



**DECISION AND RECCOMENDATIONS,  
CASE #1025**

In the Matter of

Gary Fuller,  
v.

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GERBES WEST Inc.

**DECISION AND RECCOMENDATIONS**

For the following reasons, the department concludes the following:

1. A finding of race discrimination against Gerbes West due to refusal of service to complainant by Gerbes West; and
2. A finding of unreasonable detainment of the complainant due to the lack of reasonable suspicion for the complainant's detention by Gerbes West.

**I. INTRODUCTION**

- A. Responding on behalf of Gerbes West in documentation to both the NACCP and other organizations was Ms. Diane Young of Dillion Corporation, their parent company. Those documents have been obtained and considered by this Department. Complainant, Gary Fuller, a paralegal, appeared on his own behalf in this proceeding.
- B. On March 1<sup>st</sup>, 2007 Gary Fuller filed a complaint with this department against Gerbes West alleging discriminatory treatment based upon his race, and false detention.
- C. After considering Mr. Fuller's complaint and supporting documents, Gerbes' response through documentations with various organizations, the Department is ready to issue its decision, recommendations, and actions taken.

## II. THE DEPARTMENT'S FINDING OF FACTS

- A. On May 5, 2006, sometime, in the evening, complainant (an African American man) went to Gerbes store 122. At this time, complainant was accompanied by Ms. Danielle Hensley (a Caucasian female).
- B. After complainant was through gathering his items to purchase, they headed to the checkout, where the complainant saw Greg Harris. Greg Harris was the "pic" person in charge of the store at the time. Mr. Harris knew complainant and Ms. Hensley from Gerbes store 121 (Gerbes East), where Ms. Hensley had previously worked. Neither the complainant, nor Ms. Hensley had a prior history of shoplifting at any Gerbes store.
- C. At this time, complainant purchased his items and attempted to leave and was confronted and stopped at

the exit door by Greg and another Gerbes' employee named Todd Kopp, who, according to complainant, falsely identified himself as law enforcement.

- D. While detained, complainant was questioned and searched. The search revealed that nothing was stolen, and no wrongdoing by the complainant took place. At the same time, Ms. Hensley had also been detained yet she was not questioned or searched. Greg and Todd blocked the doorway so complainant could not leave. The search turned up empty. Neither complainant, nor his acquaintance had taken any items.
- E. When complainant and Ms. Hensley were finally allowed to leave, complainant was nervous, humiliated, and embarrassed.
- F. Mr. Fuller returned to the store later that night to speak to the manager about the earlier events. Before leaving, Mr. Fuller attempted to purchase some items. Based upon complainant's testimony, he was stopped by Gerbes' Employee, Rhonda Johnson, who refused to let him purchase his items. According to Mr. Fuller, Ms. Johnson claimed that due to his race and earlier events, she was not comfortable with allowing Mr. Fuller to purchase his items. This Department informed Gerbes West of this allegation against them. Neither Gerbes West nor Ms. Johnson denied in these proceedings, or any that we are aware of, that Ms. Johnson refused complainant service on the basis of his race.
- G. Regarding Gerbes' detention of the complainant for suspected shoplifting, Gerbes responded that an unknown woman claimed to have seen the complainant and

Ms. Hensley take items from the store before. This previous allegation was investigated by assistant manager Kirk Bailey, who stated that he observed the complainant and Ms. Hensley during that incident and did not see them do anything wrong. Yet, again, alleged Gerbes, the same unknown woman made the same allegation a second time. Upon this allegation, Gerbes claims that Mr. Harris' had reasonable suspicion to detain and search the complainant and his acquaintance.

H. Gerbes further claims that Mr. Fuller had a bulge in his pants pocket, and that he reached into his pocket at various times. Gerbes admits that no employee actually saw Mr. Fuller take any items. Gerbes also admits that the search of Mr. Fuller's belongings showed that he had not taken any items.

### III. CONCLUSION

Because Gerbes West does not deny, in these proceedings, or any other that we are aware of between these two parties the allegation that Ms. Johnson refused to allow complainant to purchase items from the store; and, based upon complainant's testimony, this Department enters a finding of intentional race discrimination against Gerbes West.

As to the detention of the complainant by Gerbes West for suspected shoplifting, this Department finds that the detainment was unreasonable because: 1. no Gerbes' employee claimed to actually seeing the complainant taking any items from the store, and; 2. the search and

detainment of the complainant showed beyond reasonable doubt that complainant had taken nothing from the store.

IV. RECCOMENDTATIONS

- A. The Department would recommend that complainant and respondent agree upon a reasonable resolution to this matter.
- B. If the parties cannot agree upon a resolution within (30) days of this decision, then the complainant may notify this Department, whereupon this decision shall be fully published in the National Consumer Protection Database [http://www.peopleneed2know.net/National\_Consumer\_Protection\_Database}, made part of the public record, transferred to the associated press, and any other remedial action the Department may wish to institute within the law. Furthermore, we note that Mr. Fuller has an active file with the United States Department of Justice. Therefore, a copy of this decision shall be sent to that body.

V. Legal Effect of This Decision

- A Court of Law may take judicial notice of this Department's decision pursuant to existing law. Fed. R. Evid. 201(b) (West 2000).

Dated this 11<sup>th</sup> day of April, 2007

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CHRISTOPHER "CHRIS" WALTERS  
Director of Civil and Consumer  
Affairs Department