LEGAL PRACTICE SKILLS PROGRAM
SUFFOLK UNIVERSITY LAW SCHOOL

TO: LPS Students

FROM: LPS Faculty

DATE: August 2019

RE: Objective Memorandum 1

This packet contains the materials you will need to complete your first Legal Practice Skills ("LPS") writing assignment, Objective Memorandum 1 ("OM1").

Prior to your first LPS class during the week of August 26, 2019, read the attached e-mail and memorandum. For the first LPS class, day students should read the attached Georgia statute and also prepare case briefs for the Mitchell and Jackson cases. For the first evening class, evening students should read the attached Georgia statute and prepare case briefs for all three cases: Mitchell, Brown, and Jackson.

Use only the versions of the statute and cases (Mitchell, Brown, and Jackson) included in this assignment. Some of the materials have been edited for use in this assignment, and information from any other source will be inaccurate. Additional research is prohibited and will be considered a violation of the LPS course rules.

For your memorandum, you will be required to analyze the legal question posed and predict the likely outcome of the issue. Your memorandum must not exceed four (4) pages, double-spaced. You must follow the LPS formatting guidelines set forth in the LPS Student Handbook. Citations within the memorandum must conform with the ALWD Guide. ALWD & Coleen M. Barger, ALWD Guide to Legal Citation (6th ed. 2017).

Your OM1 is due by 9 a.m., uploaded to Blackboard, on the following dates:

- Friday, September 13, 2019, for all day students
- Monday, September 16, 2019, for evening students.

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E-MAIL MESSAGE FROM DESI BUTLER

From: Isiah Samuels <i.samuels@slclaw.com>
Date: Wednesday, August 12, 2019 10:15 AM
To: Junior Associate <j.associate@slclaw.com>
Subject: Peach Tree Quick Mart – potential false imprisonment claim

Welcome to the firm. I am e-mailing to assign your first project. As you know, I work with both our Boston and Atlanta offices. This assignment is for our client, Peach Tree Quick Mart ("Peach Tree"), in a potential suit by a suspected shoplifter, Ryan Hernandez ("Mr. Hernandez").

Earlier this month Mr. Hernandez was detained by an employee of Peach Tree and accused of shoplifting. To make a long story short, he is now threatening to sue the store for false imprisonment. By way of background, false imprisonment is a civil claim (not a criminal issue) involving the unlawful detention of a person, for any length of time, when the person argues that they were unreasonably deprived of their personal liberty.

I need your help in assessing whether Peach Tree has a defense to Mr. Hernandez's claim. A Georgia statute provides a defense to a false imprisonment claim when a store reasonably detains someone to investigate shoplifting. This defense is called the shopkeeper's privilege defense. You'll see that the statute setting forth this defense has several elements, but I'd like you to focus your efforts. Mr. Hernandez admits that Peach Tree had reasonable grounds to believe he was shoplifting and that the length of time the store employee detained him is not at issue. Therefore, please do not discuss anything regarding the store employee's belief that he was shoplifting or the length of the detention. The only issue I need you to analyze under this statute is whether the *manner* in which the suspect was detained was reasonable. I want to know if Mr. Hernandez files suit for false imprisonment, will Peach Tree be able to successfully assert the shopkeeper's privilege defense by saying that the manner of detention was reasonable.

Attached is a memorandum I wrote summarizing the client's statement about what happened. Please read these facts carefully and the legal authority attached. Then draft a discussion section of a memorandum no longer than four pages analyzing subsection three of the statute, specifically whether Peach Tree can successfully use the shopkeeper's defense because under the statute the manner of detention was reasonable. Another associate has already researched the applicable law, and you should not consult additional sources. Use only the statute and three cases listed below, all of which are attached.

Ga. Code Ann. § 51-7-60 (Westlaw through 2019 Legis. Sess.).
Mitchell v. Walmart Stores, 477 S.E.2d 631 (Ga. Ct. App. 1996).
Jackson v. Kmart Corp., 390 S.E.2d 134 (Ga. Ct. App. 1994).
Brown v. Super Disc. Mkts., Inc., 477 S.E.2d 839 (Ga. Ct. App. 1996).

I look forward to reading your analysis. Your prediction will play a critical role in deciding whether we settle the case or take it to trial.

Thank you,

Isiah Samuels
Samuels, Linden, & Cho LLP
1000 Winsor Rd.
Atlanta, Georgia 30309
i.samuels@slclaw.com

MEMORANDUM

TO: File

FROM: Isiah Samuels

DATE: August 9, 2019

RE: Potential False Imprisonment - Peach Tree - Grove Park, File No. 2019-2319

Our client, Peach Tree Quick Mart ("Peach Tree"), is owned by Vijay and Melinda Advani-Atkerson. They have 5 small convenience stores in the Atlanta area. This issue arose in their store in Grove Park. The Grove Park store is managed by Maria Garcia and staffed by a long-term employee, Adam Johnson, and a relatively new hire, Wanda Lee. The store is 2 blocks from a local high school and is a popular place with the students and staff from that school. The store has had a few problems this summer with kids shoplifting (often in the afternoons when the summer school program has let out for the day). Maria has told Adam and Wanda to be extra vigilant as they have not yet caught the offender(s).

On July 31, around 3 p.m., two teens, Andrea Ortiz (age 16) and Ryan Hernandez (age 15), entered the store. The teens entered together and spent a long time standing in front of the candy shelf, repeatedly choosing one candy bar, then putting it back and choosing another. At the beginning of the teens' visit, Wanda was helping another customer, but she kept her eye on the pair. She could hear that they were talking, but they were speaking in Spanish and she did not understand what they were saying. The teens meandered to the section with the granola bars and snacks and continued talking and touching the merchandise, alternately choosing and returning various products. They continued speaking in Spanish and laughing loudly. Wanda thought that they often looked at her—perhaps to see if she was watching. Wanda tried to keep track to make sure that all items were either returned to the shelf or were held in plain sight, but they exchanged so many items that it was hard to keep track. She pretended to be cleaning so

that she could get closer and observe the teens.

At approximately 3:15 p.m. another customer, an older woman, entered the store. The students saw her and recognized her as Ms. Roberts, a librarian at the nearby high school. She nodded and smiled at them. Ms. Roberts went directly to the beverage cooler to select a drink. When Ryan and Andrea proceeded to the cash register, Wanda returned to check them out.

At checkout, Andrea retreated toward the door while Ryan placed one candy bar and two drinks on the counter. Ryan paid for the three items and quickly turned to go out the door. As the two started to leave, Wanda thought that she saw a candy wrapper sticking out of his backpack. She rushed after them. Just as they reached the door, Wanda jumped in front of the pair, blocking their exit. She yelled "STOP! You stole some candy!" The two students denied it, but Wanda said sternly and loudly to Ryan, "You have items in your bag that you haven't paid for and that's stealing! You kids have been ripping off this store for months now and my bosses are tired of it!" Wanda grabbed Ryan by the arm and commanded that he come with her. She led him past the other customers to the back of the store and down a hallway. As she led him, Wanda said sternly, "Just because I can't understand the gibberish you're speaking doesn't mean I don't know a thief when I see one!!" Wanda, who was still holding Ryan by the arm, pulled him into the store manager's small office, kicked out the only chair in the office, and told him to sit down. She told Ryan that she needed to call her manager to investigate.

Wanda texted both Adam and Maria and asked them how to proceed. She was worried about the store and needed to go out front to check on the other customers. She bent down and shook her forefinger inches from Ryan's face and said loudly, "You better stay right there 'till I get back. I know how you kids are – you never listen! But you better listen this time!" When she went back through the hallway to the store, the older woman, Ms. Roberts, brought up a granola bar and paid. She hesitated at the door where Andrea was still waiting, but Wanda firmly said to her, "I'm afraid I need you to leave right now!" and she did.

About 15 minutes after the text from Wanda, Adam, who lived down the street, entered

the store. Wanda filled him in on what had happened and they both went back to the office. Outside the office, where Ryan could still hear them, Adam said “You might have found the thief!” Wanda answered, “I was watching them as soon as they came in. You can’t trust them.” They entered the crowded office, stood just a foot from Ryan’s chair, and looked down at their suspect. Adam commanded Ryan to empty his backpack onto the desk. The contents included a physics book, spiral notebook, pencil pouch, Apple X phone, and an Apple computer. Wanda said “Those are some pretty fancy electronics for a kid like you!” Adam rifled through the pockets of the backpack, and pulled out a new pack of Juicy Fruit gum, a Hershey candy bar still in its wrapper, $7.65 in bills and change, and an apple. Wanda pointed at the gum and candy and said, “There! Didn’t he steal those? He never paid for those.” Adam said “Nah, you’re new so you wouldn’t know all our inventory, but we don’t sell Juicy Fruit or Hershey – never have.” Wanda turned to Ryan and said, “Whoops! Sorry! Guess you can pack up and go.” She slapped him on the back and laughed, saying, “No harm, no foul!”

Ryan stuffed his belongings back in his back pack, his face flushed and red, and scurried out. Adam helped Wanda write up a report and they submitted the report to management, as store policy requires.

About a week after the event, attorney Jaylen Heyer contacted me. He told me that he represents Ryan Hernandez and that his client is strongly considering filing a false imprisonment claim against Peach Tree. He suggested that I speak with my client and he will follow up with me in late September to see if I wish to talk about settlement or if he should file a claim in state court.

West's Code of Georgia Annotated
Title 51. Torts (Refs & Annos)
Chapter 7. False Arrest, False Imprisonment, Malicious Prosecution, and Abusive Litigation (Refs & Annos)
Article 4. Detention or Arrest on Suspicion of Shoplifting (Refs & Annos)

Ga. Code Ann., § 51-7-60

§ 51-7-60. Operator of mercantile establishment, when free of liability for false arrest or false imprisonment

Effective: July 1, 2014

Currentness

Whenever the owner or operator of a mercantile establishment or any agent or employee of the owner or operator detains, arrests, or causes to be detained or arrested any person reasonably thought to be engaged in shoplifting or refund fraud and, as a result of the detention or arrest, the person so detained or arrested brings an action for false arrest or false imprisonment against the owner, operator, agent, or employee, no recovery shall be had by the plaintiff in such action where it is established by competent evidence:

(1) That the plaintiff had so conducted himself or herself or behaved in such manner as to cause a person of reasonable prudence to believe that the plaintiff, at or immediately prior to the time of the detention or arrest, was committing the offense of shoplifting, as defined by Code Section 16-8-14, or refund fraud as defined in Code Section 16-8-14;

(2) That the length of time during which such plaintiff was detained was reasonable; and

(3) That the manner of the detention or arrest was reasonable.

Credits

Laws 1958, p. 693, § 1; Laws 2014, Act 566, § 2-4, eff. July 1, 2014.

Ga. Code Ann., § 51-7-60, GA ST § 51-7-60
The statutes and Constitution are current through laws effective as of June 1, 2019. Some statute sections may be more current, see credits for details. The statutes are subject to changes by the Georgia Code Commission.

End of Document

223 Ga.App. 328
Court of Appeals of Georgia

MITCHELL et al.
v.
WALMART STORES, INC.

No. A96A2010.
|
Oct. 24, 1996.

Customer filed action against store, alleging intentional and negligent infliction of emotional distress, assault, battery, false imprisonment, and loss of consortium. The State Court, Bibb County, Phillips, J., granted summary judgment on the false imprisonment claim in favor of the store. Appeal was taken. The Court of Appeals, McMurray, P.J., held that the manner of detention of the customer was reasonable and, thus, supported immunity of the store from liability for false imprisonment despite embarrassment of customer.

Judgment affirmed.

Ruffin, J., concurred in the judgment only.

West Headnotes (2)

[1] **False Imprisonment**
Probable Cause

Automatic activation of electronic antitheft device provided store security guard with reasonable cause to forcibly stop customer and triggered statutory immunity of store from liability for false arrest, regardless of whether store clerk was negligent in failing to deactivate merchandise tag which activated antitheft device. O.C.G.A. §§ 51-7-60(1), 51-7-61(b).

[2] **False Imprisonment**
Extent of Restraint

Manner of detention of customer after automatic activation of electronic antitheft device was reasonable and, thus, supported statutory immunity of store from liability for false imprisonment in absence of unlawful restraint by force or fear, despite embarrassment of customer; although customer complained that security guard was gruff and rude, customer was subjected to detention in open, during which items in her shopping bag were individually tested for presence of electronic sensor, and after which bag was returned to her and she was free to leave, and security guard never placed hand on customer's person or accused her of theft. O.C.G.A. §§ 51-7-20, 51-7-60(1, 2, 3), 51-7-61(b).

Attorneys and Law Firms

****632** Bobby J. Lindsey, Macon, for appellants.

McLain & Merritt, Albert J. Decusati, Atlanta, for appellee.

Opinion

***329** McMURRAY, Presiding Judge.

Plaintiff Edith Mitchell brought this tort action against defendant Walmart Stores, Inc. alleging intentional and negligent infliction of emotional distress arising out of a July 18, 1995, incident whereby plaintiff was forcibly stopped as she exited defendant's store. A guard allegedly grabbed plaintiff's shopping bag and commanded her to come with him. Plaintiff was "subjected to a lengthy, unreasonable, and humiliating search[, ... which search] produced no evidence of stolen property but revealed the presence of a security code unit still attached to one of Plaintiff's purchased items." The complaint further alleged the intentional torts of assault, battery, and false imprisonment. An amendment alleged loss of consortium on behalf of William L. Mitchell, plaintiff's spouse.

After discovery, defendant moved for summary judgment on the false imprisonment claim on the basis of OCGA § 51-7-60, supporting its motion with the following undisputed facts: Plaintiff, accompanied by her 13-year-old daughter, went through the checkout and purchased several items, including a television remote control, at defendant's store. As she exited, plaintiff passed through an electronic antitheft device. The alarm sounded. Plaintiff "wasn't going to stop because [she] didn't have nothing in [her] pocketbook or in [her] bag." Robert Canady, employed by the defendant as a "people greeter"

and security guard, forcibly stopped plaintiff at the exit. Mr. Canady "grabbed [plaintiff's] bag and told [her] to step back inside [, ... that she] had something in [the] bag. So [plaintiff] stepped back inside." This security guard removed every item plaintiff had just purchased and ran it through the security gate. Plaintiff affirmed that "one of the items still had a security code thing on it." An employee named Brenda "told [plaintiff] it could have been that [security code unit], that she [Brenda] forgot to pull it off [at the cash register]." When the security guard finished examining the contents of plaintiff's bag, "he put it on the checkout counter...." This examination of her bag took ten or fifteen minutes. Plaintiff then "reached over there and got it and went over to the snack bar and [sat] there." The security guard never touched nor threatened to touch plaintiff or her daughter. No employee of defendant ever told plaintiff she could not leave, once her bag had been checked. Plaintiff never asked to leave but felt like she could not leave. Although plaintiff told an assistant manager that " '[she] need[ed] to see the manager,' [the assistant] said, ***330** 'he won't come.' " Plaintiff knew of no circumstances indicating that the detection device was not working properly. Plaintiff was never threatened with arrest. Nevertheless, plaintiff described the security guard's actions in her affidavit as "gruff, loud, rude behavior."

Plaintiff opposed summary judgment, arguing that a reasonable fact finder could find the manner of detention unreasonable under OCGA § 51-7-60. The trial court granted defendant's motion, and this appeal followed. *Held:*

[1] OCGA § 51-7-60 (1) and (3) provides: "Whenever the owner or operator of a mercantile establishment ... detains, arrests, or causes to be detained or arrested any person reasonably thought to be engaged in shoplifting ..., no recovery [for false arrest or false imprisonment] shall be had by the plaintiff ... where it is established by competent evidence ... (1) [t]hat the plaintiff ... behaved in such manner as to cause a [person] of reasonable prudence to believe that the plaintiff ... was committing the offense of [theft by] shoplifting, as defined by Code Section 16-8-14; and ... (3) [t]hat the manner of the detention ****633** or arrest was reasonable." In the case sub judice, plaintiff enumerates the grant of summary judgment, arguing that jury questions remain as to the reasonableness of her detention. We disagree, and hold that the search was reasonable as a matter of law.

[2] Plaintiff was subjected to a "detention" in the open, during which the items in plaintiff's shopping bag were individually tested for the presence of the electronic antitheft sensor and after which plaintiff's bag was returned to her and she was free to leave. Plaintiff appears to concede that the time of the search was reasonable, but argues that the manner was problematic. The manner of plaintiff's detention was reasonable, in that since defendant's employee never placed a hand on plaintiff's person but only took her shopping bag, any contact was not overly forceful and plaintiff was subject merely to casual touching.

Furthermore, plaintiff was never accused of theft, which supports a finding of reasonableness. Naturally, plaintiff was mortified by this episode because she knew she had properly paid for all of her items. Assuming that the defendant's agent was in fact gruff and rude as he forcibly halted her, it is nevertheless undisputed that this was done solely in response to the alarm of the antitheft device. While we cannot say that "gruff" or "loud" or "rude" behavior can never support a finding of unreasonable manner of detention, standing alone it is insufficient. Indeed, causing embarrassment is not the same as unlawful imprisonment. *Lord v. K-Mart Corp.*, 177 Ga.App. 651, 653(1), 340 S.E.2d 225 (1986); *Estes v. Jack Eckerd Corp.*, 184 Ga.App. 98, 99(1), 102, 360 S.E.2d 649 (1987). We recognize that being detained and accused of shoplifting in front of other customers is not a pleasant experience, and could lend some support to a finding of unreasonableness, especially if such customers happen to be well known to the person being detained. However, the mere fact that some other individuals might be present (as would almost always be the case in any public store setting) does not, standing alone, support a conclusion that the detention was unreasonable. *Lord*, 177 Ga.App. at 653, 340 S.E.2d at 228.

In the case sub judice, there is no evidence that the manner of plaintiff's detention was anything but reasonable. Compare *Brown v. Super Discount Markets*, 223 Ga.App. 174, 477 S.E.2d 839 (1996). Consequently, the defendant mercantile establishment is entitled to the immunity afforded by OCGA § 51-7-60. It follows that the trial court correctly granted defendant's motion for summary judgment.

Judgment affirmed. HAROLD R. BANKE, Senior Appellate Judge, concurs.

RUFFIN, J., concurs in the judgment only.

223 Ga.App. 174
Court of Appeals of Georgia

BROWN et al.
v.
SUPER DISCOUNT MARKETS, INC. et al.

No. A96A1787.
|
Sept. 27, 1996.
|

Customers brought action against supermarket and its security employee to recover damages for false imprisonment resulting from their detention for suspected shoplifting. The Superior Court, Henry County, Smith, J., granted summary judgment in favor of supermarket and employee, and customers appealed. The Court of Appeals, Harold R. Banke, Senior Appellate Judge, held that material issues of fact on the reasonableness of the manner of detention precluded summary judgment on false imprisonment claim.

Reversed and remanded.

West Headnotes (3)

[1] **Judgment**
Tort Cases in General

Material issues of fact as to reasonableness of manner of detention of customers suspected of shoplifting by supermarket and its security employee precluded summary judgment for supermarket and employee on customers' claim of false imprisonment.

[2] **False Imprisonment**
Probable Cause

Supermarket security employee's alleged firsthand observation that customers were attempting to conceal or take possession of supermarket's merchandise gave employee reasonable cause to believe that shoplifting was in progress, and employee was thus entitled to intercept customers and investigate further. O.C.G.A. § 16-8-14(a)(1).

[3] **False Imprisonment**
Questions for Jury

In action alleging false imprisonment, whether manner of detention was reasonable may be determined as matter of law only in rare cases where evidence is uncontroverted.

Attorneys and Law Firms

****840** Joseph M. Todd, Jonesboro, for appellants. Drew, Eckl & Farnham, Peter B. Barlow, Atlanta, George Moody, for appellees.

Opinion

***175** HAROLD R. BANKE, Senior Appellate Judge.

Janice Brown and her daughter Kelly Roper sued Super Discount Markets, Inc. d/b/a Cub Foods ("Cub") and Phillip Smith, a security employee, to recover damages for false imprisonment resulting from their detention for suspected shoplifting at Cub. The case is before us on appeal from the grant of summary judgment in favor of Cub and Smith.

Summary judgment is appropriate when the court viewing all the evidence and drawing reasonable inferences in a light most favorable to the non-movant concludes that the evidence does not create a triable issue as to each essential element of the case. *Lau's Corp. v. Haskins*, 261 Ga. 491, 405 S.E.2d 474 (1991). Viewed in that light, the evidence was as follows. As Brown and Roper were beginning to checkout at Cub, Smith intercepted them because he had purportedly observed them concealing

cigarettes, meat, ****841** and cheese inside their purses as they shopped. Cashier Cheryl Hall noticed that the women unsuccessfully attempted to remove some of the secreted merchandise from their purses after they were caught. Evette Sanabria, a customer service representative, accompanied Smith, Brown, and Roper to the store office. Sanabria ascertained that the items allegedly purloined totaled $26.66. Smith decided not to prosecute the customers, gave them a criminal trespass warning, and advised them not to return.

Cub and Smith moved for summary judgment asserting that their actions were protected by statutory privilege under OCGA § 51-7-60. The trial court granted summary judgment, and this appeal followed.

Brown and Roper offered ***176** their testimony and that of Nichols, Brown's fiancé, who witnessed Smith's initial confrontation with the women. All three testified that Smith grabbed Brown's arm and slung her and that Smith shoved Roper into a nearby candy rack. Brown and Roper further claimed that Smith locked the office door, prevented them from leaving, pushed Brown down repeatedly whenever she attempted to leave the office and poked her in the back as she was departing the store. Both stated that they were detained an unreasonable length of time, between an hour and an hour and a half. They further testified that Smith threatened to contact the Department of Family and Children Services to have Roper's child taken away and that Smith was profane and verbally abusive.

[1] There are substantial concerns in this case such that the Court cannot grant summary judgment for defendants on the issue of manner of detention. *K Mart Corp. v. Adamson*, 192 Ga.App. 884, 885, 386 S.E.2d 680 (1989); OCGA § 51-7-60.

[2] When Smith intercepted Brown and Roper, he claimed that he had observed first-hand that the women were attempting to conceal or take possession of Cub's merchandise. OCGA § 16-8-14(a)(1). Because Smith had reasonable cause to believe that shoplifting was in progress, Smith was entitled to intercept Brown and ****842** Roper and investigate further. *Swift v. S.S. Kresge Co.*, 159 Ga.App. 571, 573(2), 284 S.E.2d 74 (1981).

[3] Even if the Court assumes at this stage that the length of time of the detention (over an hour) was reasonable, the circumstances surrounding the manner of detention are problematic. Whether the manner of detention was reasonable may be determined as a matter of law only in rare cases where the evidence is uncontroverted. This is not such a case. For starters, there is evidence that Smith used inappropriate language that a jury could find exceeded the bounds of mere embarrassment which would then support a person's allegation that he or she was detained in an unreasonable manner. Personal comments such as the ones here regarding children have nothing to do with an investigation into shoplifting, and could support a finding that Brown and Roper experienced indignity and were detained in an unreasonable manner. In addition, the evidence of some amount of physical force by way of shoving and pushing suggests something beyond a casual touching or inadvertent contact. While the Court cannot say that shopkeepers would never be reasonable in making some physical contact with a suspected shoplifter, the facts here go well beyond that which seemed necessary to investigate shoplifting. Therefore, ***177** the lower court's grant of summary judgment is reversed and remanded as there are sufficient facts that could support a finding of unreasonable manner of detention.

*Judgment **reversed** and remanded.*

McMURRAY, P.J., and RUFFIN, J., concur.

201 Ga.App. 14
Court of Appeals of Georgia

Debbie JACKSON, Plaintiff,
v.
KMART CORP., Defendant.

No. 24371
|
May 11, 1994.

Employee brought claim against employer for false imprisonment. On employer's motion for summary judgment, the Superior Court, Rockdale County held that a fact issue precluded summary judgment for defendant on plaintiff's false imprisonment claim. Employer appealed. The Court of Appeals, Harold R. Banke, Senior Appellate Judge, held that the record could support a finding of unreasonable detention.

Affirmed.

West Headnotes (3)

[1] **Civil Procedure**
Tort cases in general

Genuine issue of material fact, as to reasonableness of manner of employer's detention of employee, precluded summary judgment for employer on employee's claim under Georgia law for false imprisonment; employee alleged that while she was being detained, her manager told her that he could make a pass at her and that there was nothing she could do about it and also said that he wished employee were white because, according to manager, shoplifting always involved blacks. Georgia Civ.Proc.Rule 56(c); O.C.G.A. §§ 51– 7–20, 51–7–60.

[2] **False Imprisonment**
Probable cause

To be entitled, under Georgia law, to assert shopkeeper's privilege in defense of claim of false imprisonment, shopkeeper must show that reasonable person would have believed that plaintiff was shoplifting and must also show that manner and length of detention were reasonable. O.C.G.A. §§ 51–7–20, 51–7–60.

[3] **False Imprisonment**
Presumptions and burden of proof

Fact that grand jury indicted employee on charges of theft created rebuttable presumption that employer had reasonable belief that employee was shoplifting, for purposes of determining whether under Georgia law employer could assert shopkeeper's privilege as defense to employee's false imprisonment claim. O.C.G.A. §§ 51–7–20, 51–7–60.

Attorneys and Law Firms

***15 **135** F. Robert Raley, J. O'Quinn Lindsey, Macon, GA, for plaintiff.

Marc Thomas Treadwell, Richard A. Watts, Macon, GA, for defendant.

OPINION

BANKE, Senior Appellate Judge.

Before the court is defendant's appeal of a denial of its motion for summary judgment. After careful consideration of the arguments of counsel, the relevant case law, and the record as a whole, the court holds as follows.

FACTS

On December 18, 1991, Rocky Malone, a loss prevention manager working at a Kmart store in Macon, Georgia, noticed two females with shopping carts full of merchandise enter a checkout lane. One of the females was Kathleen Bell. Malone, who was responsible for theft prevention at the store, suspected that the two females were involved in a theft scheme. To confirm his suspicions, Malone positioned himself a short distance away from the lane in which the two females were located so that he could observe what was taking place. The cashier at the checkout lane was plaintiff Debbie Jackson. Malone observed plaintiff scan several items from Bell's shopping cart into the computer and then void the items off the sale. Plaintiff then placed these items into a shopping cart. As Malone watched these transactions take place, he noticed Kathleen Bell staring at him. Therefore, to avoid arousing suspicion, Malone walked out of the store and into the parking lot. When Malone reached the parking lot, he doubled back to the front entrance of the store. He then positioned himself outside the store and began to observe the transactions through the windows located on the front of the building.

Subsequently, as Bell attempted to leave the store with the shopping carts, Malone stopped her and asked to see her receipt. Bell refused. Eventually, Malone recovered the receipt from one of the shopping carts. The receipt indicated that Bell had purchased only one item, which had a value of $4.99. The carts, however, contained merchandise worth $834.86. Consequently, Bell was taken to a private security office in the rear of the store and the police were summoned.

[1] Shortly thereafter, plaintiff was asked to close her register and report to an office at the rear of the store. When plaintiff arrived at the office, the store manager questioned her about the transactions. Plaintiff, however, denied any knowledge of the attempted theft. The manager then told plaintiff that he could make a pass at plaintiff and that there would be nothing plaintiff could do about it. In addition, the manager told plaintiff that he wished she was white, because, according to the manager, "shoplifting always involved blacks."[1]

After being interviewed by the store manager for approximately thirty minutes, plaintiff was taken to the room where Kathleen Bell had been placed. By this time, Officer Jeffrey Lary of the Macon Police Department had arrived. Lary questioned both plaintiff and Bell about the incident. Plaintiff told Lary that although she knew Bell, she had no knowledge of the theft. Bell, however, told the officer that plaintiff was involved in the theft scheme. Subsequently, Lary was instructed by his supervisor to contact Magistrate Pam Rogers for directions. The magistrate advised Lary to make a warrantless arrest of both Bell and plaintiff.

On March 12, 1992, a grand jury indicted Kathleen Bell and plaintiff on charges of theft by deception. At plaintiff's trial, plaintiff denied having any involvement in the theft scheme. In addition, plaintiff denied knowing Bell prior to December 18, 1991. Plaintiff was subsequently acquitted.

On October 27, 1992, plaintiff filed suit against Kmart Corporation for wrongful discharge, malicious prosecution, and false imprisonment. ***16** Defendant subsequently filed a motion for summary judgment, which the Superior Court denied.

DISCUSSION

False Imprisonment Claim

[2]"False imprisonment is the unlawful detention of the person of another, for any length of time, whereby such person is deprived of his personal liberty." O.C.G.A. § 51–7–20. However,

> Whenever the owner or operator of a mercantile establishment or any agent or employee of the owner or operator detains, arrests, or causes to be detained or arrested any person reasonably thought to be engaged in shoplifting or refund fraud, and, as a result of the detention or arrest, the person so detained or arrested ****136** brings an action for ... false imprisonment against the owner ..., no recovery shall be had by the plaintiff in such action where it is established by competent evidence:
>
> (1) That the plaintiff had so conducted himself or

> herself or behaved in such manner as to cause a person of reasonable prudence to believe that the plaintiff, at or immediately prior to the time of the detention or arrest, was committing the offense of shoplifting ...;
>
> (2) That the length of time during which such plaintiff was detained was reasonable; and
>
> (3) That the manner of the detention or arrest was reasonable.

O.C.G.A. § 51–7–60. In sum, a defendant is required to establish (1) that a reasonable person would have believed that the plaintiff was shoplifting, *and* that the (2) length and (3) manner of the detention were reasonable.

The primary focus of this case is whether the manner of detention was reasonable, as Plaintiff does not dispute the length of time of her detainment.[2] Therefore, the third requirement of O.C.G.A. § 51–7–60 is "[t]hat the manner of the detention or arrest was reasonable" O.C.G.A. § 51–7–60(3) is the only issue before the court. That is, "a person [should not] be subjected to gratuitous and unnecessary indignities during the course of ... a detention." *Adamson*, 192 Ga.App. at 886, 386 S.E.2d at 682.

Plaintiff has put forth ***17** sufficient evidence to challenge the reasonableness of the manner in which she was detained. The law requires that detention occur in a reasonable manner with the purpose of aiming to preserve the basic dignities of the individual and prevent abuse by management, employees, and/or security of the establishment. A jury could reasonably find that the words and actions of the store manager subjected plaintiff to "gratuitous and unnecessary indignities." Statements of an unnecessary personal nature directed towards the plaintiff that have nothing to do with investigating shoplifting have no place in a reasonable detention. ****137** Accordingly, the Superior Court's denial of defendant's motion for summary judgment on plaintiff's claim of false imprisonment is AFFIRMED.

Footnotes

1 The manager also refused to allow plaintiff to use the phone to call her husband and told plaintiff in a loud, threatening tone of voice "that he was going to keep [her] there until [plaintiff told] him ... the truth."

2 There is no dispute that the first statutory requirement is met, in that plaintiff acted in a manner such that a reasonable person would have believed she was shoplifting.