

# Op-Ed/Editorials: Who Owns Tokens Left In Slot Machine Trays

January 25, 2006

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Stella Romanski found a nickel token in a slot machine tray and won a jackpot, thanks to a runaway jury and judges who think casinos have too much money. Stella, 72, and her friends, Dorothy Dombrowski and Linda Holman, had paid \$9.00 each for bus rides and a lunch buffet at the MotorCity casino in Detroit. After playing nickel slots for an hour with no luck, Stella apparently decided to do a little "slot-walking," looking in the trays for spare change. She found one nickel token accidentally left behind by another player. What happened next is in dispute. Stella, now playing the sweet, innocent, injured grandmother, claims she was accosted by the casino's evil security minions. Surrounded by uniformed officers, she was led to an interview room without windows, seated at a desk and informed that she had stolen a coin from the slot machine tray. They even took her nickel. The trial judge, Lawrence Zatkoff, bought her story, hook, line and sinker. "Ms. Romanski began to cry at the thought that she, a grandmother of nine children, could commit a crime." Right. The testimony of the security officers, under oath, was a little different. Stella, far from being the shy little elderly lady, was loud, hostile and "even belligerent." The first and only security officer at the scene, Marlene Brown, was in plainclothes, not in uniform. She explained the casino's policy that money left in a slot machine tray belonged to the player who won the money or, if no one claimed it, to the casino. But Stella became hostile and raised her voice. Brown testified, "Well, my instinct was to just tell her and let her just go finish gaming, but like I said, she was getting kind of loud, and that's when I called Sky." The eye-in-the-sky surveillance operators sent backup. But Stella still was making a scene, so they got her off the floor. Judge Zatkoff refused to throw out the complaint. Apparently buying Stella's version of events, he wrote that she had been banned from the casino. Admittedly, she was allowed to return to use a restroom, but she was humiliated by having a

security officer in the stall with her. The casino then forced her to stand outside for hours in the hot, humid, Detroit summer. When she was directed to a bus to take her home, “after she crossed Grand River Ave., and negotiated relatively heavy traffic, she discovered that it was not the proper bus, and that her bus would not arrive for another two hours.” At trial it was shown that, in fact, the female security officer did not enter the bathroom stall with Stella, that she was escorted to the valet area which was air-conditioned, and the reason she decided to walk outside was because she ran into her friends. But never let truth get in the way of a good story. Her lawyer, Neil H. Fink, sued the casino and agents alleging five counts: false arrest and imprisonment, defamation, intentional infliction of emotional distress, violation of her federal civil rights, and exemplary damages. Students learn in their first year of law school that there is no such thing as a “count” for exemplary damages, but Judge Zatkoff reworked the complaint for Fink.

The jury found there was no defamation and no intentional infliction of emotional distress. So this left only the civil rights claim, called a §1983 action, and false arrest. Damages were thus limited to what happened to Stella from the time she was approached by Officer Brown to the time she left the interview room.

Since there was no evidence that she ever even visited a doctor, let alone needed psychiatric care for this traumatic incident, the jury awarded Stella as follows: \$9.00 for the bus trip and lunch, \$270.00 for compensatory damages for being detained, five cents for the nickel token, and \$850,000.00 in punitive damages.

The legal issue on appeal was the civil rights claim and the size of the punitive damages.

If a person “acting under color of state law” deprives another person of her federal civil rights, the victim can sue in federal court. Fink’s problem was that there was no state agent involved, no state policeman, no agent of the state gaming board, no one at all, except the casino’s private security agents.

In a two to one decision, the 6th Circuit Court of Appeals held that Officer Brown’s conduct could be “fairly attributable to the state,” because she had the power to make arrests on the casino grounds.

Courts are split on whether a private security guard, and, of course, her deep-pocket employer, can be sued under §1983. One way to find state action is the

“public function” test. This looks to see if the privately hired guard has the power of a government policeman. The test has become so complicated that tiny differences in the facts and state laws spell the difference between liability for hundreds of thousands or millions of dollars and the claim being dismissed.

What has gotten lost is the reason for the tests. Private guards can be sued for state violations of civil rights only because the state has decided to delegate its police power to that private individual.

Does anyone really think the security guards at casinos were acting for the state in this case?

But having found the casino’s private guards were state agents, the Court went on to find that they had, in fact “arrested” Stella, and that they had no right to make that arrest. A real cop can make an arrest when there is “probable cause” to believe a crime has been committed. But here there could be no crime, because the casino was wrong in thinking the nickel token was its property.

The Court ruled the slot token was abandoned property. Since the real owner could not be found, the law of finders-keepers kicks in. Stella, being the first person to find the abandoned token had a superior title over everyone else, including the owner of the place where the property was found.

The Court held that \$850,000 was excessive, but \$600,000 in punitive damages sounded right. It got that number by looking at cases where victims had been strip-searched, falsely convicted and even beaten to death.

And the Court decided that big money was needed to deter the casino. It noted that Wal-Mart had been hit for \$600,000 in a horrendous case of a pregnant woman falsely convicted and sent to jail, as if that were the same as Stella’s half-hour in the interview room, or that a casino is as rich as the world’s largest retailer. The Court also ignored the fact that the casino had never done this before and would be hit with enormous damages if it ever did it again.

But what was really overlooked was that this windfall all belongs to Stella and her lawyer. With a one-third contingency fee, that means that Fink gets \$200,000 and Stella walks away with \$400,000.

Personally, I would put up with being questioned by security guards, even called a thief, for \$400,000.

What do you think? Comments on this article can be addressed to Prof. I. Nelson Rose.