Dog bite memo essay sample

Law, Security

Under the Georgia false imprisonment statute, whether Charlene Miller has a valid claim against the Center for Independent Performers and Artists (CIPA) when the security guards (1) searched Charlene suspecting her of having stolen a CD; and (2) confiscated the iPhone for inspection suspecting her illegal recording?

BRIEF ANSWER

Probably no. The Georgia false imprisonment statute requires that the plaintiff must prove, that there is a detention for any length of time and such detention is unlawful. With respect to detention, the security guard's search of Charlene probably is a detention because the search is against Charlene's will and she is afraid the force would be used if she did not submit to the search, even though she acquiesced to be searched. Regarding unlawfulness, the shoplifting defense of the owner applied in the instance when the guards checked Charlene for a stolen CD. We may argue that the security guard believed Charlene was committing the offense of shoplifting and the manner and length of detention by the security guard were reasonable. Therefore, the search for stolen a CD does not qualify as unlawfulness; however, an unreasonable belief of suspected shoplifting and racial profiling would allow the plaintiff to argue that the detention was wrongful and Charlene should recover. However, the confiscation of Charlene's iPhone probably does not qualify as detention, because Charlene chose to remain at the events center and there was no restraint either by force or fear.

FACTS AND PROCEDURAL HISTORY

On March 5, 2012, a seventeen-years-old African-American Charlene Miller and two friends attended a concert held by CIPA at its complex near Atlanta. After the concert, as Charlene was leaving the facility, she was stopped by a private security guard. The guard told Charlene that based on observations of her behavior, she was suspected of having stolen a CD. Charlene denied stealing anything, but acquiesced in his request to ask her to be searched. Another female guard then searched her jacket and checked her handbag. No stolen CD was found. But the iPhone found in her jacket was confiscated and inspected for possible illegal recording. The guard told Charlene it would take a few hours for inspection and she could wait or return the next day to retrieve her phone.

Charlene chose to wait and stay in the complex’s security office because she was worried that no transportation was available for returning to Atlanta the next day. After four hours waiting, the phone was returned and no illegal recording was found. The security guard was employed by Zero Tolerance, Inc. (ZTI), which are hired by CIPA to provide security during concerts and other events. It is said in the complaint that all of the teenagers, whose phones had been confiscated, including Charlene, were persons of color. The Millers sued CIPA in Georgia Superior Court in Atlanta for false imprisonment and claimed for compensatory damages of 100, 000 USD as well as other costs and fees. CIPA filed the motion to dismiss for failure to state a cause of action upon for relief can be granted.

APPLICABLE STATUTE

Definition of false imprisonment:

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 (emphasis added)

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 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 behaved in such manner as to cause a man of reasonable prudence to believe that the plaintiff, ..., was committing the offense of shoplifting, ...; or (2) That the manner of the detention or arrest and the length of time during which such plaintiff was detained was under all the circumstances reasonable.

O. C. G. A. § 51-7-60 (emphasis added)

DISCUSSION

The Georgia false imprisonment statute contains two elements to establish a valid claim: (1) there was a detention, for any length of time; and (2) this detention was unlawful. Wallace v. Stringer, 553 S. E. 2d 166, 169 (Ga. Ct. App. 2001). There are two instances of potential false imprisonment in this case: when the guards searched Charlene for a stolen CD; and when the guards confiscated the iPhone in her possession. The two elements at issue

in the first instance are detention and lawfulness; I discuss these in turn. Under the rules recognized by Georgia courts, the guard searching Charlene’s jacket and checking Charlene for a stolen CD probably is a detention. The lawfulness issue is more complicated, as the shoplifting defense for the purposes of the statute can be successfully applied to defeat claim of false imprisonment. However, an unreasonable belief of suspected shoplifting and racial profiling would leave room for the argument that the Millers have a valid claim. The second issue element in the confiscation of iPhone is not at issue because this was not an instance of shoplifting. Therefore, the only element issue here is detention. Under the rule recognized by Georgia courts, confiscation of Charlene’s phone probably is not a detention.

A. The security guard’s searching on Charlene for stolen CD might qualify as a detention, because the search is against Charlene’s will.

By the presence of security guards will allow Charlene to argue the search conducted by the security guard is against Charlene’s will and accordingly a fear that force would be used if she did not submit to the search, regardless of the fact Charlene acquiesced to the security guard’s search. Georgia courts acknowledged that a detention need not consist of physical restraint, but may arise out of “ words, acts, gestures, or the like, which induce a reasonable apprehension that force will be used if plaintiff does not submit; and it is sufficient if they operate upon the will of the person threatened, and result in a reasonable fear of personal difficulty or personal injuries”. Fields v. Kroger Company, 414 S. E. 2d 703 (Ga. Ct. App. 1992). In J. H. Harvey Co. v

Speight, 344 S. E. 2d 701 (Ga. Ct. App. 1986), the court held that if someone agrees of his own free choice to surrender his freedom of motion, as by remaining in a room or accompanying the defendant voluntarily, to clear himself of suspicion or to accommodate the desires of another, rather than yielding to the constraint of a threat, then there is no imprisonment.

Id. at 702. As a result, the court concluded that a 45-second encounter with manager and employees of supermarket, in which manager asked if customer had anything that did not belong to him and parted customer's jacket with his hands to see if anything was concealed there, did not establish involuntary restraint of customer, where customer admitted that he invited search by manager, and, thus, customer could not recover for false imprisonment. Id. However, in Mitchell v. Lowe's Home Centers, Inc., 506 S. E. 2d 381 (Ga. Ct. App. 1998), the court held that a customer accompanied the store's manager to his office voluntarily, while resulted in a reasonable fear on the part that the customer was not free to leave the manager's office without experiencing personal difficulties, constituted " detention." Id. at 384. Thus, analyzing the restraint against one's will, either restraint against one's will without consent or fear and consent, amounts to detention.

The guard's search of Charlene for a stolen CD might constitute detention for the purpose of above rules under both Fields and Mitchell, regardless of the fact Charlene acquiesced to the search. First, under Fields, Charlene can show that she was detained if she was restrained against her own will. Since a restraint may consist in words, acts, or gestures that lead the plaintiff reasonably to apprehend that if they do not submit to the defendant force

will be used. Second, it could be argued that Charlene acquiesced to the request to be searched and that the cooperation with the security guard was not against her will.

However, with the presence of the guard's size and imposing manner, Charlene might still argue the search is against Charlene's will because of fear that force would be used if she did not submit to the search, and forced her decide to acquiesce to the search and cooperate with the guard. Under Mitchell, it is possible that she was frightened by the presence of security guards and heightened level of security at the concert. This resulted in a reasonable fear that Charlene was not free to leave the concert without experiencing personal difficulties. There was, in this respect, arguably a fear that force would be used if Charlene did not submit to the search. Therefore, the security guard's searching of Charlene for a stolen CD was a detention. Having addressed detention, I now turn to lawfulness.

B. The Millers might not have a strong argument against CIPA because the shoplifting defense applied and security guard's search is not unlawful.

Although under the Georgia statute, the shop owner could successfully use the shoplifting defense to defeat plaintiff's claim of false imprisonment, it is unlikely for Charlene to argue that the racial profiling that all of the teenagers whose phones had been confiscated, including Charlene, were persons of color would allow Charlene to recover. Shoplifting defense under the statute required the store owner to show that the patron had conducted herself in such a manner as to cause a person of reasonable prudence to believe that she was shoplifting and to show that the manner of the

detention of the patron and the length of time of the patron’s detention was reasonable under all of the circumstances. K-Mart Corp. v. Adamson, 386 S. E. 2d 680, 682 (1989). With respect to the reasonable cause to believe the plaintiff was engaged in shoplifting, in Brown v. Winn-Dixie Atlanta, Inc., 389 S. E. 2d 530 (Ga. Ct. App. 1989), a assistant grocery store manager had cause as reasonably prudent person to believe that customer had not paid for item she had selected from store delicatessen, where customer had gone twice to deli in space of a few minutes, carrying other groceries, and had made three shopping forays in approximately 20 minutes.

The court held that the store manager had cause as a reasonably prudent person to believe that plaintiff had not paid for the stew. However, in Walmart Stores, Inc. v. Johnson, 547 S. E. 2d 320 (Ga. Ct. App. 2001), jury found that department store personnel physically detained, arrested, and prosecuted customer on suspicion of shop-lifting simply because she was a black female, despite confirming that she was not involved with group of shoplifters. As a result, the court held that the customer was entitled to punitive damages of $250, 000 on finding that department store was liable for false imprisonment and other charges. Id. at 326. Thus, analyzing on suspicion of shoplifting simply because of color, it could be argued that there is no reasonable cause to believe the plaintiff was engaged in shoplifting.

In this case, when Charlene was stopped by the guard, the guard told that Charlene was suspected of having stolen a CD from the band’s merchandise table based on her behavior. Although the guard didn’t reveal what kind of behavior Charlene acted such as the example under Brown, we may argue

that he didn’t suspect Charlene without any basis, rather, he exercised his duty of protecting the security in this area. Under Walmart, Charlene probably may argue that the guard suspected her merely because of her color, which was definitely discrimination against colored people. However, we may argue that the guard had good reason and experience to explain his observation of Charlene as a basis of reasonable suspect. In other words, what kind of Charlene’s behavior established a reasonable basis on which the guard suspected Charlene having stolen a CD? Did Charlene act abnormally from ordinary people? Did Charlene seem to take any item in this area and put it in her jacket or handbag?

Did Charlene have done anything which revealed that she might be involved in shoplifting? All these factors are critical to determine if the guard had reasonable basis to suspect Charlene committed shoplifting or not. Regarding the manner and the length of time of detention, for example, in Estes v. Jack Eckerd Corp. 360 S. E. 2d 649 (Ga. Ct. App. 1987), the plaintiff was subjected to a five or ten minutes “ 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. As a result, the court held this procedure was reasonable. Similarly, in Mitchell v. Walmart Stores, Inc. 477 S. E. 2d 631 (Ga. Ct. App. 1996), the defendant’s employee never placed a hand on plaintiff’s person but only took her shopping bag, and during which plaintiff was never accused of theft. The court held that the manner and duration of subsequent detention of customer was reasonable. Id. at 632. Thus, a five to ten minutes search of shopping bag, and without placing a hand on plaintiff’s

person shows the manner of the detention of the patron and the length of time of the patron’s detention was reasonable.

Although it is true that the detention caused inconvenience and embarrassment to Charlene, causing embarrassment is not the same as unlawful imprisonment. The length of time and the manner of security guard’s search on Charlene was not unreasonable under both Estes and Mitchell. First, a female guard conducted the search and the guard only searched the jacket pockets, and looked into her handbag, which is reasonably in connection with the search of CD. Furthermore, after the search and no stolen CD was found, Charlene was free to leave, regardless of the fact that she chose to wait for retrieve her iPhone.

Thus, We may argue the evidence sufficient to support the conclusion that Charlene was not detained unreasonably. Even if Charlene was detained by the guard, we may argue that the detention wasn’t unlawful when Charlene was searched because of suspicion of having stolen CD. Considering the complaint that all of the teenagers whose phones had been confiscated, including Charlene, were persons of color, because the racial profiling issue was so critical, it leaves room for the Millers to argue that the security guard unreasonably believed that Charlene was engaged in shoplifting and the Millers should still have a valid claim against CIPA. However, me may defend that the guard had reasonable basis to suspect Charlene committed shoplifting.

C. Security guard’s confiscation of Charlene’s phone for inspection is not a detention.

Although the Georgia courts discussed whether the detention of a person's property is the detention of the person, not any words, acts or gestures against Charlene's will allow us to argue that there is no detention. Georgia courts recognized of detention could include the taking of the plaintiff's property. In Burrow v. K-Mart Corp., 304 S. E. 2d 460 (1983), the plaintiff had purchased two lamps which were not in their original boxes. The store greeter took the boxes to search them and demanded to review the receipt. The Court determined that "[t]he exercise of dominion over the property serves also to exercise dominion over the person owning such property," and that a jury issue was created as to whether the greeter's words and acts "[acted] upon the plaintiff's will so as to restrain her." Id. at 465. As a result, the court held that store customer was told by store employee who had just checked boxes customer was carrying out of store that " she could go," was sufficient to sustain finding that store falsely imprisoned customer.

Id. Although Georgia court discussed whether the detention of a person's property is the detention of the person, there was no restraint against Charlene either by force or fear. Under Burrow, the confiscation of the iPhone does not serve to exercise dominion over Charlene because she is still free to leave or return to retrieve her iPhone. Although she finally waited in the security officer because that all restaurants and stores in this area were closed and being afraid of sitting in the dark parking lot with her friends, this decision was made out of her own will. Furthermore, Charlene was allowed to return home. It is out of her personal willing that she determined to wait at her will. There is no evidence showing that the guards exerted any physical or similar restraint against Charlene' will nor she was frightened by the

words, acts or gestures of security guards. Because there was no fear that force would be used if Charlene did not consent of confiscation, the confiscation of the iPhone also does not constitute detention under Mitchell 506 S. E. 2d at 384. Consequently, her will wasn't restrained. Since the confiscation of iPhone does not constitute exercise dominion over Charlene and there was no fear nor force against Charlene's will, the security's guard confiscating Charlene's iPhone for inspection was not a detention.

CONCLUSION

In sum, Charlene's claim against CIPA for false imprisonment will probably fail. The security guard didn't impose physical restraint or any other forcible restraint against Charlene, however the fear and her acquiesce of search may be argued a restraint against her will and constitute detention. Furthermore, we may argue that the guard's searching on Charlene based on Charlene's doubtful behavior was reasonable prudence to believe that she was shoplifting, and the manner and the length of search was also reasonable, therefore the detention wasn't unlawful. Although Charlene may argue that the security guard have engaged in racial profiling at the concert, we may strongly defend that the guard had a good reason and experience to explain his observation of Charlene as a basis of reasonable suspect. Lastly, the confiscation and the inspection on Charlene's iPhone was not a detention because her will wasn't restrained and waiting in the security office was her consideration of personal interests. As a result, Charlene wasn't detained by the security guard. Thus, at the hearing, we can argue that the Millers do not have a valid claim against CIPA and the judge should grant CIPA motion to dismiss for the failure to state a claim upon which relief can be granted.