

CASE NO. 18-CI-007456

JEFFERSON CIRCUIT COURT
DIVISION THREE (3)
JUDGE MITCH PERRY

JENNIFER SAINATO

PLAINTIFF

v.

PLAINTIFF'S TRIAL MEMORANDUM

NIKOLA JAJIC, et al.

DEFENDANTS

* * * * *

FACTS

Jennifer Sainato was an aortic intervention clinical specialist for Cook Medical. She arrived from Chicago at around 7:00 PM on January 2, 2018 to meet with vascular surgeons and a coworker for dinner and to discuss a surgery scheduled for the next day. The group had wine during dinner, but since servers were replenishing glasses from a bottle at the table Sainato is not sure exactly how much.

After dinner, Sainato checked in to the Louisville Marriott Downtown at 280 W. Jefferson St. Rather than go directly to her room, she decided to have another glass of wine while reviewing her surgical case notes. Because the hotel was undergoing renovations, the restaurant and bar had been relocated to a conference room off the lobby. Sainato ordered her glass of wine and closed her bar tab at 10:55PM.

After seating herself at a table in the makeshift bar, Defendant Nikola Jajic ("Jajic"), who was seated at another table, struck up a conversation. The two flirted and chatted about work and family. Jajic told Sainato that he was single, childless, and also from the Chicago area. At 11:34PM, Jajic opened a bar tab, on which he charged three vodkas, a glass of wine, and some deviled eggs. At around 11:40 PM, Jajic asked Sainato if she wanted to join him outside for a

cigarette. Sainato agreed, and followed Jajic to the Marriott's Starbucks patio. Sainato noted that the cigarette Jajic handed her looked beat up and had an unfamiliar metallic taste.

Upon returning to the hotel bar, Sainato began feeling foggy, disassociated, and somewhat euphoric. Jajic began aggressively propositioning her and encouraged Sainato to get another glass of wine, which she declined. Despite Sainato's protestations, Jajic insisted that the bartender refill her glass and offered her a \$20 bill to pour another glass. The bartender acquiesced. Jajic closed his bar tab at 12:02 a.m. Another man staying in room 701 closed his bar tab at the same time. Sainato's last clear recollection was asking a hotel employee if there was a separate elevator bank she could use to take to her room.

Sainato has very little recollection of the events that followed. She recalls waking up to the sensation that she couldn't breathe and her head banging against the headboard. She recalls sitting in a chair while Jajic and another man held her head and instructed her to inhale from a glass pipe. She recalls voicing confusion over who the men were, and she heard one of them say, "she's starting to freak out."

At some point that night, the guest in the room next to Sainato called the front desk to complain that "loud and multiple voices" from Sainato's room were keeping him awake. "He said it stopped at 2 a.m. when a man left the room and a woman was heard crying very loudly." Key card records show that Jajic opened the door to his room on another floor at 2:28 a.m. At 2:40, Sainato's adult son contacted the front desk and reported that something had happened to his mother. At 3:02 a.m., Marriott's front desk employee called 911.

Louisville EMS took Sainato to University of Louisville hospital. A sexual assault nurse noted three vaginal lacerations, at least one of which was actively bleeding, and a blood alcohol

level of .13. Nurses noted concern about Sainato's intoxication. Her diagnosis: "acute confusion; sexual assault of adult."

CLAIMS

In her Complaint, Plaintiff asserted claims for battery and intentional infliction of emotional distress against Defendant Jajic. She asserted negligence and dram shop claims against Marriott International, Inc., White Lodging Services Corp., and RLJ Lodging Trust, the entities that own and operate the Louisville Marriott Downtown (collectively, the "Marriott"). The Court granted summary judgment to the Marriott on Plaintiff's negligent hiring and negligent security claims.¹

The Marriott and its employees have a duty "to use their powers of observation to perceive readily visible warning signs that a person is intoxicated, and to refrain from serving or selling alcohol to that patron. *Carruthers v. Edwards*, 395 S.W.3d 488, 492 (Ky. Ct. App. 2012) (citing KRS 413.241(2)). The jury will be asked to determine whether the Marriot failed to perceive, or ignored signs that Jajic or Sainato were intoxicated when serving them. *Id.*; *Taylor v. King*, 345 S.W.3d 237, 244 (Ky. App. 2010). If the intoxication of either Jajic or Sainato was a substantial factor in causing Sainato's injuries, the jury should render a verdict in favor of Plaintiff. *DeStock v. Logsdon*, 993 S.W.2d 952 (Ky. 1999); *Rechar LLC v. Drake*, 579 S.W.3d 198 (Ky. Ct. App. 2019).

In addition to the dram shop instruction, Plaintiff will ask the Court to instruct the jury to infer that video surveillance of Plaintiff and Defendant Jajic that was destroyed by the Marriot would depict signs of intoxication in one or both parties. *Palmore*, Kentucky Instructions to Juries 24.01.

¹ Plaintiff contends that *Reeves v. Walmart, Inc.*, 2021 Ky. App. LEXIS 78 (*motion for discretionary review pending*) requires the Court to reinstate the negligence claims and submit them to the jury.

With respect to Defendant Jajic, the jury will be asked to determine whether Jajic subjected Sainato to sexual contact without her consent or when she was incapable of consent due to intoxication. *Ten Broeck Dupont, Inc. v. Brooks*, 283 S.W.3d 705, 726–734 (Ky. 2009); *Haywood v. Allen*, 406 S.W.2d 721 (Ky. 1966); *Vitale v. Henchey*, 24 S.W.3d 651 (Ky. 2000). It will further be asked to determine whether Jajic’s conduct exceeded the bounds of common decency, whether he had reason to know his conduct would cause Plaintiff emotional distress, and whether Plaintiff in fact suffered emotional distress as a result. Restatement, Torts 2d, §§ 46 and 47; *Audiovox Corp. v. Moody*, 737 S.W.2d 468, 471 (Ky. Ct. App. 1987); *Humana of Kentucky, Inc. v. Seitz*, 796 S.W.2d 1 (Ky. 1990); *Kroger Co. v. Willgruber*, 920 S.W.2d 61 (Ky. 1996); *Burgess v. Taylor*, Ky. App., 44 S.W.3d 806 (2001).

In addition to compensatory damages, Plaintiff will also ask the jury to find that the Defendants acted with fraud, oppression, malice, or gross negligence and award punitive damages pursuant to KRS 411.184 and 411.186.

Respectfully submitted,

/s/ Laura E. Landenwich #92109

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CERTIFICATE OF SERVICE

I certify that on January 4, 2022, the above was electronically filed with the Clerk of the Court by using the electronic filing system and copied to all registered participants in the above-styled action.

/s/ Laura E. Landenwich

LAURA E. LANDENWICH