

# SUPREME COURT OF LOUISIANA

*No. 99-C-1222*

SHIRLEY POSECAI

Versus

WAL-MART STORES

LEMMON, J., Concurring

A merchant has the duty to exercise reasonable care to discover that criminal acts by third persons are likely to occur on the merchant's premises and to take adequate steps to protect customers when and where such conduct is reasonably foreseeable. See 2 Restatement (Second) of Torts §344 (1965). If the place and character of the merchant's business, considered with past experience, is such that the merchant should reasonably anticipate criminal conduct by third persons, generally or at some particular time or place on the premises, the merchant should take appropriate precautions and provide reasonable security measures and, if necessary, a reasonably sufficient number of security persons to afford reasonable protection. Id. at cmt. f.

In the present case, the character of defendant's high volume retail business operation (as compared to nearby small retail and service operations), in close proximity to a high crime area, provided cause for concern about the safety of customers, particularly in the parking lot where defendant's 1994 corporate survey had shown that the vast majority of criminal offenses were being perpetrated nationally against customers and employees. Nevertheless, because defendant had experienced virtually no criminal activity in the exterior area of this particular store during the past six years, defendant did not act unreasonably by failing to provide outside security guards and surveillance cameras, at least in daylight hours.



