

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

BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PARTIES

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

1. Albert B. Smith, Coahoma County Circuit Judge
2. Maggie Mayweather, Plaintiff/Appellant
3. Allan D. Shackelford, Attorney for Plaintiff/Appellant
4. Rose Carpenter, Appellee
5. Chris Kittell, Attorney for Appellee-Isle of Capri.



ALLAN D. SHACKELFORD

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STATEMENT OF THE ISSUES

1. The trial court erred in granting summary judgment on the Plaintiff's count for false arrest.
2. The trial court erred in granting summary judgment on the Plaintiff's count for slander.

STATEMENT OF CASE

On November 5, 2002, Maggie Mayweather was in the Isle of Capri Casino playing slot machines. (Deposition of Mayweather, p.10, 11.21-23; p. 13, 11.10-12) All her actions were captured on a video tape which is attached to the record.

When Ms. Mayweather was walking through the casino, she noticed a wallet lying in the floor, so she reached down and picked the wallet up and placed it on a ledge of the bank (slot machines are arranged on top of a platform, referred to as a bank, that is approximately 15 feet long) in plain view of everyone including the surveillance cameras of the slot machines. She then turned and started playing a slot machine. (Surveillance video)

Subsequently, two men that she believed to be security personnel approached her and told her she had to go with them. (Deposition of Mayweather, p.11,11.14-16) She questioned the men as to the reason why she needed to go with them but they just reiterated that she needed to go with them. (Deposition of Mayweather, p.14, 11.7-8) They escorted her to a room and once in the room, one of the men sat in front of the door, blocking the only exit. (Deposition of Mayweather, p. 17, 11.25) Mr. Johnny Jackson, who had driven Ms. Mayweather to the casino was also present in this room. (Deposition of Mayweather, p. 15, 11. 18-20) One of the security personnel sat in front of the door, blocking the only exit and the other one stood over by the desk.

(Deposition of Mayweather, p. 17, 11. 23-25, p. 18,1.1)

One of the men then proceeded to ask Ms. Mayweather if she knew about some money that had been taken out of a wallet and she told him that she didn't take any money out of a wallet. (Deposition of Mayweather, p. 18, 11.7-9) One of the security guards accused Ms. Mayweather of being uncooperative and told his partner to call law enforcement. (Deposition of Mayweather, p. 19, 11. 24-25) The officer arrived and Ms. Mayweather was searched and handcuffed by an Officer from the Sheriff's Department. (Deposition of Mayweather, p. 27, 11. 15-17)

The Plaintiff saw and heard the Security guard talking to the law enforcement officer and the following is what was said:

Q: Did you see him talking to him?

A: Yes.

Q: Could you hear their conversation?

A: Yes, then they went back outside and you could hear them talking in the hallway.

Q: What did they say?

A: He told him that that lady had wanted to file a complaint and then the officer was talking to the lady and told her the procedure, what all she was going to have to do. Then she told him where they were headed and she didn't want to be bothered with that. 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. (Emphasis added)

One of the Security personnel then told Mrs. Carpenter, the owner of the wallet, that she needed to do her part and go and sign an affidavit so that Ms. Mayweather and Mr. Jackson could be arrested. (Deposition of Mayweather, p. 29, 11. 23-25)

Ms. Mayweather was then transported to and booked at the Coahoma County Jail. (Deposition of Mayweather, p. 32, 11. 7-9) Her sister picked her up later that night. (Deposition of Mayweather, p. 33, 11. 21-24)

The case against Ms. Mayweather was later dismissed.

Ms. Mayweather sued Rose Carpenter the owner of the wallet who signed the criminal affidavit and sued the casino whose employees insisted the do sd. Ms. Carpenter did not answer. The casino ensued for summary judgment pedgement which the trial court sustained. It is from this ruling that Ms. Mayweather appeals.

SUMMARY OF ARGUMENT

On November 5, 2002, Plaintiff/Appellant Maggie Mayweather entered the casino owned by the Defendant/Appellee to patronize their business. Along with her was Johnny Jackson.

It developed that earlier another patron Ms. Rose Carpenter had dropped her wallet on the floor of the casino. Upon entering the gaming area of the casino Ms. Mayweather noticed the wallet on the floor and picked it up and laid it on a ledge of the bank where the slot machines were placed. All of this was in plain view of everyone including the surveillance video. Ms. Mayweather then proceeded to play the slot machines.

It further turned out that the man who accompanied her to the Isle of Capri saw the wallet lying on the bank and picking it up, took it to the restroom and removed twenty dollars there from.

Based upon these actions Isle of Capri employees came to Ms. Mayweather at the slot machine, where she was playing and instructed her to follow them into a room in the back of the casino. Upon arriving in the room she was falsely accused of complicity of the stealing of the wallet and its contents and blocked her exit from the room.

Ms. Carpenter, the owner of the wallet, was summoned and cohearsed by Isle of Capri employees into signing a criminal affidavit against Ms. Mayweather.

The Isle of Capri employees summoned a deputy sheriff from Coahoma County and had Ms. Mayweather arrested and taken to the jail where she was booked and incarcerated. She later had a friend bond her out.

Subsequently, the charges against Ms. Mayweather were dismissed.

The summary judgment in favor of the Isle of Capri was erroneously

granted. There is ample evidence for a jury to conclude that the actions of the Isle of Capri against Ms. Mayweather were slanderous and resulted in false imprisonment without cause. In fact, based upon the evidence presented thus far, which must be viewed in favor of Ms. Mayweather, it would be difficult for a court to sustain a jury verdict in favor of the Isle of Capri should a jury see fit to render such a verdict and certainly there is ample evidence to allow a jury to make the determination to.

ARGUMENT

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is an extreme and drastic measure which courts should use sparingly and only in the clearest of cases. *Frinty v. Crochet & Borel Services*, 196 F.R.D. 46, 50 (E.D. Tex. 2000). "All motions for summary judgment should be viewed with great skepticism and if the trial court is to err, it is better to err on the side of denying the motion." *Daniels v. GNB, Inc.*, 629 So.2d 595, 599 (Miss.1993); *Burton v. Choctaw*, 730 So.2d 1, 3 (Miss.1997).

Summary judgment is appropriate only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Hirras v. National R.R. Passenger Corp.*, 95 F.3d 396, 399 (5th Cir.1996) (quoting Fed. R. Civ. P. 56(c)). The party seeking summary judgment carries the burden of demonstrating that there is no evidence to support the non-movant's case. *Celotex Corporation v. Catrett*, 477 U.S. 317, 325 (1986). It is clear that the Defendant cannot meet that stringent test and summary judgment would be improper.

GENUINE ISSUE OF MATERIAL FACT REGARDING CLAIM OF PLAINTIFF FOR FALSE ARREST

The court in the *City of Mound Bayou v. Johnson*, 562 So.2d 1212 (Miss.1990) gave a succinct definition of false imprisonment stating "false arrest is an intentional tort which occurs when one causes another to be arrested

falsely, unlawfully, maliciously and without probable cause.”

Trial court in its opinion in the case at bar stated “...there is absolutely no evidence that the detainment was unlawful and unreasonable. Based on the facts known to the security officers and the defendant at the time of the incident, it was reasonable for them to believe that a crime had been committed.”

There is no question that the employees of the defendant Isle of Capri had reasonable grounds for believing that a crime had been committed. A crime had been committed. However, there must be another element to make the actions of the employees of the Isle of Capri justified and relieve them of false arrest and false imprisonment-namely reasonable grounds to believe that Maggie Mayweather committed the crime. The evidence linking Maggie Mayweather to the crime is that she arrived at the casino with the person who committed the crime; she picked up the lost wallet from the casino floor; and she laid it on a slot machine stand. This is the only evidence of connection between the wallet, its contents or the theft which the casino can adduce to justify the action of its employees. It must hastily be pointed out that even though this is not a scintilla of evidence of Maggie Mayweather’s connection to the crime when she retrieved the wallet from the floor and laid it on the slot machine stand, the place where she laid it was not hidden or concealed in anyway but was in plain view of all including the surveillance tape which has been introduced into

evidence. That surveillance tape clearly shows that the wallet was laid in a place to be found by anyone and that Maggie Mayweather did not examine it, open it, or do anything else to determine its contents. Since the actions of Maggie Mayweather are clearly captioned on the tape introduced into evidence she implores the court to view the tape and screen it for any action which could imply criminal action or intent.

Furthermore, the statements of the security officers to the owner of the wallet and the co-defendant herein clearly reflects that the security officers had a pre-meditated agenda for having Maggie Mayweather arrested and imprisoned. That statement was as follows:

Q: Did you see him talking to him?

A: Yes.

Q: Could you hear their conversation?

A: Yes, then they went back outside and you could hear them talking in the hallway.

Q: What did they say?

A: He told him that that lady has wanted to file a complaint and then the officer was talking to the lady and told her the procedure, what all she was going to have to do. Then she told him where they were headed and she didn't want to be bothered with that. 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 the 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. (Emphasis added)

It was only with this arm twisting that the casino prevailed on the owner of the wallet and co-defendant herein to sign the affidavit which of course resulted in the arrest and imprisonment of Maggie Mayweather by the Coahoma County Sheriff Deputy.

Furthermore, the court found that "...facts do not provide proficient case of false arrest and imprisonment." It bases this opinion upon a finding that Maggie Mayweather was not forced to accompany the officers to an interview room nor was she verbally threatened. The court found that "The security officers told the Plaintiff to come with them, and she ascended."

To begin with, this finding ignores the fact that the officers through their actions as set forth above caused Maggie Mayweather to be arrested and imprisoned by the Coahoma County Sheriff Deputies.

Secondly, the security officers approached Maggie Mayweather on the

floor of the casino it gave all the appearance of being security personnel and one was even displaying handcuffs on his pants, granted they did not at that time handcuff her, lay hold upon her or use any physical force to take her to a interrogation room. However, they certainly gave the appearance of having authority to require that she accompany them. (it should be noted that Maggie Mayweather had no idea as to why she was being told to "...just come with us...".) Of course, as was held in *Marting v. Santora*, 199 So.2d 63, 65 (Miss.1967), this court recognized that it is unnecessary to utilities actual force or violence in order to constitute arrest or imprisonment if it is to be reasonably apprehended.

After this confrontation by the security officers Maggie Mayweather was taken to a room where she was told to stay. Furthermore, although she was not told she could not leave the door was blocked by security officers.

It is submitted that, it was reasonable to be apprehended that she could not leave.

It is submitted that, in light of the causation of her actual detention and imprisonment by Coahoma County law enforcement and her detention by security personnel a question of fact for a jury is clearly presented and that actually a jury would be hard pressed to find that false arrest and false imprisonment did not occur at the hands of the employees of the casino.

QUESTION OF FACT PRESENTED AS TO SLANDER

The trial court in dismissing the claim for slander stated:

As for the slander claim, it is also wholly without merit. By the Plaintiff's own admission in her deposition the officers merely "accused" her of picking up the wallet, not stealing it. Since she admits picking up the wallet, there can be no claim for slander.

This ignores the acquisition of being a trouble maker as noted above which was used to co hearse the co-defendant and owner of the wallet to sign the affidavit resulting in the arrest and imprisonment of Maggie Mayweather. It also totally ignores the fact that the co-defendant had no knowledge of who had taken funds from her wallet and therefore, some type of acquisition must necessarily have been made by the casino employees in order to induce the reluctant affiant to sign the affidavit.

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 action ability sic. 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.1998); *Chatham v. Gulf Publ'g Co., Inc.*, 502 So.2d 647, 649 (Miss.1987).

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 in this and some other jurisdictions (5) Words imputing to a female a want of chastity.

W. T. Farley, Inc. v. Bufkin, 132 So.2d 86, 87 (Miss. 1931).

An utterance falsely imputing a crime or accusing one of being a thief is actionable *per se*. *Boler v. Mosby*, 352 So.2d 1320, 1323 (Miss. 1977); *Lemonis v. Hogue*, 57 So.2d 856, 866 (Miss. 1952); citing from *Baugh v. Baugh*, 512 So.2d 1283, 1285 (Miss. 1987). The relevant phrase is that "an utterance falsely [1] imputing a crime or [2] accusing one of being a thief is actionable *per se*. *id* at 1285. (brackets added). *Baugh* literally provides that the imputation of any crime at all is actionable *per se*. *Speed v. Scott*, 787 So.2d 626, 634 (Miss. 2001).

The security personnel imputed criminal activity to the Plaintiff in this case and since the Plaintiff was not found guilty of any criminal activity and in fact, did not do anything against the law, this imputation of criminal activity should be recognized as slander *per se*. Therefore, it is a dispute of fact as to whether the Plaintiff has a valid claim for slander.

CONCLUSION


Maggie Mayweather and an acquaintance went to the casino of the Isle of Capri as customers.

While there Maggie Mayweather was falsely accused by security personnel of the casino of theft. These accusations were in the presence of others and in addition thereto she was accused of being a trouble maker in the presence of others.

Furthermore, at the insistence of the employees of the Isle of Capri, Ms. Mayweather was arrested by the Coahoma County Sheriff's Department, booked and jailed for a crime that there is no evidence that she committed.

The above actions constitute both slander and false imprisonment. Being actionable conduct on behalf of the employees of the Isle of Capri, Ms. Mayweather is entitled to have a jury determine the liability of the Isle of Capri and the amount, if any, of her damages.

Respectfully submitted.



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CERTIFICATE

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 **BRIEF OF APPELLANT** to

Judge Albert B. Smith
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This the 15th day of November, 2007.



ALLAN D. SHACKELFORD