

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2016-CA-001688-MR

TERESA KINNER

APPELLANT

v.

APPEAL FROM JOHNSON CIRCUIT COURT  
HONORABLE THOMAS M. SMITH, JUDGE  
ACTION NO. 13-CI-00164

WAL-MART STORES, INC.

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\*

BEFORE: CLAYTON, DIXON, AND MAZE, JUDGES.

CLAYTON, JUDGE: Teresa Kinner appeals from a Johnson Circuit Court order granting summary judgment to Wal-Mart Stores, Inc. on her claim of false imprisonment. Kinner claims that she was unreasonably detained by a Wal-Mart Asset Protection Associate (“APA”).

According to Kinner’s deposition testimony, she had completed a shopping trip to Wal-Mart, paid for her purchases and was leaving the store when

she was approached by a woman who said she needed to talk to her. When Kinner asked what she needed to talk about, the woman replied that she needed to speak to Kinner privately because she did not want to embarrass her. The woman also informed Kinner that she was from security. Because the woman was not wearing a uniform, Kinner asked how she could know she was from security. The woman replied that if she would go with her and step into a room she would show her. Kinner walked to the door of the room, but felt uncomfortable and did not go in. The woman retrieved a card from the desk which she flashed at Kinner who was not able to see what was printed on it. The woman again told Kinner that if she came in and sat down, she would explain the situation. Kinner stepped in and started to pull her gloves from her coat. The woman told her she did not have to do that, and then said that she had followed Kinner around the store, listened to her conversations with people, and learned that she goes to church. She said that she did not think Kinner had shoplifted. When Kinner asked the purpose of this, the woman replied that someone had called the store to say that Kinner was a shoplifter, and described her from "head to toe," her hair, and her clothes. When asked, the woman said she did not have the person's name because callers did not have to identify themselves and that they did not have caller ID. Kinner asked her why, if she did not think she had shoplifted, she had brought her into the room. The woman replied that she thought Kinner needed to know that there was

somebody out to get her. Kinner did not feel comfortable and asked if she could leave. The woman replied that she could not hold her. Kinner said that she did not feel like she was even safe going to her car but refused the woman's offer to walk her to her car.

When asked why she felt compelled to go with the woman, Kinner replied "She told me she was security and that I had to go – she didn't tell me she was security when she said I had to go with her. At that point in time, she said, 'You have to go with me.'" When Kinner asked her, "Why would I have to? I don't know you," the woman replied that she was security and did not want to embarrass Kinner. Kinner testified that the woman touched her elbow when she was going into the room. Kinner stated that she felt very uncomfortable and very scared, but did not feel threatened.

Kinner filed a complaint against Wal-Mart, alleging false imprisonment and outrageous conduct. Wal-Mart moved for summary judgment, which the trial court granted. This appeal by Kinner followed.

In reviewing a grant of summary judgment, our inquiry focuses on "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996); Kentucky Rules of Civil Procedure (CR) 56.03. The trial court must view the record "in a light most

favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). On the other hand, “a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial.” *Id.* at 482. “An appellate court need not defer to the trial court’s decision on summary judgment and will review the issue *de novo* because only legal questions and no factual findings are involved.” *Hallahan v. The Courier-Journal*, 138 S.W.3d 699, 705 (Ky. App. 2004).

“The tort of false imprisonment requires the plaintiff to establish that she was detained unlawfully.” *Birdsong v. Wal-Mart Stores, Inc.*, 74 S.W.3d 754, 757 (Ky. App. 2001) (citing *Wal-Mart Stores, Inc. v. Mitchell*, 877 S.W.2d 616, 617 (Ky. App. 1994)). “[A]ny deprivation of liberty of one person by another or detention for however short a time without such person’s consent and against his will, whether by actual violence, threats, or otherwise, constitutes’ . . . false imprisonment.” *Great Atlantic & Pacific Tea Co. v. Smith*, 281 Ky. 583, 136 S.W.2d 759, 767 (1939)(quoting *Great Atlantic & Pacific Tea Co. v. Billups*, 253 Ky. 126, 69 S.W.2d 5, 6 (1934)); *see also Mitchell*, 877 S.W.2d 616.

Kinner argues that she was deprived of her freedom of action and felt threatened when the APA stopped her and told her three times “You need to come

with me.” After the second demand, the APA moved closer and told Kinner she was security; Kinner described her final demand as “a little bit loud.” The officer touched her elbow and guided her into the security office where she was directed to sit down, the door was closed, and Kinner was granted permission to leave only after asking. Only after Kinner was directed into the security room and told to sit down was she told that someone had informed the store she was a shoplifter. She contends that the following testimony from her deposition supports her claim of false imprisonment:

Q. But you could have left if you wanted to.

A. I didn’t know that ma’am. I didn’t know that. I didn’t know I could just get up and walk out. I didn’t want –

Q. But you didn’t try to leave at any time, did you?

A. I didn’t try to leave, because I felt like she asked me to come in there because she was security and that’s where I had to go.

But the APA’s words and actions did not rise to the level necessary to state a claim of false imprisonment because they were unaccompanied by any force or threats of force.

In order to constitute a case of false imprisonment, it is essential that there be some direct restraint present. Restraint constituting a false imprisonment may arise out of words, acts, gestures, or the like, which induce a reasonable apprehension that force will be used if the plaintiff does not submit.

On the other hand, “submission to the mere verbal direction of another unaccompanied by force, or threats of any character, does not constitute false imprisonment . . . Bare words are insufficient to effect an imprisonment if the person to whom they are spoken is not deprived of freedom of action.

*Ford Motor Credit Co. v. Gibson*, 566 S.W.2d 154, 155–56 (Ky. App. 1977)

(internal citations omitted).

The APA’s remarks constituted mere verbal direction, unaccompanied by force or threats. At no time did Kinner testify that she felt a reasonable apprehension that force would be used if she did not submit. She testified that she acted out of respect for authority, and admitted that the APA simply wanted to help her by letting her know that someone had accused her of shoplifting.

By contrast, in *Birdsong v. Wal-Mart Stores, Inc.*, the Court of Appeals held that the genuine issues of material fact precluded summary judgment when a Wal-Mart employee instructed a shopper to sit down and pushed a shopping cart in front of her to block her from leaving. When the shopper asked if she had to stay, the employee said yes. *Birdsong*, 74 S.W.3d at 756, 759.

Similarly, in *Wal-Mart Stores, Inc. v. Mitchell*, 877 S.W.2d 616 (Ky. App. 1994), this Court upheld a jury verdict in case in which two Wal-Mart employees grabbed the appellee, a fourteen-year-old boy, in the store parking lot and tried to remove an allegedly stolen item from his pocket. The employees

“manhandled” him, grabbed his arms and took him against his will to a room at the back of the store. They closed and locked the door, interrogated him for thirty minutes, ordered him to pull down his pants and tried to persuade him to sign a statement admitting to theft. They only released him when he started to cry and complain of feeling sick. *Mitchell*, 877 S.W.2d at 617.

Finally, in *Ashland Dry Goods Co. v. Wages*, 302 Ky. 577, 195 S.W.2d 312 (1946), a shopper accused of theft was told by the store manager that she could not leave. When she tried to do so, the manager grabbed her purse. On appeal, Kentucky’s highest court conceded that although she

probably was at liberty to leave the store at any time, and there is no evidence that she was forcibly restrained from doing so, the result of her departure would have been an automatic parting with her purse. It is natural to assume that the appellee, knowing her innocence, was most reluctant to leave the store without her purse and its contents. We are of the opinion that the retention of the purse and the statement by [the manager] that the appellee could not leave the store . . . constituted an unlawful detention of the appellee without her consent and against her will, and that the court properly submitted this question to the jury.

*Ashland Dry Goods*, 195 S.W.2d at 314–15.

When the facts in Kinner’s case are viewed in the light of these earlier cases, they simply do not support a false imprisonment claim. No facts were elicited that Kinner was physically detained or threatened with physical detention.

For the foregoing reasons, the order granting summary judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mitchell D. Kinner  
Paintsville, Kentucky

BRIEF FOR APPELLEE:

Christopher R. Cashen  
Catherine A. Stivers  
Louisville, Kentucky