 21 in July of 1998, but did not file his complaint against Officer Coleman until April of 2001, almost three (3) years after reaching the age of majority.

The MTCA provides the exclusive remedy for claims against governmental employees acting within the course and scope of their employment, and Miss. Code Ann. § 11-46-11(3) provides a one year statute of limitations for such claims. It also creates a rebuttable presumption that governmental employees are acting within the course and scope of their employment when any complained of act or omission occurs within the time and place of their employment.

6

Officer Coleman disputes that he was guilty of any traffic violation, and that traveling at 35 miles per hour through a flashing yellow light at 12:30 in the morning does not constitute negligence or a violation of any statute.

Honeycutt's claims against Coleman are for personal injuries resulting from a vehicle collision with Officer Coleman when he was on duty, in uniform, in his patrol car patrolling his way home during his assigned shift. Honeycutt argues that Coleman committed a traffic violation, and therefore a "criminal offense," by not slowing down before entering the intersection where the collision occurred. Based upon this premise, Honeycutt concludes that Officer Coleman was acting outside the course and scope of his employment at the time of the accident. The MTCA specifically excludes traffic violations from the types of "criminal offenses" which would otherwise render an employee outside the course and scope of his employment, thus Honeycutt's argument must fail.

There are no material facts in dispute. The trial court properly found that Officer Coleman was acting within the course and scope of his employment at the time of the accident, and that Honeycutt's claims were barred by the MTCA's one year statute of limitations.

Respectfully submitted this 15th day of June, 2011.

TOMMY M. COLEMAN, *Appellee*

BY: JC

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CERTIFICATE OF SERVICE

I, the undersigned, JOHN W. CROWELL, attorney of record for the Appellee, Tommy M. Coleman, herein, do hereby certify that I have this date mailed, postage pre-paid, a true and correct copy of the foregoing ***BRIEF OF APPELLEE*** to the following:

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SO CERTIFIED on this the 15th day of June, 2011.

John W. Crowell

CERTIFICATE OF MAILING

I, Jan Atkins, do hereby certify pursuant to the Mississippi Rules of Appellate Procedure that I have this day mailed, via U. S. First Class Mail, postage pre-paid, the original and three (3) copies together with an electronic copy of the Appellee's Brief to:

Ms. Kathy Gillis, Clerk
Mississippi Supreme Court
Carroll Gartin Justice Bldg.
P. O. Box 117
Jackson, MS 39205
(Paper and Disk)

SO CERTIFIED on this the 15th day of June, 2011.

Jan Atkins

Jan Atkins

25,969-015