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Las Vegas SUN

April 26, 2004

Court: Board, agent immune from suit

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SUN CAPITAL BUREAU

CARSON CITY -- The Nevada Supreme Court says the state Gaming Control Board and one of its agents are immune from a lawsuit in a case where a Las Vegas man was held for questioning about cheating the Resort at Summerlin in July 1999.

The suit was brought by Steven Bernier, who was never charged with a crime but was detained after security officials said he acted suspiciously while playing a video gaming device at the Summerlin hotel and casino now called the JW Marriott hotel and Rampart Casino, respectively.

Bernier attended the grand opening of the casino and on the advice of a friend played a video machine that awarded him player club points at an abnormally high rate.

For every \$5 token dropped, player's club points for a \$100 token were awarded. He accumulated \$17,323 in cash-back credits in the player's club promotion and additional \$9,200 in "comp value."

After Bernier left the club, a group of people started playing the machine and Summerlin security said they acted suspiciously. They were detained and questioned. The technicians of the Control Board then examined the machine and found that the computer tracking system was reversed so that the \$5 machine played by Bernier was programmed as a \$100 machine from the player tracking standpoint.

Bernier returned four days later and started playing the machine again but it was no longer awarding points at a higher than normal rate. Resort security said Bernier looked nervous as he played and he continuously reached into his left sock. He was detained by security guards and state agent Ronald Hearn was summoned to investigate.

Hearn and another agent watched the videotape that showed Bernier removing a card from his pocket and placing it into the machine and then pulling it out as if to manipulate the unit. When Bernier was searched, nothing was found.

The agents continued to question Bernier and informed him he could be charged with a felony that prohibits taking anything of value from a gambling game with the intent to defraud.

Bernier agreed to surrender his player's club points to the casino and was released. The state never filed criminal charges.

But the gambler then filed suit against the resort, the Control Board and Hearn charging false imprisonment, assault and battery, and conversion and conspiracy.

Bernier later settled with the casino.

District Judge Valorie Vega ruled Hearn had probable cause to arrest Bernier and granted a pre-trial summary judgment for the state and the agent.

The Supreme Court said Friday that Hearn had probable cause to detain and, if he chose to, arrest Bernier. "Probable cause does not require virtual certainty; it does, however require more than mere suspicion," said the court's unanimous decision.

It said that Hearn did not know at the time he was questioning Bernier that the slot machine had been misprogrammed and had not been cheated.

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