

IN THE SUPREME COURT OF MISSISSIPPI

TORSHA A. BROWN

APPELLANT

V.

2008-CP-01430

HARRAH'S ENTERTAINMENT
d/b/a
HORSESHOE CASINO-TUNICA

APPELLEE

BRIEF OF THE APPELLANT

CERTIFICATE OF INTERESTED PERSONS:

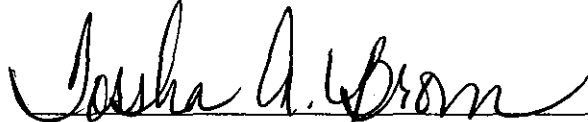
The undersigned appellant (pro se) certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

Here list names of all such persons and identify their connection and interest.

Torsha A. Brown- Appellant (pro se)

Honorable Robert L. Moore-Counsel for defendants

Harrah's Entertainment d/b/a Horseshoe Casino-defendants

A handwritten signature in black ink, appearing to read 'Torsha A. Brown', is written over a horizontal line.

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TABLE OF AUTHORITIES

Statutes and Regulations:

Miss. Code Ann. § 11-7-17 (Supp. 2001)
Miss. Code Ann. § 75-76-171 (3) (a).
Miss. Rules of Civil Procedure 37 (e)
Miss. Rules for Civil Procedure p. 56 (c.)
Miss. Rules for Civil Procedure p. 56 (e.)
Miss. Rules of Civil Procedure (Rule 4 of Motion Practice) 5(a) and 6 (d)
Miss. Rules of Civil Procedure 37(b)(2)(B)
Restatement of Agency §228 (1958)
Restatement of (Second) of Agency §213 (1958)

Court Decisions:

Benjamin v. Hooper Electronic Supply Co., 568 So. 2d 1182, 1190-91 (Miss 1990).
C & C Trucking Co. v. Smith, 612 So. 2d at 1100. (Miss 1992).
Cannon v. Mid-South X-Ray Co., 738 So. 2d 274, 275) (Miss. Ct. App. 1999).
Cole v. Methodist Med. Ctr., 820 So. 2d 739, 742 (Miss. Ct. App. 2002).
Daniels v. GNB, Inc., 629, So. 2d 595 (Miss. 1993).
Delahoussaye v. Mary Mahoney's, Inc., 783 So. 2d 666, 671 (Miss. 2001).
Dennis v. Searle 457 So. 2d 941, 944 (Miss. 1984).
Dethlefs v. Beau Maison Dev. Corp., 511 So. 2d 112, 118 (Miss. 1987).
Downs v. Choo, 656 So. 2d 84, 85-86 (Miss. 1995).
Downtown Grill, Inc. v. Connell, 721 So. 2d 1113, 1118 (Miss. 1998)
Eagle Motor Lines v. Mitchell 223 Miss 398, 411-12 78 So. 2nd 482, 486-487 (1955).
Foster v. Noel, 715 So. 2d 174, 180-81 (Miss. 1998).
Fruchter v. Lynch Oil Co., 522 So. 2d 195, 199 (Miss. 1988).
Galloway v. Travelers Ins. Co., 515 So. 2d 678, 683 (Miss. 1987).

Garret v. State, 187 441, 445, 193 So. 452, 455 (Miss. 1940).

Gaylords of Meridiam v. Sicard, 384 So. 2nd 1042, 1044 (Miss. 1980).

Godines v. First Guar. Savs. & Loan Ass'n, 525 So. 2d 1321, 1325 (Miss. 1988).

Haines v. Kerner, 404 U.S. 519, 529 (1972).

Harkins v. Paschall, 348 So. 2d 1019, 1022 (Miss. 1977).

Harvill v. Tabor, 240 Miss. 750, 128 So.2d 863, 865 (1961).

Houston v. State, 531 So.2d 598 (Miss. 1988).

Hutchinson v. Smith, 417 So. 2nd 926, 928 (Miss 1982).

Kisner v. Jackson, 159 Miss. 424, 428-29, 132 So. 90, 91 (1931).

J.C. Penny Co. Inc., Blush, 356 So. 2nd 590, 592 (Miss 1978).

Lancaster v. Jordan Auto Co., 185 Miss. 530, 545, 187 So. 535, 537 (1939).

Mantachie Natural Gas District v. Mississippi Valley Gas Company, 594 So 2d 1170, 1172 (Miss. 1992).

McFadden v. State, 580 So.2d 1210, 1214 (Miss. 1991).

Mink v. Andrew Jackson Casualty Co., 537 So. 2d 431, 433 (Miss. 1988).

Mississippi Gaming Commission, CDS Service Company, ...CDS Gaming Company and Casino Data Systems v. Effie Freeman 747 So.2d at 247, (Miss 1998).

Morgan v. City of Ruleville, 627 So. 2d 275, 277 (Miss. 1993).

Moss v. Basketville Casket Co., 935 So. 2d. 393, 398 (Miss. 2006).

Myers v. State, 583 So. 2d 174, 176 (Miss. 1991).

Norman v. Bucklew, 684 So. 2d 1246, 152 (Miss 1996).

Patterson v. Liberty Assocs., L.P., 910 So. 2d 1014, 1019 (Miss. 2004).

Pierce v. Chapman, 165 Miss 749, 755, 143 So845, 847 (1932).

Ratliff v. Ratliff 500 So. 2d 981 (Miss 1986).

Sandifer Oil Co. v. Dew, 220 Miss. 609, 630 71 So. 2d 752, 758 (1954).

Sears, Roebuck & Co. v. Devers, 405 So. 2d 898, 902 (Miss. 1981).

Skaggs v. State, 676 So.2d 897 (Miss. 1996).

Summers ex rel Dawson v. St. Andrew's Episcopal Sch., Inc.,
759 So.2d 1203, 1215 (Miss. 2000).

Thomas v. Isle of Capri Casino, 781 So. 2d 125, 134 (Miss. 2001),

Tolbert v. State, 511 So.2d 1368, 1372-73 (Miss. 1987).

Turner v. Wilson, 620 So. 2d 545, 548-49 (Miss. 1993).

United States v. Banshee, 91 F.3d 99, 101 (11th Cir. 1996).

United States v. Kelly, 913 F.2d 261, 267 (6th Cir. 1990).

Washington v. State, 478 So.2d 1028, 1032-33 (Miss. 1985).

West v. Combs, 642 So. 2d. 917, 920 (Miss 1994).

White's Lumber & Supply Co. v. Collins, 186 Miss. 659, 672, 191 So. 105, 106 (1939).

Secondary Sources:

Harrah's Entertainment Corporate Career/Employment Center

Tunica County Circuit Court Appeal Transcript Docket (CI-2005-0392-AS)

Statement of Issues:

I. Whether the trial court failed to adequately consider the plaintiff's claims of negligence as separate causes of action from the intentional tort of false arrest

II. Whether the trial court erred by applying an incorrect standard of law when it granted summary judgment in favor of the defendant.

III. Whether the trial court abused its discretion by allowing Harrah's Entertainment to withhold or destroy surveillance evidence relating to the case.

IV. Whether the trial court abused its discretion by allowing the defendants to violate both M.R.C.P. and violate court's order setting deadlines for discovery, hearing on preliminary matters, and pretrial statement.

V. Whether the trial court abused its discretion by failing to implement balance and equity during oral arguments and motion requests.

VI. Whether the trial court abused its discretion by directing motions to be heard in the same setting in which information obtained from one of these motions was a required evidentiary matter to be considered for another motion

Statement of the Case:

This case is appealed from The Circuit Court of Tunica County for its finding of summary judgment in favor of Harrah's Entertainment. The appellant seeks reversal and remand of that decision on the grounds that there were acts of negligent omissions and commissions by Harrah's Entertainment committed against Ms. Brown, which are governed by the three-year statute of limitations rather than the one-year statute of limitations.

FACTS AND PROCEDURAL HISTORY

On September 27, 2005, the plaintiff was seated playing blackjack at the Horseshoe Casino in Tunica, Mississippi. She was surrounded by several Horseshoe security officers who approached her among several other patrons at the blackjack table and requested her I.D. The plaintiff asked the officer who appeared to be in charge (wearing a blue blazer) why he needed I.D., and he responded, "because you have to be 21 to be in

here.”

The plaintiff, who was then 31-years of age and a regular guest at this establishment, stated that she would just leave, and, she along with another guest, Precious Moore, left the table and then attempted to leave the premises through the front door. The plaintiff had her purse in one hand and casino chips in the other hand that she had picked up as she left the table.

The plaintiff was followed, surrounded, and forced against a blackjack table near the front exit, handcuffed and placed under arrest by three female and two male Horseshoe security officers. She was then taken to a security room and handcuffed to a metal bench. The plaintiff asked the security supervisor why she was being arrested and he responded, “You are not supposed to be in our casino.”

The security supervisor told the plaintiff that she was being charged with trespassing and disturbing the peace. The contents of the plaintiff’s purse as well as the plaintiff were searched by Horseshoe Casino security.

After approximately one hour of being handcuffed to a bench, a Tunica County deputy arrived, and Horseshoe Casino security officers along with the deputy, escorted the plaintiff to the deputy’s patrol car. The plaintiff was transported to the Tunica County Jail where she was placed in a holding cell for several hours before family members arrived and presented fees for her bail.

The plaintiff pleaded not guilty to both charges (trespassing and disturbing the peace) in the Justice Court of Tunica County. Horseshoe Casino was represented by Mr. Charles Graves, Tunica County Prosecuting Attorney, and presented one witness on its behalf, Ms. Gladys Jackson (a 10-year security officer by her own admission), who had

participated in the arrest.

The plaintiff appeared pro se before the Justice Court of Tunica County.

Jackson introduced a sworn affidavit that she had signed stating that the plaintiff “became violent and pushed over a blackjack table and said in a loud voice ‘I don’t have to show you no damn I.D.’” Jackson stated that she could produce no documentation or surveillance of a prior eviction of the plaintiff but told the court, “My supervisor said she was a prior.”

Jackson also stated that she could produce no surveillance of the plaintiff’s arrest on September 27, 2005, but could show the court the affidavit, that she had signed, which would explain what happened.

After Ms. Jackson’s testimony, The Justice Court of Tunica County found that no prior eviction of Ms. Brown had taken place and found that the plaintiff was not trespassing, and as a result, the court dismissed the charge of trespassing.

This finding by The Tunica County Justice Court was admitted under oath by Ms.

Jackson at Ms. Brown’s appeal in the Circuit Court of Tunica County. (Page 14)

(Cross Examination) of Court Transcript Docket (CI-2005-0392-AS)

Question: “In Justice Court, was I or was I not found not guilty of trespassing? Was I found guilty or not guilty of trespassing?”

Answer: “Not guilty”

Question: “Okay. So that means that I-- that the Judge found that I had never been prior evicted in the first place. So I was never trespassing in the first place, is that correct?”

Answer: “That’s what he said.”

The plaintiff was found guilty of the charge of disturbing the peace in Tunica County Justice Court after Ms. Jackson's testimony and presentation of an affidavit to the court that Ms. Brown "became violent and pushed over a blackjack table" during her arrest. The plaintiff appealed the guilty verdict to The Circuit Court of Tunica County on grounds that the arrest was unlawful and not valid because she was never trespassing, and also presented testimony to the Circuit Court that she had not become violent nor had she pushed over a blackjack table.

The affidavit that Ms. Jackson had signed on September 27, 2005, was presented to both the Justice Court of Tunica County and also to the Circuit Court of Tunica County during the appeal of the disturbing the peace conviction.

Ms. Jackson then presented the Tunica County Circuit Court with the following testimony regarding the information that was contained in the affidavit that she had signed.

(Page 8 of Direct Examination) of Court Transcript Docket (CI-2005-0392-AS)

Question: "Did you see her push over the blackjack table?"

Answer: "I didn't see her just push it over you know. It was—"

Question: "Well, tell us how it happened."

Answer: "It was overturned in the process of arresting her."

(Page 10 of Direct Examination) of Court Transcript Docket (CI-2005-0392-AS)

Question: "Well, who pushed the table over?"

Answer: "All I know, it was just knocked—overturned, you know, in the process of us trying to arrest her."

The disturbing the peace conviction was reversed and dismissed.

The plaintiff filed a Complaint (on September 21, 2007) in the Circuit Court of Tunica County on the grounds that the negligent omissions and commissions of Harrah's Entertainment and its security personnel had caused harm to her on September 27, 2005.

Ms Brown stated in the Complaint that she had been falsely arrested on that date.

The plaintiff received an order by the trial court dated September 27, 2007 regarding orders setting deadlines for discovery, hearing on preliminary matters and pretrial statement and orders to be approved by attorneys along with an assignment letter for the specific court.

The plaintiff received an answer to the Complaint dated February 7, 2007 and a notice of filing of discovery from the defendant. The plaintiff provided answers to interrogatories on March 4, 2008, with objections to interrogatories 7, 8, 9, 11, and 12. The defendant filed a motion to compel answers to these interrogatories on March 10, 2008.

On March 12, 2008, the plaintiff filed a notice of discovery and requested answers to seven interrogatories from the defendant. The plaintiff then wrote a letter on March 13, 2008 to the defendant in an attempt to settle the case.

On March 31, 2008, the defendant filed a motion for protective order (from providing answers to the plaintiff's seven interrogatories) and also filed a motion for summary judgment.

On April 7, 2008, the plaintiff filed a notice of opposition to the defendant's motion for summary judgment along with a cross-motion for summary judgment.

A hearing was held on June 6, 2008 on the defendant's motion to compel answers to interrogatories from the plaintiff, and the trial court ordered the plaintiff to

provide the defendant with answers to interrogatories 7, 8, 9, 11, and 12 within (30) days. After the motion to compel hearing on June 6, 2008, the trial court gave the directive to a court staff member to schedule a date for the defendant's motion for protective order and the cross-motions for summary judgment to be heard. The motions were scheduled to be heard on July 23, 2008.

On June 19, 2008, the plaintiff wrote a letter to the trial court requesting that the court review the situation of whether the defendant's access to all of their requested interrogatories without the plaintiff having access to any of the information requested in her interrogatories during the July 23rd motion hearings would allow the defendant an unfair advantage.

On July 23rd 2008 the trial court denied the plaintiff's motion for summary judgment and granted the defendant's motion for summary judgment with prejudice.

Summary of Argument:

The security supervisor along with security officers failed to perform a reasonable investigation into casino records to verify whether the plaintiff was actually barred from Horseshoe Casino's property prior to arresting her. This flawed investigation was under the direction and supervision of a security supervisor, whose decisions were hasty, reckless, and insufficient and who had been given essential and critical duties for which he was not prepared to perform.

The security supervisor in charge of Ms. Brown's arrest give subordinate officers inappropriate directives, and failed to properly supervise or correct the actions of a male officer who made inappropriate, lewd contact with the plaintiff. This male officer's actions were in plain view of employees, patrons, which would be clearly visible on

surveillance footage.

The actions of the security supervisor in charge of the arrest of Ms. Brown on September 27, 2005 show that he did not have an honest belief that Ms. Brown was guilty of breaking the law. He attempted to conceal his error in judgment of hastily and recklessly ordering the arrest of Ms. Brown by giving another improper directive to a subordinate officer by having her to sign the contents of an affidavit, which he had solely and inaccurately drafted. The affiant, a 10-year security officer, admitted under oath that she had not witnessed the plaintiff become violent and push over a blackjack table, as was stated in the affidavit that she had signed.

The company, Harrah's Entertainment, should have more thoroughly trained and monitored its employees to ensure competence in the actions and performance of its security supervisor and other members of its staff. The company failed to properly and reasonably prevent its employees from harming Ms. Brown through their actions and failures to take action.

The Tunica County Justice Court's finding of guilt of disturbing the peace resulted directly from distorted facts contained in an improper, inaccurate affidavit, not from any of Ms. Brown's actions.

Although the plaintiff made a proper and timely discovery request for the production of surveillance evidence pertaining to this case, Harrah's Entertainment has suppressed or destroyed all surveillance footage surrounding Ms. Brown's arrest, which could clearly show the events, which occurred on September 27, 2005.

The actions of Harrah's Entertainment and its employees were negligent, and without probable cause, and these actions caused the plaintiff to lose wages and incur unnecessary

expenses, suffer emotional distress and pain and suffering, and also suffer further mental anguish because of fear of losing her job as a teacher after being she was convicted of disturbing the peace.

In order to have probable cause to make an arrest, the person initiating the prosecution must have both "(1) an honest belief on the guilt of the person accused, and (2) reasonable grounds for such belief Harvill v. Tabor, 240 Miss. 750, 128 So.2d 863, 865 (Miss. 1961)); C & C Trucking Co. v. Smith, 612 So. 2d at 1100. (Miss 1992).

Not only did Harrah's Entertainment withhold or destroy vital surveillance evidence, but also the company provided the trial court with blatantly fabricated and unsubstantiated information, engaged in discovery violations, ignored directives in an order issued by the trial court, and also violated the Mississippi Code for Civil Procedure and proceeded with improper motions.

Argument:

I. Whether the trial court failed to adequately consider the plaintiff's claims of negligence as separate causes of action from the intentional tort of false arrest

Ms. Brown contends that on September 27, 2005, both intentional and negligent torts were committed against her and concedes that though the one-year statute of limitations prevents her from bringing causes of action from the intentional torts committed against her, that does not cancel the negligent causes of action. *In Hutchinson v. Smith*, 417 So. 2nd 926, 928 (Miss 1982) The Supreme Court of Mississippi found, "Where a party has two or more remedies for enforcement of a right, the fact that one remedy is barred by the statute of limitations does not bar the other remedies." Thus, the plaintiff argues that the

applicable statutes of limitations should have been considered separately by the trial court for intentional and negligent torts.

The State of Mississippi recognizes the tort of negligence, which was pled by Ms. Brown, as well as the torts of negligent hiring, training and supervision.

“A plaintiff in a negligence suit must prove by a preponderance of the evidence (1) duty, (2) breach of duty, (3) causation, and (4) injury. To recover, a plaintiff must prove causation in fact and proximate cause.” *Patterson v. Liberty Assocs., L.P.*, 910 So. 2d 1014, 1019 (Miss. 2004).

In the case of *Patterson v. Liberty Assoc.*, the court explained that proximate cause is a cause “without which the result would not have occurred.” (quoting *Delahoussaye v. Mary Mahoney’s, Inc.*, 783 So. 2d 666, 671 (Miss. 2001).

There were several instances in which the actions of Harrah’s Entertainment and its employees constituted negligent commissions and omissions, and those actions should have allowed to proceed to trial by the trial court.

Harrah’s Entertainment and its security officers failed in their duty to verify security records to see if Torsha Brown (the plaintiff) was actually barred from the premise prior to arresting her. According to testimony by Ms. Gladys Jackson during the appeal of the disturbing the peace conviction in the Circuit Court of Tunica County, Jackson stated that a pit clerk had called security and said that a “prior perm’ was sitting at the blackjack table in pit three. She stated, “ The pit person called an said they had—we had a person there that had been prior permanently evicted from there.” (page 5) Tunica County Circuit Court Appeal Transcript Docket (CI-2005-0392-AS).

Ms. Brown, who had been at the blackjack table for approximately two hours, was

singled out to be arrested because of an incorrect assumption by the security supervisor that she was an individual barred from the premise. According to Ms. Jackson's testimony, no confirmation or substantiation was made of this alleged statement from a pit clerk. Because the supervisor unreasonably acted upon misleading, unverified information, Ms. Brown was arrested, inappropriately touched by a male officer, and placed in extreme emotional distress. Probable cause must not be based upon an inadequate and unreasonable investigation of the circumstances concerning the alleged criminal conduct. *Benjamin v. Hooper Electronic Supply Co.*, 568 So. 2d 1182, 1190-91 (Miss 1990).

The plaintiff contends that the security supervisor failed in his duty to demonstrate appropriate, company policy oriented decision-making; therefore, he negligently performed his job duties. Alternatively, if the company's policy allows individuals to be arrested based on unverified information, then the company maintains a negligent and unlawful policy.

Through all actions before, during, and after Ms. Brown's arrest, this security supervisor failed to exercise the knowledge, skill or ability ordinarily possessed and exercised by a person in a supervisory position. The reckless, actions and decisions made by the security supervisor to order an arrest without probable cause and without conducting any reasonable inquiry or investigation prior to ordering the plaintiff's arrest were not the actions of a reasonable, prudent individual.

Also, the plaintiff argues that the manner in which the arrest was conducted and the actions of security personnel toward the plaintiff were reckless. *Harrah's Entertainment*

and its security supervisor failed to control the actions of a male security guard who made inappropriate, lewd contact with Ms. Brown.

(Restatement of (Second) of Agency 213 § (1958). States that a person conducting an activity through servants or others is subject to liability for harm resulting from his conduct if he is negligent or reckless.

(a) in giving improper or ambiguous orders or failing to make proper regulations; or (b) in the employment of improper persons or instrumentalities in work involving risk or harm to others; (c) in the supervision of the activity; or (d) in permitting, or failing to prevent negligent or other tortuous conduct by persons, whether or not his agents, upon premises or with instrumentalities under control. (Restatement of (Second) of Agency 213 § (1958).

The supervision by this security supervisor during this arrest was negligent because he failed to reasonably and properly control or correct the actions of a male security officer who initiated improper, unnecessary, and lewd physical contact with Ms. Brown by bending her forward while she was handcuffed and aggressively pulling her jeans up by the back belt loop as far as they could anatomically go. At the time that she was grabbed in this indecent fashion, she was no longer resisting, securely handcuffed and in full compliance with the directives of the security officers. He used his forearm to bend her forward by pushing her back forward as he forcefully grabbed her belt loop and pulled her jeans up.

The actions of this male security officer were plain view of Harrah's Entertainment personnel on the casino floor, the supervising officer, and members of surveillance. His inappropriate contact would be clearly visible if surveillance footage of this incident were

to be released. However, Harrah's Entertainment has refused to release the surveillance, which would clearly show that this male officer's actions were outrageous, excessive, wanton and inappropriate. This male officer was allowed to violate her in plain view of the supervisor and others without any Harrah's Entertainment employee intervening or attempting in any way to stop him. In arguments submitted to the trial court, Ms. Brown maintained that the conduct of both this male security guard and the security supervisor were reckless and outrageous.

Where there is something about the defendant's conduct, which evokes outrage or revulsion, done intentionally--or even unintentionally yet the results being reasonably foreseeable—Courts can in certain circumstances comfortably assess damages for mental and emotional stress, even though there has been no physical injury. *Sears, Roebuck & Co. v. Devers*, 405 So. 2d 898, 902 (Miss. 1981). In *Devers*, a store-patron was detained for a short time when a tag, which had inadvertently been left on a sweater she had purchased set off an alarm while she was leaving the store. The Court held she could bring action for negligence, and damages are recoverable for mental pain and anguish by a willful, wanton, malicious or intentional wrong even though no bodily injury was sustained.

Such a severe violation by this male officer should have been immediately corrected by the supervising officer or another manager and instructed to lead the plaintiff to the security room by guiding her arm or the handcuffs, not by making any unnecessary direct or indirect improper contact with personal parts of the plaintiff's body.

The male officer's actions were not objectively reasonable and went beyond necessary measures needed to conduct a proper arrest. Three female officers were present who

could have properly guided Ms. Brown to the place for her to be detained. She posed no risk to these officers because she was handcuffed with her purse in one hand and approximately \$160 in five dollar (casino chips) in the other hand.

It would have been reasonable and prudent for the security supervisor to instruct a female officer to switch positions with this male officer; however, he failed to give proper directions to any of the security officers during the entire arrest process.

Though this male officer did not frisk her, he unnecessarily compromised her by making indirect contact with her genital area in the way that he grabbed her and in the amount of force that he applied in pulling up her belt loop, thus forcing her underwear up into her buttocks and genital area while she was handcuffed, posing no threat to the officers, and cooperating with them.

The company policy regarding personal contact of male security officers with female arrestees when female security officers are present was either inadequate or not properly followed or supervised.

The deference of male police officers to female officers in conducting the frisk of female suspects appears a common, if certainly not exclusive, practice throughout the country, one which reflects the "[s]ocial sensitivity about stereognosis of . . . the breasts and genital area of a female suspect" *United States v. Kelly*, 913 F.2d 261, 267 (6th Cir. 1990); *United States v. Banshee*, 91 F.3d 99, 101 (11th Cir. 1996).

Neither the security supervisor who participated in the arrest, members of the surveillance team, nor any member of upper security management, or casino management attempted to correct his actions or stop him from doing this to the plaintiff, or even to intervene at all. Harrah's Entertainment's ongoing conduct and refusal to release any

surveillance has only further caused undue emotional distress because of their reckless behavior toward the plaintiff and their indifferent disposition in regard to the severity of this incident.

Members of surveillance were negligent in performing their job duties because they failed to maintain proper and close surveillance of this situation. The actions of this male security officer were perverse and uncalled for.

Surveillance officers are responsible for closely observing the actions of employees as well as guests and reporting all illegal and unusual activities to the appropriate authorities.

Essential duties and responsibilities of a senior surveillance officer include:

Maintaining close surveillance on all casino table games, slots, and other activities via electronic monitoring systems, observing both guest and employee activity to maintain integrity of games and company assets.

Utilizing necessary equipment to identify, record, document, and report illegal and unusual activities occurring in the casino slot area, slot booths, cage areas, count rooms, table games and interrogation room.

Reporting all illegal and unusual activities to the appropriate authorities.

(According to Harrah's Entertainment Career/Employment qualifications for (Senior Surveillance Operator) Job number 1273208; Horseshoe Tunica, Robinsonville, MS)

The right to control is as important as de facto control at the tortuous moment, for the right to control the work of another 'carries with it the correlative obligation to see to it that no torts shall be committed' by the other in the course of the work." *Fruchter v.*

Lynch Oil Co., 522 So. 2d 195, 199 (Miss. 1988)(quoting *White's Lumber & Supply Co.*

v. Collins, 186 Miss. 659, 672, 191 So. 105, 106 (1939)). Therefore, one who controls, or has the right to control, the work of another may be liable as the master of that party.”

It is reasonable to expect a security supervisor, casino floor employees, and members of a casino surveillance team to address and correct such behavior that is blatantly inappropriate and outrageous. These employees were placed in positions dealing with the public by this company, and they committed tortuous acts and failures to act without any reprisal or correction by their employer, Harrah’s Entertainment.

A corporate office or agent may be liable for the torts of the corporation or of other directors, officers or agents when he either knew or in the exercise of reasonable care should have known of the tortuous conduct and should have taken steps to prevent it. *Turner v. Wilson*, 620 So. 2d 545, 548-49 (Miss. 1993).

This male security officer held Ms. Brown firmly in this posture as the arrest progressed from near the front entrance and along with the other officers while pushing her in her back through the casino to the holding/interrogation room where Ms. Brown was confined to a metal bench for a period of approximately one hour. These improper actions should have been closely monitored so that they could have been identified, documented, and reported by members of the surveillance department.

Harrah’s Entertainment failed in their duty to properly train, monitor and/or supervise its security officers to ensure that their actions were not in violation of the rights of the plaintiff, who was an invited patron.

Harrah’s Entertainment failed to hire/maintain competent personnel in vital positions to make important decisions, such as security supervisor and security officers.

The content of the plaintiff's pleadings pointed out these unintentional torts, which should have been sufficiently considered by the trial court. The Mississippi Supreme Court has held that a court looks to the content of the pleadings to determine the nature of the actions. *West v. Combs*, 642 So. 2d. 917, 920 (Miss 1994 (citing *Pierce v. Chapman*, 165 Miss 749, 755, 143 So845, 847 (1932))). "Substance is considered over form." (citing *Lancaster v. Jordan Auto Co.*, 185 Miss. 530, 545, 187 So. 535, 537 (1939). *Eagle Motor Lines v. Mitchell* 223 Miss 398, 411-12 78 So. 2nd 482, 486-487 (1955). "An employer will be liable for negligent hiring or retention of its employee when an employee injures a third party if the employer knew or should have known of the employee's incompetence or unfitness."

Harrah's Entertainment should have reasonably foreseen that their security supervisor and security staff were unable to make vital decisions without causing harm to its patrons.

An affidavit is a sworn statement based on personal knowledge of the affiant, which is signed under the penalty of perjury according to M.R.C.P. 56 (e).

Harrah's Entertainment and its security officers failed in their duty to follow lawful procedures, company policy, or proper protocol by allowing a sworn affidavit to be totally fabricated by a security supervisor and signed by a subordinate officer with its contents not based on truth or personal knowledge of the affiant.

That same supervisor acted in bad faith when he inappropriately and negligently prepared an affidavit by placing the content is his own exaggerated words and negligently directing a subordinate officer to sign and attest to the contents of that affidavit. This supervisor did not have reasonable grounds to believe that the criminal allegations that he

initiated against Ms. Brown were true. These actions further show that he was unfit to be in a supervisory capacity by failing to properly supervise subordinates and by misguiding their actions. Ms. Brown maintains Harrah's Entertainment is liable for the actions of this security supervisor because he acted within the scope of his employment with this company to institute criminal proceedings against her by knowingly providing the court with this false information with the expectation that it would serve as a catalyst for a criminal proceeding. *Downtown Grill, Inc. v. Connell*, 721 So. 2d 1113, 1118 (Miss. 1998) (quoting *Godines v. First Guar. Savs. & Loan Ass'n*, 525 So. 2d 1321, 1325 (Miss. 1988)).

The plaintiff argues that the actions and conduct of this security supervisor, a person in an important, authoritative position within the company, were also outrageous and reckless. Harrah's Entertainment allowed its inadequately trained security personnel under the direction of an incompetent supervisor to use an ill-prepared affidavit to justify this arrest and obtain a disturbing the peace conviction of the plaintiff in the Justice Court of Tunica County, when the company knew or should have known that that the entire arrest was baseless. During the following testimony from Ms. Brown's appeal in the Circuit Court Ms. Jackson changed her version of events from what she told the court in the Justice Court, and the disturbing the peace conviction was overturned in the Circuit Court of Tunica County.

Though Ms. Jackson stated in the Justice Court of Tunica County proceeding that the plaintiff "became violent and pushed over a blackjack table," and had signed an affidavit that she had witnessed Ms. Brown become violent and push over a blackjack table,

during the Tunica County Circuit Court proceeding, she totally changed her account of what happened.

Ms. Jackson made the following statements, which contradicted both her testimony in the Justice Court of Tunica County and her sworn affidavit:

(Page 8 of Direct Examination) Tunica County Circuit Court Appeal Transcript Docket (CI-2005-0392-AS)

Question: “Did you see her push over the blackjack table?”

Answer: “I didn’t see her just push it over you know. It was—“

Question: “Well, tell us how it happened.”

Answer: “It was overturned in the process of arresting her.”

(Page 10 of Direct Examination)

Question: “Well, who pushed the table over?”

Answer: “All I know, it was just knocked—overturned, you know, in the process of us trying to arrest her.”

(Pages 14-15 of Cross Examination) Tunica County Circuit Court Appeal Transcript Docket (CI-2005-0392-AS)

Question: “Okay. Why was I followed, surrounded and forced against the table by these security guards?”

Answer: “You was placed under arrest.”

During both direct and cross examinations, Gladys Jackson admitted that the affidavit that she had signed and testified to in Court had been totally drafted by her supervisor with no input from her, she simply signed it.

The following testimony was given by Gladys Jackson concerning the sworn affidavit that she signed and testified to in Court. (Page 10 of Direct Examination) Tunica County Circuit Court Appeal Transcript Docket (CI-2005-0392-AS)

Question: "Is this the – is this the report that you—

Answer: "Yes, sir"

Question:--"dictated or wrote out yourself that day?"

Answer: "No, sir, my supervisor did the report."

Question: "Okay. You didn't narrate that for him?"

Answer: "No, sir."

Question: Okay. And that's why you charged her with disturbing the peace, because it caused a ruckus, didn't it?"

Answer: "Yes, sir."

(Page 17 of Cross Examination) Tunica County Circuit Court Appeal Transcript Docket (CI-2005-0392-AS)

Question: "Okay. So you said I used several profanity words. But on your affidavit that you gave the Court, it says that I stated, 'I don't have to show you no damn I.D.' Okay. So does that constitute several profanity words?"

Answer: "You used several profanity words."

Question: "Okay. If I used those profanity words, why didn't you include those in the affidavit?"

Answer: “I don’t type up an affidavit. I only—

Question: “But you signed it.”

Answer: “—signed the one.”

Question: “But you signed your name. Is this your signature right here? Is this your signature?”

Answer: “Yes, ma’am.”

Though Gladys Jackson placed her signature on the affidavit that she introduced to the court, the information therein was not at all of her personal knowledge. Jackson admitted under oath that the statement in the affidavit stating, “she became violent and pushed over a blackjack table,” was not her own words, but the words of her supervisor and also admitted that this statement was not what she had actually witnessed.

Ms. Jackson’s statement, “I don’t type up an affidavit. I only signed the one.” indicates that it is the usual process for a supervisor to draft an affidavit for a subordinate officer to sign as if it is written his or her own words. This statement by Ms. Jackson reveals that she was not adequately or reasonably trained or prepared with the knowledge or skills to competently and lawfully perform her job duties without causing legal harm to Ms.

Brown, due to Harrah’s Entertainment’s lack of diligence in training her, or monitoring her actions or ongoing performance.

Also, Ms. Jackson was negligently directed by her supervisor to apply her signature to a statement that she didn’t agree with or witness; therefore, it was not of her personal knowledge as the law requires.

Ms. Jackson, an officer with 10 years of experience, not only disavowed her sworn

affidavit under oath, but also was negligent and incompetent in fulfilling several of her essential daily job duties which requires that a Harrah's Entertainment Security Officer is able to:

- 1.) Provide testimony in court and other administrative hearings.
- 2.) Interview, investigate and document all applicable incidents in accordance with company policy
- 3.) Prepare effective written reports
- 4.) Adhere to regulatory, departmental and company policies
- 5.) Enforce all company policies and procedures

(According to Harrah's Entertainment Career/Employment qualifications for (Security Officer) Job number 1198196; Tunica—Regional, Robinsonville, MS)

Harrah's Entertainment failed in their duty to rectify an arrest, which had obviously been made in error and release Ms. Brown after it was realized that she had never been barred from the premises.

The misconduct on behalf of this security supervisor and other employees was ratified by Harrah's Entertainment because the company, rather than admit that an error in judgment had been made, by admitting false arrest upfront, allowed these inappropriate and unreasonable criminal charges to go forward. Under the doctrine of respondeat superior, the master is liable for the acts of his servant, which are done in the course of his employment and in furtherance of the master's business. *Sandifer Oil Co. v. Dew*, 220 Miss. 609, 630 71 So. 2d 752, 758 (1954).

The Mississippi Supreme Court has stated that "the main element required to constitute the relationship of master and servant is that the servant be subject to the control of the

master in carrying on the business at the time of the injury. *Kisner v. Jackson*, 159 Miss. 424, 428-29, 132 So. 90, 91 (1931).

The company had control and the ability to control the “specific instrumentality”, which was the actions of this security supervisor, which caused proximate harm to Ms. Brown, so Harrah’s Entertainment is vicariously liable for his actions. The company failed to maintain reasonable direction and control over his actions. Harrah’s Entertainment had the right and the duty to control and direct the actions of all of their employees. The company not only had the duty to control what should have been done by its employees, but the manner in which its employees carried out these actions.

In *Kisner v. Jackson*, So. 2d 90, 91 159 424, 428-29, 90, 91 (Miss. 1931), the Mississippi Supreme Court expounded a non-exclusive list of factors that are to be used in determining whether a party is the master of another party:

- (1) Whether the principal master has the power to terminate the contract at will;
- (2) whether he has the power to fix the price in payment for the work, or vitally controls the manner and time of payment;
- (3) whether he furnishes the means and appliances for the work;
- (4) whether he has control of the premises;
- (5) whether he furnishes the materials upon which the work is done and receives the output thereof, the contractor dealing with no other person in respect to the output;
- (6) whether he has the right to prescribe and furnish the details of the kind and character of work to be done;
- (7) whether he has the right to supervise and inspect the work during the course of the employment;

(8) whether he has the right to direct the details of the manner in which the work is to be done;

(9) whether he has the right to employ and discharge the sub employees and to fix their compensation; and

(10) whether he is obliged to pay the wages of said employees.

The negligent actions of this security supervisor as well as other members of security were within the scope of their employment with Harrah's Entertainment. To be within the scope of employment, the act must be (1) the kind he is employed to perform, (2) occur substantially within the authorized space and time limits, (3) actuated, at least in part, by a purpose to serve the master, (4) and if force is intentionally used, it is not unexpected by the master. (quoting Restatement of Agency §228 (1958).

The appellant's negligence pleadings are not governed by the one-year statute of limitations but by the three-year statute of limitations, *Norman v. Bucklew*, 684 So. 2d 1246, 152 (Miss 1996).

The trial court did not allow the plaintiff's negligence claims to go forward to allow a jury to decide if there were genuine issues of material fact. Instead, the trial court determined that all of the plaintiff's claims were governed by the one-year statute of limitations. However, "If there is a doubt as to whether there exists a genuine issue of material fact, the non-movant receives the benefit of that doubt." *Downs v. Choo*, 656 So. 2d. 84, 85-86 (Miss. 1995). "[A]ll questions of negligence and contributory negligence shall be for the jury to determine." Miss. Code Ann. § 11-7-17 (Supp. 2001). Harrah's Entertainment became further liable for the actions of their employees when the company failed to make any effort to acknowledge that errors in judgment had been made

by their employee, a security supervisor, when he ordered the arrest of Ms. Brown without verifying any of his baseless suspicions and also when he failed to properly and reasonably adhere to company policy or to the law during the monitoring of the arrest or the preparation of an affidavit against Ms. Brown. The security supervisor's drafting of an affidavit with inaccurate, exaggerated information along with his negligently directing a subordinate security officer to sign it without the information therein being of her personal knowledge violated the (Restatement (Second) of Agency 213 (1958). He gave improper orders and failed to abide by proper regulations.

These breaches of duty caused injury to Ms. Brown including emotional distress because of this negligence, loss of wages, and pain and suffering to Ms. Brown.

This entire flawed investigation and arrest process was under the direction and supervision of a security supervisor, whose decisions were hasty, reckless, and insufficient and who had been given essential and critical duties for which he was not prepared to perform.

Harrah's Entertainment authorized the manner in which this security officer made irresponsible, unreasonable decisions, and this security supervisor was not adequately trained or supervised by the surveillance department whose job is to monitor actions of both patrons and employees in the casino. Also, Harrah's Entertainment was maintaining a right of control over the performance of that aspect of work which gave rise to Ms. Brown's injuries."

Harrah's Entertainment was reckless in employing this security supervisor who served in a managerial capacity and who negligently directed subordinate employees. Harrah's

Entertainment's ratification of his conduct deems the company liable for his actions because they failed to address and provide any corrective action for his reckless behavior. This security supervisor who was in charge of ordering and carrying out the arrest process of Ms. Brown had been given this authority by Harrah's Entertainment and was allowed without restraint to make unreasonable decisions. Moreover, an affidavit stating "Horseshoe Casino vs. Torsha Brown" was submitted to the Justice Court of Tunica County to support unfounded criminal charges. The company's support of the progression of this affidavit into a court of law shows that the company was in agreement with the inappropriate actions of this security supervisor. This supervisor was allowed to engage in misconduct with out consequence or reprimand, and he was also allowed to recklessly mislead other employees in his control. According to **Miss. Code Ann. § 11-7-17** (Supp. 2001), it would be appropriate for a jury to make the decision as to whether the actions of Harrah's Entertainment and its employees constituted negligence. Before this incident, Harrah's Entertainment should have been aware of this supervisor's hasty, aggressive, and dishonest propensities and should have acted accordingly with additional and adequate supervision of his actions, additional supervisory training or perhaps reassignment to a position for which he was fit. Reasonable monitoring and ongoing employee development of this security supervisor's job performance and conduct should have been done to prevent the plaintiff from being harmed by his actions and failures to reasonably take action as a supervisor. The Supreme Court of Mississippi has held that the totality of the circumstances must be examined when measuring **conduct** complained of in order to determine if the reasonable trier of fact could find malice, gross negligence or reckless disregard. *Summers ex rel*

Dawson v. St. Andrew's Episcopal Sch., Inc., 759 So.2d 1203, 1215 (Miss. 2000).

During both her pleadings and oral arguments to the trial court, the Ms. Brown argued that Harrah's Entertainment committed these negligent acts; and also disputed the version of events set forth by the defendant, in which they inaccurately stated that she had been banned from the property. The trial court accepted the arguments of Harrah's Entertainment and rejected Ms. Brown's claims of negligence, even though there were two totally different versions of the events occurring on September 27, 2008. According to *Moss v. Basketville Casket Co.*, 935 So. 2d 393, 398 (Miss. 2006), There is always a genuine issue of material fact when "one party swears to one version of the matter in issue and another says the opposite."

II. Whether the trial court erred by applying an incorrect standard of law when it granted summary judgment in favor of the defendant.

There were several issues as to disputed material facts, which should have been allowed by the trial court to proceed to a jury trial. If the trial court had properly considered all evidentiary matters in the record including: affidavits, depositions, admissions, interrogatories, pleadings etc. according to Miss. Rules for Civil Procedure 56 (c.), summary judgment would not have been deemed appropriate. "An issue of fact may be present where there is more than one reasonable interpretation of undisputed testimony, where materially different but reasonable inferences may be drawn from uncontradicted evidentiary facts, or when the purported establishment of the facts has been sufficiently incomplete or inadequate that the trial judge cannot say with reasonable confidence that

the full facts of the matter have been disclosed. *Dennis v. Searle* 457 So. 2d 941, 944 (Miss. 1984),

In Daniels v. GNB, Inc., 629, So. 2d 595 (Miss. 1993), a review by the Supreme Court of Mississippi of a granted motion for summary judgment determined that summary judgment cannot be used to deprive a litigant of a full trial of genuine fact issues. The burden of demonstrating that no genuine issue of fact exists rests on the moving party with the non-moving party being given the benefit of the doubt. Had Ms. Brown been given the benefit of doubt by the trial court, the issues of this case would have received a full trial of the genuine fact issues. In question are genuine issues of fact as to whether a security supervisor and security staff and other employees who failed to reasonably and competently perform their job duties and the company who employed them are liable for injuries to Ms. Brown caused by their actions and failures to take action.

Mantachie Natural Gas District v. Mississippi Valley Gas Company, 594 So 2d 1170, 1172 (Miss. 1992) *see also in Mink v. Andrew Jackson Casualty Co.*, 537 So. 2d 431, 433 (Miss. 1988) [citing *Ratliff v. Ratliff* 500 So. 2d 981 (Miss 1986)], the Supreme Court of Mississippi said, “motions for summary judgment should be viewed with great skepticism.” However, Ms. Brown contends that in this case the trial court failed to apply the degree of skepticism needed to properly grant summary judgment to the defendants and that the arguments by Harrah’s Entertainment did not meet the necessary requirements to have been granted summary judgment.

The Mississippi Supreme Court explained the requirements for the entry of summary judgment in *Galloway v. Travelers Ins. Co.*:

“In our view, the plain language of Rule 56(c) mandates the entry of summary judgment,

after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. *Galloway v. Travelers Ins. Co.*, 515 So. 2d 678, 683 (Miss. 1987).

The evidence, consisting of the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, must be viewed in a light most favorable against whom the motion has been made. *Foster v. Noel*, 715 So. 2d 174, 180-81 (Miss. 1998); *Morgan v. City of Ruleville*, 627 So. 2d 275, 277 (Miss. 1993); *Cole v. Methodist Med. Ctr.*, 820 So. 2d 739, 742 (Miss. Ct. App. 2002); *Dailey*, 790 So. 2d at 907.

Summary judgment "is a powerful tool that should be used sparingly by the trial judge." *Cannon v. Mid-South X-Ray Co.*, 738 So. 2d 274, 275 (Miss. Ct. App. 1999).

Ms. Brown further contends that because the defendants contumaciously refused to provide any answers to interrogatories, which made it improper for the trial court to find summary judgment in favor of the defendants because there were no answers to interrogatories submitted by the defense for the court to consider in its summary judgment deliberations. The plaintiff did not respond to the defendant's summary judgment motion with general allegations, but provided the trial court with specific facts showing that issues exist, which necessitate a trial as required in: *Drummond v. Buckley*,

627 So 2d. 264, 267(*Miss 1993*).

III. Whether the trial court abused its discretion by allowing Harrah's Entertainment to withhold critical surveillance evidence.

The Supreme Court of Mississippi has held that it is a general rule that the intentional spoliation or destruction of evidence relevant to a case raises a presumption, or, more properly, an inference, that this evidence would have been unfavorable to the case of the spoliator. Such a presumption or inference arises, however, only where the spoliation or destruction was intentional and indicates fraud and a desire to suppress the truth, and it does not arise where the destruction was a matter of routine with no fraudulent intent. *Tolbert v. State*, 511 So.2d 1368, 1372-73 (Miss. 1987)(quoting *Washington v. State*, 478 So.2d 1028, 1032-33 (Miss. 1985)).

The Court stressed in a patron dispute case, *Mississippi Gaming Commission, CDS Service Company, ...CDS Gaming Company and Casino Data Systems v. Effie Freeman* 747 So.2d at 247, (Miss 1998) ...patrons are at the mercy of the gaming system and the law, and the judicial system is their only current safeguard legal authority that allows this Court to protect the substantive due process rights of patrons rests in Miss. Code Ann. § 75-76-171(3)(a).

It is a reasonable expectation for Horseshoe Casino, which has access to numerous angles of highly sophisticated surveillance equipment, to provide a copy of that video to the court when they have initiated prosecution toward a patron. This evidence was not made available, or shown during the Tunica County Justice Court proceeding, the appeal proceeding in the Tunica County Circuit Court or when requested in the form of interrogatory requests.

It would not be a matter of a realistic or practical routine for such conclusive and decisive

surveillance evidence to be withheld or destroyed prior to an upcoming court proceeding if Horseshoe Casino deemed that this footage would show the actions of their employees to be appropriate and lawful.

This surveillance footage was of such a nature that Ms. Brown could not have obtained comparable evidence by any other means, and it was intentionally suppressed in an effort to conceal the truth. It should have been adequately preserved and produced for both court proceedings and also during discovery attempts.

The defendant's actions adversely affected a substantial right of Ms. Brown, her right to due process, by the defendants concealing or destroying this critical surveillance evidence.

In *Thomas v. Isle of Capri Casino*, 781 So. 2d 125, 134 (Miss. 2001), The Mississippi Supreme Court held that the negligent loss of evidence results in a permissible inference that the lost evidence would have been unfavorable to the party who lost the evidence. This lack of surveillance evidence in this case severely compromised the ability of the trial court to make adequate and proper decisions regarding the actions of the Harrah's Entertainment employees toward Ms. Brown.

The trial court did not instruct this evidence to be produced or released by the defendants. This surveillance would have definitively been viewed by the trial court the events surrounding Ms. Brown's arrest; however, Harrah's Entertainment refused to release it because this evidence was destroyed or otherwise withheld. Harrah's Entertainment deliberately spoiled, hid, or withheld tangible evidence, and this deliberate failure to preserve evidence interfered with Ms. Brown's due process rights.

Numerous measures have been used by Harrah's Entertainment to conceal the truth; however, the facts of this case overwhelmingly show that Horseshoe security personnel committed acts for which the company should be held liable.

IV. Whether the trial court abused its discretion by allowing the defendants to violate both Miss. Rules for Civil Procedure and also violate trial court's order setting deadlines for discovery, hearing on preliminary matters, and pretrial statement.

Harrah's Entertainment flagrantly disregarded the procedural directives of the trial court. The defendants improperly proceeded in filing their motion to compel, their motion for protective order, and their motion for summary judgment.

The trial court was informed in a letter from the plaintiff letter to the court about a possible unfair advantage that the defendant had because the plaintiff had been ordered by the trial court to provide answers to interrogatories, while the defendants refused to abide by the rules of the court. This letter had been addressed to the trial court on June 19, 2008, prior to the July 23rd motion hearing asking the trial court to review this potential unfair advantage in favor of the defendant when the defendant's motion to compel answers to interrogatories was well-taken without any consideration being given to the defendant's refusal to answer any of the plaintiff's interrogatories. The defendant not only had access to answers to their interrogatories in their entirety without the plaintiff having answers to any of her interrogatories, but also they proceeded with both their motion to compel and their motion for protective order in violation of an order by the trial court.

In the trial court's order setting deadlines for discovery, hearing on preliminary matters and pretrial statement 1) (b) states, "Prior to service of motions for extension of

discovery, protective orders and/or to compel discovery for whatever reason, all counsel shall be under a duty to confer in good faith to determine to what extent such discovery disputes can be resolved before presenting the issue to the assigned judge. No such motion shall be heard by the assigned judge unless counsel for the moving party shall incorporate in his motion a certificate that he has conferred in good faith with opposing counsel in an effort to resolve the dispute and has been unable to do so.” (4) “That failure by any party and/or attorney to comply with any one or more of the provisions contained hereinabove shall subject such party and/or attorney to the imposition of appropriate sanctions including the assessment of costs, expenses and attorney’s fees.” Counsel for the defendant violated the above portion of the trial court’s order by failing to confer with Ms. Brown, prior to service of their motion to compel and their motion for protective order. The trial clerk’s record will reflect that no certificate showing that counsel for the defendant had conferred with Ms. Brown was incorporated with either their motion to compel or in their motion for protective order.

Ms. Brown abided by the trial court’s order and had not filed a motion to compel answers to interrogatories because she had not conferred with the defendant’s counsel and made an attempt to resolve the matter of their refusal to answer interrogatories as mandated in the trial court’s order. She abided by the trial court’s order although the defendant refused to provide any responses to the interrogatories necessary for the proper and lawful achievement of discovery. The defendants’ refusal to produce information requested during discovery deprived the plaintiff of the opportunity to evaluate and develop evidences not otherwise available to her. The trial court abused its discretion by not mandating that the defendant’s abide by either the rules of the court or Miss. Rules

for Civil Procedure.

The trial judge's ruling regarding discovery will only be reversed if there has been an abuse of discretion. *Harkins v. Paschall*, 348 So. 2d 1019, 1022 (Miss. 1977).

In the defendants' motion for summary judgment, the defendants stated that they relied upon an affidavit by an individual named Jimmy Joyner. However, the rules of M.R.C.P. (Rule 4 of Motion Practice 5(a) and 6 (d) were violated) because the trial clerk's record will reflect no certificate of service was made of any affidavit from an affiant named Jimmy Joyner. Also, the plaintiff was never served with a copy of any affidavit from the defendants.

Rule 4 (Responses). "The original of any response to the motion, all opposing affidavits and other supporting documents shall be filed with the clerk where the action is filed."

5(a) "requires that every paper relating to discovery is required to be served upon a party unless the court otherwise orders."

6(d) requires that affidavits supporting motions should be served with that motion."

The plaintiff argues that the trial court's consideration of the information from an alleged affidavit, which was not served with the defendant's summary judgment motion and was not part of the trial clerk's record, was improper.

Mississippi **Rules of Civil Procedure** (M.R.C.P.) 37(e). The rule allows sanctions for discovery violations "as may be just" in response to abuses in "seeking, making or resisting discovery. When a discovery violation occurs, one of the sanctions available under the rules of civil procedure is "an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence." Miss. Rules of Civil Procedure 37(b)(2)(B)

Ms. Brown argues that the defendants' actions were a willful, deliberate, and cynical scheme to gain a substantial tactical advantage by knowingly violating both discovery rules and with rules set forth by the trial court. *Skaggs v. State*, 676 So.2d 897 (Miss. 1996) and *Houston v. State*, 531 So.2d 598 (Miss. 1988).

After reviewing page (047) of the record of the trial clerk, the plaintiff argues that counsel for the defendants deceptively wrote a letter to the trial clerk stating the following,

"Enclosed you will find Motion for Summary Judgment, a Memorandum in Support of that Motion and Affidavit of Jimmy Joyner to be filed on behalf of the defendant. Please stamp the extra copies as "Filed" and return them to me in the enclosed self addressed, stamped envelope." All of the listed items were contained in the trial clerk's file except an affidavit from an individual from Jimmy Joyner.

The plaintiff argues that this letter was willfully written in a deceptive manner knowing that no such affidavit was filed with the trial clerk or served upon the plaintiff.

The plaintiff further argues that even if an actual affidavit by this alleged person had been presented to the court, the information therein would have been fabrications along with hearsay from this alleged individual. The plaintiff further maintains that this alleged affiant, if this person exists at all, could not possibly have personal knowledge of the statements alleged in the defendant's summary judgment motion. The averments contained in a witness's affidavit must be based on the witness's personal knowledge. Otherwise, the affidavit has no probative value. M.R.C.P. 56(e).

V. Whether the trial court abused its discretion and failed to implement balance and equity during oral arguments and motion hearing requests.

During her oral argument, Ms. Brown pointed out elements of the security supervisor's negligent supervision by telling the trial court (motion hearing transcript pages (10-11) that a competent, reasonable security supervisor would not have instructed a subordinate to sign an affidavit which was not true. The trial court responded (page 11) that would be an intentional act, not negligence. The plaintiff argues that the trial court abused its discretion by promptly rejecting the plaintiff's arguments rather than fully considering them determine if they had merit, as she was not allowed to provide the trial court with a complete rebuttal of the defendant's arguments.

(page 11) (by Ms. Brown) "But see, he --- when---"

(by the Trial Court), "I don't care. Go to the next one. That's an intentional not a negligent."

After hearing arguments from counsel for the defendant, Ms. Brown contends that equivalent consideration was not given to her arguments to see if there was value to her case, as had been given to the defense in their arguments.

In *McFadden v. State*, 580 So.2d 1210, 1214 (Miss. 1991) (quoting *Haines v. Kerner*, 404 U.S. 519, 529 (1972)), the Supreme Court recognized that pleadings filed by pro se litigants are to be held "to less stringent standards than formal pleadings drafted by lawyers." It is true that **litigants** appearing **pro se** are generally to be held to the same standard regarding pleadings and procedure as are those appearing through counsel." *Dethlefs v. Beau Maison Dev. Corp.*, 511 So. 2d 112, 118 (Miss. 1987). "Nevertheless, appellate courts are also admonished to pay special attention to the pleadings of **pro se litigants** to discover whether, though not pled with the clarity that might otherwise be expected, the litigant has raised issues that might have merit." *Myers v. State*, 583 So.

2d174, 176 (Miss.1991).

There were two motions scheduled to be heard on July 23rd 2008. motion for protective order (by the defendants) and cross-motions for summary judgment (by both parties).

The trial court asked (page 3 of motion hearing transcript) “.....who filed what first?” (By Mr. Moore: Well, this is before you on my motion for summary judgment. There is also a cross-motion for summary judgment that was filed as part of the plaintiff’s response, and those were the only two motions that are noticed for today.”

However, (page 74) of the trial clerk’s record reflects that there was also a motion for protective order scheduled to be heard on July 23, 2008. The motion for protective order was filed by the defendant with the clerk’s office on March 31, 2008.

The plaintiff contends that court abused its discretion during the motion hearings scheduled for summary judgment motion and the motion for protective by allowing the proposition from the defendant’s counsel stating that he didn’t feel like it would be necessary to hear arguments on the defense’s motion for protective order to sustain and set the tone for the proceeding without using the court’s authority to take charge and make an imperative decision on the matter. (Motion hearing transcript (page 3) By Mr. Moore) “Ms. Brown points out there is also a pending motion for a protective order that I don’t think is necessary in light of these motions that we’re going to hear today.”

Ms. Brown further argues that it was unfair to the plaintiff for these two motions to be simultaneously scheduled on July 23rd 2008, when the information needed from the outcome of the motion for protective order hearing (answers to interrogatories) is one of the evidentiary matters according to Rule 56 (c) that needed to be considered by the trial court prior to a making an appropriate ruling in the summary judgment hearing. Thus,

Ms. Brown maintains that it was improper for the trial court to hear and rule on a motion for summary judgment when a discovery request (a request for answers to interrogatories), which might have lead to the production of evidence relevant to the summary judgment motion, was still pending and the plaintiff, who seeking that discovery, had properly made the request for discovery.

The defense's suggestion not to hear their motion for protective order was adhered to by the trial court with no lucid directives or instructions to either party. The plaintiff argues that the trial abused its discretion when it did not assert its authority to make the July 23rd motion hearing unbiased and fair. The plaintiff further contends the trial court insufficiently used its official power to balance the situation regarding discovery and thus allowing prejudice against her ability to go forward with her case. Ms. Brown also contends that the defense's refusal to provide answers to interrogatories without giving the trial court a reasonable explanation as to why they were avoiding discovery, interfered with her rights to due process.

Without proper responses to the plaintiff's interrogatories propounded upon the defense, summary judgment was improper. There was not adequate time for discovery according to Rule 56(c), and also the plaintiff had no responses interrogatories, which had been properly requested from the defense.

The trial court did not give any directive or address the issue of hearing the defendant's motion for protective order. Counsel for the defendant suggested that he did not think hearing that motion (Motion for Protective Order) would be necessary. The trial court abided by that counsel's opinion, even after Ms. Brown informed the trial court of this other motion that needed to be heard. The trial court did not give any directives about

whether or not the defense's motion for protective order would be heard. Instructions or directives on hearing the defense's motion for protective order would have allowed fairness and due process to the plaintiff.

VI. Whether the trial court abused its discretion by directing motions to be heard in the same setting in which information obtained from one of these motions was a required evidentiary matter to be considered for another motion

The plaintiff argues that she was not allowed to provide the trial court with a complete rebuttal of the defendant's arguments. She further maintains that there were several important points that she needed to express to the trial court. (Page 14 of motion hearing transcript)

By The Court: Thank you, Ms. Brown. I've heard enough. . . .everything you've said goes to false arrest, which is an intentional act that is barred by a one-year statute of limitations....."

By Ms. Brown: Can I say something?

By the Court: No, ma'am. We've—I've heard enough."

During her oral arguments Ms. Brown pointed out the security supervisor's negligent supervision by telling the trial court (motion hearing transcript pages (10-11) that a competent, reasonable security supervisor would not have instructed a subordinate to sign an affidavit which was not true. The trial court responded (page 11) that would be an intentional act not negligence. The trial court abused its discretion by promptly rejecting the plaintiff's arguments rather than fully considering them to properly determine if they had merit,

(page 11) (by Ms. Brown) "But see, he --- when---"

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(By Mr. Moore: Well, this is before you on my motion for summary judgment. There is also a cross-motion for summary judgment that was filed as part of the plaintiff's response, and those were the only two motions that are noticed for today."

However, (page 74) of the trial clerk's record reflects that there was also a motion for protective order scheduled to be heard on July 23, 2008. The motion for protective order was filed by the defendant with the clerk's office on March 31, 2008.

The court abused its discretion during the motion hearings scheduled for summary judgment motion and the motion for protective by allowing the proposition from the defendant's counsel stating that he didn't feel like it would be necessary to hear arguments on the defense's motion for protective order to sustain and set the tone for the proceeding without using the court's authority to take charge and make an imperative decision on the matter. (Motion hearing transcript (page 3) By Mr. Moore) "Ms. Brown points out there is also a pending motion for a protective order that I don't think is necessary in light of these motions that we're going to hear today." Instructions or directives on hearing the defense's motion for protective order would have allowed fairness and due process to the plaintiff

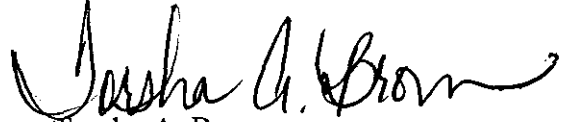
Also, it created prejudice against the plaintiff for the trial court to make it imperative that these two motions to be simultaneously scheduled on July 23rd 2008, when the information needed from the outcome of the motion for protective order hearing (answers to interrogatories) was one of the evidentiary matters according to M. R. C. P. Rule 56 (c) that needed to be considered by the trial court prior to a making an appropriate ruling in the summary judgment hearing. It was improper for the trial court to hear and rule on a motion for summary judgment when a discovery procedure (a request for answers to interrogatories), which might have led to the production of evidence relevant to the summary judgment motion, was still pending and the plaintiff, who was seeking this discovery, had properly made the request for answers to interrogatories.

Conclusion:

For the foregoing reasons and on the basis of the record and the authorities cited, I, Torsha A. Brown, appellant in this case. respectfully request that this case be reversed

and remanded by this Honorable Court to the Tunica County Circuit Court so that it may be heard by a jury.

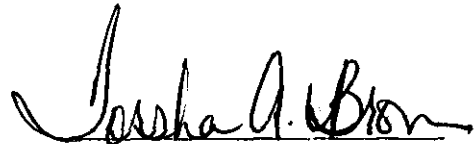
Respectfully Submitted,



Torsha A. Brown
1110 East Tyler
West Memphis, AR 72301

CERTIFICATE OF SERVICE

I do certify that a true and exact copy of the foregoing document has been mailed by United States mail, postage paid, to Mr. Robert Moore, attorney for the defendant, 100 North Main Building, Suite 3400, Memphis, TN 38103-0534, this the 5th day of December, 2008.



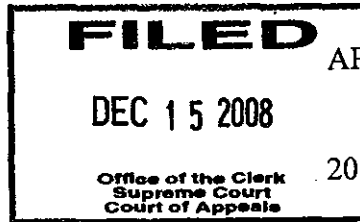
Torsha A. Brown
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West Memphis, AR 72301

IN THE SUPREME COURT OF MISSISSIPPI

TORSHA A. BROWN

V.

HARRAH'S ENTERTAINMENT
d/b/a
HORSESHOE CASINO-TUNICA



APPELLANT

2008-CP-01430

APPELLEE

CERTIFICATE OF SERVICE

I do certify that a true and exact copy of the Appellant's Brief has been mailed by United States mail, postage paid, to the Trial Court, The Honorable Albert B. Smith, P.O. Drawer 478, Cleveland MS, 38732, on this the 12th day of December, 2008.

A handwritten signature in black ink, appearing to read "Torsha A. Brown". The signature is written in a cursive, flowing style.

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