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## Advantage gambler cleared of charges

### Official says case lacks evidence to back accusations

By **ROD SMITH**  
GAMING WIRE

Despite three witnesses willing to swear an advantage gambler committed crimes at the Mandalay Bay resort, Justice of the Peace pro tem Melanie Tobiasson on Thursday dismissed the case midprosecution and found Richard Dougherty innocent.

Tobiasson interrupted testimony by Chris Tovia, a security officer at Mandalay Bay, to view a tape of the alleged incidents provided by the resort. She then said there was "absolutely" no credible evidence to support the state's case that Dougherty had committed battery against security guards and was trespassing.

Advantage gambling is wagering when the player has an edge over the casino, but it involves no illegal activity.

Civil liberties attorneys said there was no legitimate basis for taking defendants in a situation like Dougherty's into custody, holding him against his will, battering him or expelling him from the property when no crime had been committed.

"When the rules are broken, real people suffer real consequences. People are traumatized," Gary Peck, executive director of the Nevada chapter of the American Civil Liberties Union said. "That's why we have rules to protect people and that's why they are important."

This decision, in particular, "reinforces our concerns about the whole advantage gambler issue and they way they are sometimes treated by casino guards and the Las Vegas Metropolitan Police Department," he said.

"It reinforces the impression there seems to be a tendency in the system to give the benefit of the doubt to casinos and not to ordinary citizens," Peck said.

Peck said it was unusual for any case to be dismissed midtrial.

Bob Nersesian, a local attorney who represents Dougherty and other advantage gamblers, said the judge deserved to be commended for calling off the six-month prosecution.

The case had been clear evidence that some casinos are on a vendetta to prosecute advantage gamblers even though they have been engaged in no illegal activities, he said.

"The videotape was critical because without it there would have been three people swearing what never occurred did occur," Nersesian said.

Before Tobiasson aborted the prosecution, the court had heard testimony from Las Vegas Police officer Noe Larios and part of the testimony from Tovia that Dougherty had committed trespass and battery. Eric Simmons, an assistant security supervisor at Mandalay Bay, was waiting to testify, but was never called.

Susan Benedict, the assistant district attorney prosecuting the case, said the state persisted in its position that the crimes had been committed, but acceded to the judge's statement that additional testimony would only further impair the credibility of the witnesses in her eyes.

Dougherty had been playing blackjack on April 4, but was told he was not welcome at the card tables as he cashed out.

That afternoon, he called the marketing office to make sure his \$263 in complimentary point winnings could be used to pay for dinner, and he dined at Shanghai Lilly that evening with a date and her parents.

When he tried to pay, he was approached by a casino executive and told security wanted to bar him from the casino.

His comp points were rejected, he paid with a credit card, and when he tried to leave, the exit was blocked by two guards who he said were 6-foot-6-inches tall. He was handcuffed and charged with trespassing and battering guards while being led to a detention cell.

Police were called, but the officer refused to take a complaint from Dougherty and instead charged him with battery for resisting incarceration and trespassing, Nersesian said.

The incident was captured on security cameras in the casino, except for 30 seconds it took to walk behind a faux palm tree, after which Dougherty had been handcuffed.

Dougherty said he felt humiliated, suddenly had a police record, was forced to pay thousands of dollars in attorney's fees and travel expenses, and was mired in the criminal justice system for months.

"I felt bad. I was shaking. I'm still shaking," said Dougherty, who is 5-foot-7.

Dougherty, 42, is a resident of Chicago. He counts cards and uses other skills while playing blackjack, activities the Nevada State Supreme Court has held to be legal.

Advantage gambling is legal, gaming attorneys and the Nevada Supreme Court agree, and includes hole carding, card counting, shuffle tracking, bottom steering, team play and spotting slot machines

that are paying out more than their fair share.

Mandalay Resort Group officials could not be reached for comment.

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