

FROM THE AUSTIN COUNTY DISTRICT ATTORNEY'S OFFICE

FOR IMMEDIATE RELEASE

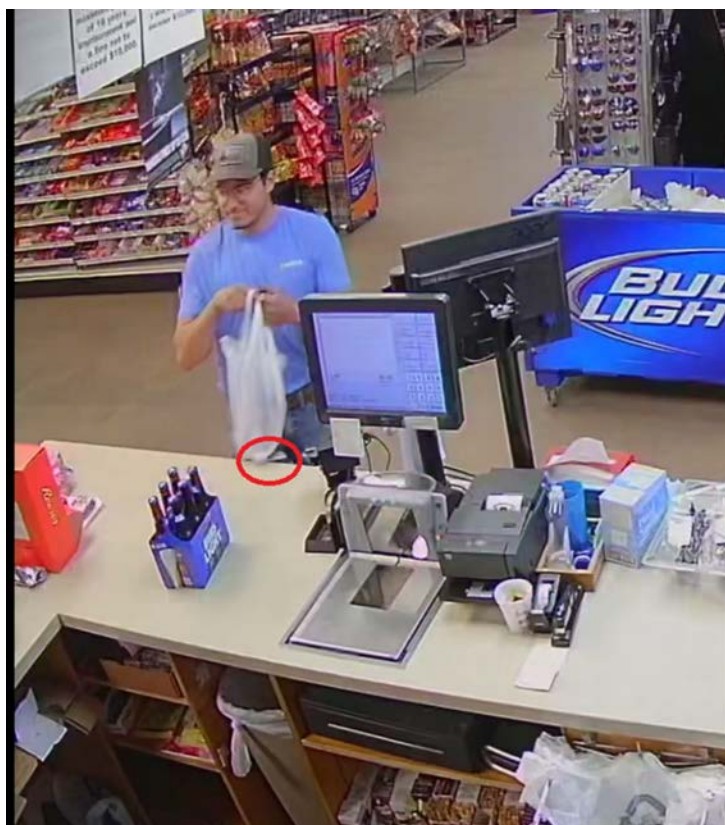
An incident occurred involving several parties at the Lindemann Store on January 15, 2023. The Austin County District Attorney's Office presented this case with all potential charges to the Austin County Grand Jury on February 22, 2023.

The Grand Jury considered the following potential charges: 1. Theft (Class C Misdemeanor) by Female Customer; 2. Unlawful Restraint (Class A Misdemeanors) by Store Employees; 3. Assault (Class A Misdemeanor) by Female Customer; 4. Injury to Elderly Person (Third Degree Felony) by Store Employees; 5. Assault (Class A Misdemeanor) by Customer's Granddaughter; 6. Assault (Class A Misdemeanor) by Customer's Daughter.

After thorough review, the Austin County Grand Jury recommended that no criminal charges be filed against any of the parties involved in the Lindemann Store incident. As criminal charges have been rejected against all parties, the persons involved will not be publicly identified.

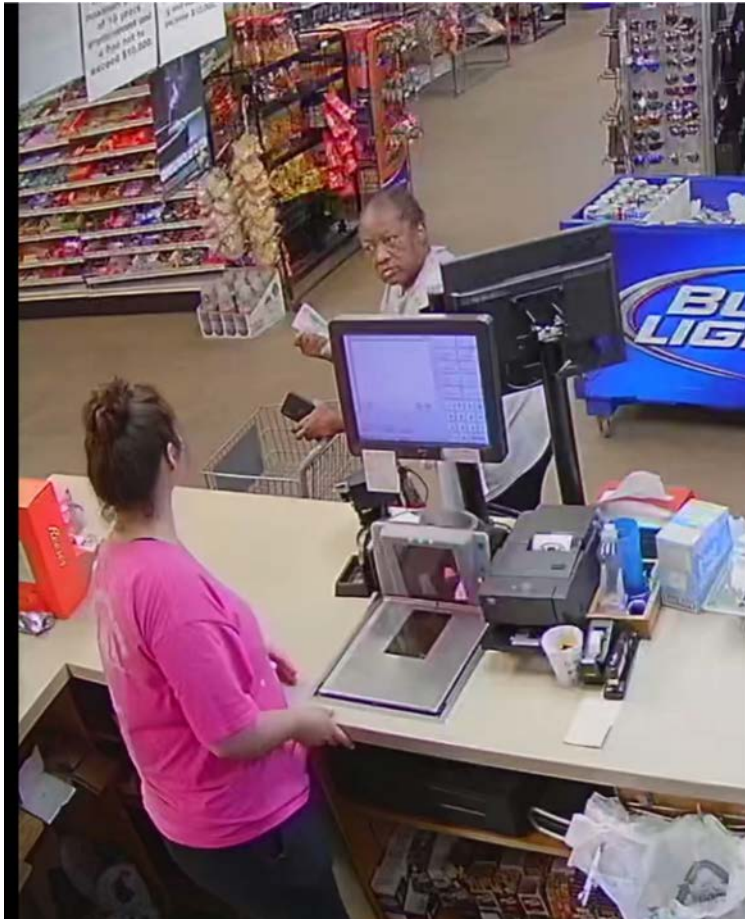
1. Theft by Female Customer—(Class C Misdemeanor):

Video evidence and witness statements showed that on January 15, 2023, a male customer received a \$50 bill in change and accidentally knocked the bill off the counter (circled below) onto the floor directly in front of a register as he left Lindemann Store.



Less than three minutes later, the next customer, a 65-year-old female, walked up to the same register and picked up the \$50 bill from the floor directly in front of that register.

The customer showed the bill to a female store clerk wearing a pink, short-sleeved shirt, and stated, "I just found this on the floor."



The on-duty manager, a female wearing a long-sleeved white sweatshirt, immediately told the female customer that the bill belonged to the previous male customer who had just received the \$50 bill in change.

The store employees knew the male customer and told the female customer the bill owner's name.

The female customer refused to give the store employees the \$50 and said she would only give it to the bill owner. The store employees told her they had plenty of cameras to prove it and that the male customer had just left.

The customer told the employees that she would not leave with the money and would wait until they found the owner. She then began shopping with the bill in hand.

The store employees immediately tried to locate and notify the owner of the money.

About 6 minutes later, the female customer returned to the register to check out. She then asked if she could bring the \$50 back to a manager the next day.

The female clerk stated that would not happen.

When the manager told the customer that she was the manager, the customer then argued that the store employees did not really know whose money it was. The manager repeated the bill owner's name, and the female clerk replied that they had cameras to prove it.

The female clerk also said that they would have to call Austin County, meaning law enforcement. The customer replied, "Looky here, I don't give a d**n about Austin County."

The female clerk stated, "You're not leaving here with the money." The customer replied, "I am, too."

The female clerk told the customer, "You picked it up off the floor, it's not yours." The customer replied that the store employees had not actually seen her pick it up off the floor—that she had only told them she picked it up.

The employees repeated that they had cameras. They argued that the customer had admitted that she found the money on the ground. The customer replied, "Yeah, but don't do an old woman like that."

The female clerk responded, "I don't give a f**k how old you are. If you can't respect me, I'm not gonna respect you." She then repeated that the customer would not be leaving with the \$50.

The customer asked, "What are you going to do, hold me?" The clerk repeated that she would call Austin County.

The customer said, "Call them."

The manager began calling an officer that she knew personally. She told the customer that she was the closing manager and that the customer should give the money to her. The customer again refused. The clerk asked, "Why not?"

The customer did not respond. Instead, she asked the store employees if they were going to check her out. The employees refused. The customer then tried to leave the store with the \$50.

To prove a theft of property under Texas Penal Code § 31.03, the State must prove beyond a reasonable doubt that a suspect intended to unlawfully take property without the owner's consent. A theft of less than \$100 may be charged as a Class C Misdemeanor offense.

Theft Law Regarding Lost Property

This case has led many to wonder about Texas theft law regarding lost property.

Texas law, for decades, has held that a person commits theft if he or she finds lost property and takes it, despite knowing and believing that the true owner can be found. See *Williams v. State*, 268 S.W.2d 670, 672 (Tex. Crim. App. 1954). Determining whether the owner can be found relies heavily on the circumstances of each case.

Here, the customer attempted to leave the store with the lost money despite being advised repeatedly that the owner was known and could be found.

Mistake of Fact Defense

Based on the customer's statements during and after the incident, the customer may have mistakenly believed that the employees were lying about whether the true owner could be found. This belief, although mistaken, could provide a legal defense at trial.

A legal defense arises when someone, through mistake, forms a reasonable belief about a matter of fact that shows that she lacked criminal intent, per Texas Penal Code § 8.02(a).

Also, the rightful owner of the money did not wish to press charges in this matter. The store later returned the \$50 to him.

The Grand Jury recommended that no charges be filed against the customer for Theft.

2. Unlawful Restraint by Store Employees—Class A Misdemeanors:

Video evidence showed that when the customer tried to leave, the employees detained her by closing the front doors to the store. The employees appeared motivated by an intent to prevent the customer from committing theft of the male customer's money, based on the circumstances as the employees believed them to be at the time.

When the customer tried to take the money despite the store employees' repeated warnings, the manager attempted to contact police by calling a local deputy directly. When the deputy eventually returned the call, he informed the clerk that he was stationed on the opposite end of the county. He directed the clerk to call 911, he did not respond to the scene, and he played no part in the investigation of the offense.

While the manager was attempting to reach that officer on the phone, she and the female clerk locked the store doors to detain the customer until police could arrive.

Citizen's Rights to Prevent Theft

This case has led many to wonder what laws apply when a citizen attempts to prevent a theft.

Texas law, for over 140 years, has given citizens the right to take action to prevent a suspected theft. See *Smith v. State*, 13 Tex. App. 507, 1883 WL 8828 (Tex. App. 1883).

Texas Code of Criminal Procedure Article 18.16 states that Texas citizens have the right to detain a person suspected of committing theft, to retrieve the stolen property from that person, and to take both the person and the property to police. The citizen performing this "citizen's arrest" must have reasonable grounds to believe that the suspected person is committing theft. A seizure under this law must be made openly and without delay.

A person commits the crime of unlawful restraint by restraining another without consent. However, per Texas Penal Code § 20.02(d) says that a person does not commit the crime of unlawful restraint if the person is performing a lawful arrest

The right to perform a citizen's arrest applies to store employees who witness theft, and the law authorizes them to use the same amount of force that a police officer could under the same circumstances. See *Simpson v. State*, 815 S.W.2d 900, 902 (Tex. App.—Ft. Worth 1991).

The law also permits employees to hold the suspected person even after the person no longer holds the stolen property. See *Simpson v. State*, 815 S.W.2d 900, 902 (Tex. App.—Ft. Worth 1991)

Although this type of citizen's arrest is legal in certain circumstances, such action should never be undertaken lightly, and it could result in civil liability, serious bodily injury, or death.

Law Permitting Defense of Another's Property

Texas Penal Code § 9.43(1) also creates a legal defense for citizens who use force to prevent a suspected theft of someone else's property. Any use of physical force must be reasonable, necessary, and proportionate under the circumstances.

A familiar example raising this type of defense would be a good Samaritan tackling a suspected purse-snatcher.

As stated above, although such an action may be legal, it should never be undertaken lightly.

Here, the employees shut the store doors to detain the customer, and the customer hit the manager with a shopping cart several times while trying to leave the store with the \$50.

The manager then retrieved the \$50 by grabbing the edge of the bill sticking out from the customer's hand the third time that the customer hit the manager with the cart.



Video evidence indicated that the store employees detained the customer and retrieved the money without using any physical force against the customer.

The Grand Jury reviewed the evidence and the potential defenses and recommended that no charges be filed against the employees for Unlawful Restraint.

3. Assault Bodily Injury by the Customer—Class A Misdemeanor:

As stated above, the customer hit the manager several times with a shopping cart. Then, after the manager retrieved the money, the customer tried to get the \$50 back by grabbing the manager's shirt, following the manager, and grabbing the manager's throat.



At that point, the female clerk and a male clerk wearing a baseball cap grabbed the customer to prevent her from injuring the manager.

To charge someone with Assault-Bodily Injury, the State must prove that bodily injury occurred, per Texas Penal Code § 22.01(a)(1). The manager did not report any physical injuries caused by the customer.

The Grand Jury recommended that no charges be filed against the customer for Assault-Bodily Injury.

4. Injury to an Elderly Person by the Store Employees—Third Degree Felony:

Video evidence showed that the female clerk and the male clerk grabbed the customer only after the customer followed the manager and began grabbing her throat.



At that time, the male clerk grabbed the customer's right arm and pulled it away from the manager.

The female clerk in the pink, short-sleeved shirt then reached over the customer's shoulder and across her chest to pull the customer away from the manager.



The female clerk yelled at the customer, "Get off of her now," and then told the customer she was being a "f***ing b****," and said that the customer would not leave with the \$50. The customer yelled and attempted to slap the female clerk twice before pulling away from the employees.



The employees let the customer go. The customer then called her family and told them that the store employees had assaulted the customer and would not let her leave.



The customer also called 911 on speaker phone. She told 911 that the store employees had jumped her to take the \$50 she found. During the recorded call, the customer stated that she thought the employees would kill her. The female clerk repeatedly argued that she had only restrained the customer to keep the customer from choking the manager, who was 17 years old.

Angry words were exchanged while all parties waited for police. The customer attempted to kick the female clerk in the leg. The employees did not touch the customer again.



Later that night, deputies had EMS check the customer, and deputies obtained a written statement from the customer.

In the customer's written statement to police, she reported suffering from diabetes and high blood pressure. However, the customer did not report any injuries caused by the employees grabbing her, and no injuries were observed on the customer.

To charge someone with Third Degree Felony Injury to the Elderly and related offenses, the State must prove that bodily injury occurred, per Texas Penal Code § 22.04(a)(3).

Law Permitting Defense of Another from Injury

A legal defense exists if a citizen is justified in using physical force to protect another person, per Texas Penal Code § 9.33. Any use of physical force must be reasonable, necessary, and proportionate under the circumstances.

Video evidence showed that no employee touched the customer until the customer tried to grab the manager by the throat. The male and female clerks then grabbed the customer to pull her away from the manager.

The Grand Jury recommended that no charges be filed against the employees for Injury to the Elderly.

5. Assault-Bodily Injury by the Customer’s Granddaughter—Class A Misdemeanor:

The customer’s family began arriving at Lindemann Store, and the customer’s granddaughter stood outside the store door.

Then law enforcement arrived. The Austin County Sheriff’s deputies who came to the scene were responding to the customer’s 911 call. The deputy who had been called directly by the manager played no part in the investigation.

When the manager saw a deputy arriving, she left the store to meet him. The customer’s granddaughter then tried to shove the manager away from the store door.



The first thing that the initial responding deputy saw on scene was the customer’s granddaughter shoving the manager. The deputy, based on what he viewed, had authority to detain the granddaughter in his patrol car under Texas Code of Criminal Procedure 14.01(b) on suspicion of assault and to secure the scene so that he could investigate further.

The deputy eventually determined it was safe to release the granddaughter. He did not charge her, and she was not booked into the Austin County Jail.

Law Permitting Defense of Another

Law enforcement later obtained a written statement from the granddaughter which indicated that she was motivated by a desire to protect her grandmother, based on the circumstances as she believed them to be at the time following the customer’s call.

Also, the manager reported no injuries caused by the customer’s granddaughter.

As stated above, it is a defense to prosecution for assault or related offenses if a citizen uses force in defense of another person, per Texas Penal Code § 9.33.

The Grand Jury recommended that no charges be filed against the customer's granddaughter for Assault-Bodily Injury.

6. Assault-Bodily Injury by the Customer's Daughter—Class A Misdemeanor:

Another relative, reported to be the customer's daughter, arrived while the granddaughter was being detained. The daughter walked past the patrol car, grabbed the manager's face, and shoved the manager's head into the glass door of the store. A young man pulled the daughter away from the manager.

When the deputy returned to the store, the deputy interviewed the manager, and a bystander approached him and showed the deputy her video evidence of that incident.



Based on the circumstances the officer knew at the time, the officer had probable cause to arrest, and did arrest, the customer's daughter for Assault per Texas Code of Criminal Procedure 14.03(a)(2).

However, if the matter were taken to trial, the State would have to prove, beyond a reasonable doubt, that the daughter had no possible legal justification to use physical force to protect her mother under the circumstances as the daughter believed them to be.

Although the manager suffered pain from the attack, the evidence indicated that she had no visible injuries following the incident.

Surveillance evidence showed that while the customer was on the phone with 911, she said that several store employees jumped her to take \$50, were unlawfully holding her, and that she thought that the employees were going to kill her.

Evidence from the granddaughter's witness statement showed that the customer had called her family before she called 911, and the customer appeared to make the same claims to the family.

The Grand Jury recommended that no charges be filed against the customer's daughter for Assault-Bodily Injury.

CONCLUSION

After a careful and thorough review of the potential charges from this incident, the Grand Jury recommended that no criminal charges be filed. Accordingly, the Austin County District Attorney's Office will not pursue any criminal charges arising from the January 15, 2023 incident at Lindemann Store.

****Surveillance Footage Notes****

As part of its investigation into this matter, the Austin County District Attorney's Office requested full surveillance footage, along with all camera angles and available audio, from the Lindemann Store. A Lindemann Store manager who was not involved in the incident provided all available footage to the Austin County Sheriff's Office.

The store manager said that he had previously given this full footage to others, including the customer and her attorney. A 15-20 second portion of the footage has been publicized by private parties.

Photos in this release have been cropped from screen shots of the store video evidence. A red circle has been added to the first photo to highlight the \$50 bill that fell. Otherwise, the photos are unaltered.

The timestamps displayed in the surveillance footage run about 15 minutes ahead of the clock displayed on the wall near the register. Based on Austin County Sheriff's Office dispatch records, it appears that the footage timestamps are correct, and the clock on the wall was around 15 minutes slow.

Only one camera at Lindemann Store recorded audio. This camera provided a view of one register and appeared to only record video and audio when motion was detected near that register. When no movement occurred near that register after approximately twenty seconds, this camera stopped recording video and audio.

When the camera was active, it picked up much of the dialog of the parties near the entry door. However, due to the camera's apparent automated shut-off, not all dialog was recorded.

The District Attorney's Office has made all video and audio footage received from Lindemann Store available to the press in its entirety, unaltered, and in its original format.

The District Attorney's Office has also made an additional reference video available to the press which was created by District Attorney staff. The reference video chronologically synchs the relevant camera angles with the available audio for ease of viewing.

The publisher of Austin County News Online has indicated that a link to the Lindemann Store surveillance footage will be posted for public viewing on his site, <https://austincountynewsonline.com/>. Other press sites may also post the footage.