NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 1206

TONY CHANEY

VERSUS

RACES AND ACES
(THE OLD EVANGELINE DOWNS)
AND VINSON GUARD

On Appeal from the 18th Judicial District Court
Parish of West Baton Rouge, Louisiana
Docket No. 34,945, Division "D"
Honorable William C. Dupont, Judge Presiding

Tony Chaney **Baton Rouge, LA**	**Plaintiff-Appellant** **In Proper Person**
John M. Madison, Jr. **Wiener, Weiss & Madison** **Shreveport, LA**	**Attorney for** **Defendant-Appellee** **The Old Evangeline Downs, L.L.C.** **d/b/a Races and Aces**
Stephen E. Broyles **Glusman, Broyles & Glusman, L.L.C.** **Baton Rouge, LA**	**Attorney for** **Defendant-Appellee** **Vinson Guard Service, Inc.**

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

Judgment rendered December 23, 2008

PARRO, J.

The plaintiff appeals a summary judgment that dismissed his claims against the defendants. For the following reasons, we affirm.

Factual and Procedural Background

While a patron at Races and Aces Casino, an off-track betting facility in Port Allen, Tony Chaney (Chaney) made an outburst of noise when his horse won a race, after which Chaney was confronted by a security guard working at the establishment and employed by Vinson Guard Service, Inc. (Vinson Guard). Following the confrontation, the West Baton Rouge Sheriff's Office was contacted, and Chaney was arrested. Subsequently, Chaney filed a petition for damages against The Old Evangeline Downs, L.L.C. d/b/a Races and Aces Casino (R&A) and Vinson Guard, contending that his constitutional rights were violated in that he was falsely charged and incarcerated. In his petition, Chaney noted that R&A did not have a rule that prohibited its patrons from raising their voice or shouting. He alleged that during his arrest, his hands were cuffed, which caused abrasions, the deputy refused to loosen the cuffs, and he was forced to submit to a DNA test in violation of LSA-R.S. 15:602-614, which limited DNA testing to individuals charged with a felony.

After filing their answers, Vinson Guard and R&A filed separate motions for summary judgment. Chaney's deposition testimony was offered by the defendants in support of their motions. In his deposition, Chaney testified about the incident. He was unsure as to how long, one to two hours, he had been at R&A betting on horses when he hit a long shot and shouted "pie-yah" twice. He was then approached from behind by a security guard and told to be quiet. According to Chaney, the security guard was "making poking signs at the back of [Chaney's] head" and told him that "if [he] didn't shut up, he was going to call the police." He objected to the security guard's request as he believed that shouting was a "common custom" in R&A and was allowed. The security guard informed him that he had every right to demand that he quiet down, to which Chaney responded, "get the f--- away from me or I'll kick [your] a--." Chaney

explained that he meant what he told the security guard, that is, if the guard did not leave, Chaney intended to kick his "a--." The security guard then spoke with R&A's manager,[1] and the sheriff's office was called. Minutes later, a deputy arrived and escorted Chaney outside where he was handcuffed and taken to the police station. He was charged with simple assault. When no one from Vinson Guard or R&A appeared at the criminal proceeding, the charges against Chaney were dismissed.

Chaney opposed the motions, urging that his conduct and behavior were considered normal and acceptable within gaming businesses of this nature but offered no evidence.

Following a hearing on the motion for summary judgment, the trial court determined that no genuine issue of material fact existed and that summary judgment was appropriate. Therefore, Chaney's claims were dismissed. Chaney appealed, contending for the first time that Vinson and R&A failed to give proper notice to the Louisiana Racing Commission regarding his eviction/exclusion.[2] He also re-urged the absence of the establishment of a noise policy by the Louisiana Racing Commission. Chaney further questioned whether "a guilty conviction can be rendered in a civil matter when the alleged victim does not participate in the criminal proceeding." In essence, he questioned the use of the simple assault charge as a basis for his arrest in light of the later dismissal of the simple assault charge.

Discussion

Wrongful arrest or the tort of false imprisonment occurs when one arrests and restrains another against his will and without statutory authority. Kennedy v. Sheriff of East Baton Rouge, 05-1418 (La. 7/10/06), 935 So.2d 669, 690. The tort of false imprisonment or false arrest consists of the following two essential elements: (1)

[1] Chaney did not have any conversations with the manager, but heard her inform the police after he had been handcuffed and placed in the police car that R&A had a rule that prohibited patrons from raising their voices or shouting.

[2] Because this argument was not raised in the trial court, we decline to address it for the first time on appeal. See Uniform Rules-Courts of Appeal, Rule 1-3.

detention of the person, and (2) the unlawfulness of the detention. Id. A peace officer may arrest a person without a warrant when the peace officer has reasonable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer. LSA-C.Cr.P. art. 213(3).

Although the security guard was armed, he did not pull out his gun, nor did he take on the task of physically ejecting Chaney. The deposition of Chaney confirms that Chaney remained in the establishment after his confrontation with the security guard. There is no evidence that the security guard or any employee of R&A restrained him or prevented him from leaving. Rather, the security guard, without physically detaining Chaney, simply called the sheriff's office to have a deputy come to the establishment to resolve the matter. Chaney was detained only when the deputy asked him to step outside, where he was handcuffed and transported to the police station.

Simple assault is an assault committed without a dangerous weapon. LSA-R.S. 14:38. Assault is an attempt to commit a battery or the intentional placing of another in reasonable apprehension of receiving a battery. LSA-R.S. 14:36. Battery is the intentional use of force or violence upon the person of another. LSA-R.S. 14:33.

There is no dispute of fact as to what physically took place in the establishment and the words that were exchanged between the parties. By his own admission, Chaney threatened to use force against the security guard and fully intended to follow through with his threat so as to intentionally place the security guard in reasonable apprehension of receiving a battery. Furthermore, Chaney's admission provides reasonable cause for the action taken by the security guard and R&A's manager at the time that it was taken. Chaney's account of the events also supports a reasonable belief by the arresting deputy that a simple assault had been committed which, in turn, supports the detention and subsequent arrest by the deputy. The fact that the charges were not pursued is of no consequence to Chaney's civil action.

Considering the above, we conclude that there is no factual support for an essential element of Chaney's cause of action for false imprisonment or false arrest

against Vinson Guard and R&A. Therefore, summary judgment was appropriate.

Answer to Appeal

In its answer to Chaney's appeal, Vinson Guard requested damages from Chaney for frivolous appeal pursuant to LSA-C.C.P. art. 2164. Damages for a frivolous appeal may be awarded when there is no serious legal question, when the appeal is taken solely for the purpose of delay, or when it is evident that the appellant's counsel does not seriously believe in the position he advocates. Cortes v. Lynch, 02-1498 (La. App. 1st Cir. 5/9/03), 846 So.2d 945, 954. The courts have been very reluctant to grant damages under this article, as it is penal in nature and must be strictly construed. Lane Memorial Hosp. v. Gay, 03-0701 (La. App. 1st Cir. 2/23/04), 873 So.2d 682, 687. Rather, appeals are favored, and damages for frivolous appeal are granted only when clearly due. Charleston v. Berry, 97-2527 (La. App. 1st Cir. 12/28/98), 723 So.2d 1069, 1075. Although we have determined that this appeal lacks merit, we cannot say that Chaney did not seriously believe the position he advocated or that this appeal was taken solely for purposes of delay. Therefore, damages for frivolous appeal are not warranted.

Decree

For the foregoing reasons, the judgment granting Vinson Guard and R&A's motions for summary judgment and dismissing Chaney's claims is affirmed. All costs of this appeal are assessed to Tony Chaney.

AFFIRMED.