IN THE SUPREME COURT FOR THE STATE OF MISSISSIPPI

DANIEL EDMONDS — **PLAINTIFF-APPELLANT**

v. — **CIVIL ACTION NO. 2008-CA-00759**

ROBINSON PROPERTY GROUP, LIMITED PARTNERSHIP d/b/a HORSESHOE CASINO & HOTEL TUNICA — **DEFENDANT-APPELLEE**

ON APPEAL FROM THE CIRCUIT COURT
OF TUNICA COUNTY, MISSISSIPPI

BRIEF OF APPELLANT

(Oral Argument Not Requested)

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of records 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 Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Plaintiff/Appellant At Issue in This Appeal:

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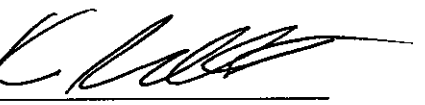
Trial Judge:

1. Honorable Albert B. Smith, III, Trial Court Judge
   Tunica County Circuit Court Judge
   Post Office Drawer 478
   Cleveland, Mississippi 38732

Respectfully Submitted,

DANIEL EDMONDS

By: 

J. KEVIN RUNDLETT, MSB NO. 100327
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STATEMENT REGARDING ORAL ARGUMENT

Appellant does not believe that the facts and legal arguments encompassed in this appeal necessitate oral argument, but instead assert that this matter should be decided based on the briefs which have been submitted to the Court.

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STATEMENT OF JURISDICTION

On April 14, 2008, the Circuit Court of Tunica County, Mississippi, Honorable Albert B. Smith, presiding, granted directed verdict in favor of Defendant/Appellee.

On March 13, 2008, the Circuit Court of Tunica County, Mississippi, Honorable Albert B. Smith, presiding, denied Plaintiff/Appellant's Amended Motion for Citation for Contempt and Sanctions.

Pursuant to Mississippi Rule of Civil Procedure, Plaintiff/Appellant filed his Notice of Appeal on April 30, 2008..

STATEMENT OF THE ISSUES

Daniel Edmonds, Plaintiff-Appellant herein, being aggrieved by the judgment of the Circuit Court of Tunica County, Mississippi, as rendered in civil action number 2005-0286, hereby prosecutes this, his Appeal, to the Supreme Court of Mississippi.

The Appellant respectfully submits the following issues for review by the Court:

I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING EDMONDS' AMENDED MOTION FOR CITATION FOR CONTEMPT AND SANCTIONS, AND MOTION FOR ATTORNEYS' FEES AND COSTS, AND ABUSED ITS DISCRETION IN NOT ALLOWING EDMONDS TO ARGUE SAID MOTION.

II. WHETHER THE TRIAL COURT ERRED IN GRANTING DIRECTED VERDICT TO ROBINSON.

Each of the above issues requires reversal of the judgment rendered in civil action number

STATEMENT OF THE CASE

A. Nature of the Case and Course of Proceedings and Disposition in the Court Below.

This is a personal injury action filed by Daniel Edmonds ("Edmonds") against Robinson Property Group, Limited Partnership d/b/a Horseshoe Casino & Hotel Tunica ("Robinson"). The course of proceedings in this civil action is briefly summarized below:

September 28, 2005	-	Edmonds files original complaint against Harrah's Tunica Corporation dba Horseshoe Casino and Hotel Tunica. (CP 17-21).
September 28, 2005	-	Edmonds files Notice of Service of Discovery including Interrogatories, Request for Production of Documents, and Admissions. (CP- 24-25).
November 1, 2005	-	Harrah's Tunica Corporation files answer denies any knowledge as to the incident at issue. (CP- 38-39).
November 1, 2005	-	Harrah's Tunica Corporation files its Notice of Service of Discovery propounded on the plaintiff and responses to discovery propounded by the plaintiff denying the existence of any video or other related documents. (CP- 40-42).
January 19, 2006	-	Edmonds files Motion to Amend Complaint to substitute Robinson as proper party defendant. (CP- 56-58).
January 23, 2006	-	Harrah's Tunica Corporation agrees to amended complaint. (CP- 63-64).
February 10, 2006	-	Edmonds requests issuance of Subpoena Duces Tecum regarding video surveillance of incident at issue. (CP- 65)
February 13, 2006	-	Order allowing amended complaint entered. (CP- 67-68).
February 14, 2006	-	Robinson files objection to Subpoena Duces Tecum. (CP- 70-71).
February 15, 2006	-	Robinson served with Subpoena Duces Tecum requesting video surveillance tapes, incident reports, and all documents for **February 8, 2005 through February 15, 2005.** (CP- 79-82).
February 21, 2006	-	Edmonds files Amended Complaint. (CP- 73-78).

March 6, 2006	-	Robinson files Answer to Amended Complaint denying any knowledge of the incident at issue. (CP- 84-86).
May 19, 2006	-	Edmonds filed a Motion to Compel Discovery requesting the production of any videotapes of the incident. (CP- 91-95).
May 22, 2006	-	Edmonds files Notice of Service of Discovery and serves Robinson with Interrogatories, Requests for Production, and Requests for Admissions. (CP- 113).
May 24, 2006	-	Robinson acknowledges the correct date of the incident as being on or about February 11, 2005 in response to Edmonds Motion to Compel, and further claims that best efforts were used to locate the requested documents and video tape with no success. (CP- 120-121).
June 20, 2006	-	Robinson responds to Edmonds' Request for Production of Documents claiming the requested documents did not exist. (CP- 126).
September 1, 2006	-	Robinson files Motion for Summary Judgment. (CP- 137-140).
December 7, 2006	-	Edmonds brought on for hearing his Motion to Compel Discovery, Robinson brought on for hearing his Motion for Summary Judgment. (CP- 227-230).
December 22, 2006	-	Following the hearing on Edmonds' Motion to Compel Discovery, the trial court ordered Robinson to "make all reasonable efforts to locate all video surveillance tapes for the dates of February 10, 11 and 12, 2005, and should [Robinson] be unable to procure same, provide [Edmonds] with the written policy, internal operating procedure, manual, handbook, or otherwise for the maintaining of all video surveillance tapes and disposal of same." (CP- 236-237). The Court also granted Robinson partial summary judgment. (CP-232-233).
January 15, 2007	-	Edmonds receives videotape of the incident from Robinson some year and a half following the filing of the Complaint and following being compelled by the trial court and following the granting of partial summary judgment in its favor. (CP- 263).
February 28, 2007	-	Edmonds filed his Motion for Citation for Contempt and

Sanctions, which was based upon the video surveillance tape of the incident, that had been requested since September of 2005, ultimately being produced following the granting of partial summary judgment to Robinson, and following the Order of the trial court compelling the productions of same. (CP- 254-306).

April 5, 2007 - Edmonds' Motion for Citation for Contempt and Sanctions was brought on for hearing. (CP-324).

May 4, 2007 - Having apparently found that the non-disclosure of the video surveillance tape to be suspicious and possibly intentional, the trial court entered an Amended Order on Edmonds' Motion for Citation for Contempt and Sanctions, which allowed Edmonds to "conduct discovery to determine whether [Robinson] should be found in contempt and whether sanctions should be issued in this matter regarding the video surveillance tape." The trial court took Edmonds' Motion "under advisement until [Edmonds] has had the opportunity to conduct discovery to determine whether [Robinson] should be found in contempt and whether sanctions should be issued in this matter regarding the video surveillance tape." (CP-356-357).

August 10, 2007 - Edmonds' conducted the 30(b)(6) depositions of three Robinson employees and the depositions of six other casino employees. (CP- 391-396).

October 12, 2007 - Following discovery on the issue of the videotape, Edmonds files his Amended Motion for Citation for Contempt and Sanctions, and Motion for Attorneys' Fees and Costs. (CP-426-616).

February 15, 2008 - Following a discussion with the trial court judge's administrator regarding hearing dates (R.E.1-2), Edmonds files his Notice of Hearing regarding his Amended Motion for Citation for Contempt and Sanctions, and Motion for Attorneys' Fees and Costs, which set the hearing date for the date the trial was to begin. (CP- 710-711).

March 13, 2008 - The trial court denies Edmonds' Amended Motion for Citation for Contempt and Sanctions, and Motion for Attorneys' Fees and Costs, stating that it should have been

noticed before the trial date. (Tr.-62-63). Needless to say, had the trial court judge's court administrator not advised Edmonds that the trial court judge would hear the Amended Motion on the date of trial since it was not dispositive (R.E. 1-2), Edmonds would have been more than happy to have argued it prior to the trial date. Edmonds followed the trial court's advise to his detriment.

March 13, 2008 - Following Edmonds' presentation of his case in chief, the trial court grants Robinson's Motion for Directed Verdict. (T.r. 200).

April 14, 2008 - Trial Court enters order granting Directed Verdict. (CP- 747-748).

April 30, 2008 - Edmonds files his Notice of Appeal with this Court. (CP-753-754).

B. Statement of the Facts.

On or about February 12th, 2005 Edmonds was a business invitee of the Horshoe Casino in Tunica, Mississippi. Edmonds and his friend, Lisa Barciszewski, checked in to the hotel, gambled, and eventually went to one of the Casino dining areas to order food. While sitting at the bar, Edmonds was served with french fries when a stranger walked up and began taking fries off Edmonds' plate. After a short discussion, the stranger walked away. The stranger then returned and attacked Edmonds. The stranger violently struck Edmonds across the neck with his right arm knocking Edmonds backwards onto the casino floor. The stranger then pounced on Edmonds and continued the attack for approximately one minute and fifteen seconds. The video evidence shows several casino employees watching without assisting Edmonds. As a result of the attack and failure of Casino employees to intervene, Edmonds sustained serious injuries to his right shoulder.

The trial of this matter was held on March 13, 2008. Edmonds presented evidence, which created an issue of fact for the jury, as to whether the Casino was negligent to allow one minute and fifteen seconds to lapse prior to rendering assistance to their business invitee, Edmonds. Furthermore, Edmonds presented evidence, which created an issue of fact for the jury, as to whether

the Casino was negligent due to its security officers witnessing the attack and allowing it to continue as opposed to intervening. The Court erred by taking the aforementioned questions of fact from the jury and by granting a directed verdict.

Robinson intentionally hid evidence of the incident at issue for a year and a half after litigation was initiated. The Court allowed Edmonds to conduct costly discovery as to why it took so long for the video tape to be produced. Based upon the evidence discovered from Robinson's employees, the tape was never even requested until the Court compelled production of same and until partial summary judgment had been granted. Edmonds submitted a supplemental Motion for Sanctions based upon the newly discovered evidence, however, despite proper of notice of hearing, the Court refused to allow Edmonds to argue said motion, and summarily denied the same.

SUMMARY OF THE ARGUMENT

The trial court abused its discretion in denying Edmonds' Amended Motion for Citation for Contempt and Sanctions, and Motion for Attorneys' Fees and Costs, and by not allowing Edmonds the opportunity to argue his Motion given that Edmonds had discovered numerous instances of discovery violations.

The trial court erred in granting directed verdict to Robinson. Edmonds presented ample evidence that created a question of fact for the jury as to whether the Casino was negligent to allow one minute and fifteen seconds to lapse prior to rendering assistance to their business invitee, Edmonds. Furthermore, Edmonds presented evidence, which created an issue of fact for the jury, as to whether the Casino was negligent due to its security officers witnessing the attack and allowing it to continue as opposed to intervening. The Court erred by taking the aforementioned questions of fact from the jury and by granting a directed verdict.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING EDMONDS' AMENDED MOTION FOR CITATION FOR CONTEMPT AND SANCTIONS, AND MOTION FOR ATTORNEYS' FEES AND COSTS, AND ABUSED ITS DISCRETION IN NOT ALLOWING EDMONDS TO ARGUE SAID MOTION.

Robinson, by and through its attorney, intentionally and inexcusably withheld and hid properly discoverable evidence from the Plaintiff in this case. Not only was this a blatant violation of the Mississippi Rules of Civil Procedure, but also is in violation of the ethical duties members of the bar are sworn to uphold. The Court erred by refusing sanctions and by refusing to allow Edmonds to argue said motion following extensive discovery into the matter. M.R.C.P. 37(e) states that "the court may impose upon any party or counsel such sanctions as may be just, including the payment of reasonable expenses and attorneys' fees, if any party or counsel . . . otherwise abuses the discovery process in seeking, making or *resisting* discovery." (Emphasis added). In addition, the *comment* to M.R.C.P 37 discusses the great flexibility of the trial court in its form of a general grant of power which would enable it to deal summarily with discovery abuses, whenever and however the abuse is brought to the attention of the court:

> For example, for the failure of a party to have made *proper* discovery, or for the misuse of the various discovery vehicles, the court may...impose monetary penalties according to the unnecessary expense to which the adverse party was put. It is significant that Rule 37(e) does not enumerate the sanctions available to the court; courts should have considerable latitude in fashioning sanctions suitable for particular applications.

(Emphasis added).

In ***Ford Motor Co. et. al. v. Tennin,*** 960 So. 2d. 379 (Miss. 2007), this court stated;

> Under our rules of civil procedure, failure to make or cooperate in discovery should first be resolved by making a motion in the proper court requesting an order compelling such discovery. See M.R.C.P. 37(a)(2). The remedy for failing to comply with the discovery requests when the trial court grants an order to compel falls under M.R.C.P. 37(a)(4) in the form of awarding the moving party

> the expenses for such a motion. See M.R.C.P. 37; ***January v. Barnes***, 621 So. 2d 915, 922 (Miss.1992). **After such an order to compel has been granted** under M.R.C.P. 37(a)(2), **and the party ordered to answer fails to respond**, then the remedy may be sanctions in accordance with M.R.C.P. 37(b).

Tennin, 960 So. 2d. at 393 (quoting ***Caracci v. Int'l Paper Co.,*** 699 So. 2d. 546, 577 (Miss. 1977) (emphasis in original)). In ***Willard vs. Paracelsus Health Care Corp.,*** 681 So. 2d. 539 (Miss. 1996), the Mississippi Supreme Court stated, "*[w]e have held that the award of attorney's fees against the losing party is* ***mandatory*** *under Rule 37(a)(4), unless the trial court finds that the motion to compel was substantially justified, and the award was not unjust.*" ***Id.*** at 545 (citing ***Barnes v. Confidential Party***, 628 So. 2d 283, 292 (Miss.1993)) (emphasis added).

Edmonds propounded discovery requests on Robinson on or around September 26, 2005, and again on May 19, 2006, requesting any video surveillance recordings of this incident. (CP-24-25). Robinson responded to Edmonds's discovery requests as follows on or around October 28, 2005, May 19, 2006, June 19, 2006, and July 11, 2006, stating the same response: "None." (CP-40-42, 498-520).

Additionally, on February 15, 2006, Robinson was served with a Subpoena Duces Tecum requesting among other things a copy of any video surveillance tape of the incident in question for the dates of February 9, 2005 until February 13, 2005. (CP- 79-82). Counsel for Robinson filed an Objection to Subpoena Duces Tecum stating that the information requested is overly broad among other things. (CP- 70-71). Additionally, on May 16, 2006, counsel for Robinson also wrote a letter to counsel for Edmonds stating that, in regard to the Subpoena Duces Tecum requesting copies of video surveillance tapes, Robinson "has completed a search of our records and can find no such record." (CP- 526-527).

Edmonds's Motion to Compel Discovery was filed on May 19, 2006. (CP- 91-95). This Motion was filed because Edmonds had been attempting to obtain a copy of any video surveillance

tape in Robinson's possession since 2005. Edmonds' Motion to Compel Discovery was brought on for hearing on December 7, 2006. (CP-227-230). On December 22, 2006, the trial court ordered Robinson to "make all reasonable efforts to locate all video surveillance tapes for the dates of February 10, 11 and 12, 2005, and should Robinson be unable to procure same, provide Edmonds with the written policy, internal operating procedure, manual, handbook, or otherwise for the maintaining of all video surveillance tapes and disposal of same." (CP-236-237). At this hearing, the trial court also granted Robinson partial summary judgment. (CP-232-233).

A. Misrepresentations to the Court.

Although counsel for Robinson advised the trial court at the hearing on December 7, 2006[1] that he had attempted to locate the tape and incident reports (CP-554, 558), and counsel for Robinson advised the Court again at the hearing on April 5, 2007[2] that he even went as far as personally going to search for the tape on five (5) separate occasions just to be sure that none existed (Tr.-10-11), this tape somehow mysteriously appeared after (1) numerous requests by Edmonds; (2) the Order of the trial court to produce same; and (3) the granting of partial

---

[1] At the December 7, 2006 hearing, counsel for Robinson affirmatively stated that: "I have personally looked for tapes. I've personally cross-examined, cross-referenced every name that's involved in this, other than Albert Smith [. . .] and it's just not there."

[2] At the April 5, 2007 hearing on Edmonds's Motion for Citation for Contempt and Sanctions, counsel for Robinson affirmatively stated that:

> He makes two grounds for the sanctions, I think. And he can speak better to which one he is really flying on. But I think what he is saying is that Horseshoe should be sanctioned because it produced the videotape so late in the game. And I thought how best to respond to that before you today and I've got two or three things I want to tell you. First of all, we looked both in terms of Horseshoe people and ***me personally, at least five separate times and did not find a tape***.

(Emphasis added). Despite counsel for Robinson's statements, Brenda Reyna Tyler and Vicki Clark both testified under oath that the tape was only requested on *one (1)* occasion, and as a result of this request and search accompanied with same, the tape of the altercation was located. (CP-567-568, 586). In fact, Brenda Reyna Tyler stated under oath that she was not asked to locate the video tape until after the trial court had granted the motion to compel. (CP-567-568).

summary judgment to Robinson. Not only does the tape capture one view of the altercation, there are numerous video cameras that capture numerous angles of the altercation, and Edmonds is followed (by different video cameras) from the time the attack started until he was escorted to his room. This includes surveillance of the altercation, Edmonds being escorted through the lobby to the elevators following the altercation, Edmonds exiting the elevators on the floor his room was located, and even being escorted into his room by the security guards.

The video surveillance tape only recently surfaced in **2007, some year and a half following the initiation of this lawsuit and requests of Edmonds**.

As such, on February 28, 2007, Edmonds filed his Motion for Citation for Contempt and Sanctions (CP-254-306), which was based upon the video surveillance tape of the incident, that had been requested since September of 2005, ultimately being produced following the granting of partial summary judgment to Robinson(CP-232-233), and following the Order of the trial court compelling the productions of same. (CP-236-237).

On April 5, 2007, Edmonds' Motion for Citation for Contempt and Sanctions was brought on for hearing, (CP-324), and on May 4, 2007, the trial court entered an Order on Edmonds' Motion for Citation for Contempt and Sanctions, which allowed Edmonds to "conduct discovery to determine whether [Robinson] should be found in contempt and whether sanctions should be issued in this matter regarding the video surveillance tape." (CP-356-357). The trial court took Edmonds' Motion "under advisement until [Edmonds] has had the opportunity to conduct discovery to determine whether [Robinson] should be found in contempt and whether sanctions should be issued in this matter regarding the video surveillance tape." (CP-356-357).

At great expense[3] to Edmonds, he conducted discovery on the issue of the video surveillance tape, and despite counsel for Robinson's statements that he had personally attempted to locate the tape on numerous occasions, Brenda Reyna Tyler and Vicki Clark, employees of Robinson, both testified under oath that the tape was only requested on *one (1)* occasion, and as a result of this request and search accompanied with same, the tape of the altercation was located. (CP-567-568, 586). In fact, Brenda Reyna Tyler stated under oath that she was not asked to locate the video tape until after the trial court had granted the motion to compel. (CP-567-568). As such, Edmonds filed his Amended Motion for Citation for Contempt and Sanctions, and Motion for Attorneys' Fees and Costs. (CP-426-616).

1. Deposition Testimony of Brenda Reyna Tyler.

On August 10, 2007, Edmonds took the deposition of Brenda Reyna Tyler, a Robinson employee, who testified under oath that she was a surveillance operator at the Horseshoe Casino. (CP-566).

According to Ms. Tyler, she was contacted by Vickie Clarke, Claims Administrator for Horseshoe Casino, to pull the tape of the altercation. (CP-566).

Importantly, although counsel for Robinson affirmatively represented to the trial court at the hearing on December 7, 2006, that he had attempted to locate the tape, and at the April 5, 2007 hearing stated that he even went as far as personally going to search for the tape on five (5) separate occasions just to be sure that none existed, (CP-554, 558), Ms. Tyler testified under oath on numerous occasions during her deposition that there was only ***one (1) request*** for a search of the tape, and as a result of this ***one (1)*** search, the tape was discovered notwithstanding her being told

[3] Edmonds submitted for the trial court's consideration a detailed Invoice for Services Related to Sanctions Motion dated March 12, 2008. (CP-740-742)

the wrong date (*i.e.*, year)–the very reason Robinson claims the tape was unable to be located:

> BY MS. TYLER: When Vickie [Clark] told me what the incident -- it was at the snack bar, I spent numerous days going through, checking every month, every date in the years.
>
> BY MR. KOBS: When was -- when did you do this?
>
> BY MS. TYLER: This has been a while back.
>
> BY MR. KOBS: Years? Months?
>
> BY MS. TYLER: I can't remember exactly what date that I pulled all this information.
>
> BY MR. KOBS: Could it have been years or months or weeks?
>
> BY MS. TYLER: Oh, it's been longer than weeks. *Months.*
>
> BY MR. KOBS: Months?
>
> BY MS. TYLER: Yeah. I can't remember exactly.
>
> BY MR. KOBS: *Is that the first time you searched for it?*
>
> BY MS. TYLER: *It's when Vickie contacted me on it is the first time I started looking.*
>
> BY MR. KOBS: *What about -- was that the first time y'all talked about trying to find a particular tape?*
>
> BY MS. TYLER: ***Right.*** She gave me a date and a -- she gave me a date, a year, and a time.
>
> BY MR. KOBS: What was that date, year, and time?
>
> BY MS. TYLER: I know it was not the one I actually found later. It was incorrect information.
>
> BY MR. KOBS: ***Okay. So the first time that she contacted you about finding the tape, regardless of the year, regardless of the date, was months back?***
>
> BY MS. TYLER: ***Right. Yeah.*** . . .
>
> * * *

BY MR. KOBS: So you started searching?

BY MS. TYLER: Right.

BY MR. KOBS: And what did you find?

BY MS. TYLER: After numerous days of going through all the reports, I did find an incident in the DAR, which is our Daily Activity Report, of an altercation at the snack bar.

BY MR. KOBS: This was a couple days after you were asked to look?

BY MS. TYLER: It's like three days.

BY MR. KOBS: ***That was the first time you were asked to look for a particular -- this particular event?***

BY MS. TYLER: ***Right.***

BY MR. KOBS: Let me kind of rephrase that.

That was the first time that you were asked to look for the altercation itself, even though the date and the time --

BY MS. TYLER: No. I was asked to look for a specific -- I was asked to look for anything that I might have had for that month, that day, that year.

BY MR. KOBS: But that wasn't even the right date.

BY MS. TYLER: No.

BY MR. KOBS: So the first time that you even were asked to look for this altercation, you were told the wrong day, the wrong time, the wrong year.

BY MS. TYLER: Right.

BY MR. KOBS: It just wasn't the right time. It was a whole different year.

BY MS. TYLER: Right.

BY MR. KOBS: After that, it took you a few days to find it?

BY MS. TYLER: Yes.

BY MR. KOBS: What did you do in an effort to find it?

BY MS. TYLER: I went through our Daily Activity Reports. I pulled up every month, every day in every year and physically going through them. I think I started, like, in -- actually, I started with the year that was on there -- I mean started from the year that she had called on, trying to go forward with it. And that's when I actually found --

BY MR. KOBS: Picked up on it about a year later.

BY MS. TYLER: Yeah.

BY MR. KOBS: *That was the first time she even spoke with you about finding it, right?*

BY MS. TYLER: ***Well, she had came down and spoke to me about it. And then when I called her and told her I had something, but it was all wrong, date, time, year, and then her and Robert [Moore] came down.***

BY MR. KOBS: How many days was that after she first approached you with trying to find this tape?

BY MS. TYLER: Like I said, it took me three days to find anything on it. Then they come down to see if this was even --

BY MR. KOBS: When --

BY MS. TYLER: -- what we were looking for.

* * *

BY MR. KOBS: *So the first time she ever contacted you about this she had the wrong date, wrong time, wrong everything months back. And then it took you a few days to locate what we're looking for or what you thought might be what we were looking for, she was looking for.*

And that's when you called her and said, "I think I might have something." And then she and Mr. Moore came down and actually, I guess, retrieved the tape from you?

BY MS. TYLER: *I called her and told her I had an incident, but it was the wrong date, wrong time –*

BY MR. KOBS: But it might be --

BY MS. TYLER: -- wrong year. It was the only thing that I had that could've been maybe what they were looking for, based on --

(CP-567-568) (emphasis added). Clearly, the request to search for a video tape of the altercation was not made until sometime after the December 7, 2006, hearing. To be sure, Edmonds received a copy of the tape approximately seven (7) months prior to Ms. Tyler's August 10, 2007, deposition. To further be sure, four days following the hearing and the trial court granting Edmonds' Motion to Compel the video tape, counsel for Robinson wrote a letter to the Honorable Albert B. Smith, III, advising him that a video tape had possibly been located. (CP-581). It is evident that the first request to search for the tape was not conducted until after the December 7, 2006 hearing because Ms. Tyler stated that the tape was located a few days after she was first requested to search for same, and the trial court was notified four days following the December 7, 2006 hearing that the potential videotape had been located. Again, Ms. Tyler testified that she was only requested on only one occasion to search for the video tape of the altercation.

2. Deposition Testimony of Vickie Clark.

In further support of only one (1) request being made on the video surveillance department to search for the tape, and that request being made after the hearing on Edmonds' Motion to Compel, the following dialogue ensued at the deposition of Vickie Clark:

> BY MR. KOBS: When did you first know of the videotape, Ms. Clark?
>
> BY MS. CLARK: Robert and I went down to surveillance, and I forgot when it was. "Do you have anything?" Said, "We've got a tape back here on a fight between a black male and a white male." And I don't remember what exact date that was. They pulled it, and we looked at it.
>
> That was my first knowledge.
>
> BY MR. KOBS: How many times did you go down there looking for that tape? Once?
>
> BY MS. CLARK: ***Once***, I'd say.

(CP-585) (emphasis added).

BY MR. KOBS: That's the first time that you recall going down there and asking for that tape.

BY MS. CLARK: Correct.

* * *

BY MR. KOBS: You didn't have to ask 30 times before -- more than once before she found it for you.

BY MS. CLARK: No.

* * *

BY MR. KOBS: ***You're sure you went down there once?***

BY MS. CLARK: ***Yes.***

(CP-586) (emphasis added).

BY MR. KOBS: But you didn't have to go down there four or five different occasions before she could locate it for you.

BY MS. CLARK: No.

BY MR. KOBS: ***You didn't have to go down there more than one time.***

BY MS. CLARK: ***No.***

(Emphasis added) (CP-586). To be sure that only one (1) request was made, according to Ms. Clark's testimony, approximately six (6) months before her deposition, Edmonds received a copy of the tape approximately seven (7) months prior to Ms. Tyler and Ms. Clark's depositions.

Clearly, as testified to by Ms. Tyler and Ms. Clark, Ms. Tyler's search for the tape some months back was the **first and only** time a search for the tape was ever conducted, and Ms. Tyler was not requested to search for the tape until after the trial court compelled Robinson to produce a copy of the tape to Edmonds, and after partial summary judgment was granted to Robinson. Moreover, despite the statements of counsel for Robinson at the December 7, 2006 hearing on Edmonds' Motion to Compel and April 5, 2007 hearing on Edmonds' Motion for Citation for

Contempt and Sanctions, that he had previously requested and searched for[4] the tape on five (5) separate occasions[5], it is very evident that Ms. Tyler was not requested to search for the tape until after the trial court ordered Robinson to produce a copy of the tape. Even though Ms. Tyler could not remember the exact date, she testified that it was months–not years–before her August 10, 2007 deposition. (CP-567). Even though Ms. Clark could not remember the exact date, she testified that it was approximately six (6) months–not years–before her August 10, 2007 deposition. (CP-585). This is consistent with counsel for Robinson advising the trial court four (4) days following the hearing that the video tape had potentially been located. (CP-581). This is further consistent with Robinson, for the first time, producing a copy of the tape to Edmonds on or around January 15, 2007, keeping in mind that Ms. Tyler's deposition was taken approximately eight (8) months following Plaintiff receiving a copy of the video tape; approximately nine (9) months following the hearing on Edmonds' Motion to Compel Discovery and the granting of partial summary judgment to Robinson, Robinson; and approximately ten (10) months following counsel for Robinson notifying the trial court that the video tape had potentially been located.

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[4] Counsel for Robinson asserts that he did, in fact, request the tape prior to the hearing on Edmonds' Motion to Compel. More specifically, counsel for Robinson asserts that he requested Vickie Clark to search for the tape. However, despite Robinson's assertions, Ms. Clark testified under oath on numerous occasions at her deposition that she only requested the tape on one (1) occasion (CP-585-586); received the tape from the video surveillance department shortly after her first and only request (CP-585-586); and this request was made by her approximately six months–not years-prior to her deposition taken on August 10, 2007 (CP-585,587). Consistent with Ms. Clark's testimony, the request for the tape was not made on the surveillance department until (1) after the hearing on Edmonds' Motion to Compel wherein counsel for Robinson stated that there was no tape, and it had been searched for, and (2) the trial court ordered Robinson to produce a copy of any tape in its possession.

[5] Contrary to counsel for Robinson's assertion that he personally went to the casino on more than one occasion searching for the tape, according to Ms. Clark, Mr. Moore only came to the casino on one (1) occasion in search of the tape, and the tape was located shortly after him coming to the casino. (CP-586).

Additionally, Ms. Clark stated that counsel for Robinson could not even search for the tape himself, as there is restricted access to the video surveillance room. (CP-586).

B. Location of the Video Surveillance Tape Since February 12, 2005–the Date of the Altercation.

In regard to the location of the tape that allegedly did not exist and that had been searched for on numerous occasions, it was located in the video surveillance room on a shelf from February 12, 2005 (*i.e.*, the date of the altercation) until December 31, 2005 (*i.e.*, the end of the calendar year), (CP-572), and following the end of the calendar year, it was relocated to the "cage" in the video surveillance room, (CP-568, 572); both the "shelf" and "cage" are located in the video surveillance room in the possession and control of Robinson. (CP-573). Ms. Tyler also testified that tapes with altercations were kept and labeled and placed on a different shelf than the tapes that were to be reused:

> BY MS. TYLER: There's no tapes we cannot identify as far as by an incident report number. Everything is given a number. If we save a tape, it is given a number. We can go into our system, pull that number up, get a copy of our report, go find the tapes.
>
> BY MR. KOBS: How often are tapes recorded over? I mean, what makes you decide whether or not you want to record over a tape because it didn't have anything on it or whether or not you want to save it and archive it and put it in the vault, in the cage, the box?
>
> BY MS. TYLER: The only thing that would make me save a tape is if there was a tape -- I looked at it something occurred, it was a gaming violation, it was a law that was broken, or there was something -- *an altercation, a fight, that type of thing*, or somebody fell.

(CP-568-569) (Emphasis added).

> BY MR. KOBS: So there's different shelves. There's "something that we need to keep this one for" shelves and there's "we need to rerecord over these" shelves --
>
> BY MS. TYLER: Right.

(CP-573).

As mentioned, *supra*, Ms. Tyler located the tape containing the altercation on the very first and only time she was requested to search for same.

C. Robinson's Spurious Argument Regarding Not Being Able To Locate The Video Surveillance Tape.

In support of its opposition to Edmonds' Motion for Contempt and Sanctions, Robinson relies upon Edmonds at some point or another inadvertently stating the incorrect date (*i.e.*, Edmonds allegedly advised that it was February of 2004, as opposed to February 2005-the correct date of the incident)[6]. However, this argument is disingenuous and totally lacking, as Edmonds' Complaint and Amended Complaint both clearly state that this altercation occurred on or about February 14, 2005, not 2004. (CP-17-21, 73-78). Moreover, in Edmonds's First Set of Request for Production of Documents Propounded to Robinson, Harrah's Tunica Corporation[7], no date was provided in the request to produce a copy of video surveillance, but rather requested Robinson to produce the following:

> **REQUEST NO. 6:** Any audio or video tape recordings, or transcripts of such recording of conversations related to the incident in this cause.

(CP-607-609). Additionally, once the correct legal name of Robinson was determined, Edmonds propounded Edmonds' First Set of Request for Production of Documents Propounded to Robinson, Robinson Property Group, LP d/b/a Horshoe Casino & Hotel Tunica, wherein Edmonds requested Robinson to produce the following:

> **REQUEST NO. 6:** Any audio or video tape recordings, or transcripts of such recording of conversations related to the incident in this cause.
>
> **REQUEST NO. 12:** Copies of any and all casino surveillance video tapes recorded between February 9, 2005, and February 13, 2005.

(CP-610-612) (emphasis added). Moreover, Edmonds' Subpoena Duces Tecum served on Robinson

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[6] Edmonds is unsure as to when he incorrectly stated the wrong date other than in one set of interrogatories propounded to Robinson.

[7] The correct legal name of Robinson was later determined and an Amended Complaint was filed.

requested video surveillance tapes of the altercation from February 9, 2005 until February 13, 2005. (CP-79-82). Regardless of whether Edmonds at any point inadvertently typed the wrong date in his interrogatories to Robinson, this does not take away from the fact that: (1) Edmonds' Complaint and Amended Complaint both list the date of the incident as "on or about February 14, 2005," (2) Edmonds' Subpoena Duces Tecum to Robinson requests video surveillance of the altercation from February 9, 2005 until February 13, 2005, and (3) Edmonds' request for production of documents to Robinson requests video surveillance for the dates of February 9, 2005 to February 15, 2005. Clearly, Robinson's argument regarding being requested video surveillance for the wrong dates/year is a mistake of its own.

Additionally, assuming arguendo that Edmonds had requested video surveillance for the wrong year, this does not take away from the fact that counsel for Robinson stated that he had personally visited the casino on five (5) separate occasions in an effort to locate the tape, and both Ms. Tyler and Ms. Clark stated under oath that there was only ***ONE (1)*** request ever made for any tape, be it 2004 or 2005. Ms. Tyler and Ms. Clark's depositions clearly reveal that prior to the December 7, 2006 hearing, no request was even made for a February 2004, despite counsel for Robinson's assertion. In fact, even though Ms. Tyler was requested to look for a surveillance tape of the altercation from February 2004 (the wrong year), she was still, within a few days[8] of the first and only request, able to locate the video surveillance tape of the altercation from February 12, 2005 at the snack bar between an unidentified white male and unidentified black male.

In ***Thomas v. Isle of Capri Casino***, the Court discussed spoliation of evidence regarding a

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[8] Ms. Tyler testified that she located the tape a few days after the first request from Ms. Clark. (CP-567-568). Ms. Clark testified that Ms. Tyler provided her with the tape 15 or 20 minutes after she requested it for the first time. (CP-586). Regardless of whether the tape was given to Ms. Clark 15 or 20 minutes after her request for it, or a few days after her request for it, it was still found on the first and only request notwithstanding the wrong year being given.

machine. 781 So. 2d 125 (Miss. 2001). In ***Thomas***, a patron supposedly hit the jackpot and the information contained in the CP-U of the slot machine would have proven whether or not Thomas had actually won any jackpots on that night and "*how much time had elapsed* since it occurred." ***Id.*** at 36. The Court held that because the information was not lost by an act of God that it must have been the fault of the Isle or CDS. ***Id.*** at 38. It has been stated by the Court that when evidence is lost or destroyed by a party that there is a presumption then that the evidence would have been damaging to that party's case and hindering the other party's ability to prove its case. In addition the Court held that to hold otherwise would encourage parties with a weak case to deliberately lose or misplace "damning" evidence and then lie to the other party as well as the court as to some innocent reason for the loss. ***Id.*** at 37. In the case sub judice, the casino knowingly had evidence all along that would have damaged its case while at the same time helped Edmonds prove his case. Robinson "misplaced" and "could not find" this video tape intentionally; thereby attempting to spoliate the evidence.

D. Robinson Committed Discovery Violations by Failing to Timely Provide the Incident Report and Daily Activity Report Following the Trial Court's Order to Compel.

As stated, *supra*, on or around May 19, 2006, Robinson was sent Edmonds' First Set of Requests for Production of Documents Propounded to Robinson, Robinson Property Group, LP d/b/a Horseshoe Casino & Hotel Tunica, which requested a copy of any incident reports regarding the altercation in Robinson's possession. (CP-610-612). Robinson responded to this request stating: "***None.***" (CP-499, 509-510, 513).

Additionally, as mentioned, *supra*, on February 15, 2006, Robinson was served with a *Subpoena Duces Tecum* requesting among other things a copy of any incident report in Robinson's possession:

> Copies of any and all incident reports filed between February 8, 2005 and February 15, 2005.

(CP-79-82). Counsel for Robinson filed an Objection to Subpoena Duces Tecum stating that the information requested is overly broad among other things. (CP-70-71).

Finally, on December 22, 2006, the trial court ordered that "Robinson will make all reasonable efforts to locate all incident reports as it pertains to the incident in question." (CP-236-237).

Still, no report was given to Edmonds.

During the deposition of Ms. Tyler, counsel for Edmonds learned there to be an actual, tangible incident report. To counsel for Edmonds' disbelief, counsel for Robinson handed counsel for Edmonds a copy of a document clearly and unambiguously titled "INCIDENT REPORT" (CP-613-615) as a result of counsel for Edmonds requesting Ms. Tyler give a copy of the incident report and DAR (Daily Activity Report) to counsel for Robinson so that it could be forwarded to counsel for Edmonds. (CP-571). ***This was the very first time*** **counsel for Edmonds was provided a copy of the incident report, despite Robinson being ordered to provide same by the Court on December 22, 2006, some nine (9) months prior. Edmonds was also provided a copy of the DAR for the altercation at the same time the incident report, which allegedly did not exist, was provided.** (CP-616, 571). The "INCIDENT REPORT" was prepared at the time of the altercation on February 12, 2005, and had been in the possession of Robinson since it was prepared.

At the very least, Robinson has known that an incident report exists[9] since January 15, 2007,

[9] To be sure, Ms. Tyler testified that the DAR references and directs you to the incident report, and the incident report directs you to the surveillance tapes, which are numbered. (CP-573). In other words, you have to pull the DAR before being able to locate the incident report because the DAR directs you to the incident report, and you have to pull the incident report before you are able to locate the numbered tape(s) associated with same.

when the video was forwarded to Edmonds, although Edmonds was not provided a copy of same until Ms. Tyler's deposition on August 10, 2007, despite the Order of the trial court to compel same and many requests from Edmonds. (CP-236-237). Edmonds did not receive a copy of this "INCIDENT REPORT" until August 10, 2007, despite having requested same and being told that none exist on numerous occasions. Needless to say, counsel for Edmonds was very surprised when counsel for Robinson handed him a copy of the very documents that allegedly did not exist. Why was this incident report and/or DAR not forwarded to Edmonds at the time the video was forwarded?

II. THE TRIAL COURT ERRED IN GRANTING DIRECTED VERDICT TO ROBINSON

STANDARD OF REVIEW

The standard of review in cases where a directed verdict has been granted is as follows: "[t]his Court conducts a de novo review of motions for directed verdict. If the Court finds that the evidence favorable to the non-moving party and the reasonable inferences drawn therefrom present a question for the jury, the motion should not be granted." ***Pace v. Fin. Sec. Life of Miss.***, 608 So. 2d 1135 (Miss. 1992).

ARGUMENT

Where motion is made for a directed verdict, the court must look only to testimony presented by the plaintiff and accord truthfulness to it drawing all favorable inferences in favor of the non-moving party; and, if either is sufficient to support a verdict, the motion should be overruled. ***Edwards v. Cleveland Food, Inc.***, 437 So. 2d 56 (Miss. 1983).

The comment to Mississippi Rule of Civil Procedure 50 is so clear and concise that it should be quoted rather than paraphrased:

> Simplistically stated, it is the law in Mississippi that questions of fact are for the jury and questions of law are for the court. ***Cantrell v. Lusk***, 113 Miss. 137, 73 So. 885 (1917). Rule 50 is a device for the court to enforce the rules of law by taking away

> from the jury cases in which the facts are sufficiently clear that the law requires a particular result. The rule enables the court to determine whether there is any question of fact to be submitted to the jury and whether any verdict other than the one directed would be erroneous as a matter of law; it is conceived as a device to save the time and trouble involved in a lengthy jury determination.

M.R.C.P. 50 comment.

The trial court erroneously granted directed verdict following Edmond's presentation of his case in chief. (Tr.-183-200, CP-747-48). Edmond's theory of negligence was based on the premise that Casino security guards (1) observed the attack on Edmonds and failed to intervene, and (2) failed to intervene within a reasonable amount of time. The Court granted directed verdict due to the false conclusion that Edmonds had not proven with certainty exactly the amount of time it should have taken the security personal to intervene. This was a question for the jury, not the judge.

The Mississippi Supreme Court has stated,

> Whether a duty is owed is a question of law. ***Rein v. Benchmark Constr. Co.***, 865 So. 2d 1134, 1143 (29) (Miss. 2004). The general duty is to act as a reasonable prudent person would under the circumstances. ***Donald v. Amoco Prod. Co.***, 735 So. 2d 161, 175 (48) (Miss. 1999). "[T]he important component of the existence of the duty is that the injury is `reasonably foreseeable.'" ***Rein***, 865 So. 2d at 1143 (29) (quoting ***Lyle***, 584 So. 2d at 399)). "When the conduct of the actor is a substantial factor in bringing about the harm to another then, `the fact that the actor neither foresaw nor should have foreseen the extent of the harm or the manner in which it occurred does not prevent him from being liable.'" ***Id.*** at 1144-45 (34) (quoting Restatement (Second) of Torts § 435 (1965)). "[D]efendants `cannot escape liability because a particular injury could not be foreseen, if some injury ought to have been reasonably anticipated.'" ***Id.*** at 1145 (34) (quoting ***Delta Elec. Power Ass'n v. Burton***, 240 Miss. 209, 219, 126 So. 2d 258, 261 (1961)).

Jim Doe v. Wright Security Services, Inc., 950 So. 2d. 1076 (Miss. Ct. App. 2007).

In ***Wright Security Services, Inc.,*** an alternative school employed security guards to monitor the bus stop. One of the students wandered away from the stop and was injured. The trial court granted summary judgment, which was reversed by the Mississippi Court of Appeals. The Court stated:

> The undisputed facts indicate that Wright contracted with JPSD to provide security services for the alternative school students at the Livingston Road bus stop. Thus, as a matter of law, Wright obligated itself to a duty to protect the alternative school students, including Jim. Based on the evidence submitted in opposition to the motion for summary judgment, one purpose of Wright's contract with JPSD was to prevent violence or altercations among the alternative school students. Not only does this tend to make the incident foreseeable, but it shows as a matter of law that Wright owed a duty to minimize risks to Jim's safety.

Wright Security Services, Inc., 950 So. 2d. 1076.

In the case at bar Edmonds submitted unquestionable evidence that he was attacked while a business invitee at the Horseshoe Casino, that security guards were present during the attack, and that he suffered damages as a result of the attack. First, Edmonds testified as to checking into the hotel and the subsequent series of events that led to his attack. (Tr.-81-98). During Edmonds testimony, the video tape showing the attack was admitted into evidence. (Tr- 86). Edmonds further testified that security guards were present at the time of the attack and failed to intervene. (Tr.-86, 94-95). Edmonds also presented evidence that other employees of the Casino observed the attack and did nothing. (Tr.-96). Edmonds testified as to the injuries he sustained as a result of the attack, and his medical records and bills were admitted into evidence. (Tr.-97-102).

Lisa Barciszewski also testified at the trial at issue and presented evidence as to the attack. (Tr.-144). She further testified that Casino employees observed the attack and did nothing. (Tr.-144-145). Brenda Reyna Tyler, a hotel employee, further testified an proved that the attack occurred. (Tr.-176-181).

Edmonds clearly presented a prima facia case for negligence against Robinson. Evidence was presented that security was present, that employees and security observed the attack and did nothing. Evidence was also presented through testimony and the video that no one intervened for one minute and fifteen seconds. As discussed supra, the duty of care is determined as a matter of law, therefore expert testimony as the standard is not required. ***Wright Security Services, Inc.,*** 950

So. 2d. 1076. Robinson had a legal duty to keep their premises reasonably safe. Whether their actions/inactions did so is a question for the trier of fact. Directed verdict was wholly inappropriate in this matter and the case should have been submitted to the jury.

CONCLUSION

Edmonds submits that the trial judge's decision that Robinson's outrageous behavior and intent to deceive both Edmonds as well as the judicial system was not sufficient to warrant sanctions was an abuse of discretion.

Robinson was in willful and contumacious contempt of this Court because of its failure and refusal to carry out and perform the trial court's Order of December 22, 2006, and failure to provide the video surveillance tape until years after Edmonds' initial requests. Robinson blatantly refused to produce the video surveillance tape, incident report, and daily activity report, despite numerous requests of Edmonds and orders of the trial court.

Ms. Tyler, Robinson's employee, testified under oath at deposition that she was only requested to search for the tape on one (1) occasion, and as a result of this search, located the tape. Ms. Clark, Robinson's employee, also testified under oath at deposition that she only requested the tape be searched for on one (1) occasion, and as a result of her request, the tape was located. Counsel for Robinson represented to the Court that he personally[10] went to the casino on more than one occasion to search for the tape; however, this is not in any way, shape, form or fashion consistent with the testimony of Ms. Tyler and Ms. Clark.

Additionally, although Edmonds, on numerous occasions, requested a copy of any incident report, and Robinson, on numerous occasions, stated that there was no such document in existence,

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[10] Ms. Clark testified that counsel for Robinson could not go to the surveillance room and search for the tape himself because of gaming laws, and she is only allowed in one room of the surveillance department. (CP-586-587).

a document clearly titled "INCIDENT REPORT" was provided to Edmonds, ***for the very first time***, at the depositions of Horseshoe personnel on August 10, 2007. Not only was this document finally produced to Edmonds on August 10, 2007, but it was also produced approximately nine (9) months following the Order of the Court compelling Robinson to attempt to locate same and provide to Edmonds, and at the very least, Robinson knew of its existence at the time the video surveillance tape of the altercation was located.

Ms. Tyler stated under oath that Daily Activity Reports and Incident Reports are saved "forever." (CP-569).

In the face of all of this misconduct by Robinson, the trial court would not even allow Edmond's to argue same, despite that the trial court judge's administrator stated that the motion could be argued on the date of the trial.

Interestingly, although the trial court apparently found that the non-disclosure of the video surveillance tape to be suspicious and possibly intentional, and consequently entered an Order on Edmonds' Motion for Citation for Contempt and Sanctions, taking Edmonds' Motion for Citation for Contempt and Sanctions under advisement and allowing Edmonds to "conduct discovery to determine whether [Robinson] should be found in contempt and whether sanctions should be issued in this matter regarding the video surveillance tape," (CP-236-237), when Edmonds did in fact discover facts under oath clearly evidencing that (1) counsel for Robinson misrepresented to the trial that he had personally searched for the tape on numerous occasions when Ms. Tyler and Ms. Clark stated that only one search was made; (2) Robinson at least had the incident report for nine (9) months prior to it producing same to Edmonds, and it was not produced until nine (9) months following the order of the trial court compelling same; and (3) Robinson at least had the daily activity report for nine (9) months prior to it producing same to Edmonds, and it was not produced

until nine (9) months following the order of the trial court compelling same, the trial judge did not even allow Edmonds the opportunity to argue his case! The trial court summarily denied Edmonds' motion as if his additional discovery regarding the video surveillance tape turned up no evidence of any discovery violation; however, Edmonds' additional discovery was fruitful and evidenced many discovery violations. It is very clear that the trial court abused its discretion in not granting Edmonds' Amended Motion for Citation for Contempt and Sanctions, and Motion for Attorneys' Fees and Costs. "To determine whether an attorney's conduct was sanctionable, we must focus on whether the attorney's conduct was objectionably reasonable." ***Choctaw, Inc. v. Campbell-Cherry-Harrison-Davis and Dove***, 965 So. 2d 1041, 1045 (Miss. 2007). Obviously, Robinson's conduct regarding discovery was not objectively reasonable.

Edmonds clearly presented a prima facia case for negligence against Robinson. Evidence was presented that security was present, that employees and security observed the attack and did nothing. Evidence was also presented through testimony and the video that no one intervened for one minute and fifteen seconds. As discussed supra, the duty of care is determined as a matter of law, therefore expert testimony as the standard is not required. ***Wright Security Services, Inc.,*** 950 So. 2d. 1076. Directed verdict was wholly inappropriate in this matter and the case should have been submitted to the jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff-Appellant, Daniel Edmonds, respectfully requests this Court reverse the judgment and findings of the Circuit Court of Tunica County, Mississippi regarding directed verdict, and render judgment in his favor regarding contempt and sanctions.

RESPECTFULLY SUBMITTED, this the 9TH day of January, 2009.

DANIEL EDMONDS

By: _____

J. KEVIN RUNDLETT, MSB NO. [redacted]

Attorney for Daniel Edmonds

CERTIFICATE OF SERVICE

This is to certify that I have caused the above document to be served upon the person or entity identified below at their usual place of business.

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Honorable Albert B. Smith, III, Trial Court Judge
Tunica County Circuit Court Judge
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Cleveland, Mississippi 38732

SO CERTIFIED this the 9TH day of January, 2009.

J. Kevin Rundlett