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Judges weigh mistaken charges

KROGER ARGUES it should not be liable for arrest of customer its workers thought was passing a fake \$100 bill

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THE GEORGIA COURT of Appeals heard lively arguments Tuesday over whether a grocery store should be liable for the police's wrongful arrest of a customer mistakenly accused of paying with a counterfeit \$100 bill.

One of the three judges hearing the case said the customer's predicament made her fear she could be falsely accused, too.

"A lot of citizens—myself included—like to work with big bills," Judge M. Yvette Miller told a lawyer for Kroger Co. "Are you saying we should put that customer at the whim of being arrested?"

Later Miller mused, "I'm going to start getting my change in \$20s," adding, "Maybe Publix will take my \$100 bill."

Kroger's lawyer, Matthew Moffett of Gray, Rust, St. Amand, Moffett & Brieske, argued that the police were to blame, not the grocery store, when Najah Briggs was arrested and falsely charged with counterfeiting and forgery. Moffett asked the court to reverse a \$500,000 verdict against Kroger.

Briggs' lawyer, Michael Mills of Dixon Mills, asked the court to affirm the verdict delivered last year before Clayton County State Court Judge Morris Braswell after a three-day trial.

The case started in August 2009 at a Tara Boulevard Kroger, when Briggs tried to pay with a \$100 bill. According to defense pleadings, a customer service clerk marked the bill with a counterfeit detection pen, "which caused a dark mark to appear, raising the possibility that it might be counterfeit."



Matthew Moffett, representing Kroger, argued the plaintiff should have sued the police, not the grocery store. "What happened here is the police officer made the wrong call," he said.

Briggs' complaint said he was told to wait while the store manager called the police. Two Clayton police officers arrived and decided to arrest Briggs.



Najah Briggs

He was held for 31 hours in jail and then fired from his security guard job. The U.S. Secret Service determined two months later that the \$100 bill—which was issued in 1950 and looked different from newer bills—was real, and Briggs' charges were dropped.

On Tuesday, Moffett told the judges that the store manager who suspected the bill was counterfeit and called 911 should have been able to trust law enforcement.

"What happened here is the police officer made the wrong call," said Moffett.

"Doesn't Kroger have some responsibility?" asked Miller, who was on the panel with Judges Sara Doyle and Michael Boggs.

Miller added that the briefs show the Kroger manager's call to police—saying "I have a guy trying to pass a counterfeit bill"—violated store policy and training to avoid accusations and offer the customer a chance to pay by other means if a bill seems suspicious.

"I don't know that every merchant has a policy, but the public policy is to call the police if you suspect a crime," Moffett answered. "There is no evidence of bad faith in this case."

"But the jury found otherwise," Miller interjected.

"The jury should have never had this case," said Moffett.

"I don't fault the jury," he added, arguing that the judge should have granted Kroger a directed verdict or a judgment notwithstanding verdict. Moffett said Briggs should have sued

the police instead of Kroger.

When it was the appellee's turn to argue, Mills opened with his answer to Miller's question. "Kroger has a responsibility to act non-negligently. They have a responsibility to follow their own guidelines."

Mills, who tried the case with law partner S.K. "Rod" Dixon, told the court that Kroger's manager could have reasonably expected that a 911 call reporting a counterfeit bill could have led to the arrest of the customer waiting for his change.

The judge responded that "anyone could be in the shoes of this gentleman."

"Since I've been working on this case, I've been nervous about using \$100 bills," Mills answered.

Mills continued his argument with Kroger's assertion that the police determination of probable cause for arrest "shields them from liability."

"So I assume you take issue" with the Kroger argument that the police are to blame, not the store, Miller asked.

"Absolutely," Mills answered.

The judge went on with a question about how the actions of the store clerk and manager in wrongly suspecting the bill set in motion the events that led to the false arrest. "So really we have a complete unbroken chain of negligence?"

"Yes. I agree with that," Mills answered. "Foreseeability is the key."

One case Moffett cited on Kroger's behalf was *Baggett v. National Bank & Trust Co.*, 174 Ga. App. at 348.

In that case, a man was wrongfully arrested after he used a deposit slip picked up off a table in the lobby, not knowing that a note had been scribbled on the back: "This is a stek [sic]



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Judge Yvette Miller: Anyone who uses big bills could be falsely accused of counterfeiting.

up." The teller alerted her boss, who summoned the police by silent alarm.

Kroger's brief quoted the decision in that case: "To allow an action in negligence to lie against a citizen if he makes an honest mistake in reporting to the police would have a chilling effect on an important source of information about crime. Citizen cooperation is essential to efficient police operation and should not be stifled."

Mills argued that the *Baggett* case does not apply to the Kroger case because in *Baggett*, the defendant bank made a great effort to correct its mistake.

"Here, Kroger was mute after the police arrived," Mills said. "The manager did nothing."

Mills argued that Kroger had policies in place that would have prevented the wrongful arrest in the Briggs case and the *Baggett* case, but Kroger employees failed to follow policy. The appellee brief said: "Kroger should never have called the police at all."

The case is *Kroger v. Briggs*, No. A13A0671. 