

# DAILY REPORT

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## QuikTrip Wins Dismissal of Lawsuit Over Shooting Death

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A FEDERAL JUDGE has thrown out a premises liability lawsuit against QuikTrip over a man who was murdered in a convenience store parking lot.

“As a matter of law, a proprietor’s duty of ordinary care toward its invitees does not normally include taking measures to protect them against the intervening criminal acts of third parties, as such acts usually are unforeseeable,” Senior Judge Clarence Cooper of the U.S. District Court for the Northern District of Georgia said Friday in an order granting QuikTrip’s motion to dismiss. “The shooting death of Andrew Spencer was not reasonably foreseeable, as prior crimes in



Michael Rust and Nicole Leet of Gray, Rust, St. Amand, Moffett & Brieske defended QuikTrip

the QuikTrip parking lot were not substantially similar and did not establish foreseeability.”

Nicole Leet and Michael Rust of Gray Rust St. Amand Moffett & Brieske defended QuikTrip. Pete Law of Law & Moran represented Spencer’s mother. The lawyers did not have an immediate comment.

“It was an every-night thing

for sometimes-intoxicated customers to come to QuikTrip after leaving Follies, one of the nearby clubs, between 3:00 a.m. to 4:00 a.m.,” Cooper wrote.

Spencer died outside a QuikTrip at 4050 Buford Highway in Chamblee in the early morning hours of Dec. 20, 2016. He and a friend had gone inside for

about two minutes after leaving a nearby strip club at 3:20 a.m. After a silent encounter near the store's hot dog stand, a gang member mistook Spencer and his friend for rivals, according to Cooper.

Testimony and security film showed the gang member walked outside first, went to his vehicle, took out a gun and started pacing near the door waiting for Spencer and his friend to leave, Cooper said.

"You guys were looking at me funny in the store," the shooter said, according to the friend's testimony. "Y'all out here fake reppin'."

The friend took the statement to be a reference to gang affiliation, but neither he nor Spencer were in a gang, Cooper said. The gang member shot anyway, killing Spencer.

Law and Moran had argued that QuikTrip was negligent for

not having a security officer on duty to observe the confrontation and intervene to de-escalate it.

Leet's successful argument defending QuikTrip seemed to hang on the day of the week. The company employed a security guard on Friday and Saturday



**As a matter of law, a proprietor's duty of ordinary care toward its invitees does not normally include taking measures to protect them against the intervening criminal acts of third parties, as such acts usually are unforeseeable. The shooting death of Andrew Spencer was not reasonably foreseeable, as prior crimes in the QuikTrip parking lot were not substantially similar and did not establish foreseeability."**

—Senior Judge Clarence Cooper  
of the U.S. District Court  
for the Northern Georgia

nights—which happened to be when previous violent crimes had taken place—but not on week-

"Plaintiffs allege that, if there had been a security guard outside the QuikTrip store on the Thursday in question, this incident would not have happened," Cooper said. "However, none of the prior incidents involving gun violence would have drawn QuikTrip's attention to the need to have a security guard on the premises on weekday nights or on Thursdays, in particular."

Other incidents of gunshots outside the store had been on weekends. They were also different in other ways, Cooper ruled. "The Court agrees with QuikTrip that there were no prior incidents that were sufficient to put QuikTrip or any of its employees on notice of the allegedly dangerous condition of not having a security guard on weekday nights."

The case is *Yvette Sanders v. QuikTrip*, No. 1:17-CV-2341-CC.