

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

KATHY RICHEY, Individually and as)
Surviving Spouse, and KATHY)
RICHEY, as Administrator of the Estate)
of JOSHUA RAY RICHEY, deceased,)
)
Plaintiff,)
v.)
)
THE KROGER CO. and)
NORRED & ASSOCIATES, INC.,)
)
Defendants.)

CIVIL ACTION
FILE NO.: 16EV004491H

**ORDER GRANTING DEFENDANTS', THE KROGER CO.'S AND NORRED &
ASSOCIATES, INC.'S, MOTIONS FOR SUMMARY JUDGMENT**

This case came before the Court on May 29, 2019, for oral argument on Defendants', The Kroger Co.'s ("Kroger") and Norred and Associates, Inc.'s ("Norred") Motions for Summary Judgment. The Court, having: heard argument, reviewed the Parties' briefs, and all matters of record before the Court, and having considered the applicable law, finds as follows:

On March 10, 2015, Joshua Richey (Plaintiff's Decedent) was performing work as part of a construction project at the Kroger store located at 725 Ponce de Leon Avenue in Atlanta, Georgia. Mr. Richey and a co-worker, Jason Shelton, were removing debris from a bridge coming onto Kroger property. While Mr. Richey and Mr. Shelton were standing on the bridge, located above the Kroger parking lot, Mr. Richey noticed an unauthorized individual had broken into his work truck, which was parked in the Kroger parking lot.

In response, Mr. Richey jumped down from the bridge and ran through the parking lot toward the individual who had broken into his work truck. When Mr. Richey reached the driver's side window of his truck, the individual shot through the driver's window and killed Mr. Richey.

The Court recognizes the facts of this case are tragic. However, the evidence establishes that Mr. Richey was in a position of safety at the time he observed someone had broken into his work truck. Further, based upon the evidence, Mr. Richey had the opportunity to consider his options (such as calling the police) before he voluntarily chose to leave his position of safety in order to engage the individual who had broken into his work truck. Regardless of whether Mr. Richey knew the individual was armed, Mr. Richey's decision to voluntarily take affirmative steps to leave a clear position of safety and engage with an individual he knew to be inside Mr. Richey's truck without permission bars Plaintiff's recovery from Kroger and Norred as a matter of law. *See e.g. Rappenecker v. L.S.E., Inc.*, 236 Ga. App. 86 (1999).¹

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED, after careful consideration, Defendant The Kroger Co.'s and Defendant Norred & Associates, Inc.'s Motions for Summary Judgment are hereby **GRANTED**.

SO ORDERED, this 19th day of June, 2019.

/s/ Wesley B. Tailor
WESLEY B. TAILOR, JUDGE
STATE COURT OF FULTON COUNTY

¹ Plaintiff is barred from recovery on this basis and, therefore, the Court declines to rule upon the other grounds for summary judgment raised in Norred's Motion for Summary Judgment.