IN THE CIRCUIT COURT OF FORREST COUNTY, MISSISSIPPI

F. CHARLES PHILLIPS **PLAINTIFF**

VS. **CAUSE NO. CI-04-0278**

THE MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY/MISSISSIPPI HIGHWAY SAFETY PATROL, JOHN DOES 1 AND 2 **DEFENDANTS**

FINDINGS OF FACT AND CONCLUSION OF LAW

THIS CAUSE is here before this Court on the complaint of the Plaintiff, F. Charles Phillips, against the Defendants, for an occurrence that took place October 15, 2003, when Phillips was stopped by Highway Patrolmen Joseph Seals. Phillips alleges that he was "beaten" by Trooper Seals and later joined by Trooper Thomas Little. The matter was tried before this Court, without a jury, pursuant to the provisions of the Mississippi Tort Claims Act on October 30 and 31, 2006. Based upon the evidence and testimony accepted at trial, the Court finds the following as its Findings of Fact, and Conclusions of Law.

FINDINGS OF FACT

This matter arises out of an "encounter" between Mississippi Highway Patrolmen, Joseph W. Seals and Thomas E. Little, with the plaintiff on October 15, 2003. The testimony of the plaintiff suggests that he was driving home in his personally owned vehicle ("POV") from a coaches/umpires meeting in Laurel on the night of October 15, 2003. On his way back, he overheard on his "police scanner" with the Hattiesburg Police Department that a vehicular chase was apparently under way with law enforcement officials with the Covington County Sheriffs Office. The vehicle, as Phillips appreciated it, was proceeding south into Forrest County via Highway 49. Phillips is unsure whether he was listening to the common law channel of his

police scanner or the Forrest County Sheriffs Office ("FCSO") dispatch when he first heard of the chase, but did hear enough of it to know that law enforcement officials were pursuing a "white Ford Explorer." There is no available dispatch record with the Forrest County Sheriffs Department, but the dispatch tape with the Hattiesburg Police Department (D-9), indicates that the suspect's name was Tyrone Jackson, and that he was apparently wanted upon an accusation or charge of Domestic Assault. Testimony at trial by Seals and Little suggests that they did not monitor either the Forrest County Sheriffs Department or Hattiesburg Police, relying instead upon their dispatch for assistance, advise, information and instructions. By the transcript, the Hattiesburg Police Department ("HPD") did not want the Covington County Sheriffs Office to continue their pursuit into Forrest County, and for some reason, HPD was not going to continue the pursuit in any event. It is unclear at what point Phillips began his monitoring of the conversation, but it is evident that he was under the impression that he could ultimately be of some "assistance" to the Hattiesburg Police Department. He testified at trial that he did know that the Mississippi Highway Patrol ("MHP") was in pursuit, but this was only by virtue of him monitoring the radio traffic of HPD and Forrest County, and not by direct monitoring of the radio traffic with the MHP.

While Phillips monitored the HPD or FCSO radio transmission, MHP Troopers Joe Seals, Thomas Little and Donnie Rayburn had been dispatched from Highway 98 in Lamar County and were in route to intercept what had been reported to them as a "white SUV," and had positioned themselves along Highway 49, north of the city limits of Hattiesburg. By the testimony of Troopers Seals and Little, the suspect vehicle apparently got past both Little and Seals, but was spotted by Trooper Rayburn who was positioned the furthest South on Highway 49, north of the

City. Rayburn reported his visual contact with the suspect and that he was in pursuit. The dispatcher, then reported that fact to all units and monitored the pursuit from that point forward.

Unknown to the MHP, HPD or his own dispatch, Phillips had taken up a position in his personal vehicle, a 2003 white Ford Escape (D-18), in the approximate area of Eddy Street and Highway 49 and was going to attempt to impede or block the suspect from getting through the intersection. By his testimony, he saw the first Trooper, Rayburn only (not Seals or Little), coming through in pursuit of the suspect. Phillips, fell in behind Trooper Rayburn to join the chase and states that he reported his position and the fact of his participation in the pursuit to the FCSO dispatch. Jeff Byrd, the FCSO dispatch on the night of the occurrence, confirms that Phillips did report his position and that he was 10-94 behind the suspect. Byrd testified though that prior to this exchange, he was not advised that Phillips had been dispatched to assist nor was he instructed to engage by any superior officer, as required by the Forrest County Sheriffs Department General Orders (§ 93-003; D-14).

Phillips caught up with Trooper Rayburn and the suspect around the multipurpose building on Highway 49 (south of town), and testified that he attempted to assist Trooper Rayburn in an effort to bring the suspect to a halt by attempting to either force him from the roadway, or blocking his traveling path. There is no evidence that Phillips advised MHP of his participation in the "chase" nor is there any evidence on the MHP dispatch log that the MHP was aware that Phillips was engaged in the pursuit of Jackson. After this effort failed and the suspect increased his speed, Phillips fell slightly behind as Trooper Rayburn began to pull ahead of him, although still maintaining his distance from the suspect. Trooper Rayburn pulled ahead of Phillips as they both approached the Highway 49/98 intersection heading South. Seals and Little, initially well behind Rayburn, had finally caught up with Rayburn and Phillips at this very

location. Video coverage (D-20) of the vehicular movement of Seals' vehicle was admitted into evidence at trial and shows that as Trooper Seals approached both Phillips and Rayburn from the rear, that Phillips' car was the only "white SUV" on the highway, that it was alongside Trooper Rayburn's vehicle, and that there is no other "white SUV" in sight.

Trooper Seals testified at trial that he advised Trooper Rayburn to position himself forward of Phillips' vehicle (the "white SUV" believed by Seals to be the fleeing suspect's car) and block him from exiting Highway 49 onto Highway 98 by what is known as a "rolling roadblock." Based upon the video, Rayburn appears to comply with this request by speeding ahead, but in actuality remains in pursuit of Jackson onto Highway 98 East. Meanwhile, Trooper Seals pulled along side of Phillips, both still moving, and yells through his passenger window to pull over. Phillips appears to comply on the video (D-20), but not without some additional forward movement that Seals described as an apparent attempt by the operator of the vehicle to avoid being stopped.

Based upon the testimony at trial, it is evident that Trooper Rayburn believed that Seals was referring to Jackson in his "white SUV," who was well ahead and not visible to Seals. Seals by his testimony, was instructing Rayburn, in an effort to contain Phillips, traveling similarly in his "white SUV." The defendant suggested at trial that clearly there was a tacit mis-communication on the part of Trooper Seals and Rayburn by which both of them were focusing on two totally separate vehicles in their apparent pursuit. As Rayburn pulled ahead of Phillips and away from Seals, Seals testifies that he was totally focused on Phillips to assure that there was no danger to him and he was paying close attention to making sure that his car and that of the plaintiff were properly positioned so as to conduct the rolling roadblock without coming into contact with one another, thus causing an accident and property damage.

At the time that Trooper Seals attempted to position himself so as to block the plaintiff, it is clear that Phillips attempted to move his vehicle around Seals, at which point Seals moved his vehicle to further cut off Phillips. This maneuver was accomplished more than once and possibly three times. This was witnessed by Trooper Little, who had now caught up to Seals and saw who he also believed to be the suspect vehicle being a "white SUV" and further saw him attempt to maneuver around Seals' vehicle. It was apparent that Seals, and now Little, believed that the occupant of the Phillips vehicle was the one that attracted all of the law enforcement attention for the last twenty minutes and was reported to have committed a domestic assault in Covington County that led police on a high speed chase through a populated area at dangerous speeds for in-town travel.

Phillips eventually brought his vehicle to a stop as a result of Trooper Seals cutting him off from the ability to proceed further on the paved roadway. Trooper Seals then exited his vehicle and approached Phillips' vehicle. At no time did Phillips ever volunteer his status as a member of the Sheriffs Department Reserve Unit, nor did Seals ask for identification believing him to be the suspect that had been the subject of the chase. Trooper Seals testified that he approached the plaintiff's vehicle and commanded him to exit his vehicle immediately. Seals testified that Phillips failed to comply, and that he had to repeat this directive. Phillips' hands, according to Seals, were initially held up off of the steering wheel where they could be seen, but were then lowered to his lap at the second command. Trooper Seals then extricated Phillips from the vehicle in what he described as a "straight arm bar," took the plaintiff to the ground, and attempted to handcuff him. Trooper Little approached both of them about the time that Seals was extricating Phillips from his car, and arrived to assist Seals in the handcuffing. Both Trooper Seals and Little described a discernible amount of resistance from Phillips as they were

trying to handcuff him, but that they were ultimately able to overcome. Trooper Seals described that he approached Phillips, initially, from his car, conscious of the following factors that justified immediate extrication and securing of the suspect:

1. That the suspect had committed a domestic assault in Covington County;

2. That a "white SUV" was being operated by the suspect from Covington County;

3. That a "white SUV" had been chased through Hattiesburg, placing many citizens at risk, followed by Trooper Rayburn;

4. That it appeared that Rayburn was attempting to slow the pursued vehicle at the intersection of Highway 49/98 at the time that Seals made visual contact with them;

5. That Rayburn, as the closest officer, appeared to have been attempting to intercept the white SUV being driven by Phillips; and,

6. That Seals attempted several times to have Phillips pull over, which Phillips did not do.

After the plaintiff was handcuffed and while still laying on the ground, Phillips identified himself as "Forrest 124." At approximately the same time, Trooper Rayburn asks for assistance on the radio as he was still in pursuit of the original suspect. Both Trooper Seals and Little heard this which served to confirm that indeed the wrong individual, Phillips, had been stopped. At this point, it was apparent that a mistake had been made in pulling Phillips over. The handcuffs were removed from Phillips by Trooper Seals. Trooper Seals commented to Phillips that he was bleeding and that he needed medical attention. Seals testified that he inquired whether Phillips needed an ambulance but Phillips indicated that he was fine. Phillips radioed his dispatch and told them that he was fine, and the dispatcher, Jeff Byrd, asked "When were you not OK?" Trooper Little left then to assist Rayburn, still in pursuit and now on Highway 98 East of Highway 49. Trooper Seals momentarily remained with Phillips and provided him with his

name and supervisor's name so that follow-up contact could be made. Trooper Seals then left to assist Rayburn who had requested assistance during the continued pursuit.

Phillips' account of the events alongside the roadway is obviously contradictory to that of both Seals and Little, as well as the video coverage taken from Seals' patrol vehicle. Phillips indicates that he was engaged in the chase along with Trooper Rayburn, but that at some point in time, he was told to "cease" the chase. The plaintiff states that he pulled off of the roadway and stopped, and that it was only later that Trooper Seals came upon him and he believed gestured for him to move forward, which he says that he did. Phillips stated that once his vehicle was stopped, that Seals pulled him from his vehicle without asking him verbally to do so, "slammed" him to the ground, and then took his head and banged it onto the ground several times resulting in lacerations and cuts to his forehead. Then Phillips stated that he was "choked" and rendered unconscious. He awoke to the screams of the officer to get up but he could not because of the handcuffs. Phillips testifies that Seals and "another officer" assisted him to his feet but that he only remembers Trooper Seals, and not Little being there. Phillips stated then that he identified himself as Forrest 124, and that the officers released him from the handcuffs. The plaintiff stated that Trooper Seals commented on the blood from his head and that he should seek medical attention, and then Seals "left him on the side of the road to bleed."

The plaintiff proceeded north on Highway 49 to Elks Lake Road from the area of the encounter, then believing that he should consult with the Sheriff and Shift Commander, doubled back to the 21 Truck Stop, immediately across the street from the event, where he had a discussion with Sheriff Magee. A deputy riding that evening with Sheriff Magee offered to drive Phillips to the hospital, and did so.

Both parties, Seals and Phillips, agree that Seals came to the hospital to see Phillips that evening. Phillips admits that Trooper Seals had asked him how he was doing and that this prompted an accusation from Phillips about Seals "choking" him. Trooper Seals denied doing any such thing, and Phillips asked him to leave. Thereafter, Mr. Phillips continued to seek medical care, which included treatment for headaches, depression and post-traumatic stress disorder.

CONCLUSION OF LAW

The plaintiff alleges in his complaint that the agents of the Mississippi Highway Patrol were negligent, and that they are not entitled to immunity under the Mississippi Tort Claims Act ("MTCA"), M.C.A. § 11-46-1 *et. seq.* He asserts that Troopers Little and Seals acted with "reckless disregard" of the plaintiff's safety and well being by using excessive force on him during the course of the stop that he alleges resulted in his alleged injury. The plaintiff further contends that he was not engaged in criminal activity at the time of the incident.

The Mississippi Department of Public Safety is a governmental entity under the provisions of the Mississippi Tort Claims Act and therefore, any relief which the plaintiff might be entitled to for the incident, must emanate exclusively from this series of statutes. The MTCA was created with the intent to provide governmental entities and employees immunity when acting within the course and scope of their employment duties. *See* generally M.C.A. § 11-46-1, *et seq.* In the context of law enforcement and police protection, the legislature specifically provided that (in relevant part only):

> 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 . . .

M.C.A. § 11-46-9(1)(c).

It is clear that law enforcement officials, such as Highway Patrolmen, acting within the course and scope or their employment, while engaging in the performance of their duties relating to law enforcement and police protection, without **reckless disregard** for the safety and well being of others not engaged in **criminal conduct,** will be entitled to immunity in this case. In order for the plaintiff to recover against the defendant, the plaintiff must prove that:

A. Trooper Seals or Little acted with "**reckless disregard**" toward him at the time of the encounter; and,

B. That the plaintiff was not engaged in "**criminal activity**" at the time of the injury.

The plaintiff simply cannot meet the criteria of this provision in order to defeat the immunity provided to the officers and recover from the defendant. At trial, the plaintiff carries the burden to prove each of these elements. The plaintiff's burden herein is by a preponderance of the evidence. *See Simpson v. City of Pickens*, 761 So.2d 855, 859 (Miss. 2000).

It is not disputed that Seals and Little were acting within the course and scope of employment duties and were lawfully engaged in police protection at the time of this incident. As such, they are not personally liable for the complaints of the plaintiff and any liability for their conduct during the "scope" of their duties, is the responsibility of their agency employer.

Next, the plaintiff must show that Seals and Little acted with "*reckless disregard*" for his safety and well being. Reckless disregard has been described by the Mississippi Supreme Court as a "higher standard than gross negligence" and "embraces willful or wanton conduct which requires knowingly and intentionally doing a thing or wrongful act." *Turner v. City of Ruleville*, 735 So. 2d 226, 230 (Miss. 1999)(citation omitted)(emphasis added). In finding **reckless**

disregard, this Court must look at the "*totality of the circumstances*" of the officers' conduct. *Thomas ex rel. Thomas v. Miss. Dept. of Pub. Safety*, 882 So. 2d 789, 796 (Miss. Ct. App. 2004). Based upon the totality of circumstances in this case it is clear that Seals and Little did not act with **reckless disregard** to this plaintiff.

A review of the plaintiff's Complaint indicates that the most contentious dispute in this case regards the use of excessive force and its application to the reckless disregard standard. The Mississippi Supreme Court "has held that the police may exert physical force in overcoming resistance during an arrest, but they may only use that force which is reasonably necessary to respond to the resistance encountered." *City of Jackson v. Powell*, 917 So. 2d 59, 71 (Miss. 2005)(citations omitted). This Court's "determination of the nature of the officers' actions is judged on an objective standard with all the factors that they were confronted with, taking into account the fact that the officers must make split-second decisions." *Id.* at 72; *see also Wagner v. Bay City, Texas*, 227 F. 3d 316, 321 (5th Cir. 2000), providing that a Court should be "careful not to engage in second-guessing officers in situations in which they have to make split-second, on-the-scene decisions . . .'even law enforcement officials who reasonably but mistakenly use excessive force are entitled to [qualified] immunity.'"(citations omitted). "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight." *Graham v. M.S. Connor*, 490 U.S. 386, 397, 109 S. Ct. 1865, 1872 (1989). These decisions must be made not only for the safety of the public, but also for the safety of the suspect and themselves.

In this case, Trooper Seals and Little secured the plaintiff believing him to be a perpetrator that had given law enforcement officials (State, County and Local) occasion to chase him through a highly populated area of Hattiesburg, with the suspect endangering the lives of

many as he recklessly sped through Hattiesburg at a high rate of speed. The actions of the perpetrator, projected desperation and danger, and Trooper Seals had every reason to believe that he would be a danger to him if ultimately cornered and stopped. The suspect had been previously involved in a "domestic assault" which places him at a high likelihood of presenting violence and bodily threat to the officer or officers that stop him. In fact, the testimony of David Jones, Sheriff Magee and Trooper Thomas Little confirmed that the officers that actually did stop the correct perpetrator on Highway 98 were engaged in a dangerous standoff with him that resulted in the apparent display of weapons and he had to be arrested with some force.

The mindset of Trooper Seals clearly justified an approach in handling this "suspect" that was quick and decisive for his own protection and the protection of the suspect. The defendant tendered the testimony of Charles Simms, former Chief of Police for the City of Hattiesburg, who testified as an "expert" that Trooper Seals clearly was justified in assuming that Phillips was the "suspect" by virtue of his relationship to Rayburn at the time that Trooper Seals came within sight of them. Unfortunately, for Phillips, he was mistaken for the "suspect" because of the stark similarity of his vehicle with that of the correct suspect, and his disobedient actions, which enhanced the officers' belief that he was the subject of their attention. The plaintiff's unannounced and certainly unanticipated involvement in the chase while riding in his personal automobile that bore a resemblance to the vehicle that was being chased, was clearly a violation of his commission and of the stated policies and procedures of the Forrest County Sheriff's Department. Sheriff Billy McGee testified that Phillips violated departmental policy in involving himself in the chase in his personal vehicle due to the fact that he did not have authorized and approved equipment to participate in a "pursuit." Sheriff Magee additionally stated, as Sims concurred, that it was common knowledge in the law enforcement community

that personally owned vehicles would simply not be used in a suspect pursuit. Former Chief Sims further stated that not only did Phillips not comply with his departmental policy in pursing a suspect in an unmarked vehicle, he did not have the right equipment under Mississippi Law to engage in a pursuit thus endangering himself and others.

Since Phillips, at the moment of the stop, because of his unauthorized involvement and participation in it, occupying a vehicle very similar to the suspect's, essentially stood in the shoes of the perpetrator in the belief and mind of Trooper Seals and later Little, he then justifiably became the subject of the quick and decisive actions of the law enforcement officers consistent with the situation and in harmony with the safety of all concerned. This unfortunately resulted in some injury to him during the process of securing him. Yet, under an objective review of these facts and taking into account the fact that officers must make split-second decisions, Troopers Seals and Little used reasonably necessary force to respond to the resistance they believed they encountered from Phillips. Their actions in no way rise to the level of *reckless disregard.* Mr. Sims indicated as an expert witness in appropriate police procedures and tactics, that Troopers Seals and Little completely followed appropriate law enforcement procedures in securing a suspect believed to have been one to have committed a crime in an adjoining county and that the securing of the suspect is the first priority given the "totality of circumstances."

The best that the plaintiff can argue in this matter is that a mistake was made, and thus a matter of due care – said differently, possible negligence. However, a negligent mistake in police duties or otherwise is not **reckless disregard**. Especially when based upon "probable cause" which this Court finds existed to pull the plaintiff over and stop him. While the defendants argued that it is simply not a matter of "negligence" to make a mistake in securing a perpetrator given the circumstances of this case (*See e.g. Baker v. McCollan*, 443 U.S. 137 , 146

(1979), arresting officers merely have a duty to exercise "due diligence" in identifying an arrestee and/or detainee; *see also, Sanchez v. Swyden*, 139 F.3d 464 (5th Cir. 1998); *Sanders v. English*, 950 F.2d 1152 (5th Cir. 1992); *Herrera v. Carlson*, 862 F.2d 1157 (5th Cir. 1989); *Simmons v. McElveen*, 846 F.2d 337 (5th Cir. 1988); *Jackson v. Jackson County, Miss.*, 956 F. Supp. 1294 (S.D. Miss. 1995)), and even if the officers' alleged "acts or omissions" reached the level of negligence, this is not enough to find "reckless disregard" that would deny the MHP immunity from liability for this incident.

In the recent decision in *City of Greenville v Jones*, 925 So. 2d 106 (Miss. 2006), John Jones was mistakenly accused and arrested for making bomb threats. Jones was erroneously identified due to mistakes by the city police department. Jones brought an action against the city and prevailed upon the finding that the police department had acted with **reckless disregard** by conducting an "inadequate" and "careless" investigation. *Id.* at ¶ 28. On appeal, the Mississippi Supreme Court found that the city police officers did not act in **reckless disregard** of Jones' safety and well-being when conducting their investigation, because their **mistakes** at identifying the correct perpetrator amounted to nothing more than **mere negligence**. The Court stated "[i]t simply does not evidence reckless disregard within the meaning of the statute or case law. As pointed out by the trial judge, reckless disregard under the MTCA, is action which amounts to 'wanton and willful' conduct." *City of Greenville*, 925 So. 2d at ¶ 29 (citation omitted). Even though Jones and his family had suffered for a crime which he did not commit, the Court could only find that police had acted with negligence, or were mistaken, and that is not enough to overcome immunity. *Id.* at ¶ 32.

It is clear that the actions of Trooper Seals and Little in identifying and securing someone who they thought was a danger to them and to the public, under these circumstances, is not

"reckless disregard." Since they did not evidence "reckless disregard" toward the plaintiff, either in identifying him, though a mistake, or in securing him, believing him to be the intended suspect, the plaintiff cannot meet the "reckless disregard" component of his claim. As such, the Mississippi Highway Patrol is immune from suit for this occurrence.

Alternatively, even if ***reckless disregard*** toward the plaintiff is found, the defendants are still entitled to immunity if the plaintiff was at any time throughout the operative moments of the event, engaged in the commission of a crime. *See Mississippi Dept. of Public Safety v. Durn*, 861 So. 2d 990 (Miss. 2003). Misdemeanor traffic offenses are criminal activities within the meaning of police exception to the MTCA entitling law enforcement personnel to immunity as to any act where injured party was engaged in criminal activity that had a causal nexus to the wrongdoing of the law enforcement officer. *Id.*

The plaintiff was *tacitly* engaged in "criminal activity" at the time of his injury. In Mississippi, it is a criminal act to engage in emergency vehicular operations without the right equipment or vehicle (M.C.A. § 63-3-517); to fail to yield to emergency vehicles (M.C.A. § 63-3-809); to not comply with a police officer's traffic orders ((M.C.A. § 63-3-809); and to refuse to comply with a police officer request (M.C.A. § 97-35-7). Given the testimony, the plaintiff impeded the pursuit of the correct suspect by his unannounced insertion into the chase thereby creating the confusion that led to his detention, by his multiple failures to yield to a law enforcement officers' attempts to pull him over, and then by refusing to peaceably exit his vehicle, no matter the justification for any of his conduct. Essentially, he failed to comply with the lawful orders of a police officer and as such, cannot claim the imprimatur under the Miss. Tort Claims Act by claiming to be engaged in non-criminal behavior. This too disqualifies him from recovering against the defendants.

The Court is simply puzzled at the fact that the plaintiff, minimally but professionally versed in law enforcement procedures as a reserve academy graduate, could have believed it acceptable to remain mute about his status as a member of the law enforcement community in the face of obvious enforcement action by another law enforcement agency. However, Phillips chose to withhold his identity until late in the process of securing him, and very likely after he was injured because of it. Certainly given the fact that the plaintiff had joined in a chase when he occupied a very similar vehicle as that of the suspect, and with no method to communicate with the Highway Patrol but through his dispatcher which he apparently elected not to do, gives evidence to the virtue of not participating in such police operations without an obvious and profound right to be there, such as in a marked vehicle or perhaps in uniform.

In this case, Phillips, though unwittingly and with the best of intentions, inserted himself into a situation that amounted to his violation of the law. He simply did not have the appropriate equipment to engage in emergency operations under MCA § 63-3-517 (or his department guidelines) and had a duty to yield to other "emergency vehicles" (such as other police officers) under MCA § 63-3-809. His failure to comply with both of these statutes, regardless of his best of intentions, resulted in his violation of very specific statutes that proscribe criminal sanction. When he violated both, he increased the hazard to himself and to others, especially the officers attempting to enforce the law and maintain the safety of the community, by involving himself in a chase that he had no authority or entitlement to assist in. His presence in the event, occupying a very similar vehicle as that being chased, justifiably led the officers to believe that he was the correct individual being chased. This clearly resulted in their confusion, exposed the motoring public to additional unnecessary risk, and could have resulted in a catastrophic outcome by the fact that he distracted Troopers Seals and Little from their primary objective, of backing up their

fellow officer in the face of his pursuit of a fleeing criminal. As such, Phillips cannot be said to be free of criminal behavior at the time of the occurrence that resulted in his alleged injuries. Therefore, he cannot avoid the immunizing features of the MTCA, and his claim, for that reason, too must fail.

The officers in this case were clearly possessed with "probable cause" in attempting to stop and secure Mr. Phillips, even though in the end, he was the wrong suspect detained. It is clear under Mississippi law, that an individual has no claim for the mistake of law enforcement in his apprehension, if the mistake was based upon probable or reasonable cause and made in good faith. If based upon probable cause, even though mistaken, an officer has qualified immunity. Further, an arrestee, even one such as the plaintiff, does not have to be placed under arrest, for the detention to initially be proper. In this case, before Seals was even able to introduce the plaintiff to the concept of an arrest, his detention and apprehension was determined to be a mistake. *Williams v. Lee County Sheriff's Department*, 744 So. 2d 286 (Miss. 1999), *Gliatta v Jones*, 96 Fed. Appx. 249, 2004 WL 1114469 (C.A.5 (Miss.)(probable cause analysis restated); *Hodge v. State*, 801 So. 2d 762 (Miss. 2001); *Jones v. State*, 841 So. 2d 115 (Miss. 2003)(officer's reliance on radio communications and dispatcher information confer sufficient probable cause for arrest, even though mistaken); *Jones v State*, 799 So. 2d 171 (Miss. Ct. App. 2001)(officers were entitled to rely on the information they received from the dispatcher); *Jackson v State*, 45 So. 2d 727 (Miss. Ct. App. 2003)(Police officers may make investigatory stops based upon reasonable suspicion, even though they may not have probable cause).

CONCLUSION

It is clear after hearing two days of testimony, that the plaintiff was in the wrong car, at the wrong place and at the wrong time. For some apparent reason, his disengagement in the

chase happened at the very moment that Trooper Rayburn appeared to be chasing him and no other white SUV was in sight. A myriad of facts converged so precisely against the plaintiff, that it can only be said that it simply "was not his lucky day." He inserted himself into this chase inappropriately, in a car that bore resemblance to that of the intended suspect and in violation of every law enforcement protocol. Seals and Little were justifiably distracted to the plaintiff and were rightful in their trepidation toward him to the point of believing him to be quite dangerous.

The Court does therefore find that the plaintiff has been unable to prove any set of facts in support of his claim which would entitle him to relief under the Mississippi Tort Claims Act and as such, his cause of action must be dismissed and judgment rendered for the defendant. Alternatively, the facts presented herein clearly support a conclusion that Phillips is unable to create any issue of fact other than, at the very most, simple negligence. Phillips' inability to demonstrate anything more than simple negligence defeats his claims under the MTCA. *Williams v. City of Amory*, 2006 WL 1984596, *6 (N.D. Miss. 2006). Therefore, the defendant is entitled to have this claim dismissed and judgment rendered in its favor accordingly.

The defendant will submit an appropriate Judgment to the Court pursuant to the Rules dismissing this matter, with prejudice.

SO ORDERED AND ADJUDGED, this the 27 day of December, A. D., 2006.

ROBERT B. HELFRICH
CIRCUIT COURT JUDGE