

**IN THE SUPREME COURT OF MISSISSIPPI**

**ALVIN ROBINSON**

**APPELLANT**

**VS.**

**NO. 2007-CA-00320**

**HILL CITY OIL CO., INC., ET AL.**

**APPELLEES**

---

**BRIEF OF APPELLANT**

---

**ORAL ARGUMENT NOT REQUESTED**

**An Appeal From the Circuit Court of  
The Second Judicial District of Hinds County, Mississippi**

**Prepared By:**

**John R. Reeves (MSB [REDACTED])  
Law Offices of John R. Reeves, P.C.  
555 Tombigbee St., Suite 107  
Jackson, MS 39201  
601/355-9600  
Attorneys for Appellant**

**IN THE SUPREME COURT OF MISSISSIPPI**

**ALVIN ROBINSON**

**APPELLANT**

**VS.**

**NO. 2007-CA-00320**

**HILL CITY OIL CO., INC., ET AL.**

**APPELLEES**

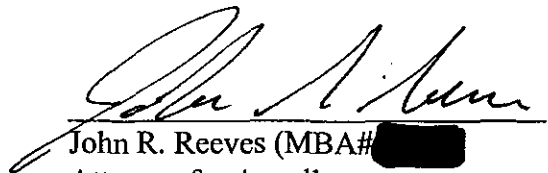
---

**CERTIFICATE OF INTERESTED PERSONS**

---

Pursuant to Rule 28(a)(1) of the Mississippi Rules of Appellate Procedure, the undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. Their representations are made in order that the Justices of the Supreme Court and/or the Justices of the Court of Appeals may evaluate possible disqualification or recusal.

1. Alvin Robinson - Appellant
2. Samuel F. Creasey - Attorney for Appellee
3. Mahalie Nelson - Appellee
4. Hill City Oil Company, Inc. - Appellee
5. Honorable Bobby DeLaughter, Hinds County Circuit Court Judge
6. John R. Reeves, Attorney for Appellant

  
John R. Reeves (MBA# [REDACTED])  
Attorney for Appellant

## TABLE OF CONTENTS

	Page(s)
Certificate of Interested Persons .....	ii
Table of Contents .....	iii
Table of Authorities .....	iv
Statement of the Issues .....	1
Statement of the Case .....	2
Summary of the Argument .....	5
Argument .....	6
I.    Summary Judgment Standard .....	6
II.   The Court Erred by Denying Alvin's Motion for Partial Summary Judgment as to Liability .....	8
A.    Malicious Prosecution .....	8
B.    False Imprisonment .....	10
C.    Intentional Infliction of Emotional Distress .....	11
D.    Negligence .....	12
E.    Gross Negligence .....	12
F.    Repondeat Superior .....	13
III.   The Court Erred by Granting the Defendant's Motion for Summary Judgment ..	13
Conclusion .....	13
Certificate of Service .....	14

## TABLE OF AUTHORITIES

Page(s)

### **Supreme Court Cases**

Celotex Corp. v. Catrett, 477 U.S. 317(1986) .....	6
----------------------------------------------------	---

### **5<sup>th</sup> Circuit Cases**

Dickey v. Baptist Memorial Hospital-North MS, 146 F.3d 262 (5 <sup>th</sup> Cir. 1998) .....	7
----------------------------------------------------------------------------------------------	---

### **Mississippi State Cases**

Alpha Gulf Coast, Inc. v. Jackson, 801 So. 2d 709 (Miss. 2001) .....	10
Burnham v. Tapp, 508 So.2d 1072 (Miss. 1987) .....	7
Choctaw Maid Farms, Inc. v. Hailey 822 So.2d 911 (Miss. 2002) .....	12
Croft v. Grand Casino Tunica, Inc., 910 So. 2d 66 (Miss. App. 2005) .....	8, 11
Downtown Grill, Inc. v. Connell 721 So.2d 1113 (Miss. 1998) .....	12
Funderburk v. Johnson 935 So.2d 1084 (Miss. App. 2006) .....	13
Hurst v. Southwest Miss. Legal Services Corp., 610 So. 2d 374 (Miss. 1992) .....	6
Mabus v. St. James Episcopal Church, 884 So.2d 747 (Miss. 2004) .....	12
Memphis & Chareleson R.R. Co. v. F.E. Whitfield, 44 Miss. 466 (Miss. 1870) .....	12
Mink v. Andrew Jackson Cas. Ins. Co., 537 So.2d 431 (Miss. 1988) .....	6
Mogan v. Greenwaldt, 786 So.2d 1037 (Miss. App. 2001) .....	11
Nationwide Mutual inc. Co. v. Garriga, 636 So. 2d 658 (Miss. 1994) .....	6
Page v. Wiggins 595 So.2d 1291 (Miss. 1992) .....	9
Palmer v. Anderson Infirmary Benevolent Ass'n, 656 So.2d 790 (Miss. 1995) .....	6
Webb v. Jackson, 583 So.2d 946 (Miss. 1991) .....	

**Mississippi Court Rules**

MRCP 56 .....	6, 7
---------------	------

### **STATEMENT OF THE ISSUES**

1. The trial court erred by denying plaintiff's motion for partial summary judgment as to liability.
2. The trial court erred by granting summary judgment in favor of the defendants.

## STATEMENT OF THE CASE

On July 17, 2001, and July 18, 2001, Defendant Mahalie Nelson (hereinafter "Nelson") was an employee of Defendant Hill City Oil Company, Inc., d/b/a Jubilee Chevron (hereinafter "Jubilee Chevron"). She was acting as the agent of Jubilee Chevron at all times material to the claims asserted in this appeal. On July 17, 2001, a female customer of Jubilee Chevron left her wallet on the cashier's counter. She returned to retrieve it but the wallet was not there. (Rec. P. 99)

On July 17, 2001, Jubilee Chevron had a surveillance video camera in place. Nelson, her store manager, and another Jubilee Chevron employee reviewed the surveillance tape after the female customer complained that her wallet was missing. The surveillance tape showed a male customer stealing the wallet from the cashier's counter. (Rec. P. 123). Nelson, the cashier on duty for Jubilee Chevron, did not see anyone take the wallet. Nelson was not an eye-witness to anyone removing the wallet from the cashier's counter. (Rec. P. 132-133).

The police were called. On July 17, 2001, Nelson told the police that a man stole the lady's wallet. Nelson based her statement on a store surveillance videotape she viewed after the fact. (Rec. P. 123).

On July 18, 2001, Alvin entered Jubilee Chevron, made a purchase and returned to the truck in which he was a passenger. The truck was in the parking lot of Jubilee Chevron. While Alvin was there Nelson telephoned the police and told them that the man who stole the wallet from the cashier's counter yesterday was at the store. (Rec. Pgs. 124-126). Shortly after Nelson's call the police arrived and arrested Alvin. The police arrested Alvin because Nelson told them that Alvin was the man on the videotape who stole the wallet. (Rec. Pgs. 121-122).

Alvin was indicted by the Madison County Grand Jury for the crime of Grand Larceny (Rec. P. 135), arrested and incarcerated. Alvin was jailed for 110 days.

Alvin is not the person shown on the videotape that removed a wallet from the counter of Jubilee Chevron. (Rec. P. 133 and Record Exhibit). Alvin did not remove the wallet from the counter of Jubilee Chevron. (Rec. P. 133).

On November 8, 2002, the criminal proceeding was terminated in Alvin's favor. The DA filed a Motion to *Nolle Prosequi* based on lack of evidence. The motion was granted by Order entered the same day by Circuit Judge William Chapman. (Rec. P. 136).

Alvin timely filed his complaint on November 7, 2003, for damages stemming from malicious prosecution, false imprisonment, intentional infliction of emotional distress, defamation, negligence and gross negligence. (Rec. Pgs. 4-9).

Nelson has admitted that Alvin is not the person in the video recording taking the wallet. Even though Nelson admits that Alvin is not the person shown on the video recording, she identified Alvin to the Police as the man shown in the video recording taking the wallet. Nelson has admitted that Alvin did not take the wallet. (Rec. P. 132-134).

Even though Nelson did not see Alvin take the wallet she nonetheless accused him. She accused Alvin with intentional, reckless and wanton disregard for his guilt or innocence, as shown by her own statement:

"Well, if he didn't get it, he can prove himself that he didn't, and I call the police department. And the polices came up." (sic).

(Rec. P. 124).



On January 4, 2005, Alvin filed his Motion for Partial Summary Judgment as to Liability.  
(96) Nelson and Jubilee Chevron filed their Motion for Summary Judgment on January 10, 2007.  
(Rec. P. 302). On December 5, 2006, both motions were brought on for hearing. Alvin's motion  
for partial summary judgment was denied, Nelson and Jubilee Chevron's Motion for Summary  
Judgment was granted (Rec. P. 402). From that ruling, Alvin appeals.

### **SUMMARY OF THE ARGUMENT**

The lower court erred in two respects: 1) By denying Alvin's motion for partial summary judgment as to liability and 2) By granting summary judgment by granting summary judgment in favor of the defendants.

Alvin was wrongly incarcerated for 110 days because of Nelson's inexcusable conduct. Nelson's conduct amounts to malicious prosecution and resulted in Alving' false imprisonment. Nelson's actions also constitute the tort of intentional infliction of emotional distress. Nelson was negligent to the point of committing gross negligence. Jubilee Chevron is liable for Nelson's actions under the doctrine of respondeat superior.

This court should reverse the trial court judgment and grant Alvin's motion for partial summary judgment as to liability and deny the defendant's motion for summary judgment.

## ARGUMENT

### **I. Summary Judgment Standard**

A party moving for summary judgment on any issue bears the initial burden of demonstrating the absence of a material fact through "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any." MRCP 56 (c); Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Hurst v. Southwest Miss. Legal Services Corp., 610 So. 2d 374, 383 (Miss. 1992). "A fact is material if it tends to resolve any of the issues properly raised by the parties." Webb v. Jackson, 583 So.2d 946, 949 (Miss. 1991) quoting Mink v. Andrew Jackson Cas. Ins. Co., 537 So.2d 431, 433 (Miss. 1988). The court can grant a summary judgment only where, viewing the evidence before the court in the light most favorable to the non-movant, the movant establishes that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. MRCP 56 (c); Nationwide Mutual inc. Co. v. Garriga, 636 So. 2d 658, 661 (Miss. 1994).

A trial court may grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. MRCP 56(c). A fact is material if it "tends to resolve any of the issues properly raised by the parties." Palmer v. Anderson Infirmary Benevolent Ass'n, 656 So.2d 790, 794 (Miss. 1995).

MRCP 56 reads in pertinent part:

#### **Summary judgment.**

(a) *For claimant.* A party seeking to recover upon a claim, counter-claim, or cross-claim, or to obtain a declaratory judgment may, at any time after the expiration of thirty days from the commencement of the action or after service of a motion for summary judgment by the

adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

MRCP 56 (Rev. 2003). The comment to the rule reads:

... The motion may be directed toward all or part of a claim or defense and it may be made on the basis of the pleadings or other portions of the record, or it may be supported by affidavits and other outside material. Thus, the motion for a summary judgment challenges the very existence or legal sufficiency of the claim or defense which it is addressed; in effect, the moving party takes the position that he is entitled to prevail as a matter of law because his opponent has no valid claim for relief or defense to the action, as the case may be.

Comment to MRCP 56 (Rev. 2003). The comment further reads:

A motion for summary judgment lies only where there is no genuine issue of material fact; ....

Id. The comment goes on to read:

... a summary judgment motion is based on the pleadings and any affidavits, depositions, and other forms of evidence relative to the merits of the challenged claim or defense that are available at the time the motion is made. The movant under Rule 56 is asserting that on the basis of the records as it then exists, there is not genuine issue as to any material fact and that he is entitled to a judgment on the merits as a matter of law.

Id.

If a defendant seeks summary judgment the plaintiff must make a showing that affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough.” Dickey v. Baptist Memorial Hospital-North MS, 146 F.3d 262, 267 (5<sup>th</sup> Cir. 1998) citing Burnham v. Tapp, 508 So.2d 1072, 1074 (Miss. 1987).

## **II. The Court Erred By Denying Alvin's Motion for Partial Summary Judgement as to Liability**

Alvin was wrongly accused. He was put behind bars for 110 days. At all times pertinent discussed herein, Nelson was an employee and agent of Jubilee Chevron. Nelson admits that she identified Alvin to the police as the person in the videotape removing the wallet. (Rec. P. 123). Nelson admits, as well, that she identified Alvin to the Police as the person who in-fact took the wallet. (Rec. P. 123). Thus, Nelson made two identifications to the police, the first that Alvin is the person on the videotape taking the wallet and the second that Alvin in-fact took the wallet. Nelson's wrongful charge set in motion Alvin being jailed for 110 days for a crime he did not commit. Nelson's actions, acting as an agent for Jubilee Chevrron, make the defendants liable to Alvin for the various wrongs committed against him. Alvin meets all of the elements for wrongs committed against him. Below is an explanation of the claims for which the defendants are liable:

### **A. Malicious Prosecution:**

Croft v. Grand Casino Tunica, Inc., 910 So. 2d 66 (Miss. App. 2005), sets forth the elements of a malicious prosecution claim. Those elements set forth below and are followed by an analysis of how the facts of this case apply to those elements:

1. The institution of a proceeding - Grand Larceny charges were initiated against Alvin. (Rec. P. 135).
2. by, or at the insistence of the Defendant - Defendant Nelson, in the course and scope of her employment with Defendant Hill City Oil, identified Alvin to the City of Madison, Mississippi, Police Department as the person who stole a wallet from the sales counter. (Rec. Pgs. 121-122).

3. the termination of such proceeding in the Plaintiff's favor - On November 8, 2002, the Grand Larceny charge was dismissed. (Rec. P. 136).
4. malice in instituting the proceedings - "Malice can be inferred from the fact that a defendant may have acted with reckless disregard for plaintiff's rights." Page v. Wiggins 595 So.2d 1291, 1293 (Miss. 1992). Even though Nelson did not see Alvin steal the wallet, she identified Alvin as the thief, with no regard for his guilt or innocence. This is proven by her statement that, "Well, if he didn't get it, he can prove himself that he didn't ...." (Rec. P. 124). In other words, it didn't matter to Nelson whether Alvin was innocent; she could accuse him and then he could prove he didn't do it. This is reckless disregard for Alvin's rights.
5. want of probable cause for the proceeding - Probable cause "requires a concurrence of an honest belief in the guilt of the person accused and reasonable grounds for such belief .... [U]nfounded suspicion and conjecture are not proper bases for finding probable cause." Id. at 1294. Nelson's statement that Alvin could prove his own innocence if he didn't steal the wallet is proof unto itself that she lacked an honest belief in Alvin's guilt when she accused him and that her accusation was based on conjecture.
6. the suffering of the injury or damage as a result of the prosecution - Alvin spent 110 days in jail for a crime he didn't commit. He can never recover these 110 days to live them in freedom.

The lower court writes that Alvin's prosecution was not at Nelson's insistence because she acted in good faith. (Rec. P. 93). This is not accurate. Nelson's own statement that Alvin "prove himself that he didn't" take wallet. (Rec. P. 124). Nelson's own statement shows that she wasn't acting in good faith. Her own statement shows that she didn't care whether or not Alvin took the wallet. Nelson acted maliciously without regard to Alvin's guilt or innocence.

The defendants maliciously instituted criminal proceedings against Alvin without probable cause. The proceedings were terminated in his favor. Alvin suffered injury and damage as a result of the defendants' actions and inactions. They are therefore liable for Alvin's suffering and damages.

## **B. False Imprisonment**

Alpha Gulf Coast, Inc. v. Jackson, 801 So. 2d 709 (Miss. 2001), sets forth the elements of false imprisonment. Below is an analysis of how the facts of this case apply to those elements:

1. Plaintiff was detained - Alvin was jailed for 110 days.
2. The detention was unlawful - Whether a detention was unlawful "turns on whether, looking at the totality of the circumstances, the actions of the defendants were objectively reasonable in their nature, purpose, extent and duration." "It is the reasonableness of the defendants' actions, not their intent, that matters." Page v. Wiggins, 595 So.2d 1291. Defendant Nelson did not see anyone steal the wallet from the counter. (Rec. Pgs. 132-133). In spite of the fact that she didn't see who stole the wallet, she fingered Alvin to the police as the criminal who did it. When asked why she would name someone she did not see steal the wallet, Nelson retorted, "Well, if he didn't get it, he can prove himself that he didn't ...." (Rec. P. 124). In other words it didn't matter to Nelson whether Alvin was innocent; she could accuse him and then he could prove he didn't do it. The fact that Alvin would go to jail because of her accusation apparently didn't matter to Nelson. Nelson's actions were unreasonable by civilized standards.

The lower court denied Alvin's claim for false imprisonment because in its opinion Alvin's incarceration was based on legal processes issued by a court. While the justice system may have acted according to procedure, it was Nelson, and vicariously Jubilee Chevron, who set in motion the

events leading to Alvin's false imprisonment. For, without her malicious conduct, Alvin would never have been incarcerated.

It is undisputed that Alvin was detained. Alvin has certainly shown through Nelson's admissions and her deposition that his incarceration was unlawful. The defendants are therefore liable for Alvin's suffering and damages.

### **C. Intentional Infliction of Emotional Distress**

The trial court denied Alvin's claim for intentional infliction of emotional distress because in its opinion, Nelson did not instigate criminal proceedings. As outlined above, this is not so.

Intentional infliction of emotional distress requires proof that conduct of the defendant was "malicious, intentional or outrageous." Mogan v. Greenwaldt, 786 So.2d 1037 (Miss. App. 2001). Croft v. Grand Casino Tunica, Inc., 910 So. 2d 66 (Miss. Ct. App. 2005), holds that "A Defendant's conduct must be wanton and willful and such that it would evoke outrage or revulsion." Certainly, when Nelson told the Police that Alvin took the wallet when she did not see Alvin take it, this was both intentional and outrageous. Compounding her act, she did not care whether Alvin took the wallet or not, simply saying that if he did not do it he could get himself out of it. When asked why she accused Alvin even though she did not see him steal the wallet, Nelson retorted "Well, if he didn't get it, he can prove himself that he didn't ....." (Rec. P. 124). This indifference is a terribly cruel disregard for the rights of one's fellow man. It ignores that an innocent man must retain legal counsel, suffer the embarrassment of a criminal charge and endure the degradation of losing 110 days of his life in jail for a crime he did not commit. To Nelson, Alvin was expendable - charge him and let him get himself out of it. She had no regard for the truth. Truly, this is outrageous if anything ever was.



#### **D. Negligence**

Alvin has pled generally for damages resulting from negligence. Negligence is defined as the breach of a duty, which breach is the proximate cause of damages. Mabus v. St. James Episcopal Church, 884 So.2d 747 (Miss. 2004). Here, the defendants had a duty not to falsely accuse Alvin of stealing the wallet. They had a duty not to set in motion events resulting in Alvin's wrongful incarceration. Nelson, while acting in the course and scope of her employment, set in motion the events that led to Alvin's unlawful detention. The supreme court has held that persons are responsible for the result of occurrences which they have set in motion. Downtown Grill, Inc. v. Connell 721 So.2d 1113 (Miss. 1998). The police arrested Alvin because Nelson told them Alvin stole the wallet. Nelson set in motion police activity. Moreover, at any point, Nelson could have gone to the police and told them that she was unsure, that she couldn't say that Alvin stole the wallet. The ordeal would have been over for Alvin at that point. But she didn't do that. She left in motion the chain of events that she began with her false charges and Alvin stayed in jail for 110 days for a crime he didn't commit as a result. The defendants breach their duty when Nelson, without basis, wrongly identified Alvin to the Police as the man in the videotape who stole the wallet, and as the man who-in-fact took the wallet. This breach certainly caused damages - Alvin spent 110 days behind bars for a crime he did not commit. He will never be able to unwind the hands of time and reclaim those 110 days.

#### **E. Gross Negligence**

Gross negligence involves a willful, wanton or reckless disregard for the rights of others. Choctaw Maid Farms, Inc. v. Hailey 822 So.2d 911 (Miss. 2002). Gross negligence involves some vituperative act on the part of the wrongdoer. Damages flowing from it are largely left to the province of the jury. Memphis & Chareleson R.R. Co. v. F.E. Whitfield, 44 Miss. 466 (Miss. 1870). While Alvin requests partial summary judgment as to liability, damage assessment being left to the jury, Alvin has, nonetheless, proven the elements of gross negligence. Nelson wrongly accused him

of stealing the wallet and did not care whether he was guilty or innocent. She had no concern for the hardship and humiliation Alvin would suffer from being falsely accused. She found it more convenient for herself to name Alvin as a criminal and let him fend for himself rather than take the reasonable approach and verify whether Alvin took the wallet before she accused him of being a crook. For the reasons stated throughout this brief and this explanation, Nelson's reckless disregard for Alvin's rights amounts to gross negligence.

#### **F.      Respondeat Superior**

Under the doctrine of *respondeat superior*, the master may be liable only for the torts actually committed by his servant within the scope of employment. Funderburk v. Johnson 935 So.2d 1084 (Miss. App. 2006). Defendants admit that Nelson was employed by and working for Hill City Oil on July 18, 2001, when she wrongly accused Alvin of stealing the wallet. (Rec. Supp. Vol. P. 2). Therefore all defendants are liable for Nelson's conduct.

#### **III.    The Court Erred By Granting the Defendants' Motion for Summary Judgement.**

Alvin reincorporates his argument as to whey the court erred in denying his motion for partial summary judgment as his argument for why the court erred by granting the Defendant's Motion for Summary Judgment.

#### **CONCLUSION**

The lower court erred when it granted the defendants' motion for summary judgment. Alvin has set forth undisputed facts that the defendants' conduct resulted in him being wrongly jailed for 110 days for a crime he did not commit. It is surely more likely than not that the conduct of the defendants was a cause in fact of Alvin's wrongful incarceration.

The lower court erred when it denied Alvin's motion for partial summary judgment as to liability. Nelson, as servant of Jubilee Chevron, undisputedly set in motion the chain of events which led to Alvin's arrest and incarceration for 110 days for a crime he didn't commit. Alvin

suffered damages - he lost 110 days of his life which he will never regain, as well as the stain on his reputation of having been arrested and jailed. Jubilee Chevron is liable for Nelson's actions through respondeat superior. As shown herein, Alvin has established that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law.

For the above and foregoing reasons, Alvin respectfully requests that this court reverse the trial court and grant summary judgment in favor of Alvin as to liability, remand the case to the for a trial on damages. Alternatively, the court should deny both motions for summary judgment and remand the case for trial.

Respectfully submitted,

By:



John R. Reeves, MSB# [REDACTED]  
Law Offices of John R. Reeves, P.C.  
555 Tombigbee, St., Suite 107  
Jackson, MS 39201  
Attorneys for Appellant

**CERTIFICATE OF SERVICE**

I certify that I mailed a true copy of this document to the following, via First Class U.S. Mail, postage prepaid on August 17, 2007:

Samuel F. Creasey, Esq.  
P.O. Box 750  
Jackson, Mississippi 39205-0750

Honorable Bobby DeLaughter  
Hinds County Circuit Court Judge  
P.O. Box 27  
Raymond, MS 39154



John R. Reeves