

**COPY**

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**MAGGIE MAYWEATHER**

**PLAINTIFF/APPELLANT**

**VERSUS**

**CAUSE NO.: 2007-CA-00580**

**ROSE CARPENTER AND  
ISLE OF CAPRI CASINO**

**APPELLEE**

**REPLY BRIEF OF APPELLANT**

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## **SUMMARY OF ARGUMENT**

Since authorities have been cited by both Appellant and Appellee in their original briefs and the applicable law was analyzed and applied to this case, this Reply Brief will only be directed to facts omitted by Appellant/Defendant IOC (hereinafter referred to as IOC) in its brief.

IOC takes the position that since the words "you stole the wallet" were not used no action for slander can lie. The words and actions of the IOC employees however was sufficient to convey the slanderous message and therefore this argument of IOC must fail since a jury should make a determination as to the implication of these words and actions. With regard to the contention of IOC that Plaintiff/Appellant, Maggie Mayweather (hereinafter referred to as Ms. Mayweather) was not detained and therefore not falsely imprisoned ignores the fact that to begin with she was confined to a room at the casino of IOC and more importantly that she was thereafter incarcerated in the Coahoma County Jail at the insistence of the employees of IOC.

Furthermore, IOC seeks to hide behind probable cause for the actions of its employees.

On each of these issues a jury should be allowed to make the determination at the very least and on some of them the Court as a matter of law

should instruct the jury that the actions of the employees of IOC does not fulfill the law.

## **ARGUMENT**

### **SLANDER**

Defendant/Appellee IOC attacks Plaintiff/Appellant charge of slander on the basis that the explicit words "you stole the wallet" were not uttered by the employees of IOC. This overlooks other statements and actions of IOC employees which convey the same message.

As has been stated in both the Brief of Appellant and the Brief of Appellee, Ms. Mayweather picked up the wallet in question from the floor in the casino and laid it on the ledge by a row of slot machines. Subsequent thereto, employees of the IOC approached her and told her to go with them and took her to an interrogation room. Taken from the deposition of Ms. Mayweather by IOC's attorney, the following was stated:

- Q. All right, now we've kind of got the set up. What happened?
- A. Then one man said, the one that was over by the desk, well, I don't remember everything he said.
- Q. I understand.
- A. But he asked about some money that was taken out of a wallet and I told him I didn't take any money or whatever. He said, are y'all going to cooperate?
- Q. This is the same man?
- A. Yes, the short man. He had glasses on.  
(R104 Depo18).

After a question and answer exchange to identify the man speaking Ms.

Mayweather's testimony continues as follows:

- Q. I understand he had said something about some money taken out of a wallet and then he said something about y'all cooperating or if y'all were going to cooperate. What else did he say?
- A. Then I said, well, I didn't take any money. He said, well, y'all are not going to cooperate. Call Tunica County.  
(R104, Depo19, L20-25)

Further in the course of the deposition the following exchange was had:

- Q. He handcuffed you in front. Then what happened? Y'all are still in the little room, but now you're handcuffed. The law enforcement officer...?
- A. Before he put the handcuffs on us, we had to empty out our pockets. He searched us and made sure we didn't have no weapons or nothing. Then he put the handcuffs on us.  
(R106, Depo 28-29, L21-25;1-2)

It is submitted that these actions and words can be construed in no way other than this lady was involved in the theft. However, even if another interpretation can be put on these words and actions certainly it is not for the Court to say as a matter of law that they do not canote this message but that this question is for a jury to determine.

Additionally, IOC raises the question of whether there is evidence that she was damaged by the slander. There is certainly an allegation of damage in Ms. Mayweather's Complaint and since this lack of evidence of damages was not raised in the trial court, it can not be raised in this Court (Motion for Summary Judgment of IOC which also contains this argument). Certainly, the slander admitted by the employees of IOC along with their other actions resulted in damages and will be proven at a complete trial hereof. In the event that no damages can be proven Ms. Mayweather's case must fall. However, at this juncture only those questions raised by the Motion for Summary Judgment can be considered.

#### **FALSE IMPRISONMENT**

IOC asserts that since there was no actual force or vocal threat thereof, there could be no imprisonment. This overlooks two (2) things. First, the blocking of the exit door in which Ms. Mayweather was taken for interrogation by the employees of IOC. More importantly the undisputed incarceration resulting from the criminal affidavit executed by the owner of the wallet at the overwhelming insistence of the employees of IOC. Ms. Mayweather testified in the deposition taken by the attorney for IOC, as follows:

Then the short man from the casino was talking  
and I could hear him talking. He was talking

to the lady and told her that she needed to go and press charges and told her that they would set a court date and if she couldn't come to court, that they would reschedule it for her.

Q. This is the short guy saying all this?

A. Yes. He said that we've done all we could. We've had them sign and he said what kind of paper it was saying that they would never come back to the casino. So now you need to do your part and you need to go and sign an affidavit. He said, these are trouble makers and she said, well, it was only twenty dollars. He said, well, it's going to cost them a whole lot more than twenty dollars to get out of this. Then the police officer, he talked to the lady and told her that - he said, I can't put them under arrest until you sign an affidavit. She said, she didn't know where to go. He said, well, you can follow me over there. So she agreed to follow him. (R106-107, Depo29-30; L15-25;1-6)

Ms. Mayweather was not only detained but incarcerated at the Coahoma County Jail due to the insistence of the employees of IOC.

It is submitted, as a matter of law Ms. Mayweather was certainly imprisoned. Actually, no question here can be left for interpretation by the jury but should there be no proof negating the incarceration of Ms. Mayweather this element should be decided as a matter of law and not even left for the interpretation of the jury.



IT IS THEREFORE, SUBMITTED, that to say Ms. Mayweather was not retained ignores the absolute fact.

Secondly, IOC claims that the imprisonment claim of Ms. Mayweather must fall because it was legal not illegal.

In an attempt to legitimize the actions of it's employees IOC points out that Ms. Mayweather picked the wallet in question up and put it on the edge of a stand containing slot machines. This is the only evidence IOC brings to the attention of the Court to justify it's actions in insisting upon the arrest of Ms. Mayweather for the theft.

It should be born in mind that the action by Ms. Mayweather in picking the wallet up from the floor and placing it on the stand was in full view of everybody including the surveillance cameras. In other words, to allow the position of IOC to stand, it must be determined as a matter of law that the public act of picking up a lost wallet containing money and without looking in it or examining it (see video tape) which wallet was ultimately stolen and funds removed there from is sufficient probable cause to charge the good Samaritan with a crime. It is submitted that, this is ludicrous. If this be the law then anyone retrieving a lost item exposes themselves by that simple and sole act to criminal prosecution.

Justification or lack thereof is the same with regard to false arrest as with

the false imprisonment charge addressed in the above paragraph. An arrest without probable cause is illegal and the question of probable cause having been addressed above will not be reiterated at this point.


## **CONCLUSION**

A question of material fact has been presented in each of the several counts of Ms. Mayweather's complaint. Slander can be committed by less than slanderous words coupled with actions which convey the same message. Whether these words and actions coupled together constitutes slander is a question for the jury.

False arrest and false imprisonment occur when an arrest, detention and/or incarceration occurs without probable cause. The picking up of a wallet and laying it out in plain view so that it can be easily found by its owner and easily viewed by the surveillance cameras does not rise to the level of probable cause.

It is therefore, submitted that this case and all counts thereof should be reversed and remanded for a full trial by a jury.

RESPECTFULLY SUBMITTED,



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## CERTIFICATE OF SERVICE

I, Allan D. Shackelford, 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 **REPLY BRIEF** to

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This the 11<sup>th</sup> day of February, 2008.

  
ALLAN D. SHACKELFORD