

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

CHADWICK WILSON

PLAINTIFF

VS

CAUSE NO. 3:10-CV-070-B-A

**DESOTO COUNTY, MISSISSIPPI;
DEPUTY CHAD BILLINGSLEY,
LT. KERRY GILES, and DEPUTY
ERIC COLEMAN in their individual
capacities;**

**BILL RASCO, individually and in
his official capacity as Sheriff of
DeSoto County, Mississippi**

DEFENDANTS

PRETRIAL ORDER

1. The final pretrial conference was held on the 19th day of October, 2011, before Magistrate Judge S. Allan Alexander at the United States Courthouse at Oxford, Mississippi. The parties have conferred and agree upon the following terms of this pretrial order:

2. The following counsel appeared:

a. For the Plaintiffs:

<u>Name</u>	<u>Address</u>	<u>Telephone No.</u>
Phillip A. Stroud Brandon L. Flechas	THE STROUD LAW FIRM 5779 Getwell Road, Building C1 Southaven, MS 38672	(662) 536-5656

b. For the Defendants:

<u>Name</u>	<u>Address</u>	<u>Telephone No.</u>
Daniel J. Griffith MS Bar # 8366 Michael S. Carr MS Bar # 102138	123 South Court Street P.O. Drawer 1680 Cleveland, MS 38732-1680	(662) 843-6100

Joseph D. Neyman, Jr., Esq. SMITH PHILLIPS MITCHELL (662) 429-5041
SCOTT & NOWAK
2545 Caffey Street
P. O. Box 346
Hernando, MS 38632

3. The pleadings are amended to conform to this pretrial order.
4. The following claims (including claims stated in the complaint, counter-claims, cross-claims, third-party claims, etc.) have been filed:

Plaintiff brings an instant claim for relief pursuant to 42 U.S.C. 1983 for alleged denial of his rights to substantive due process under the Fourteenth Amendment and under the Fourth Amendment to be free from use of unnecessary and excessive force. Plaintiff further alleges theories of assault and vicarious liability/*respondeat superior* under state law.

5. The basis for the court's jurisdiction: Federal Question.
6. The following jurisdictional questions remain: None
7. The following motions remain pending:
 - a. Plaintiff's Motion for Sanctions in the Form of Spoliation and/or Adverse Inference Jury Instruction [Doc. 48]
 - b. Defendants' Motion to Bifurcate [Doc. 50]
 - c. Defendants' Motion for Partial Summary Judgment [Doc. 51]
 - d. Defendant's Motion in Limine #1 [Doc. 62]
 - e. Defendant's Motion in Limine #2 [Doc. 63]
 - f. Plaintiff's Motion in Limine #1 [Doc. 58]
 - g. Plaintiff's Motion in Limine #2 [Doc. 59]
 - h. Plaintiff's Motion in Limine#3 [Doc. 74]
8. The parties accept the following **concise** summaries of the ultimate facts as claimed by:
 - a. Plaintiff:

Prior to July 23, 2009, video cameras were installed in the DCSD jail. Shortly after the installation of these cameras, jail administration became aware that certain "blind spots" existed in the system where there was no video surveillance coverage. DCSD jailors knew that these blind spots existed and were encouraged by command staff to be aware of the location of the cameras when interacting with detainees. DCSD had the ability to retrieve video surveillance of events occurring within the jail if the video was requested within 5 days of the

incident. DCSD policy was such that if the video was not requested by the complaining party within 5 days, it would be taped over and lost.

On July 23, 2009, Plaintiff and his girlfriend were brought to the DCSD jail following a traffic stop in Horn Lake, MS. Immediately upon entering the jail, Plaintiff and his girlfriend were placed in a holding room and instructed to face the wall and put their hands above their heads to be searched. While being searched, DCSD officers began to curse Plaintiff's girlfriend, ordering her among other things to "spread her legs further apart" in an effort to further humiliate and sexually harass her. One of the officers even leaned over from a seated position behind her and began to gaze up her skirt.

While all of this was going on, Plaintiff did not engage the officers. He did, however, speak to his girlfriend and told her that she had the right to request that a female officer conduct the search. Immediately after Plaintiff made this comment, the officers focused their attention onto him, slammed his head into the wall and began screaming obscenities at him. The entire holding room where these events were occurring was under video surveillance.

Plaintiff was handcuffed behind his back, forcibly removed from the holding room and escorted by Defendant Billingsley through the booking area with the purpose of eventually transporting him to the "med cell" across the jail. The "med cell" is a 4x4 padded cell used by DCSD as a "cool down" room. According to jailors, this room is also used to punish detainees. The entire booking area, including the area from the holding room to the booking desk was under video surveillance.

Billingsley escorted Plaintiff around the booking desk and turned the corner to walk Plaintiff to the "med cell". At this turn in the corner, there existed a "blind spot" in the video coverage. At this very location, Plaintiff was forcibly thrown to the ground and assaulted by Billingsley, Giles and Coleman. During this entire assault, Plaintiff's hand were secured behind his back in handcuffs. Plaintiff suffered multiple injuries, including, but not limited to a right orbital (eye socket) fracture. The assault also caused Plaintiff to experience a severe panic attack.

Plaintiff was transported to Baptist Desoto Hospital where he was admitted and treated for symptoms of facial pain and vomiting blood. He was released two days later.

Video surveillance of the entire ordeal inside the jail was requested in this litigation. DCSD first indicated that the video was not preserved because Plaintiff did not request the video within 5 days. It was later determined that video of Plaintiff's jail experience did exist and that it was actually reviewed by command staff before the decision was made to intentionally destroy or tape over it. DCSD claims that the area where Plaintiff was assaulted was not recorded by video

surveillance. DCSD does not dispute that there was video surveillance of Plaintiff in other areas of the jail, but this video was not preserved.

b. Defendant:

Wilson was a passenger in an automobile stopped by Horn Lake Police Department. The driver, Wilson's girlfriend, was arrested for DUI. Wilson was arrested for public intoxication. Wilson became unruly while officers were attempting to book him. Ultimately, Wilson ended up being taken to the floor by Officer Chad Billingsley. Billingsley tripped over his own feet while trying to restrain Wilson, and both individuals fell to the floor. Wilson sustained injury to his eye. Two other officers, Kerry Giles and Eric Coleman, were called to assist to stop further resistance by Wilson. Wilson was promptly evaluated by a jail nurse, and was taken to a local hospital for treatment. The matter was documented via officer statements and incident reports. Although the tape was pulled and reviewed by Jail Administrator Jerry Owensby, the incident was not caught on camera. The matter was investigated and cleared by the U.S. Department of Justice.

9. a. The following facts are established by the pleadings, by stipulation, or by admission:

1. Pretrial detainee Chad Wilson was arrested on or about July 23, 2009, and transported to the Desoto County Adult Correctional Facility. He was subsequently booked into the jail.
2. Plaintiff was injured while in custody at the Desoto County Jail facility.
3. On January 1, 2008, William D. Rasco took office as the Sheriff of Desoto County, Mississippi. Sheriff Rasco is the final policy maker for law enforcement in Desoto County.
4. The Internal Affairs Division conducted a review of the instant claim of Chadwick Wilson after an official complaint was made on 9/4/2009, following his release from custody.
5. The Desoto County jail was equipped with video surveillance and was fully operational on the day and time of the incident made the basis of this lawsuit.

b. The contested issues of fact are as follows:

1. Whether Plaintiff has been arrested at least eight (8) previous times by the Desoto County Sheriff's Department.

2. Whether or not Chad Billingsley used excessive force in the “take down” and follow up treatment of Chad Wilson in the early morning hours of July 23, 2009.
3. Whether or not Eric Coleman used excessive force in the “take down” or follow up treatment of Chad Wilson in the early morning hours of July 23, 2009.
4. Whether or not Kerry Giles used excessive force in the “take down” or follow up treatment of Chad Wilson in the early morning hours of July 23, 2009.
5. Whether or not Officer Chad Billingsley accidentally tripped and fell while attempting a take down of Chad Wilson.
6. Whether or not Chad Wilson was continually resisting the lawful commands of jailers, subsequently requiring the lawful use of force.
7. Whether or not Chad Wilson was intoxicated while at the DCSO jail, and to what extent his intoxication played a role in his injuries.
8. Whether or not Chad Wilson exhibited aggressive or erratic behavior against Defendants while at the DCSO jail.
9. Whether or not video surveillance of the incident with Chad Wilson was captured and existed.
10. Whether or not video surveillance of the incident with Chad Wilson was intentionally destroyed by DCSO to protect the defendant officers from liability for excessive force on Wilson.
11. The nature, degree, severity and cost of Chad Wilson’s injuries, if any.
12. Whether Chad Wilson suffered a right orbital fracture while at the Desoto County Jail facility, for which he was transported by Desoto County Sheriff Department officers to Baptist Hospital - Desoto for treatment.

c. The contested issues of law are as follows:

1. Whether or not Desoto County had policies, practices, and/or customs in place that enabled its employees to act with deliberate indifference to the constitutional rights of individuals.
2. Whether said policies, practices, and/or customs were tolerated or encouraged gross misconduct on behalf of agents of Desoto County.
3. Whether Desoto County failed to adequately screen, hire, supervise, discipline, or train its jail personnel.

4. Whether or not Sheriff Rasco had actual knowledge of deliberate indifference or gross misconduct regarding the use of force at the Desoto County Adult Detention Center.
 5. Whether or not Sheriff Rasco had constructive knowledge of deliberate indifference or gross misconduct regarding the use of force at the Desoto County Adult Detention Facility.
 6. Whether or not Sheriff Rasco was deliberately indifferent to an obvious need for additional training or supervision to correct the established customs of use of excessive force at the Desoto County Adult Detention Facility.
 7. Whether or not the deliberate indifference of Sheriff Rasco to the obvious need for additional training or supervision at the Desoto County Adult Detention Facility was the cause of the constitutional deprivation of Chad Wilson's right to be free from excessive force.
 8. Whether or not Desoto County is entitled to prevailing party attorney's fees pursuant to 42 U.S.C. §1988.
10. The following is a list and brief description of all exhibits (except exhibits to be used for impeachment purposes only) to be offered in evidence by the parties.

Each exhibit has been marked for identification and examined by counsel.

a. To be offered by the Plaintiff:

- P-1. DCSO Arrest Report-2009071441
- P-2. DCSO Release Report-2009071441
- P-3. Booking Report-2009071441
- P-4. DCSO Information Sheet for 7/23/09
- P-5. Suicide Prevention Screening Guidelines Report-2009071441
- P-6. Medical Condition/Health History Profile-2009071441
- P-7. Classification & Housing Separation Profile-2009071441
- P-8. Initial Custody Assessment for 7/23/09
- P-9. Jail Incident Report-2009000626
- P-10. Photographs taken by DCSO (Exhibit 3 to Billingsley's deposition)
- P-11. Photographs of Plaintiff's injuries (collective Exhibit)
- P-12. Photographs taken during Jail inspection (collective Exhibit)
- P-13. Written Statement of Kerry Giles
- P-14. Written Statement of Chad Billingsley
- P-15. Written Statement of Eric Coleman
- P-16. Jail Diagram (Exhibit 4 to Owensby deposition)
- P-17. Portions of personnel file for Chad Billingsley
- P-18. Portions of personnel file for Eric Coleman

- P-19. Portions of personnel file for Kerry Giles
- P-20. DCSO Operations and Procedures Manual (2007)
- P-21. Letter from Lent Rice dated April 22, 2010 (Exhibit 8 to Rice deposition)
- P-22. Summary of Plaintiff's damages (Medical expenses and lost wages)

*Each of the exhibits referenced above are subject to redaction based upon the court's rulings on pending motions in limine.

The authenticity and admissibility in evidence of the preceding exhibits are stipulated. If the authenticity and/or admissibility of any of the preceding exhibits is objected to, the exhibit must be identified below, together with a statement of the specified ground(s) for the objection(s).

Defendant objects to the following:

Nos: 11 and 12: Defendants object to the introduction into evidence of Exhibit Nos: 11 and 12 (Cumulative, Unfairly Prejudicial, Lack of Medical Foundation on F.R.E. 402, 403, 404, 407, 901 grounds.).

Nos: 17-19: Defendants object to the introduction into evidence of "portions" of Exhibits Nos: 17-19 on F.R.E. 402, 403, 404, 801, 901 grounds.

No. 20: Individual Defendants object to this official capacity evidence on F.R.E. 402, 403, 404, 901 grounds.

No. 22: Summary of Plaintiff's damages on FRE 402, 403, 404, 702, 801, 901, 902, 1006 grounds.

b. To be offered by the Defendant:

EXHIBIT A CUMULATIVE JAIL FILE

- D-1. Arrest #2004090458 (9-19-04) Domestic Violence-Simple Assault
- D-2. Arrest #2004110060 (11-4-04) Domestic Violence-Simple Assault
- D-3. Arrest #2005110455 (11-20-05) DUI 1st, Fleeing Law, Poss. of Marijuana-Simple
- D-4. Arrest #2007010153 (1-5-07) Domestic Violence-Simple Assault
- D-5. Arrest #2007030214 (3-8-07) Domestic Violence, Disturbance of Family & Malicious Mischief
- D-6. Arrest #2007030539 (3-22-07) Writ to take Custody
- D-7. Arrest #2007050522 (5-19-07) Domestic Violence-Simple Assault
- D-8. Arrest #2007050608 (5-22-07) Contempt of Ct, DV-SA, Threatening Language, DV-SA
- D-9. Arrest #2009071441 (7-23-09) Public Drunk

- D-10. Brittany M. Allgeier Arrest #2009071444 (7-23-09) DUI 2nd, DWLS, Careless DR - Arrested with Chadwick Wilson (ID'd in Complaint)
- D-11. DCSO Incident Report #2009000608 (7-23-09) entered by Lt. Kerry Giles
- D-12. DCSO Ofc. Billingsley Report of Incident (7-23-09)
- D-13. DCSO Ofc. Coleman Report of Incident (7-23-09)
- D-14. DCSO Photos (2) of Injury to C. Wilson
- D-15. Arrest #2009100737 (10-28-09) Domestic Violence x2
- D-16. Stroud Firm letter 4-16-10 re-Request for Implementation of Litigation Hold
- D-17. USDOJ-Civil Rights Div letter 3-22-10 re Investigation-Case Closed
- D-18. Exhibit D4 to Owensby Deposition (Drawing of Desoto County Adult Correctional Facility).
- D-19 - List of Employees who worked in DCSO Jail on July 23, 2009
- D-20 - Jail Diagram from deposition of Jerry Owensby
- D-21 - Defendants Notice of Tender of Medical Records (w/records) [Doc 68]

Any exhibit listed by Plaintiff.

The authenticity and admissibility in evidence of the preceding exhibits are stipulated. If the authenticity and/or admissibility of any of the preceding exhibits is objected to, the exhibit must be identified below, together with a statement of the specified ground(s) for the objection(s):

Plaintiff objects to the following:

Nos: 1-8 and 15: Plaintiff objects to the introduction into evidence of Exhibits 1-8 and 15 (DCSD jail records relating to any of Plaintiff's previous arrests and/or detentions) on F.R.E.402, 403, and 901 grounds. See also Plaintiff's Second Motion in Limine [Doc. 61].

No: 10: Plaintiff objects to the introduction into evidence of Exhibit No: 10 (arrest record of Brittany Algiers) on F.R.E. 402, 403 grounds.

No: 17: Plaintiff objects to the introduction into evidence of Exhibit No: 17 (Department of Justice letter to DCSD re: investigation) on F.R.E. 402, 403, 802, 803, and 901 grounds.

No: 19: Objection: F.R.E. 402, 802, and 901.

No: 21: Objection: F.R.E. 401, 403, 801, 805, and 901. See also Doc. 72.

- 11.** The following is a list and brief description of charts, graphs, models, schematic diagrams, and similar objects which will be used in opening statements or closing statements, but which **will not** be offered in evidence:

Plaintiff:

Plaintiff intends to use a chart summarizing damages. Plaintiff also intends to present a PowerPoint presentation during opening and closing. Such presentation will include photographs, bullet points, notes, and potential exhibits, and maybe portions of testimony offered in the case.

Defendants:

Defendants may use a PowerPoint presentation during presentation of its exhibits.

Objections, if any, to use of the preceding objects are as follows:

Defendants object to Plaintiff's use of a chart summarizing damages on FRE 901, 902, 1006 grounds.

If any other objects are to be used by any party, such objects will be submitted to opposing counsel at least three days prior to trial. If there is then any objection to use of the objects, the dispute will be submitted to the court at least one day prior to trial.

12. The following is a list of witnesses Plaintiff anticipates calling at trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed witnesses must be present to testify when called by a party unless specific arrangements have been made with the trial judge prior to commencement of trial. The listing of a **WILL CALL** witness constitutes a professional representation, upon which opposing counsel may rely, that the witness will be present at trial, absent reasonable written notice to counsel to the contrary.

<u>Name</u>	<u>Will/ May Call</u>	<u>Fact Liability Expert Damages</u>	<u>Business Address & Tel. No.</u>
Will testify live:			
Chadwick Wilson	W	F,D,L	Stroud Law Firm 5779 Getwell Road Southaven, MS 38672
Brittany Algeier	W	F,D,L	Stroud Law Firm
Richard Wilson	M	F,D	Stroud Law Firm
Chad Billingsley	M	F,D,L	DeSoto County Sheriff's Dept.
Kerry Giles	M	F,D,L	DeSoto County Sheriff's Dept.

Eric Coleman	M	F,D,L	DeSoto County Sheriff's Dept.
Lent Rice	M	F, L	DeSoto County Sheriff's Dept.
Bill Rasco	M	F, L	DeSoto County Sheriff's Dept.
Jerry Owensby	M	F, D, L	DeSoto County Sheriff's Dept.
Jane Thompson	M	F, D, L	DeSoto County Sheriff's Dept.

Will testify by deposition: N/A

*Plaintiff reserves the right to call any witness listed by Defendants.

State whether the entire deposition, or only portions, will be used. Counsel **shall** confer, no later than twenty days before the commencement of trial, to resolve **all** controversies concerning **all** depositions (videotaped or otherwise). All controversies not resolved by the parties shall be submitted to the trial judge not later than ten days prior to trial. All objections not submitted within that time are waived.–N/A

- 13.** The following is a list of witnesses Defendant anticipates calling at trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed witnesses must be present to testify when called by a party unless specific arrangements have been made with the trial judge prior to commencement of trial. The listing of a **MAY CALL** witness constitutes a professional representation, upon which opposing counsel may rely, that the witness will be present at trial, absent reasonable written notice to counsel to the contrary.

<u>Name</u>	<u>Will May Call</u>	<u>Fact Liability Expert Damages</u>	<u>Business Address & Tel. No.</u>
Sheriff William D. Rasco	M	F,L	DeSoto County Sheriff's Dept. 311 West South Street Hernando, MS 38632 662-429-1470
Jail Administrator Jerry Owensby	M	F,L	DeSoto County Sheriff's Dept.
Jailer Chad Billingsley	W	F,L	DeSoto County Sheriff's Dept.

Jailer Eric Coleman	W	F,L	DeSoto County Sheriff's Dept.
Jailer Kerry Giles	W	F,L	DeSoto County Sheriff's Dept.
Jailer Jane Thompson	M	F,L	DeSoto County Sheriff's Dept.
Jailer Thomas Jones	M	F,L	Previously with DeSoto County Sheriff's Dept.
Leslie Brady	M	F,L	Baptist Memorial Hospital Desoto 7601 Southcrest Parkway, Southaven, MS 662-772-4000
Officer Drew Coleman	M	F,L	Horn Lake Police Department 3101 Goodman Rd W # B Horn Lake, MS (662) 393-6174
Director Lent Rice	M	F,L	DeSoto County Sheriff's Dept.

Any witness listed by Plaintiff.

14. This case is scheduled as a jury trial before Senior District Judge Neal B. Biggers, Jr.
15. Counsel suggests the following additional matters to aid in the disposition of this civil action:
16. Counsel estimates the length of the trial will be three (3) days.

ORDERED, this the 3rd day of November, 2011.

s/Neal Biggers
UNITED STATES DISTRICT JUDGE

/s/ Phillip A. Stroud
Attorney for Plaintiff

/s/ Daniel J. Griffith
Attorney for Defendant

Entry of the preceding Pretrial Order is recommended by me on this, the 31st day of October, 2011.

/s/ S. Allan Alexander
UNITED STATES MAGISTRATE JUDGE