reasonable expectation that their conversations with "coworkers" would remain private, at least to the extent that intimate life details would not be published to their employer.[54]

Interviews and Interrogations

Investigations of potential misconduct usually entail interviewing witnesses and interrogating employees accused or suspected of wrongdoing. As the examples of AutoZone (see the "Clippings" feature) and the *Dietz v. Finlay Fine Jewelry* case illustrate, interrogations that are not skillfully conducted can lead to many legal problems.

Dietz v. Finlay Fine Jewelry
754 N.E.2d 958 (Ind. App. 2001)

OPINION BY JUDGE BROOK:

Appellant-plaintiff Melissa Dittoe Dietz ("Dietz") appeals from the . . . grant of summary judgment in favor of Finlay on Dietz's claims for invasion of privacy, false imprisonment, defamation, [and] intentional infliction of emotional distress. . . . * * * We affirm in part, reverse in part, and remand. * * *

Finlay leases a commercial space in the L.S. Ayres retail store, from which it sells fine jewelry. Finlay did not employ its own security personnel, but instead, utilized the security services provided by L.S. Ayres. In July of 1998, Finlay hired Dietz as a sales clerk. . . . In September of 1998, a customer wanted to purchase a Finlay diamond ring on sale for $1,439.20. The customer intended to charge the purchase to her "top" account, but Dietz did not know how to perform that task. After she mistakenly placed the purchase on the customer's "flex" account, Dietz voided the transaction and then repeatedly sought assistance to complete the sale. Both Dietz and the customer grew frustrated. Eventually, an L.S. Ayres manager assisted Dietz. Without authorization, Dietz gave the then "irate" customer an extra ten percent discount.

L.S. Ayres security manager Dennis Bake ("Bake") learned about the transaction from another employee. He confirmed the unauthorized sales price and spoke with his supervisor. Thereafter, Bake asked Dietz to accompany him to an interview room, and Dietz complied. Two other employees were present. Kathleen Camp ("Camp"), a sales manager, witnessed the interview because, if a female is interviewed, "they call one of the female managers in on it[.]" A male security employee, Curt Seufert ("Seufert"), allegedly examined video monitors during the first five or ten minutes of the meeting, a task unrelated to the Dietz interview. Dietz sat in a chair, and Bake sat in front of her.

The ensuing interview lasted fifty-seven minutes. Dietz first signed a document acknowledging that she understood she was free to leave at any time. Bake then explained his job title and responsibilities. He told Dietz that he had access to her L.S. Ayres charge account and could determine if she had been late in making her payments. Dietz was "on guard." She described Bake's demeanor as "very gruff, very intimidating." Bake also spoke of mistakes in Dietz's account book and informed Dietz that there were six pieces of jewelry missing. Dietz claims that Bake also accused her of having a drug or alcohol problem and "suggested" that she pawned the jewelry to pay bills or to support her problem. Bake allegedly stated, "It all leads back to you. What are you going to do about it?" Several times, Bake told Dietz not to interrupt him. At one point, he also demanded that Dietz stay in the room. Dietz stated she did not feel free to leave, and she believed if she had attempted to do so, Bake would have verbally intimidated her into staying.

Bake asked Dietz if she had ever given a discount to a friend or relative, or to "anybody." Dietz disclosed the incident involving the discounted ring but insisted she had done nothing wrong. Eventually, Dietz signed a promissory note for $143.92, the amount of the discount. At Bake's direction, she also drafted and signed a document admitting she had given the unauthorized discount. Finlay dismissed Dietz for violating company policy. * * *

[54]*Johnson v. K-Mart Corp.,* 723 N.E.2d 1192, 1196 (Ill. App. 2000), *appeal granted,* 729 N.E.2d 496 (2000).

We first consider Dietz's invasion of privacy claim, based upon her allegation that Bake disclosed her credit problems to Camp and Seufert. The general tort, invasion of privacy, includes four distinct injuries: (1) intrusion upon seclusion, (2) appropriation of likeness, (3) public disclosure of private facts, and (4) false-light publicity. The public disclosure of private facts . . . occurs when a person gives "publicity" to a matter that concerns the "private life" of another, a matter that would be "highly offensive" to a reasonable person and that is not of legitimate public concern. * * *

[U]nder the . . . view adopted by most courts, a communication to a single person or to a small group of persons is not actionable because the publicity element requires communication to the public at large or to so many persons that the matter is "substantially certain to become one of public knowledge." In this case, Bake allegedly discussed Dietz's credit difficulties in the presence of sales manager Camp. The record does not disclose what co-employee Seufert overheard, but release of the information to even two co-workers does not satisfy the publicity requirement. . . . In contrast, "a few courts, including Indiana's neighbors," have adopted a looser definition of "publicity," finding a disclosure actionable if made to a "particular public" with a special relationship to the plaintiff. Here, Camp was present as a female witness, and Seufert was a member of the security staff, watching video monitors. There is no evidence that Dietz had a special relationship with either so that a disclosure to them, under the circumstances, would render them a "particular public." [Because the] publicity element of Dietz's claim [was lacking], the [defendants] were entitled to summary judgment for invasion of privacy. * * *

False imprisonment involves "an unlawful restraint upon one's freedom of locomotion or the deprivation of liberty of another without [her] consent." "False imprisonment may be committed by words alone, or by acts alone, or by both and by merely operating on the will of the individual, or by personal violence, or both." [The defendants] assert immunity under the Shoplifting Detention Act which provides:

An owner or agent of a store who has probable cause to believe that a theft has occurred or is occurring on or about the store and who has probable cause to believe that a specific person has committed or is committing the theft may: detain the person and request the person to identify [herself]; * * * (3) determine whether the person has in [her] possession unpurchased merchandise taken from the store; * * *

The detention must: (1) be reasonable and last only for a reasonable time; and (2) not extend beyond the arrival of a law enforcement officer or two (2) hours, whichever first occurs.

The Shoplifting Detention Act "permits the merchant's agent to effect a warrantless arrest or detention where the facts and circumstances known to the agent at the time of the arrest would warrant a person of reasonable caution to believe the arrestee has committed or is committing a theft on or about the store." * * *

At the time of the detention, Bake had discovered and verified the unauthorized transaction. Thus, he reasonably believed that Dietz had intentionally sold the diamond ring at a price less than that approved by Finlay with the intent to deprive Finlay of part of its value. That constitutes probable cause for purposes of the Shoplifting Detention Act. That alone, however, does not mean the test of reasonableness in manner and time has been met in this case. * * * In her deposition testimony, Dietz stated that Bake also questioned her about six pieces of missing jewelry. Assuming that questioning occurred, we cannot say as a matter of law that Bake had probable cause to suspect Dietz was involved in those thefts. Without probable cause, there is no immunity under the Shoplifting Detention Act.

Nor can it be determined as a matter of law that Dietz voluntarily remained in the room during the entire interview. Although Dietz had signed a document acknowledging that she was free to leave at any time, she also stated that she did not feel free to leave during the meeting. Allegedly, at one point Bake told Dietz to stay in the room. In addition, Dietz felt that, if she had attempted to leave, Bake would have used "verbal intimidation" to keep her there. Because the designated evidence does not conclusively establish the reasonableness of the detention, we cannot determine whether the Shoplifting Detention Act renders Finlay and Ayres immune for false imprisonment. Summary judgment on that claim was improvidently granted. * * *

[D]efamation consists of the following elements: (1) a communication with defamatory imputation, (2) malice, (3) publication, and (4) damages. A communication is defamatory per se if it imputes criminal conduct. * * * Here, as stated above, Bake was justified in questioning Dietz about the unauthorized discount and, thus, Finlay and Ayres are immunized from claims of defamation based on reasonable communications related to that investigation. Indeed, statements that Dietz gave an unauthorized discount to a customer are true and, thus, not actionable. * * *

Finlay and Ayres also seek immunity under a qualified privilege of common interest, which protects "communications made in good faith on any subject matter in which the party making the communication has an interest or in reference to which he has a duty, either public or private, either legal, moral, or social, if made to a person having a corresponding interest or duty." The privilege does not apply, however, to statements made without belief or grounds for belief in their truth. As stated above, factual issues remain concerning whether Bake had grounds for belief in the truth of his alleged statements regarding jewelry thefts to support a drug or alcohol problem.

There is a second bar to application of the privilege on the designated evidence. As our supreme court recognized, a statement may lose its privileged character if there is excessive publication of the defamatory statement. "The privilege is lost if the defamation goes beyond the group interest, or if publication is made to persons who have no reason to receive the information." In this case, sales manager Camp was present during the entire interview as a female witness. Thus, Camp was required to be present. The designated evidence, however, does not indicate what Seufert heard and whether he had a corresponding duty to be present. Bake himself stated that Seufert "didn't need to be there[.]" Thus, we cannot say as a matter of law that Seufert had a reason to receive the information.

[T]here are factual disputes regarding whether Bake had grounds to believe his alleged statements concerning additional thefts to support a drug or alcohol problem. There is also a question about whether there was excessive publication of any such statements. * * * Accordingly, the trial court erred when it granted summary judgment on the defamation claim.

We next consider whether the designated material supports a claim for intentional infliction of emotional distress. The tort . . . is committed when a person engages in extreme and outrageous conduct that intentionally or recklessly causes severe emotional distress to another. Rigorous requirements must be met to prove the tort. The conduct at issue must exceed all bounds usually tolerated by a decent society and must cause mental distress of a very serious kind. * * *

In this case, Dietz asserts that Bake accused her of substance abuse, shoplifting, and dishonesty in a gruff and intimidating manner. Even if the interview proceeded as asserted, Dietz's intentional infliction of emotional distress claim fails as a matter of law. Bake's actions occurred in the context of a detainment for the purpose of determining the extent of Dietz's unauthorized conduct. While, at the most, Bake may have unreasonably detained and defamed Dietz, his actions in this case do not constitute outrageous behavior. Taken in context, Bake's conduct did not exceed all bounds usually tolerated by a decent society. The trial court properly entered summary judgment in favor of Finlay and Ayres on Dietz's intentional infliction of emotional distress claim. * * *

CASE QUESTIONS

1. What were the legal issues in this case? What did the court decide?
2. What was the basis of Dietz's privacy tort claim? Her infliction of emotional distress claim? Why were they rejected?
3. What was the basis of her false imprisonment claim? Her defamation claim? Why was she allowed to go to trial on them? Is she likely to prevail at trial?
4. What, if anything, should this employer have done differently?

Interrogations like the one in *Dietz* have enormous potential for generating legal claims, especially false imprisonment and infliction of emotional distress. **False imprisonment**—the intentional restraint of the physical liberty of an individual—is "false" because employers are not the police or the courts. Employers do not have the authority to effectively incarcerate other citizens. Confinement can be achieved by physical barriers, physical force, the threat of force, or other forms of duress. In a false imprisonment case with facts less subtle than those in *Dietz*, an employee was taken to a conference room with glass windows, interviewed for more than seven hours while coworkers passed by giving her "dirty looks," followed to the restroom by security personnel, not allowed to make a call to her husband in private, and not permitted to leave to pick up her daughter from school. Her false imprisonment claim was allowed to go to trial.[55]

[55]*Johnson v. Federal Express Corp.*, 147 F.Supp 2d 1268, 1277 (M.D. Ala. 2001).