

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MAGGIE MAYWEATHER

APPELLANT

VERSUS

NO. 2007-CA-00580

ROSE CARPENTER AND
ISLE OF CAPRI CASINO

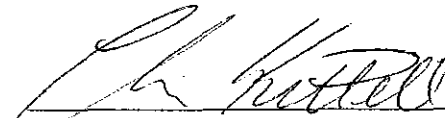
APPELLEE

CERTIFICATE OF INTERESTED PERSONS

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

1. Ms. Maggie Mayweather - Plaintiff/Appellant;
2. Allan D. Shackelford, Esquire - Attorney for Plaintiff/Appellant;
3. Isle of Capri Casino a.k.a IOC-Lula, Inc. - Defendant/Appellee;
4. Christopher E. Kittell, Merkel & Cocke, P.A. - Attorney for Defendant/Appellee;
5. Rose Carpenter - Defendant; and
6. Honorable Albert B. Smith, III, presiding Circuit Court Judge.

THIS, the 14th day of January, 2008.



CHRISTOPHER E. KITTELL, MSB # [REDACTED]
Attorney for Defendant/Appellee

TABLE OF CONTENTS

Certificate of Interested Persons	i
Table of Authorities	iii
Statement of the Issues	1
Statement of the Case	2
I. Nature of Case and Course of Proceedings in Lower Court	2
II. Statement of Facts Relevant to Issues for Review	2
A. The Incident	2
B. Activities in the Interview Room	4
Summary of Argument	6
Argument	8
I. Standard of Review	8
II. The Plaintiff's Slander Claim Fails as a Matter of Law	8
A. IOC Never Accused the Plaintiff of Committing A Crime	9
B. The Plaintiff has Failed to Present Any Evidence That She Was Damaged by the "Troublemaker" Comment	11
III. The Plaintiff's Claim for False Imprisonment Fails as a Matter of Law	12
A. The Plaintiff Has Failed to Present Any Evidence That She Was Actually Detained	14
B. The Plaintiff's False Imprisonment Claims Fails Because Any Detention Was Not Unlawful	21
IV. The Plaintiff's False Arrest Claim Fails Because Probable Cause Existed	22
Conclusion	24
Certificate of Service	25

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Armistead v. Minor</i> , 815 So.2d 1189 (Miss. 2002)	11
<i>Bass v. Dunbar House Inc.</i> , 161 A.2d 50 (Mun.Ct.App., D.C. 1960)	20
<i>Benjamin v. Hooper Electronic Supply Co., Inc.</i> , 568 So. 2d 1182 (Miss. 1990)	22
<i>Blake v. Gannett Co.</i> , 529 So.2d 595 (Miss.1988)	9
<i>Chatham v. Gulf Publ'g Co., Inc.</i> , 502 So.2d 647 (Miss.1987)	9
<i>Chrestman v. State</i> , 114 So. 748 (1927)	13
<i>City of Mound Bayou v. Johnson</i> , 562 So.2d 1212 (Miss.1990)	22
<i>Condere Corp. v. Moon</i> , 880 So.2d 1038 (Miss. 2004)	9
<i>Croft v. Grand Casino Tunica, Inc.</i> , 910 So.2d 66 (Miss. App. 2005)	22
<i>Eason v. Federal Broad. Co.</i> , 697 So.2d 435 (Miss. 1997)	11
<i>Eselin-Bullock & Assocs. Ins. Agency, Inc. v. National Gen. Ins. Co.</i> , 604 So.2d 236 (Miss.1992)	9
<i>Elston v. Circus Circus Mississippi, Inc.</i> , 908 So.2d 771 (Miss. App. 2005)	8
<i>Hartford Cas. Ins. Co. v. Haliburton Co.</i> , 826 So.2d 1206 (Miss. 2001)	8
<i>Hudson v. Palmer</i> , 2007 WL 2472559 (Miss. App. 2007)	22, 23
<i>Journal Pub. Co. v. McCullough</i> , 743 So.2d 352 (Miss. 1999)	9, 11
<i>Lee v. Alexander</i> , 607 So.2d 30 (Miss.1992)	13
<i>Lester v. Albers Super Markets</i> , 114 N.E.2d 529 (Ohio 1952)	17
<i>Lowery v. Guaranty Bank and Trust Co.</i> , 592 So.2d 79 (Miss. 1991)	8
<i>Martin v. Santora</i> , 199 So.2d 63 (Miss. 1967)	16, 17, 18
<i>Moon v. Condere Corp.</i> , 690 So.2d 1191 (Miss.1997)	9

<i>Owen v. Pringle</i> , 621 So.2d 668 (Miss. 1993)	8
<i>Owens v. Kroger Co.</i> , 430 So.2d 843 (Miss. 1983)	22
<i>Page v. Wiggins</i> , 595 So.2d 1291 (Miss.1992)	13
<i>Parker v. Mississippi Game and Fish Com'n.</i> 555 So.2d 725 (Miss.1989)	13
<i>Pollack v. City of Newark, N. J.</i> , 147 F.Supp. 35 (D. N.J., 1956)	20
<i>Price v. Roark</i> , 256 F.3d 364 (5th Cir.2001)	22
<i>Smith v. Magnolia Lady, Inc.</i> , 925 So.2d 898 (Miss. App. 2006)	19, 21, 22
<i>State for Use of Powell v. Moore</i> , 174 So.2d 352 (Miss. 1965)	13, 20, 21
<i>Thornhill v. Wilson</i> , 504 So.2d 1205 (Miss.1987)	13, 21
<i>W. T. Farley, Inc. v. Bufkin</i> , 132 So.2d 86 (Miss. 1931)	12
<i>Wallace v. Thornton</i> , 672 So.2d 724 (Miss.1996)	13

Treatises

1 Restatement of Torts §§ 35-45 (1934)	13
--	----

STATEMENT OF ISSUES

1. Whether the trial court correctly granted summary judgment dismissing the Plaintiff's claim for slander when, by the Plaintiff's own admission, the alleged slanderous statement was true.
2. Whether the trial court correctly granted summary judgment on the Plaintiff's claims of false arrest and false imprisonment when the Plaintiff voluntarily went with the Defendant's employees, the Plaintiff never attempted to leave and the Defendant possessed probable cause to believe the Plaintiff had committed a crime.

STATEMENT OF THE CASE

I. Nature of Case and Course of Proceedings in Lower Court

The Appellant/Plaintiff Maggie Mayweather (hereinafter “Plaintiff” or “Mayweather”) filed suit against Rose Carpenter (hereinafter “Carpenter”) and the Isle of Capri Casino¹ (hereinafter “IOC”), alleging that she was the victim of slander, false imprisonment and false arrest. The Plaintiff never served Defendant Carpenter with process and, as a result, Carpenter never appeared in the case and did not take part in discovery. The Plaintiff and IOC conducted discovery and, after the close of discovery, IOC timely moved for summary judgment on all of the Plaintiff’s claims. The Circuit Court of Coahoma County granted IOC’s motion and dismissed the Plaintiff’s claims against IOC with prejudice. The Plaintiff has appealed the decision of the lower court.

II. Statement of Facts Relevant to Issues for Review

A. The Incident.

On November 5, 2002, Carpenter was a patron at the Isle of Capri Casino. R. 27; R. 32. During her visit at the casino, when taking her seat at one of the slot machines, Carpenter’s wallet fell unnoticed from her purse to the floor. See surveillance video, R. 44. Carpenter was playing a slot machine located roughly in the middle of one bank² of slot machines, with her back to another other bank of slot machines. See surveillance video, R. 44. The wallet came to rest immediately behind Carpenter, in the middle of the aisle running between the two banks of slot machines. See surveillance video, R. 44. The accidental dropping of the wallet, as well as the other events

¹ The correct name of the entity which owns and operates the Isle of Capri Casino at Lula, Mississippi is IOC-Lula, Inc. However the Plaintiff improperly identified the Defendant in her Complaint as Isle of Capri Casino.

² Slot machines are arranged on top of a wooden base approximately 15 feet long. Several machines are situated side by side on one single wooden base. This arrangement is referred to as a “bank” of slot machines.

described *infra*, were caught on surveillance video, a copy of the video tape being Exhibit C to IOC's Motion for Summary Judgment and thus a part of the record on appeal. R. 44.

On this same day, Mr. Johnny Jackson (hereinafter "Jackson") and the Plaintiff, Ms. Maggie Mayweather, had traveled together to the casino. R. 52. Jackson had known Mayweather's family for some time and considered the relationship between he and the plaintiff as one of "friends." R. 52. At the time that the wallet fell from Carpenter's purse, Jackson was standing at the end of that same bank of slot machines, in a position to observe the wallet. See surveillance video, R. 44. Immediately after the wallet fell to the floor, Mayweather approached Jackson, and, after pausing momentarily at the end of the bank of slot machines, the two of them, the Plaintiff leading but followed *very closely* by Jackson, proceeded down the aisle where the wallet lay. See surveillance video, R. 44. Upon arriving at the wallet, Mayweather bent down and retrieved the wallet. See surveillance video, R. 44. Mayweather and Jackson then proceeded further down the aisle and began playing slot machines toward the end of this same bank. See surveillance video, R. 44.

According to Mayweather, once she picked up the wallet, she placed it between two of the slot machines situated on this bank of machines. R. 33-34. Jackson subsequently took the wallet from where it had been placed by Mayweather, placed it beneath his coat to hide it, went to a nearby men's restroom, opened the wallet, found \$20 in the wallet, removed the \$20, and discarded the wallet into a trash can located in the restroom. R. 56-57 and R. 60-61. Carpenter returned to the banks of slot machines in an effort to find her wallet and appeared on the video to ask other patrons regarding her missing wallet. See surveillance video, R. 44. Despite Mayweather's continued presence at the bank of slot machines where Carpenter was searching, Mayweather never communicated to Carpenter regarding "finding" the wallet. See surveillance video, R. 44.

Carpenter eventually notified security personnel regarding her missing wallet. R. 85.

Following receipt of the report of the missing wallet, casino security personnel reviewed the videotape and observed that Mayweather had picked up the wallet. R. 85. The video also depicted Jackson leaving his slot machine and going to the men's restroom. See surveillance video, R. 44. A security guard was dispatched to the men's restroom where the now cashless wallet was discovered in the trash can. R. 85.

B. Activities in the Interview Room.

Following the discovery of the wallet, security personnel approached Mayweather and Jackson and, according to both Mayweather and Jackson, requested that Mayweather and Jackson accompany them. R. 27; R. 64. Mayweather and Jackson agreed to accompany the security personnel. R. 28; R. 65. Both testified that no force, or threat of force, was used. R. 28; R. 65. Upon reaching the interview room, Mayweather and Jackson were questioned about the wallet. R. 85. Mayweather was not accused of stealing the wallet but was accused of picking up the wallet, which she admitted to doing. R. 29; R. 33. Neither Mayweather nor Jackson disclosed any knowledge of the wallet. R. 35. A Coahoma County deputy was requested and dispatched from the Coahoma County Sheriff's Department. R. 31. Upon arrival of the Deputy Sheriff, Carpenter stated³ that she wanted to file charges against both Mayweather and Jackson. R. 31. Mayweather and Jackson were then transported to the Coahoma County jail, followed closely by Carpenter. R. 32. Carpenter signed the Affidavit charging both with petit larceny. At the ensuing trial, Carpenter - a non-Mississippi resident - failed to appear and the charges were dismissed. R. 37. Mayweather then filed this litigation against IOC and Carpenter, alleging that IOC and Carpenter committed the

³ The Plaintiff contends that Isle of Capri personnel strongly encouraged Carpenter to file charges. As will be demonstrated, based upon the undisputed facts of this case, the fact that casino personnel may or may not have encouraged Carpenter to file charges is immaterial.

torts of slander, false arrest and false imprisonment. R. 2 - 4. As discussed *infra*, the Circuit Court correctly granted summary judgment in favor of the Defendant on all three of the Plaintiff's claims. R. 121 - 123.

SUMMARY OF THE ARGUMENT

The trial court was correct in dismissing the Plaintiff's claims via summary judgment. The Plaintiff could only survive summary judgment in this case if she presented admissible evidence sufficient to create a question of material fact that IOC slandered her, falsely imprisoned her and/or falsely arrested her. The Plaintiff has failed to present any evidence to support any of these theories of liability.

Mayweather alleged in her Complaint that IOC employee(s) slandered her by accusing her of stealing Carpenter's wallet. R. 3. However, Mayweather failed to present any proof that IOC employee(s) accused her of any crime. Instead, Mayweather testified that the IOC employee(s) only accused her of "picking up the wallet", which she admitted to doing. R. 33. Thus, since she admits to doing the only thing she was accused of doing, there was no slander.

Mayweather also failed to present sufficient evidence that she was falsely imprisoned. To establish a claim for false imprisonment, Mayweather must show that she was detained and that such detention was unlawful. The Plaintiff failed to establish that she was forced to go with the casino personnel. Further she failed to establish that her detention was unreasonable. Thus, the Circuit Court correctly dismissed her false imprisonment claim.

Finally, the Plaintiff failed to produce sufficient evidence to create a question of fact regarding her false arrest claim. If probable cause existed, there can be no false arrest. Whether probable cause existed is a question of law for the Court, not a question of fact for the jury. The video of Mayweather picking up the stolen wallet alone is sufficient to establish probable cause. Thus, the Circuit Court also correctly dismissed Mayweather's false arrest claim.

The Plaintiff failed to present any admissible evidence in support of any of the three theories via which the Plaintiff could possibly prevail. The trial court was correct in granting the Defendant's

Motion for Summary Judgment. The Defendant respectfully requests that this Court affirm the trial court's dismissal of the Plaintiff's claims.

ARGUMENT

I. Standard of Review

“Appellate courts apply a de novo standard in reviewing the grant or denial of summary judgment motions, making its own determinations separate and apart from the trial court.” *Elston v. Circus Circus Mississippi, Inc.*, 908 So.2d 771, 773 (Miss. Ct. App. 2005) (citing *Lowery v. Guaranty Bank and Trust Co.*, 592 So.2d 79, 81 (Miss. 1991)). “On a motion for summary judgment, a court does not try issues of fact; it can only determine whether there are issues to be tried.” *Elston, supra* at 773 (citing *Hartford Cas. Ins. Co. v. Haliburton Co.*, 826 So.2d 1206, 1209-10 (Miss. 2001)).

“The motion for a summary judgment challenges the very existence of legal sufficiency of the claim or defense to 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 actions, as the case may be.” *Owen v. Pringle*, 621 So.2d 668, 670 (Miss. 1993). “In evaluating the moving party’s position, the court reviews ‘all admissions, answers to interrogatories, depositions, affidavits, and any other evidence, viewing the evidence in a light most favorable to the non-movant.’ *Id.*

The material facts relating to the Plaintiff’s claims are undisputed. The trial court correctly applied the law to the undisputed material facts and correctly granted summary judgment in favor of IOC.

II. The Plaintiff’s Slander Claim Fails as a Matter of Law.

Slander is the *oral* form of defamation.⁴ The Mississippi Supreme Court has delineated the

⁴ The terms defamation, libel, and slander have been used somewhat loosely and interchangeably in this case since its inception, although that would not make a difference

proof necessary to establish a claim of defamation:

¶ 22. To establish a claim for defamation, an ordinary plaintiff must show the following: (1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and (4) either [actionability] of the statement irrespective of special harm or the existence of special harm caused by the publication. *Moon v. Condere Corp.*, 690 So.2d 1191, 1195 (Miss.1997); *Eselin-Bullock & Assocs. Ins. Agency, Inc. v. National Gen. Ins. Co.*, 604 So.2d 236, 241 (Miss.1992); *Blake v. Gannett Co.*, 529 So.2d 595, 602 (Miss.1988); *Chatham v. Gulf Publ'g Co., Inc.*, 502 So.2d 647, 649 (Miss.1987).

Journal Pub. Co. v. McCullough, 743 So.2d 352, 359 (Miss. 1999)

A. IOC Never Accused the Plaintiff of Committing a Crime.

Focusing on the claim of “slander,” the first assertion of slanderous conduct on the part of the Defendant appears in paragraph 1 of the Plaintiff’s Complaint when she pleads that after being escorted to the interview room:

“... the employees of Defendant Isle of Capri in the presence of others, **accused Plaintiff of stealing personal property** belonging to Defendant Carpenter.”

R. 3. (Emphasis added). The Plaintiff continues to make this assertion in her Appellant’s Brief, when she states she was “accused of complicity of the stealing of the wallet.” Appellant’s Brief at p. 9. Putting aside the allegations of the Complaint and Appellant’s Brief and instead reviewing the *sworn* deposition of the Plaintiff as to what she claims actually occurred in the interview room, the

in the result which we reach today. Defamation is defined as “[t]he act of harming the reputation of another by making a false statement to a third person.” Black’s Law Dictionary 427 (7th ed.1999). “Libel is written or visual defamation; **slander is oral or aural defamation.**” Robert D. Sack & Sandra S. Baron, *Libel, Slander, and Related Problems* § 2.3, at 67 (2d ed.1994) *Id.* at 927. *Condere Corp. v. Moon*, 880 So.2d 1038 (Miss. 2004), footnote. # 2.

facts as testified to by the Plaintiff simply do not support this allegation:

“Q: Did either one of these gentlemen actually accuse you of stealing this wallet there in the room?

A: No.

Q: Did they accuse you of stealing this twenty dollars that this guy mentioned?

A: No.”

R. 29.

“Q: So, he accused Mr. Jackson of taking the wallet?

A: Yes.

Q: But he never did accuse you of taking the wallet?

A: No.”

R. 29 - 30.

Later in the deposition, when again pressed on this issue of slander, the Plaintiff testified that the only statement made about her was that she “picked the wallet up,” and that such statement was true, as follows:

“Q: As I understand your testimony earlier, they actually didn’t accuse you of stealing the personal property?

A: He said that I picked the wallet up.”

* * *

“Q: Did you pick the wallet up?

A: Yes.”

R. 33. Thus, as regards the conduct of IOC’s security personnel, according to the *sworn* testimony of the Plaintiff herself, IOC never accused Mayweather of stealing the wallet or the money, but rather

only that she “picked the wallet up,” which, again according to her own testimony, was a true statement. R. 33 Being a true statement, by definition, the statement cannot constitute slander. “Truth is an absolute defense to a defamation lawsuit in Mississippi.” Journal Pub. Co. v. McCullough, 743 So.2d 352, ¶ 26, (Miss. 1999), *citing* Eason v. Federal Broad. Co., 697 So.2d 435, 437 (Miss. 1997). Because there is no dispute regarding the fact that the only thing which the security personnel accused the Plaintiff of doing was picking up the wallet - and because the Plaintiff admits that she did, in fact, pick the wallet up - the claim of slander, *as a matter of law*, cannot stand.

B. The Plaintiff Has Failed to Present any Evidence that She Was Damaged by the “Troublemaker” Comment.

In response to IOC’s Motion for Summary Judgment, the Plaintiff argued for the first time that IOC also slandered her when its employee allegedly called her a “troublemaker”. The Plaintiff’s Complaint does not mention this claim. However, even if this comment was indeed made, the Plaintiff has failed to prove that she suffered any injury as a result of the “troublemaker” comment.

“To establish a claim for defamation, an ordinary plaintiff must show the following: (1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.”

Armistead v. Minor, 815 So.2d 1189, 1193 (Miss. 2002). The “troublemaker” comment was allegedly made by an IOC employee to Carpenter, whose wallet was the one stolen. R. 31 - 32. There is no evidence that Carpenter or any one else changed their opinion of the Plaintiff as a result of the “troublemaker” statement. There is also no evidence that the Plaintiff’s reputation was injured in any way as a result of the “troublemaker” comment.

Apparently realizing that she was not damaged by the “troublemaker” comment, the Plaintiff argues that this statement falls under one of the categories in Mississippi where no special harm has

to be shown in order to recover. However, the “troublemaker” comment does not fall under any of the five categories of slander *pro se*.

“There are five categories in Mississippi for which no special harm need be shown: ‘(1) Words imputing the guilt or commission of some criminal offense involving moral turpitude and infamous punishment; (2) Words imputing the existence of some contagious disease; (3) Words imputing unfitness in an officer who holds an office of profit or emolument, either in respect of morals or inability to discharge the duties thereof; (4) Words imputing a want of integrity or capacity, whether mental or pecuniary, in the conduct of a profession, trade or business; and (5) Words imputing to a female a want of chastity.’”

W. T. Farley, Inc. v. Bufkin, 132 So.2d 86, 87 (Miss. 1931). Being called a “troublemaker” did not impute upon Mayweather the guilt or commission of any crime, much less one that involved either moral turpitude and infamous punishment. Neither did it impute the existence of a contagious disease. She is not an officer who holds an office of profit or emolument, so the third category does not apply. Neither does the fourth category, since the “troublemaker” comment had nothing to do with any profession, trade or business. Finally, the term “troublemaker” does not indicate a want of chastity.

Since the “troublemaker” comment does not fall under one of these five categories, Mayweather must prove special damages in order to survive summary judgment. However, Mayweather has failed to present any evidence of any injury suffered due to the “troublemaker” comment. Thus, Mayweather has failed to present any evidence in support of one of the required elements, i.e. damage. The Circuit Court therefore correctly granted summary judgment, dismissing the Plaintiff’s slander claim.

III. The Plaintiff’s Claim for False Imprisonment Fails as a Matter of Law.

Mayweather’s Complaint alleges that:

Employees of Defendant Isle of Capri ... required that [the plaintiff] accompany them to an interrogation room of said Defendant,

requiring that she stay in said room and keeping her *confined* therein.

R. 2 - 3. However, the Plaintiff has failed to present any evidence that she was either “required” to stay in the room or “confined” therein. As with the charge of slander, a close examination of what actually occurred, *as testified to by the Plaintiff*, and the applicable law, will dispel Mayweather’s claim of false imprisonment.

Prosser defines the tort of false imprisonment as “confinement of the plaintiff within boundaries fixed by the defendant, **without legal justification**, by an act or the breach of a duty intended to result in such confinement.” (Emphasis added). *Prosser* goes on to state that “[i]t is essential ... that the restraint be against the plaintiff’s will; if he agrees of his own choice to surrender his freedom of motion, as by accompanying the defendant voluntarily to clear himself of an accusation, rather than yielding to the constraint of a threat, there is no imprisonment.” *Prosser*, Id. at 49; *State for Use of Powell v. Moore*, 174 So.2d 352 (Miss. 1965), *citing Chrestman v. State*, 114 So. 748 (1927); 1 Restatement of Torts §§ 35-45 (1934).

The torts of false imprisonment and false arrest are often spoken of in the same breath. The reason seems to be that the two torts so often follow one after the other. The elements necessary to prove the respective torts are very similar. “The elements of a claim for false arrest or imprisonment are two-fold. They include: (1) the detention of the plaintiff and the unlawfulness of such detention; (2) imprisonment and the falsity thereof.” *Parker v. Mississippi Game and Fish Com’n*. 555 So.2d 725, 729 (Miss.1989), *citing Thornhill v. Wilson*, 504 So.2d 1205, 1208 (Miss.1987)).

In earlier cases the two elements necessary to prove a claim of false imprisonment were stated as follows: (1) detention of the plaintiff and (2) such detention was unlawful. *Wallace v. Thornton*, 672 So.2d 724 (Miss.1996) *citing Lee v. Alexander*, 607 So.2d 30, 35 (Miss.1992); *Page v. Wiggins*, 595 So.2d 1291, 1294 (Miss.1992); *Thornhill v. Wilson*, 504 So.2d 1205, 1208

(Miss.1987).

A. The Plaintiff has Failed to Present any Evidence that She Was Actually Detained.

In looking at the first element - the detention of the Plaintiff - Mayweather admits that she was not *forced* to accompany the casino security personnel to the interview room. Rather, she states that she simply accompanied the security personnel because she was requested to do so:

Q: Tell me ... what you recall as your first indication that something had happened that was involving you that was out of the ordinary.

A: When two men came and said come go with us or you've got to go with us or whatever they said. Two men came and got me.

R. 27.

Q: Did you believe them to be security personnel of the Isle of Capri?

A: Yes.

R. 27.

Q: What happened after that?

A: I asked them why I needed to go with them and he said, just come with us.

Q: That was still there at the slot machine?

A: Yes, and then I got up and started to go with them.

Q: Did either one of them lay hands on you?

A: No.

Q: So you got up and accompanied them?

A: Yes.

Q: Did they force you in any way, physically force you to go with

them? What I mean by that is after you got up, did they grab your arm or anything like that?

A: No.

Q: Did they physically touch you in any way?

A: No.

Q: Did they handcuff you in any way?

A: No.

R. 28.

Jackson's version of events is consistent with the Plaintiffs', as follows:

CEW: Ok. What happened when security personnel came to y'all?

JJ: ... uh ... they came in and ... um ... um ... ask to go with them.

CEW: The security personnel asked y'all to go with them?

JJ: Yes.

R. 64.

CEW: How many security people came?

JJ: Oh, I don't know, to me?

CEW: Yes.

JJ: ... um ... I think it was two at the end and one came middle ways to the ... um ... the row?

CEW: And they ask you to go with them?

JJ: Yes, come with them.

R. 65.

CEW: Did you go with them?

JJ: Yes I go went with them.

CEW: Why did you go with them?

JJ: Cause they ask me.

CEW: Well did they force you to go with them?

JJ: No they didn't force me.

R. 65.

CEW: Did they take you by the arm or simply y'all walk ...

JJ: We simply walked

R. 66.

The above testimony clearly indicates that no force was used during either the initial contact between IOC's security personnel and the Plaintiff, or during the time of the escort to the interview room. Rather, the Plaintiff and Jackson voluntarily accompanied the casino security personnel to the interview room simply because they were requested to do so. The facts of the present case are analogous to the case of *Martin v. Santora*, 199 So.2d 63, (Miss. 1967), where the Mississippi Supreme Court affirmed the dismissal of the plaintiff's case where allegations of false imprisonment were levied by an employee against her employer. In *Martin*, the owner of a store that had been recently burglarized required his employees to accompany police officers to the police station so that the employees could be fingerprinted so that the police might identify and eliminate those fingerprints found on the premises that belonged to persons who were legitimately in the store. Of particular relevance to the case at bar is our Court's discussion, *in the context of false imprisonment*, regarding circumstances where no force is used to detain a party:

"... submission to the mere verbal direction of another, unaccompanied by force or by threats of any character, cannot constitute a false imprisonment,"

Martin, supra, at p. 65, citing from *Lester v. Albers Super Markets*, 94 Ohio App. 313, 114 N.E.2d 529 (Ohio 1952). Both the Plaintiff and Jackson have testified that no one used, exhibited or threatened the use of any force to either cause them to accompany the security personnel or to restrain their liberty. R. 28; R. 65 - 66. Under the authority of the *Martin* case, the Plaintiff simply being told that she must accompany the IOC employees, without any force or threat of force, is insufficient to sustain a claim for false imprisonment.

However, to be fair to the Plaintiff, the inquiry does not end there. It is possible to have a false imprisonment without the use of force, if the use of force is reasonably threatened or implied by the circumstances.

“In order to constitute an unlawful imprisonment, *where no force or violence is actually employed*, the submission of the plaintiff must be to a reasonably apprehended force.”

Martin, supra at 66. (Emphasis added). The Plaintiff has failed to present any evidence that she was subjected to any “reasonably apprehended force.” The only testimony from the Plaintiff along those lines is that the door to the interview room was shut and one of the security persons sat in front of the door. On being questioned regarding the position of the people in the interview room, the Plaintiff testified as follows:

Q: How about the other two gentlemen? Did they remain standing up or did they sit?

A: One man sat in front of the door and other man stood over by the desk.

R. 28.

Q: Did you ever ask to leave the room?

A: No.

R. 28.

Q: Did they ever tell you that you couldn't leave the room?

A: No.

Q: Did they ever physically do anything to keep you from leaving the room?

A: The way they took me to that room and the man sat in front of the door and I ain't never been in a situation like that before, that was like, you can't leave.

R. 30. Taking the Plaintiff at her word, she *thought* that she was not free to leave the room. The truth is that she did not know, she did not ask and she did not try to leave. She simply *thought* she could not leave. The testimony of the Plaintiff in the *Martin* case is strikingly similar to what Mayweather claims:

"She [the plaintiff] also testified: 'I told him that I didn't want to go and they kept insisting, that's why I didn't know they were even talking to me, and they kept insisting that I had to go, so I went, **I took it for granted that I was under arrest, I had to go.**' She testified that the store manager **took her by the arm and went with her to the police car**; that the police took her to the police headquarters and fingerprinted her, and immediately brought her back to the store where she worked until she was relieved."

Martin, supra, p. 65. In addressing the Plaintiff's testimony that she "had to go" with the officers, the Mississippi Supreme Court stated:

"... false imprisonment may not be predicated on a person's unfounded belief that he was restrained against his will."

* * *

"The circumstances merely that one considers himself restrained in his person is not sufficient to constitute false imprisonment"

Martin, supra, at p. 65.

Merely thinking that you cannot leave a room is not sufficient to constitute false

imprisonment. The Plaintiff can point to no evidence which supports her thoughts. As such, the Circuit Court correctly found that there was no evidence that the Plaintiff was falsely detained and correctly granted summary judgment.

The present case is very analogous to the case of *Smith v. Magnolia Lady, Inc.*, 925 So.2d 898 (Miss. App. 2006). In that case, Smith, a former employee of the Magnolia Lady, d/b/a Lady Luck Rhythm & Blues Casino-Hotel⁵, accused the casino of false imprisonment, among other things. *Magnolia Lady, supra* at 900. Smith was caught on video hiding from view \$10,000 in one hundred dollar bills underneath plastic bags on top of a cart. *Magnolia Lady, supra* at 901. As a result, she was questioned by casino personnel and her employment terminated. *Magnolia Lady, supra* at 901.

Very similar to the present case, Smith testified that she did not tell anyone that she wanted to leave or wanted to stop answering questions. *Magnolia Lady, supra* at 904. She testified that no one threatened her physically or ever told her that she could not leave. *Magnolia Lady, supra* at 904. “When asked whether she ... ‘wanted to leave and ... [was] not permitted to do so,’ Smith responded that ‘I didn’t think I could just walk out of there. There was a police officer there with a gun on his hip.’” *Magnolia Lady, supra* at 904.

The Court of Appeals stated that “Smith’s testimony leaves serious doubt as to whether she was truly detained, since she never attempted to leave or even asked to do so”. *Magnolia Lady, supra* at 904. The same is true in the present case. Mayweather voluntarily went with IOC’s employees and never attempted or asked to leave. She simply “thought” she could not leave. Such is simply not sufficient to rise to the level of being detained.

The “detention” of the Plaintiff and her companion in the case at bar is also not substantively

⁵ Incidentally, the Lady Luck Rhythm & Blues Casino-Hotel was purchased by IOC-Lula, Inc., the Defendant in this action.

different from the “detention” of the plaintiff in *Bass v. Dunbar House Inc.*, 161 A.2d 50 (Mun.Ct.App., D.C. 1960), a case cited approvingly by the Mississippi Supreme Court in *State for Use of Powell v. Moore*, 174 So.2d 352 (Miss. 1965). In the *Bass* case, the plaintiff, a night clerk for a hotel, sued for false imprisonment when, after a money shortage was discovered, he was requested to appear at the hotel and was questioned by the police. At the conclusion of this conference, the officers said “Let's go to headquarters,” where he was questioned further and returned home. The Court held that the plaintiff was not arrested when the police requested that he go to headquarters for questioning, but rather the plaintiff went willingly and without protest, was not taken into custody, and was under no warrant or other form of compulsion. *Powell, supra* at 476 - 477.

Another case cited approvingly in *Powell* was the case of *Pollack v. City of Newark, N. J.*, 147 F.Supp. 35 (D. N.J., 1956). In the *Pollack* case, Pollack was distributing circulars and soliciting contributions when a patrolman told him he needed a permit and to apply at police headquarters for one. When Pollack went to the police headquarters, and while waiting for the permit, the officers ascertained the plaintiff's home town, made inquiries in his home town about him and with other police authorities, getting information about him. Pollack insisted he was placed under arrest. Just as with Mayweather, that was Pollack's “impression.” *Powell, supra* at 477. Pollack sued the City of Newark. The court found that the plaintiff's ...

“... detention is not synonymous with arrest. It must be without consent and without legal cause to constitute false arrest ... there is no false imprisonment unless the defendant intends to cause a confinement. ... There was an absence of words or conduct which would induce a reasonable apprehension of force directed to the plaintiff ... And where it is clear that there is no reasonable apprehension of force, there is no issue to go to a jury on the question of false arrest.”

Powell, supra at 477 - 478. Like these cases, Mayweather can point to no evidence that she had a reasonable apprehension of force. Thus, her false imprisonment claim fails.

B. The Plaintiff's False Imprisonment Claim Fails Because Any Detention was not Unlawful

However, even assuming that the Plaintiff was detained against her will, her false imprisonment claim still fails, because, in order to present an actionable case, the detention must be "unlawful." *Thornhill, supra* at 1208. For purposes of false imprisonment, this second element must take into consideration the totality of the circumstances in order to determine if the action of the defendant was "objectively reasonable in their nature, purpose, extent and duration." *Thornhill, supra* at 1208. It is the reasonableness of the defendant's actions, not its intent, that matters. For this element, the surveillance video is invaluable. See surveillance video, R. 44. Viewed from the perspective of the casino, a patron had advised the security department that she had lost her wallet. Before approaching the Plaintiff and/or Jackson, the security personnel reviewed the surveillance video in an effort to ascertain what had occurred. The surveillance video clearly depicts the wallet falling to the floor and Mayweather, followed very closely behind by Jackson, retrieving it. **These facts are not disputed.** It was therefore reasonable for the security personnel, having observed the Plaintiff pick the wallet from the floor and subsequently finding the wallet in the trash can of the men's restroom - minus its cash contents - to ask the Plaintiff and her companion to accompany them to an interview room to ascertain what had happened. Thus, the claim of false imprisonment, like the claim of slander, fails.

Magnolia Lady is instructional regarding this element of false imprisonment as well. As stated by the Court of Appeals, "Magnolia Lady and the sheriff's department were clearly reasonable in wanting to question Smith, given her suspicious actions on the video footage." *Magnolia Lady*,

supra at 904. Just like in *Magnolia Lady*, Mayweather's suspicious videotaped actions of picking up the wallet which was later found emptied of its cash contents, as well as her silence when Carpenter returned to look for her wallet, are sufficient to make IOC's questioning of Mayweather reasonable. The Circuit Court was correct in dismissing Mayweather's false imprisonment claim.

IV. The Plaintiff's False Arrest Claim Fails Because Probable Cause Existed

The Plaintiff also alleges that IOC committed the tort of false arrest against the Plaintiff. R.

3. "Probable cause" is the death nail to a claim of false arrest:

"False arrest is an intentional tort which occurs when one causes another to be arrested falsely, unlawfully, maliciously **and without probable cause.** *City of Mound Bayou v. Johnson*, 562 So.2d 1212 (Miss.1990). **If there is probable cause for the charges made, then the plaintiff's arrest is supported by probable cause, and a claim for false arrest must fail.**" *Price v. Roark*, 256 F.3d 364, 369 (5th Cir.2001).

Croft v. Grand Casino Tunica, Inc., 910 So.2d 66 (Miss. App. 2005) (Emphasis added). See also *Hudson v. Palmer*, 2007 WL 2472559 (Miss. App. 2007) ("if the plaintiff's arrest is supported by probable cause, the claim [of false arrest] must fail.").

In the case at bar, the probable cause regarding the Plaintiff's activities was captured on surveillance video tape. As such, **there is no dispute as to the facts.** A review of the surveillance video clearly depicts the Plaintiff retrieving the wallet from the floor. The same wallet was subsequently discovered in the trash can of the men's restroom, missing its cash contents. When there is no dispute regarding the facts, it falls to the Court to make a determination ("When the facts are undisputed, it is the function of the court to determine whether probable cause existed." *Benjamin v. Hooper Electronic Supply Co., Inc.*, 568 So. 2d 1182, p. 1190, citing *Owens v. Kroger Co.*, 430 So.2d 843, 846). The undisputed - and undisputable - facts clearly demonstrate the existence of probable cause. As such, any case of false arrest as well as false imprisonment, must fail.

Further, in *Hudson, supra*, the Mississippi Court of Appeals found that Ms. Palmer was entitled to summary judgment on the false arrest claim because there was no evidence that she filed a criminal affidavit against the plaintiff and, as a result, “did not cause [the plaintiff] to be arrested, falsely, unlawfully, or otherwise.” *Hudson, supra* at ¶ 38. Like Ms. Palmer in *Hudson*, IOC did not file a criminal affidavit against Mayweather. Accordingly, IOC did not cause Mayweather “to be arrested, falsely, unlawfully or otherwise” and is entitled to summary judgment on this claim.

Finally, to survive summary judgment on her false arrest claim, the Plaintiff must present evidence that IOC acted maliciously by having her arrested. IOC only suggested that the Plaintiff be arrested after a thorough investigation was conducted, consisting of review of the surveillance video and obtaining the Plaintiff’s side of the story. Such does not connote malice. The Plaintiff bears the burden to produce at least some evidence that IOC acted maliciously. However, the record is void of any such proof and the Plaintiff fails to even attempt to establish malice in her Appellant’s Brief.

The Circuit Court correctly dismissed the Plaintiff’s false arrest claim because (1) there was sufficient probable cause to justify the arrest, (2) IOC did not file the criminal affidavit that led to Mayweather’s arrest and (3) the Plaintiff presented no evidence that IOC acted maliciously. Any one of these reasons is sufficient to justify summary judgment in IOC’s favor. The Court should therefore affirm the Circuit Court’s order granting summary judgment.

CONCLUSION

The Plaintiff's slander claim fails because what she was accused of, i.e. picking up the wallet, she admits is true. Further, she has shown no damage suffered as a result of any potentially slanderous comment made by any IOC employee. The Plaintiff's false imprisonment claim fails because she voluntarily went with the IOC employees without force or the reasonable apprehension of force. Further, any detention was not unlawful because it was reasonable for IOC to believe that Mayweather had committed a crime, due to her suspicious activities caught on video surveillance. Finally, Mayweather's false arrest claim also fails because probable cause existed for the arrest, IOC was not the party that had her arrested and the Plaintiff failed to present any evidence that IOC acted maliciously..

For these reasons, summary judgment was appropriate. The Defendant respectfully requests that the Mississippi Supreme Court affirm the Circuit Court's Order Granting the Defendant's Motion for Summary Judgment.

Respectfully submitted, this the 14th day of January, 2008.



CHRISTOPHER E. KITTELL, MSB # [REDACTED]

MERKEL & COCKE
30 Delta Avenue
Post Office Box 1388
Clarksdale, Mississippi 38614
Telephone: (662) 627-9641
Facsimile: (662) 627-3592

CERTIFICATE OF SERVICE

I, Christopher E. Kittell, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the above and foregoing document to the following:

Allan D. Shackelford
Attorney at Law
P. O. Box 267
Clarksdale, MS 38614
Attorney for Plaintiff/Appellant Maggie Mayweather

Judge Albert B. Smith
Coahoma County Circuit Judge
P.O. Box 478
Cleveland, MS 38732-0478

THIS, the 14th day of January, 2008.


CHRISTOPHER E. KITTELL