

# *Danks Miller & Cory*

*An Association of Professional Corporations*

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February 22, 2010

Via Certified Mail Return Receipt Requested  
And Regular US Mail

Mr. Larry Ishee  
Chancery Clerk of Jones County  
P.O. Box 1468  
Laurel, MS 39441

Sheriff Alex Hodge  
Sheriff of Jones County  
P.O. Box 185  
Laurel, MS 39441

Mr. James Atkins  
Deputy Sheriff of Jones County  
P.O. Box 185  
Laurel, MS 39441

Mr. Abraham McKenzie  
Deputy Sheriff of Jones County  
P.O. Box 185  
Laurel, MS 39441

Mr. Carrol Windham  
Deputy Sheriff of Jones County  
P.O. Box 185  
Laurel, MS 39441

Commissioner Stephen B. Simpson  
MS Department of Public Safety  
P.O. Box 958  
Jackson, MS 39205

Mr. Michael Barthay  
Director MS Highway Patrol  
P.O. Box 958  
Jackson, MS 39205

Mr. Chris Walker  
MS State Trooper  
35 J.M. Tatum Drive  
Hattiesburg, MS 39401

**Re: NOTICE OF CLAIM PURSUANT TO MISSISSIPPI TORT CLAIMS ACT,  
MISS. CODE SEC. 11-46-1 *et seq.* AGAINST JONES COUNTY, MS AND  
STATE OF MISSISSIPPI BASED UPON RECKLESS DISREGARD OF  
THE SAFETY AND WELL-BEING OF THE CLAIMANTS AND  
RECKLESS DESTRUCTION OF THEIR PROPERTY BY DEPUTIES  
OF THE JONES COUNTY SHERIFF AND AN OFFICER OF THE  
MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY HIGHWAY  
PATROL ON BEHALF OF PETER M. EYRE, ADAM MUELLER, and  
JASON TALLEY**

To Whom It May Concern:

In accordance with Miss. Code Ann. Sec. 11-46-11(2), Claimants Peter M. Eyre, Adam M. Mueller and Jason Talley (hereinafter at times "Claimants") hereby serve notice of their intentions to pursue legal remedies against Jones County, acting through the Jones County Sheriff's Department, and the Mississippi Department of Public Safety Highway Patrol for the unlawful conduct of their law enforcement officers who were acting within the scope of their employment in reckless disregard of the safety and well-being of the Claimants and the reckless destruction of their property. None of the Claimants were at the time of the events described below engaged in criminal conduct. Neither the governmental entities nor the individually identified officers may claim immunity under the provisions of Miss. Code Ann. Sec. 11-46-9 (1)(c), (j), nor of any other subparagraph of Miss. Code Ann. Sec. 11-46-9 (1), nor under 42 U.S.C. Section 1983.

**Claimants' Residences**

Peter Eyre at the time of the events described below resided at 1114 Rt. 12, Westmoreland, N.H. 03467. At the time of filing this notice, he resides at 701 22<sup>nd</sup> Street, Arlington, VA 22202. Adam Mueller at the time of the events described below resided at W208 N16831 Center Street, Jackson, WI 53037. At the time of filing this notice, he resides at the same address. Jason Talley at the time of the events describe below resided at 1114 Rt. 12, Westmoreland, N.H. 03467. At the time of filing this notice, he resides at 657 Kodiak Ct., Apt. 3, Sunnyvale, CA 94087.

### **Statement of Facts and Circumstances Upon Which Claim Is Based**

On May 14, 2009, Peter Eyre was the registered owner and driver of a 2000 Four Winds Hurricane recreational vehicle (commonly called a motor home). He and two passengers, Adam Mueller and Jason Talley, were traveling lawfully through Mississippi on Interstate Highway 59 en route from New Orleans, LA to Nashville, TN. They were traveling in connection with a grassroots documentary filmmaking project—dubbed “The Motorhome Diaries: Searching for Freedom in America”—which was aimed at documenting a growing philosophical movement of individual rights in America. Throughout their travels, the three were conducting videotaped interviews with a wide variety of people and organizations, including a sitting United States Congressman, a founder of a national political party, three political candidates for the United States Congress, several think tank scholars and university professors, and numerous ordinary Americans.

Mr. Eyre's vehicle was properly registered in the state of New Hampshire. He had been issued a temporary paper tag with an expiration date clearly marked as “06-30-2010.”<sup>1</sup> Eyre had driven through several states and other counties in Mississippi without incident. As required by a Mississippi statute, Eyre's tag was “conspicuously displayed on the vehicle being operated in such a manner that it may be easily read.” Miss. Code Ann. Sec. 27-19-323 (Rev. 2006).

At approximately 9:00 A.M., Deputy Sheriff James **Atkins** was monitoring northbound traffic on Interstate 59 in the vicinity of mile marker 102. Deputy **Atkins**' patrol car was positioned in the highway median perpendicular to the northbound lanes of the Interstate. Eyre's

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<sup>1</sup> A copy of the New Hampshire tag is attached to this notice.

motor home passed by and Deputy **Atkins** pulled out onto the Interstate in pursuit. Deputy **Atkins** has testified that he could not read the information on its temporary tag.<sup>2</sup> **Atkins** followed the motor home for approximately two miles without making any apparent attempt to discern the tag information. At mile markers 104-105 (near the northern border of Jones County), **Atkins** flashed his blue lights, compelling Eyre to bring the vehicle to a stop. Eyre complied without hesitation.

Once the motor home had pulled over to the east side of the travel lanes, Deputy **Atkins** was able to see and read the New Hampshire tag and to conclude that there was no violation of Mississippi law.<sup>3</sup> However, instead of immediately allowing the vehicle to continue on its way, **Atkins** approached the front passenger side of the motor home. He then ordered Eyre to get out of his vehicle and to bring his driver's license. When Eyre complied, **Atkins** directed him to the area between the rear of the motor home and the front of the patrol vehicle.

Deputy **Atkins** told Mr. Eyre that he had stopped the motor home because of its license tag. Ignoring the obvious fact that the motor home was from out of state, **Atkins** told Eyre that "Mississippi doesn't offer paper tags." **Atkins** otherwise displayed little interest in the motor home's license tag—the ostensible justification for the traffic stop.<sup>4</sup>

Approximately one minute into the stop, **Atkins** departed from his alleged investigation of the tag and asked unrelated questions about the contents of the motor home and other

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<sup>2</sup> This claim is puzzling, as Mr. Eyre's license tag was displayed on the rear of his motor home in the area where license tags commonly are affixed on all types of vehicles.

<sup>3</sup> In an incident report prepared months later on November 24, 2009, **Atkins** falsely asserts that he had witnessed a "tag violation."

<sup>4</sup> Much later, however—approximately twenty minutes into the stop (and well after any legally-justifiable period of detention had evaporated with respect to the motor home and its passengers)—Deputy **Atkins** falsely informed Eyre, in reckless disregard of state law and of the constitutional limitations on **Atkins**' power as a law enforcement officer, that having a paper tag was the "same as having no tag."

passengers. Eyre cooperatively responded to **Atkins'** questions, answering that there were two male passengers in the motor home. Eyre also told **Atkins** that he had two handguns in the motor home. He said they were disassembled, stored in a locked gun case, and kept separate from the ammunition. Because Mr. Eyre has no felony record, it was lawful in Mississippi for him to transport these legally possessed firearms in his vehicle.

From inside the motor home, passenger Adam Mueller turned on a handheld video camera so that he could record the events. Deputy **Atkins** claimed to have noticed movement in the motor home. He approached the passenger-side window. Seeing Mueller with the video camera, **Atkins** instructed him to turn it off and to stop filming. Mueller declined, advising the deputy that he wanted to make sure that everyone was held accountable.

**Atkins** then made no further issue of the video camera and instructed Mueller to exit the motor home. Mueller complied and, when asked, confirmed Eyre's previous statement that there was one other passenger inside the vehicle. The third passenger was Jason Talley, who had been sleeping in the back of the motor home. At Deputy **Atkins'** command, Mueller woke Talley and told him to get out of the vehicle.

**Atkins** ordered Talley and Mueller to stand in designated areas separate from Eyre and from one another. Eyre and Mueller were wearing shorts and no shirts. Talley wore light khaki trousers and a tee shirt. Mueller recorded the activity from the area where he had been told to stand and was not belligerent toward the deputy. He did not interfere with the deputy's interrogation of Eyre.<sup>5</sup>

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<sup>5</sup> The activity described so far occurred within five minutes of the stop.

As **Atkins** directed Eyre to the right front door of the motor home to retrieve additional vehicle information, Mueller—still recording—asked **Atkins** if he could move forward from his position at the rear of the deputy's patrol car to "get the audio." **Atkins** told him to stay where he was and Mueller complied. When **Atkins** and Eyre returned to the rear of the motor home, and were standing just in front of the patrol unit, Mueller moved slightly forward and to his right to get a better camera angle. He was told by **Atkins** to "get on that corner of the truck." Mueller complied, even though **Atkins** had no factual basis to believe that Mueller was engaged in unlawful conduct or that he posed a threat to the officer's safety.

By this time (about seven and one-half minutes after the stop) **Atkins** had prolonged the detention beyond the time reasonably necessary to confirm by visual inspection the validity and proper display of the New Hampshire temporary license tag. Nevertheless, Deputy **Atkins** initiated unrelated inquiries without a factual basis to support a reasonable belief that any of the three persons he was detaining were engaged in unlawful activity. **Atkins** ran a radio dispatch check on Eyre that confirmed that his New Hampshire driver's license was valid and that he had no record. **Atkins** did not at this time request verification of the temporary license tag.

A few seconds later, Jones County deputy sheriff **Abraham McKenzie** arrived at the scene and parked his patrol car to the south of where Mueller was standing. While remaining in his designated area, Mueller began filming **McKenzie** as he got out of his patrol car. **McKenzie** (about 6'3", 240 pounds and fully armed) immediately and aggressively approached Mueller and ordered him to stop filming. **McKenzie** grabbed the camera from Mueller and, assisted by **Atkins**, forcibly handcuffed him and placed him under arrest for disorderly conduct. **Atkins**

took possession and control of Mueller's camera and thereby assumed responsibility for preserving it and the recordings it contained.

Deputy **Atkins** now claims that he was concerned that Mueller's video camera could have been a disguised firearm. Assuming charitably the sincerity of this concern, any perceived danger disappeared once the deputies seized possession of the camera. Clearly the camera was not a weapon. The officers faced no threat other than having their public activities recorded as evidence. Their continued lawless and reckless conduct in interfering with Mueller's right to record police activity on a public right of way; their arrest of Mueller for a nonexistent offense; and the willful destruction of exculpatory evidence by later erasing the footage filmed by Mueller, reveals the officers' awareness of the illegality of their conduct and reveals a reckless indifference to the constitutional rights of those subjected to their power.

The actions of the deputies destroyed any pretense of a lawful traffic stop. **Atkins'** and **McKenzie's** abuse of their lawful authority was the direct and proximate cause of all that followed. Any "breach of the peace" that may have occurred during this event was the result of police misconduct and not attributable to the Claimants whose conduct was lawful and constitutionally protected.

There is no law in Mississippi that prohibits the filming of law enforcement activities in public places.<sup>6</sup> Such a law would violate the First Amendment to the Constitution of the United States. Attached to this notice is a copy of the Motion to Dismiss the criminal charge filed against Mueller by **Atkins** that is currently pending in Jones County Court.

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<sup>6</sup> See the attached newspaper account of proposed (albeit redundant) legislation designed to correct the erroneous and, apparently, widespread assumptions of state and local police officers that they have the power to interfere with – and even arrest – citizens who attempt to record overt conduct by uniformed law enforcement officers in public places.

The illegal arrest of Mueller resulted in prolonging the illegal detention of the motor home and of Eyre and Talley. Over ten minutes after the initial stop, **Atkins** expressed his purpose to search for drugs and to contact a K-9 unit to initiate the search. He had no factual basis to detain Eyre and Talley and no factual basis for the detention of the motor home.

Approximately fifteen minutes after the stop, **Atkins** directed Eyre to produce the registration for the motor home. Eyre complied and the New Hampshire registration matched the description of the motor home. Even with this information in hand, **Atkins** continued to interrogate Eyre about whether there was anything he should “know about” inside the motor home. Eyre asserted his constitutional right to refuse consent to a search of the motor home. The consequence of Eyre’s assertion of a Fourth Amendment right was to extend the illegal detention of the motor home and of Eyre and Talley to await the arrival of a drug-sniffing dog.

A few minutes later, a supervising deputy sheriff, **Sgt. Carrol Windham**, arrived at the scene. **Windham** and **Atkins** approached Talley, who had remained passively at the front of the motor home as ordered by **Atkins**. Talley had witnessed the mistreatment of Mueller by **Atkins** and **McKenzie**. Talley politely declined to answer questions about travel plans whereupon **Atkins** demanded that he produce identification. Talley exercised his constitutional right to refuse to produce identification because the deputies had no factual basis upon which to premise a reasonable belief that he was engaged in criminal activity, that his identity had anything to do with the reason for the traffic stop, or that he presented any conceivable threat to their safety.<sup>7</sup> In reckless disregard of statutory and constitutional limitations upon his police powers, **Atkins**

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<sup>7</sup> Talley weighed about 160 lbs and was dressed in a pair of light trousers and a tee shirt. Each of the deputies probably weighed in excess of 230 lbs (and Windham well in excess of that) and carried loaded handguns, handcuffs and—as it turned out—pepper spray.

falsely told Talley that there was a Mississippi law that required Talley to produce a personal ID upon the demand of a police officer. When Talley continued to assert his well-established constitutional right<sup>8</sup> to refuse to produce his “papers” upon the demand of a police officer without cause, **Atkins** and **Windham** ordered him to turn around and to place his hands on the motor home. Talley refused to submit to the unconstitutional command whereupon **Windham** doused him with pepper spray, grabbed him in a chokehold and tackled him to the ground. **Atkins** and **Windham** forced Talley into handcuffs and falsely arrested him for “resisting arrest”<sup>9</sup> and “disorderly conduct.”<sup>10</sup> The arrest of Talley and the force employed was illegal, unreasonable, excessive and in reckless disregard of his safety and well being and his rights as a citizen of the United States lawfully engaged in interstate travel.

Talley experienced considerable pain and discomfort as the result of having been pepper sprayed. Despite his many requests for water to wash out his eyes, the deputy sheriffs recklessly and in conscious disregard for his safety and well-being refused to provide any relief until he was booked into the county jail—approximately two hours after being sprayed.

Following the unlawful arrest of Talley, both **Atkins** and **Windham** continued falsely and recklessly to assert their absolute power to compel citizens to obey police orders without regard to reasonable justification.

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<sup>8</sup> *Hiibel v. District Court*, 542 U.S. 177 (2004) (before a police officer may detain and compel a citizen to reveal his name or face arrest there must be (1) fact-based reasonable suspicion that the person had or was committing a criminal offense; and (2) the demand must be reasonably related to the circumstances justifying the detention); *see also Brown v. Texas*, 443 U.S. 47 (1979). In this instance, Talley's identification was in no way related to the validity of the motor home's license tag, and there was no other basis for his detention.

<sup>9</sup> Any privileged use of force in this instance lay with Talley since his arrest for a non-existent offense manufactured by the deputies was patently illegal. *See Murrell v. State*, 655 So.2d 881 (Miss. 1995).

<sup>10</sup> Attached is Talley's Motion to Dismiss the affidavit filed by Atkins in Jones County Court demonstrating the lack of factual and legal support for the allegations.

Eyre remained passively in the area between the rear of the motor home and **Atkins'** patrol unit. He had committed no offense. By the officers' own admissions, he had been fully cooperative—except for his constitutionally protected refusal to consent to a search of his motor home. But now—between twenty and twenty-five minutes after what had become an egregiously illegal detention (exacerbated by the illegal arrests of Mueller and Talley)—**Windham** approached Eyre and placed him in handcuffs. **Windham** had no reasonable suspicion (let alone probable cause) to believe Eyre had or was committing any offense or that he posed any threat to the safety of the several police officers at the location. The length of detention plus the handcuffing of Eyre was the functional equivalent of a full-blown arrest without probable cause.

Approximately thirty minutes after the initial stop of the motor home, Mississippi State Trooper **Chris Walker** arrived with his dog. Revealing his indifference to the legality of the conduct of the sheriff's deputies, **Walker** made no inquiry as to the reason for the stop of the motor home. He did not ask about the length of the detention prior to his arrival. He did not inquire as to the reasons and justification of the arrests of Mueller and Talley. His conduct thereafter was in reckless disregard of established constitutional law that forbids unreasonable detention of a vehicle for purposes of conducting a “dog sniff” of the vehicle's exterior.<sup>11</sup>

**Walker** led his dog around the outside of the vehicle and claimed that the dog “alerted” to the presence of marijuana by sitting down opposite a storage compartment near the left rear end of the motor home. Walker ordered Eyre to produce the key to the storage compartment.

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<sup>11</sup> See, e.g., *Couldery v. State*, 890 So.2d 959 (Miss. Ct. App. 2004)

When threatened with 35 years in jail and physical damage to his RV, Eyre complied.<sup>12</sup> **Atkins** and **Windham** then told Eyre that he was going to jail, even though the dog's alert would prove false and the search of the motor home would reveal no illegal drugs.

An extensive search of the storage compartment (including unscrewing an interior panel), all of the containers in the compartment, and the interior of the motor home uncovered as "evidence" a single, unopened bottle of alleged beer<sup>13</sup> in the motor home refrigerator. This became the basis for the charge against Eyre: possession of beer in a "dry" portion of Jones County.<sup>14</sup> During the course of the unlawful search, **Walker** falsely told Eyre that he had committed a federal offense by transporting guns on an interstate highway. He continued to interrogate Eyre without having given him *Miranda* warnings. In addition to **Atkins**, **McKenzie**, **Windham** and **Walker**, two other sheriff's deputies (one of whom was a senior officer) arrived on the scene and participated in the search.

The search of the motor home alongside the highway lasted about 40 minutes. About 1 hour and 45 minutes after the stop, an employee of a towing company arrived to drive the motor home to another location. At that location a more intrusive search was conducted by unknown law enforcement agents who recklessly ignored impound and inventory procedures. No inventory of the Claimants' property was compiled. No efforts were made to safeguard the Claimants' property stored within the motor home. This search was conducted in reckless

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<sup>12</sup> Incidentally, Eyre earlier had opened this compartment in the presence of deputies **Atkins** and **McKenzie** when he retrieved the title to the motor home.

<sup>13</sup> **Atkins** admitted in sworn testimony during the Justice Court trial that he did not examine the label on the bottle, could not name the brand, and could not say whether the suspected beverage had any alcoholic content. The physical evidence was not preserved.

<sup>14</sup> See Eyre's attached Motion to Dismiss the charge filed in the criminal proceedings in Jones County Court demonstrating the absence of legal support for such a charge.

disregard of Fourth Amendment constraints and resulted in recklessly inflicted damage to the interior of the motor home and to the Claimants' property.<sup>15</sup>

Eyre, Talley and Mueller were transported in vehicles driven by **Atkins** and **Windham** at unreasonable speeds far in excess of posted limits, exposing them to risk of serious bodily harm. During their illegal detention the Claimants were falsely accused by officers of the law as "white supremacists"; threatened with remarks such as "we know what you're all about"; and labeled as "Ron Paul radicals." The charge of racism was particularly hurtful since it was the very antithesis of Claimants' commitment to a free and just society.

The three Claimants were booked in to the Jones County Jail and held for another 10 hours until acquaintances were able to arrive from out of state to post their bail. Mueller was subjected to the indignity of a strip search without reasonable suspicion. Because of the late hour of their release, they were forced to spend the night at a local motel.

The next morning, the Claimants went to the unsecure "impound lot" to pick up the motor home. Its interior had been ransacked, with clothing and private belongings strewn about. Significant damage had been done to the inside of the motor home. For example, molding had been torn from the interior bulkhead and portions of the seating had been torn apart. Moreover, Mr. Eyre's two firearms—previously secured in a locked gun case (disassembled and separate from any ammunition)—had been left in plain view on the motor home's couch.

Although **Atkins** had taken custody of Mueller's video camera at the scene of his arrest and claimed that he would be holding it as evidence, he did not log it in at the sheriff's department. The camera was found in plain view when the Claimants entered the vehicle the

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<sup>15</sup> *Florida v. Wells*, 495 U.S. 1 (1990); *Colorado v. Bertine*, 479 U.S. 367 (1987).

following morning. **The footage of Atkins and McKenzie taken by Mueller before his unlawful arrest had been erased.** The willful and wanton destruction of exculpatory evidence by the officers involved is evidence of their awareness of their unconstitutional behavior, and supports a claim for recovery under the Mississippi Tort Claims Act.

The conduct of the all the law enforcement officers described in this notice discloses a serious lack of adequate training and supervision by the Jones County Sheriff and the Mississippi Department of Public Safety.

**Notice of Intent to Join Mississippi Tort Claims Action  
As a Pendent Claim to a Federal Civil Right Action  
Pursuant to 42 U.S.C. Sections 1983 and 1988**

In addition to the information required by the notice provisions of the Mississippi Tort Claims Act, the Claimants hereby notify the governmental subdivisions and individuals named in this notice of their intentions to seek relief for violations of their federal constitutional rights pursuant to the provisions of 42 U.S.C. Section 1983. The federal action will include claims for reasonable and appropriate attorneys' fees as provided by 42 U.S.C. Section 1988, and will include a pendent claim pursuant to the Mississippi Tort Claims Act.

**Damages**

As a direct a proximate consequence of the described unlawful and reckless behavior of the law enforcement officers employed by Jones County and the State of Mississippi, Claimants Eyre, Mueller and Talley suffered extensive special and general damages.

***A. Special Damages – Peter Eyre***

As the owner of the motor home Eyre was compelled to pay a towage and impound fee of \$500.00; costs of repairing the damage to the interior of the vehicle caused by the

illegal searches ran to \$600.00; share of motel room cost after release from jail and lack of immediate access to motor home (1/3 of \$120.00) was \$40.00; required posting of bond/fine \$200.00 plus \$25.00 “key charge”; proportional share of costs of returning via motor home to Jones County for Justice Court trial in September 2009 (1/3 of \$1750.00): \$583.33; cost of criminal defense in Jones County Justice Court: \$3,000.00; cost of criminal defense in Jones County Court: \$6,000.00.

Total special damages to date:  $\$500.00 + 600.00 + 40.00 + 200.00 + 25.00 + 583.33 + 3,000.00 + 6,000.00 = \$ 10,948.33$ .

***B. Special Damages – Adam Mueller***

Proportionate cost of motel room after release from jail and lack immediate access to motor home (1/3 of 120.00) was \$40.00; required posting of bond/fine \$215.00 plus \$25.00 “key charge;” proportional share of costs of returning to Jones County for Justice Court trial in September 2009: (1/3 of \$1750.00): \$583.33; cost of criminal defense in Jones County Justice Court: \$3000.00; cost of criminal defense in Jones County Court: \$6000.00.

Total special damages to date:  $\$ \$ 40.00 + 215.00 + 25.00 + 583.33 + 3,000.00 + 6,000.00 = \$ 9,863.33$ .

***C. Special Damages – Jason Talley***

Proportionate cost of motel room after release from jail and lack of immediate access to motor home (1/3 of \$120.00) was \$40.00; required posting of bond/fine \$365.00 plus \$25.00 “key charge;” proportional share of costs of returning to Jones County for Justice Court trial in September 2009 (1/3 of \$ 1750.00): \$583.33; cost of criminal defense in Jones County Justice Court: \$3000.00; cost of criminal defense in Jones County Court: \$6000.00.

Total special damages to date: \$\$ 40.00 + 365.00 + 25.00 + 583.33 + 3,000.00 + 6,000.00  
= \$ 10,013.33.

***D. General Damages***

Due to the reckless and unlawful behavior of the law enforcement officers described above, each of the Claimants was falsely arrested; subjected to illegal strip searches; falsely imprisoned for a period in excess of 12 hours; falsely charged with criminal offenses, and compelled at considerable expense and personal inconvenience to return to Jones County Mississippi from out of state to defend themselves against false and illegal charges. Moreover, claimant Jason Talley was the victim of unreasonable and excessive force when he was pepper sprayed during his illegal arrest.

In addition to the pain, suffering, public humiliation and emotional distress experienced by each of the Claimants in consequence of the reckless misconduct of deputies of the Jones County Sheriff's Department and a Mississippi State Highway Patrol Officer, the ransacking of their private papers and belongings in their "home on wheels" constituted a gross invasion of their constitutionally protected rights to privacy and an unlawful interference with their constitutional rights to interstate travel.

Because of the unlawful conduct of the officers involved in this matter, the Claimants were forced to disrupt a planned itinerary that was vitally important to the political objectives that were the primary reason for their interstate travels.

Of particular significance is an incident that was the direct and proximate result of the illegal arrests, illegal searches and false charges brought against the Claimants in Jones County. On July 23, 2009, Eyre and Talley sought to enter Quebec, Canada from the state of Vermont, in

connection with their documentary filmmaking project. Because of the false reporting of a “gun” charge on Eyre’s record stemming from the Jones County events, Eyre and Talley were detained by the Canadian Border Service Agency for over five hours. During that time their motor home was extensively searched by several Canadian law enforcement officers and their dogs. While the search revealed no contraband, Eyre and Talley were denied entry to Canada based on Section 36.2 c of the Immigration and Refugee Protection Act due to “committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.”

The false information generated by the unlawful conduct of the Jones County Sheriff’s Department and the Mississippi Highway Patrol has resulted in a severe and unwarranted restriction upon the Claimants’ ability to travel internationally. Until this taint is removed the Claimants will continue to suffer damage.

Therefore, based on the information contained in this Notice, each claimant has suffered general damages in the amount of \$ 250,000.00.

With kind regards, I am

Sincerely,

DANKS MILLER & CORY



Kenneth C. Miller

Enclosures  
KCM/tm

cc: Dale Danks, Jr. *(via email only)*  
Michael V. Cory, Jr. *(via email only)*  
F. Thomas Schornhorst *(via email only)*

Tom Huff, Esq. *(via email only)*  
Mr. Peter M. Eyre *(via email only)*  
Mr. Adam M. Mueller *(via email only)*  
Mr. Jason Talley *(via email only)*

Attachments:

1. Copy of N.H. temporary license tag
2. Copy of Peter Eyre Motion to Dismiss criminal charge
3. Copy of Adam Mueller Motion to Dismiss criminal charge
4. Copy of Jason Talley Motion to Dismiss Criminal charge
5. Copy of news article re lawful filming of public police activities.

NEW HAMPSHIRE

**MOTOR**  
**VEHICLE**  
**PLATES**

TEMPORARY

MHDIA RY

EXPIRATION DATE

06-30-210

IN THE COUNTY COURT OF JONES COUNTY, MISSISSIPPI  
SECOND JUDICIAL DISTRICT

PETER M. EYRE

APPELLANT

VS.

CAUSE NO.: 10,276

STATE OF MISSISSIPPI  
JONES COUNTY

APPELLEE

MOTION TO DISMISS AFFIDAVIT

Comes now Defendant Peter M. Eyre, by his counsel, and moves to dismiss the State's affidavit charging him with the misdemeanor of having "willfully and unlawfully . . . in his possession or under his control a quantity of beer outside the City of Laurel" in violation of Miss. Code Ann. § 67-3-13, because (1) the affidavit fails properly to allege an offense within the scope of the statute; and (2) the statute is unconstitutional on its face and as sought to be applied in this instance.

Specifically:

1. The affidavit fails to charge all the necessary elements of the alleged offense as defined in Miss. Code Ann. § 67-3-13. Mere possession by an adult of beer or of any other lawfully produced and sold alcoholic substance is not an offense in Mississippi except in certain local jurisdictions where statutorily prescribed election procedures have been followed and duly recorded. The elements of unlawful possession under the statute are:

- (1) [I]n any county which has
- (2) at any time since February 26, 1934
- (3) elected to

FILED

NOV 20 2009

BART GAVIN  
CIRCUIT CLERK  
JONES COUNTY, MS

- (4) prohibit the transportation, storage, sale, distribution, receipt and/or manufacture, of
- (5) wine and beer of an alcoholic content of not more than four percent (4 %) in such county
- (6) it is hereby declared to be unlawful to possess such beverages therein

[OR]

- (7) In any county which after, July 1, 1998,
- (8) elects to
- (9) prohibit the transportation, storage, sale, distribution, receipt and/or manufacture of
- (10) wine and beer of an alcoholic content of not more than five percent (5 %) by weight in such county
- (11) it is hereby declared unlawful to possess such beer therein.

Violation of these provisions may result in imprisonment of not more than ninety (90) days and a fine of not more than Five Hundred Dollars (\$500.00), or both.

2. The affidavit fails to allege the necessary elements requiring proof of a proper election having been held in the county either after February 26, 1934, or July 1, 1998, the result of which made the possession of beer having a specified alcoholic content a criminal offense. Our Supreme Court has recognized that to be valid an affidavit must contain allegations that an election had been held in the local county by which it was determined that the possession of alcoholic beer was thereafter to be prohibited. *Kelly v. State*, 237 Miss. 112, 113 So.2d 540 (1959); *Hays v. State*, 219 Miss. 808, 69 So.2d 845 (1954); *Hoyle v. State*, 216 Miss. 330, 62 So.2d 380 (1953). See generally, *Gilmer v. State*, 955 So.2d 829, 836 (Miss. 2007) (“An [affidavit] must contain (1) the essential elements of the offense charged, (2) sufficient facts to fairly inform the defendant of the

charge against which he must defend, and (3) sufficient facts to enable him to plead double jeopardy in the event of a future prosecution for the same offense.”); Uniform Circuit and County Court Rule 7.06 (requiring a “plain, concise and definite written statement of the essential facts constituting the offense charged and [the affidavit] shall fully notify the defendant of the nature and cause of the accusation.”). An affidavit that fails to allege an essential element cannot be corrected through judicial notice. See *Washington v. State*, 645 So.2d 915, 919 (Miss. 1994); accord, *Beem v. McKune*, 317 F.3d 1175, 1189 (10th Cir. 2003); *United States v. Herrera-Ochoa*, 245 F.3d 495, 501 (5th Cir. 2000).

3. The affidavit fails to allege that the defendant was aware, or had reason to be aware, that possession of beer in some (but not all) areas of Jones County would subject him to criminal prosecution and punishment. As a matter of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 3, Section 14 of the Mississippi Constitution, this is an instance where, even though not expressly contained in the statute, an additional element of a person’s knowledge of a legal obligation not to possess a substance that is generally legal must be supplied judicially. *Lambert v. California*, 355 U.S. 225 (1957); *Staples v. United States*, 511 U.S. 600 (1994). Otherwise, the statute would be unconstitutional as applied to interstate travelers. Such persons would have no notice that what they have lawfully purchased or acquired would subject them to arrest, criminal prosecution, fine and imprisonment in certain counties (or only discrete areas inside a county such as Jones) within the State of Mississippi. Like the situations presented in *Lambert* and *Staples*, *supra*, the law would require interstate travelers lawfully carrying as innocuous an item

as an unopened container of low alcohol beer either to attempt to plan a trip across the state as to avoid any area covered by § 67-3-13, or to rid themselves of possession. Without a requirement of actual knowledge of this extraordinary affirmative duty, the mere physical possession of an otherwise lawful item would not, as recognized by *Lambert* and *Staples, supra*, alert a traveler to potential criminal liability.

4. The law unduly burdens interstate travelers (especially those traversing the state on federally funded interstate highways). Miss. Code Ann. § 67-3-13 places unfair restraint upon interstate travel and commerce in violation of the Fourteenth Amendment and Article 1, Section 8, cl. 3 of the Constitution of the United States and is, therefore, overly broad and unconstitutional on its face. Even with actual notice of the law's restraint of possession of alcoholic beverages in some but not all areas of the State (i.e., pockets of prohibition) an interstate traveler wishing to avoid arrest and prosecution for possession of a single bottle of low alcohol beer would have to either (1) plan a trip through the state so as to avoid any county or an area within a county, covered by § 67-3-13; or (2) take affirmative action to divest himself or herself of possession of the substance before entering any pocket of prohibition within the State. *See United States v. Guest*, 383 U.S. 745, 757-59 (1966); *Kassel v. Consolidated Freightways Corp. of Delaware*, 450 U.S. 662 (1981). *United States v. Gudger*, 249 U.S. 373 (1919). Our Supreme Court did not address these issues in *Dantzler v. State*, 542 So.2d 906 (Miss. 1989), and dealt only with an equal protection claim.

5. While it is true that the Twenty-first Amendment to the United States Constitution recognizes states' rights to regulate and even ban the manufacture, sale, transportation or possession of alcohol it is not as the Mississippi Court's dictum in

*Dantzler* suggests wholly “unfettered.” 542 So.2d at 911. “[S]tate laws that violate other provisions of the Constitution are not saved by the Twenty-first Amendment. The Court has applied this rule in the context of the First Amendment . . . the Establishment Clause . . . the Equal Protection Clause . . . the Due Process Clause . . . and the Import-Export Clause. . . . [citations omitted].” *Granholm v. Heald*, 544 U.S. 460, 487 (2005). As set forth in the preceding Paragraph 4, the “constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.” *United States v. Guest, supra*, 383 U.S. at 757-58. For the reasons stated in the preceding paragraphs of this motion, Miss. Code § 67-3-13 infringes unfairly upon that fundamental right.

WHEREFORE, for the reasons stated in this Motion to Dismiss, Defendant Peter Eyre requests this Honorable Court to schedule a hearing on his motion and, thereafter, being advised on applicable constitutional, statutory and case law, to DISMISS the affidavit filed by the State in this cause because (1) it fails to allege an offense cognizable under the laws of the State of Mississippi; and (2) for the reasons stated in Paragraphs 3,

4 and 5 is premised upon a statute that, under the Fourteenth Amendment and the Commerce Clause of the United States Constitutional, is unconstitutional on its face and as sought to be applied in this instance.

WITNESS MY SIGNATURE on this the 17<sup>th</sup> day of November, 2009.

RESPECTFULLY SUBMITTED,

BY:   
F. THOMAS SCHORNHORST

  
MICHAEL V. CORY, JR.

OF COUNSEL:

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Telephone: (601) 957-3101  
Facsimile: (601) 957-3160


**CERTIFICATE OF SERVICE**

I, F. Thomas Schornhorst, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing document, via United States Mail, postage pre-paid, to the following:

M. Wayne Thompson, Esq.  
Post Office Box 6509  
Laurel, MS 39441

Donna Avila, Clerk  
Jones County Justice Court Clerk's Office  
Post Office Box 1997  
Laurel, MS 39441

THIS the 19<sup>th</sup> day of November, 2009.

  
F. Thomas Schornhorst

IN THE COUNTY COURT OF JONES COUNTY, MISSISSIPPI  
SECOND JUDICIAL DISTRICT

ADAM M. MUELLER

APPELLANT

VS.

CAUSE NO.: 10,277

STATE OF MISSISSIPPI  
JONES COUNTY

APPELLEE

MOTION TO DISMISS AFFIDAVIT

Comes now Defendant Adam M. Mueller, by his counsel, and moves to dismiss the State's affidavit charging him with the misdemeanor of Disorderly Conduct pursuant to Miss. Code Section 97-35-7(1) because the affidavit fails to allege an offense encompassed within the scope of the statute:

Specifically:

1. The affidavit fails to charge all the necessary elements of the offense. It does not specify which, if any, of the nine (9) subparagraphs of the statute (Miss. Code § 97-35-7(1)(a)-(i)) the defendant is alleged to have violated. This deficiency deprives the defendant of the fair notice of the charge(s) against him in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and Article 3, Section 14 of the Mississippi Constitution. Each subparagraph specifies alternative ways to charge the offense and adds elements that must be pleaded and proved in a prosecution pursuant to the statute. The challenged affidavit does not include in its allegations any of the additional elements. Hence, the defendant is charged with a non-existent crime. *Burchfield v. State*, 277 So.2d 623, 625 (Miss. 1973) (the state's pleading "must set forth the constituent elements a criminal offense. Each and every material fact and essential ingredient of the offense must be with precision and certainty set forth.")

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2. The affidavit alleges that Defendant Mueller committed an offense “by not putting up the video camera when told to do so.” This conduct is not encompassed within the language of any of the aforementioned subparagraphs (1) (a)-(i) that limit the range of conduct that may be criminalized as “disorderly” under the statute. *Burchfield v. State, supra*.

3. As applied to the alleged conduct of the defendant “not putting up the video camera when told to do so” the affidavit violates the First and Fourteenth Amendments to the Constitution of the United States and Article 3, Sections 11 and 13 of the Mississippi Constitution, in that it purports to criminalize speech activity that does not involve a circumstance in which a person’s right of free speech and petitioning a government authority can be inhibited or impaired. *City of Houston v. Hill*, 482 U.S. 451, 462-63 (1987 (“The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.”); *Hess v. Indiana*, 414 U.S. 105 (1973); *Cohen v. California*, 403 U.S. 15 (1971); *Jones v. State*, 798 So.2d 1241, 1248 (Miss. 2001); *Odem v. State*, 881 So.2d 940, 945-949 (Miss. Ct. App. 2004).

4. The charge premised upon Defendant Mueller’s attempt to make a video recording of police activity in a public place, independent of his illegal arrest for such protected conduct, violates his rights under the First and Fourteenth Amendments and Article 3, Sections 11 and 13 of the Mississippi Constitution. “The First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.” *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) (citations omitted). *See also Gilmer v. State, supra*,

955 So.2d at 838 (recognizing a citizen's right to record police activities in public places).

5. Arresting and charging Defendant Mueller with disorderly conduct for attempting to preserve evidence critical to his defense, and that of his co-defendants, by recording illegal police conduct deprived him of his rights to due process of law guaranteed him by the Fourteenth Amendment to the Constitution of the United States and Article 3, Section 14 of the Mississippi Constitution.

6. The charged offense requires proof of "circumstances as may lead to a breach of the peace, or which may cause or occasion a breach of the peace." The affidavit fails to allege the nature of the "circumstances" and how the alleged conduct of the accused might have led to a "breach of the peace" or may have risked a "breach of the peace" under such circumstances. The ambiguous statutory language must, in accordance with the principles of fair notice and due process of law set forth in the preceding Paragraph 1, be supplemented in the state's pleading with allegations demonstrating that circumstances were such that a "breach of the peace" was either intended or unlawfully risked by the defendant's conduct. *Gilmer v. State*, 955 So.2d 829, 833-834 (Miss. 2007); *see also*, *Brooks v. State*, \_\_\_ So.3d \_\_\_ (Miss. 2009) (2009 WL 3208682, Oct. 8, 2009) (language must be "specific enough to give notice of the act made unlawful, and exclusive enough to prevent its application to any acts other than those made unlawful."); Uniform Circuit and County Court Rule 7.06 (requiring a "plain, concise and definite written statement of the essential facts constituting the offense charged and [the affidavit] shall fully notify the defendant of the nature and cause of the accusation.").

7. In addition to the matters stated in the preceding paragraphs 1-6, the charged offense requires proof that an accused “refuse[d] to *promptly* comply with or obey a request, command, or order of a law enforcement officer, having the authority to *then and there arrest any person for a violation of the law . . .*” [emphasis supplied]. The affidavit herein is deficient in that:

a. The affidavit contains no allegation that the defendant did not respond “promptly” to a lawful command [see paragraph 7 b. *infra*] of a law enforcement officer. The use of the term “promptly” implies a temporal element requiring an accused to be given sufficient opportunity to comply with a lawful command.

b. The affidavit contains no allegation of the grounds upon which an officer possessed “authority to *then and there* to arrest any person for a violation of the law. . . [emphasis supplied].” The statute requires pleading and proof that as a condition to any command or order of compliance, either the defendant or another person have been engaged in conduct that gave the officer probable cause to arrest the defendant or another person for a preceding or on-going law violation. The general authority of a police officer to arrest law violators is not enough. The statute requires authority to exist “then and there.” In other words, the officer must have some lawful reason to issue a command or order before any refusal to “promptly” obey can be a basis for a criminal charge. The affidavit fails to disclose whether the assertion of police authority to compel the defendant’s compliance with an order (1) fell outside the protection of the constitutional guarantees of free speech as set forth in paragraphs 3 and 4, *supra*, or (2) fell outside the protections of the Fourth and Fourteenth Amendments to the Constitution of the United States, and Article 3, Section 23 of the Mississippi Constitution, guaranteeing to citizens

freedom from unreasonable searches and seizures. *See Jacobucci v. Boulter*, 193 F.3d 14, 25 (1st Cir. 1999): “A police officer is not a law unto himself; he cannot give an order that has no colorable legal basis and then arrest a person who defies it.” *See also Jones v State*, 798 So.2d 1241, 1247-48 (Miss. 2001), relying on *Terry v State*, 252 Miss. 479, 173 So.2d 889, 891 (1965) (“The sheriff had no right to arrest defendant unless it was evident to him at the time that some breach of the peace was committed in his presence.”).

8. Criminal statutes must be strictly construed against the State and liberally in favor of the accused. *Coleman v. State*, 947 So.2d 878, 881 (Miss. 2006). The basic doctrines of statutory construction are set forth and fully supported in *Gilmer v. State*, *supra*, 955 So.2d at 841: “Judicial constructions not construing statutes in favor of the offender violate fundamental principles of due process [citations omitted]. Finally, any [a]mbiguities concerning the ambit of criminal statutes should be resolved in favor of lenity. [citations omitted].” (Diaz, J. dissenting).

WHEREFORE, for the reasons stated in this Motion to Dismiss, Defendant Adam Mueller requests this Honorable Court to schedule a hearing on his motion and, thereafter, being advised on applicable constitutional, statutory and case law, to DISMISS the affidavit filed by the state in this cause because it fails to allege an offense cognizable under the laws of the State of Mississippi.

WITNESS MY SIGNATURE on this the 5<sup>th</sup> day of November, 2009.

RESPECTFULLY SUBMITTED,

BY:   
MICHAEL V. CORY, JR.

OF COUNSEL:

MICHAEL V. CORY, JR. (MSB#9868)  
DALE DANKS, JR. (MSB#5789)  
Danks, Miller, Hamer & Cory  
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Indiana Attorney No. 202-53  
*Admitted Pro Hac Vice*

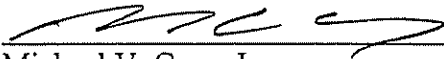
**CERTIFICATE OF SERVICE**

I, Michael V. Cory, Jr., do hereby certify that I have this day mailed a true and correct copy of the above and foregoing document, via United States Mail, postage pre-paid, to the following:

M. Wayne Thompson, Esq.  
Post Office Box 6509  
Laurel, MS 39441

Donna Avila, Clerk  
Jones County Justice Court Clerk's Office  
Post Office Box 1997  
Laurel, MS 39441

THIS the 5<sup>th</sup> day of November, 2009.

  
\_\_\_\_\_  
Michael V. Cory, Jr.

IN THE COUNTY COURT OF JONES COUNTY, MISSISSIPPI  
SECOND JUDICIAL DISTRICT

JASON D. TALLEY

APPELLANT

VS.

CAUSE NO.: 10,278

STATE OF MISSISSIPPI  
JONES COUNTY

APPELLEE

MOTION TO DISMISS AFFIDAVIT

Comes now Defendant Jason Talley, by his counsel, and moves to dismiss the State's affidavit charging him with the misdemeanor of Disorderly Conduct pursuant to Miss. Code Section 97-35-7(1) because the affidavit fails to allege an offense encompassed within the scope of the statute:

Specifically:

1. The affidavit fails to charge all the necessary elements of the offense. It does not specify which, if any, of the nine (9) subparagraphs of the statute (Miss. Code § 97-35-7(1)(a)-(i)) the Defendant is alleged to have violated. This deficiency deprives this Defendant of the fair notice of the charge(s) against him in violation of the Due Process Clause of the Fourteenth Amendment to the Constitutions of the United States and Article 3, Section 14 of the Mississippi Constitution. *Burchfield v State*, 277 So.2d 623, 625 (Miss. 1973).

2. The affidavit alleges that Defendant Talley committed an offense "by arguing with the officer, refusing to put his hands behind his back, and by taking an aggressive stance toward the officer." This conduct is not encompassed within the language any of the aforementioned sub-paragraphs (1) (a)-(i), that limits the range of conduct that may be criminalized as "disorderly" under the statute.

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3. As applied to the alleged conduct of the defendant of “arguing with the officer” the affidavit violates the First and Fourteenth Amendments to the Constitution of the United States and Article 3, Sections 11 and 13 of the Mississippi Constitution, in that it purports to criminalize speech which does not involve a circumstance in which a person’s right of free speech and petitioning a government authority can be inhibited or impaired. *City of Houston v. Hill*, 482 U.S. 451, 462-63 (1987 (“The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.”); *Hess v. Indiana*, 414 U.S. 105 (1973); *Cohen v. California*, 403 U.S. 15 (1971); *Jones v. State*, 798 So.2d 1241, 1248 (Miss. 2001); *Odem v. State*, 881 So.2d 940, 945-949 (Miss. Ct. App. 2004).

4. The charged offense requires proof of “circumstances as may lead to a breach of the peace, or which may cause or occasion a breach of the peace.” The affidavit fails to allege the nature of the “circumstances” and how the alleged conduct of the accused might have led to a “breach of the peace” or may have risked a “breach of the peace” under such circumstances. The ambiguous statutory language must, in accordance with the principles of fair notice and due process of law set forth in the preceding Paragraph 1, be supplemented in the State’s pleading with allegations demonstrating that circumstances were such that a “breach of the peace” was either intended or unlawfully risked by the defendant’s conduct. *Gilmer v. State*, 955 So.2d 829, 833-834 (Miss. 2007); *see also, Brooks v. State*, \_\_\_ So.3d \_\_\_ (Miss. 2009) (2009 WL 3208682, Oct. 8, 2009) (language must be “specific enough to give notice of the act made unlawful, and exclusive enough to prevent its application to any acts other than those made unlawful.”);

Uniform Circuit and County Court Rule 7.06 (requiring a “plain, concise and definite written statement of the essential facts constituting the offense charged and [the affidavit] shall fully notify the defendant of the nature and cause of the accusation.”).

5. In addition to the matters stated in the preceding paragraphs 1–4, the charged offense requires proof that an accused “refuse[d] to *promptly* comply with or obey a request, command, or order of a law enforcement officer, having the authority to *then and there arrest any person for a violation of the law . . .*” [emphasis supplied]. The affidavit herein is deficient in that:

a. The affidavit contains no allegation that the defendant did not respond “promptly” to a lawful command [see paragraph 5 b. *infra*] of a law enforcement officer. The use of the term “promptly” as an element of the offense implies a temporal element requiring an accused to be given sufficient opportunity to comply with a lawful command.

b. The affidavit contains no allegation of the grounds upon which an officer possessed “authority to *then and there arrest any person for a violation of the law . . .*” [emphasis supplied]. The statute requires pleading and proof that as a condition to any command or order of compliance, either the defendant or another person have been engaged in conduct that gave the officer probable cause to arrest the defendant or another person for a preceding or on-going law violation. The general authority of a police officer to arrest law violators is not enough. The statute requires authority to exist “then and there.” In other words, the officer must have some lawful reason to issue a command or order before any refusal to “promptly” obey can be a basis for a criminal charge. The language of the affidavit fails to disclose whether the assertion of police authority to

compel the defendant's compliance with an order (1) fell outside the protection of the constitutional guarantees of free speech as set forth in paragraph 3, *supra*; or (2) fell outside the protections of the Fourth and Fourteenth Amendments to the Constitution of the United States, and Article 3, Section 23 of the Mississippi Constitution, guaranteeing to citizens freedom from unreasonable searches and seizures. *See Jacobucci v. Boulter*, 193 F.3d 14, 25 (1st Cir. 1999): "A police officer is not a law unto himself; he cannot give an order that has no colorable legal basis and then arrest a person who defies it." *See also Jones v. State*, 798 So.2d 1241, 1247-48 (Miss. 2001), relying on *Terry v. State*, 252 Miss. 479, 173 So.2d 889, 891 (1965) ("The sheriff had no right to arrest defendant unless it was evident to him at the time that some breach of the peace was committed in his presence.").

WHEREFORE, for the reasons stated in this Motion to Dismiss, Defendant Jason Talley requests this Honorable Court to schedule a hearing on his motion and, thereafter, being advised on applicable constitutional, statutory and case law, to DISMISS the affidavit filed by the state in this cause because it fails to allege an offense cognizable under the laws of the State of Mississippi.

WITNESS MY SIGNATURE on this the 10<sup>th</sup> day of November, 2009.

RESPECTFULLY SUBMITTED,

BY:   
DALE DANKS, JR.

OF COUNSEL:

MICHAEL V. CORY, JR. (MSB#9868)

DALE DANKS, JR. (MSB#5789)

Danks, Miller, Hamer & Cory

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Indiana Attorney No. 202-53

*Admitted Pro Hac Vice*

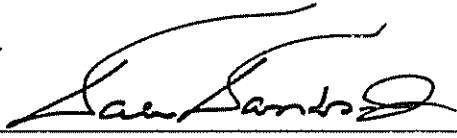
**CERTIFICATE OF SERVICE**

I, Dale Danks, Jr , do hereby certify that I have this day mailed a true and correct copy of the above and foregoing document, via United States Mail, postage pre-paid, to the following:

M. Wayne Thompson, Esq.  
Post Office Box 6509  
Laurel, MS 39441

Donna Avila, Clerk  
Jones County Justice Court Clerk's Office  
Post Office Box 1997  
Laurel, MS 39441

THIS the 10<sup>th</sup> day of November, 2009.

  
\_\_\_\_\_  
Dale Danks, Jr.



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# Bill would clarify citizens' right to tape law enforcement officers

Lawmaker says arrests have been made for taping

By MICHAEL NEWSOM - mmnewsom@sunherald.com

The state House has passed a bill that would allow citizens to record law enforcement officers carrying out their duties — a measure the bill's author says is in response to people being arrested for doing so, even though it's not against the law.

Rep. Bob Evans, D-Monticello, is an attorney who said he has represented a few clients arrested for filming officers. One was charged with refusal to comply with a law officer when he was told to stop videotaping, but Evans said the person had to go to court to be acquitted. He authored House Bill 539, which would make it clear such action doesn't violate the law.

"Although I know it is not illegal under present Mississippi law, there is an impression out there in some circles of law enforcement that in fact it is illegal and they will enforce the law," Evans said. "I decided I needed to have that codified."

**STORY:** How they voted

Evans' bill would allow cameras, film and other recording devices to be used while uniformed officers — including police, firefighters, game wardens or other conservation officials — are performing duties

related to their office, as long as the person filming doesn't interfere. It also prohibits the state from passing any rule to infringe on those rights. The law would apply to public property, but also to private property, as long as the person using the camera has permission to be there.

Leonard Van Slyke, a Jackson-based attorney who deals with First Amendment and open-government issues, said he knows of no Mississippi law that would prevent a person from such recording.

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"I'm not really aware of any specific laws in Mississippi that deal with this other than the police asserting interference with an officer in the performance of his duties," Van Slyke said. "Obviously, I don't think merely videotaping is interference with an officer."

The measure passed the House in a 80-39 vote Wednesday. Of South Mississippi's delegation, eight representatives supported the bill, while 12 voted against it. Rep. Scott DeLano, R-Biloxi, voted against the measure because, although it says "uniformed" officers, he said he wanted it to say specifically that it protects undercover officers.

DeLano, a former police patrolman, offered no amendment to the bill.

"I can't be in support of it unless I know that undercover police officers are protected," DeLano said.

Recently, an episode in Boston drew national attention after a lawsuit was filed. According to a recent Boston Globe article, a criminal defense attorney was walking down the street in October 2007 when he saw officers talking with a suspect. He heard someone tell police they were hurting the man, so he used his cellphone to video the incident, as he was wondering if it might be a case of excessive force. Police noticed the attorney was recording video and not taking still pictures and they arrested him, the Globe reported, because they said he was allegedly breaking a state wiretapping law, which the Globe said outlaws secret audio recordings.

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