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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

SUPREME COURT OF VIRGINIA

At Richmond

Record No. 730554

CHARLOTTESVILLE MUSIC CENTER, INC. Appellant

v.

OLLIE T. McCRAY, Administrator of the Estate of Jeffrey A. McCray Appellee

---

APPENDIX

Edward R. Slaughter, Jr.
David Craig Landin
McGUIRE, WOODS & BATTLE
Court Square Building
Charlottesville, Virginia

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2.	Special Plea of Workmen's Compensation	4/17/72
3.	Transcript of Hearing on Special Plea	5/9/73
4.	Order overruling Special Plea	12/11/72
5.	Transcript of Voir Dire	5/9/73
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7.	Final Judgment Order	11/9/72
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Commonwealth of Virginia

IN THE Circuit COURT OF THE CITY OF STAUNTON

NOTICE OF MOTION FOR JUDGMENT

To:

CHARLOTTESVILLE MUSIC CENTER, INC.
BOBBIE N. BALLARD, REGISTERED AGENT
2110 BARRACKS ROAD
CHARLOTTESVILLE, VA.

You are hereby notified that unless within twenty-one (21) days after service of this Notice of Motion for Judgment on you, response is made by filing in the Clerk's Office of this court a pleading in writing, in proper legal form, judgment may be entered against you by default, without further notice.

Done in the name of the Commonwealth of Virginia, this 15TH day of SEPT., 1971.

Edith H. Paxton, CLERK.

_____, DEPUTY CLERK.

WILLIAM E. BOBBITT, JR., p. q.
STAUNTON, VIRGINIA

(OFFICE ADDRESS)

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF STAUNTON

Ollie T. McCray, Administrator
of the Estate of Jeffrey A. McCray

v. MOTION FOR JUDGMENT

Charlottesville Music Center, Inc., a
Virginia Corporation
Bobbie N. Ballard, Registered Agent
2110 Barracks Road
Charlottesville, Virginia

First Virginia Bank of Augusta, a
Virginia Banking Association
Wesley A. Ballenger, President
Verona, Virginia

Plaintiff respectfully moves the Court for judgment against the defendants, jointly and severally, on the grounds and in the amount as hereinafter set forth:

(1) That the defendant, First Virginia Bank of Augusta, is the owner and lessor of premises located in the City of Staunton Virginia, described as 23 North Central Avenue, Staunton, Virginia, and defendant, Charlottesville Music Center, Incorporated, is the lessee of said premises.

(2) That defendant, Charlottesville Music Center, Incorporated, was using said premises as a retail music store to serve the general public and that as a part of such use, defendant, Charlottesville Music Center, Incorporated, operated a freight elevator to move supplies from one floor to another.

(3) That it was the duty of defendant, First Virginia Bank of Augusta, and defendant, Charlottesville Music Center, Incorporated, to keep and maintain the said premises, including said freight elevator, in a reasonably safe condition.

(4) That on June 23, 1971, plaintiff's decedent, Jeffrey A. McCray, was asked to help in moving merchandise within the

J. FORESTER TAYLOR
LAW OFFICES
STAUNTON, VIRGINIA

store, and he did so help within the store with the knowledge and approval of the store manager of defendant, Charlottesville Music Center, Incorporated.

(5) That notwithstanding the duty of defendants to keep and maintain the said premises in a reasonably safe condition, the elevator located upon the premises was maintained in an unsafe and faulty condition, which caused it, in the course of its operation on the afternoon of June 23, 1971, to fall, stricking and killing plaintiff's decedent, Jeffrey A. McCray.

(6) That the negligence of defendants in operating and maintaining said elevator in such a deteriorated state of repair so as to allow it to fall in the course of ordinary use was the sole and proximate cause of the death of said plaintiff's decedent.

WHEREFORE, the undersigned, who duly qualified as Administrator of the Estate of Jeffrey A. McCray, Deceased, in the Circuit Court of the City of Staunton, Virginia, demands judgment against the defendants in the sum of Seventy-five Thousand Five Hundred Dollars ($75,500.00), with interest thereon and reimbursement of his costs in this proceeding.

Ollie T. McCray
By Counsel

William E. Bobbitt, Jr.
William E. Bobbitt, Jr., p. q.
Staunton, Virginia

J. FORESTER TAYLOR
LAW OFFICES
STAUNTON, VIRGINIA

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF STAUNTON

OLLIE T. McCRAY,
Administrator of the Estate
of Jeffrey A. McCray, Plaintiff

v.

CHARLOTTESVILLE MUSIC CENTER, INC.

and

FIRST VIRGINIA BANK OF AUGUSTA, Defendants

SPECIAL PLEA

Comes now the defendant Charlottesville Music Center, Inc. and says that the plaintiff's exclusive remedy against it as a result of the death of Jeffrey A. McCray lies under the Workmen's Compensation statutes of Virginia, with which statutes this defendant has complied.

WHEREFORE, this defendant moves the Court for judgment in its behalf in this action and further moves the Court that it be awarded its reasonable costs in this behalf expended.

Respectfully submitted,

CHARLOTTESVILLE MUSIC CENTER, INC.

By Counsel

Counsel:

McGUIRE, WOODS & BATTLE
Court Square Building
Charlottesville, Virginia

By _____
Edward R. Slaughter, Jr.

CERTIFICATE

I do hereby certify that on the 17th day of April, 1972, a true copy of the foregoing writing was delivered to William E. Bobbitt, Jr., Esquire, of the law offices of J. Forester Taylor, 11 S. New Street, Staunton, Virginia, counsel for plaintiff; and to Wayt B. Timberlake, Jr., Esquire, Timberlake, Smith, Thomas & Moses, First Virginia Bank Building, Staunton, Virginia, counsel for defendant First Virginia Bank of Augusta.

_____
Edward R. Slaughter, Jr.

* * *

TRANSCRIPT OF HEARING [p.7]

VAN METER JOHNSON

11

12 Direct - By Mr. Slaughter:

13

14 Q Would you state your full name and address,

15 please?

16 A W. Van Medor Johnson, Route 4, Box 832,

17 Charlottesville.

18 Q And what is your age, Mr. Johnson?

19 A. Twenty-six.

20 Q And what is your employment at this time?

21 A I work for the Charlottesville Music Center.

22 Q And where are you employed?

23 A In Charlottesville, Barracks Road.

24 Q When were you first employed by the Charlottes-

25 ville Music Center?

1 A In March of last year.

2 Q That was March of 1971? And where were you

3 located when you were first employed by the Music Center?

4 A When I was first employed, I was at Char-

5 lottesville for a short training period, and then later

6 transferred to Staunton.

7 Q In what capacity were you when you were

8 transferred to Staunton?

9 A As store manager in the Staunton store.

10 Q And, in order that the record will be clear,

11 is Charlottesville Music Center a name of a corporation that

12 has one outlet in Charlottesville and one in Staunton?

13 A Yes.

14 Q And is the outlet in Staunton called the

15 Music Center?

16 A Yes, it is.

17 Q And thus, if the Court please, in order to

18 make it a little less cumbersome, we will refer to the Defen-

19 dant as the Music Center. Mr. Johnson, will you tell us

20 generally what your duties were once you came to Staunton

21 as manager of the Music Center.

22 A It was to primarily be a salesman for the

23 audio equipment and records, uh, and then to make sure that

24 I had enough supplies and, uh, the proper amount of merchan-

25 dise and to request it from the Charlottesville store if I

1 needed any. And to generally manage the store.

2 Q How many full-time employees were in Staunton

3 at that time?

4 A At that time, uh, I was the only full-time

5 and Brenda Crosby was part-time.

6 Q And how many employees did the Charlottesville

7 Music Center Corporation have?

8 A Around fifteen.

9 Q Now in the course of the spring, could you

10 tell us what, if anything, you did toward making the store

11 more attractive and more habitable than when you started?

12 A Well, we arranged things, set up the records,

13 there was quite a lot to be cleaned up, and the storage area,

14 and there were some display cases that needed a little work.

15 Q For the Court, in order to fix this in the

16 Court's mind, could you tell us what the layout of the store

17 in Staunton is, or was at that time?

18 A You mean the physical layout?

19 Q Yes.

20 A Uh, it's an elongated building, uh, longer

21 than it is wide, and in the front of the store was the audio

22 department on the lefthand side and I had records all along

23 the righthand wall. And, uh, various merchandise was around

24 the store, pianos and organs, and the rear display area, and

25 then there was a partition and behind that was a storage area.

1 Q And so on the first floor was a fairly sizeable
2 storeroom separated by a partition from a storage room at the
3 back?
4 A Yes, sir.
5 Q Again, for the record, it will be clear when
6 I say storeroom we are referring to a room where merchandise
7 is actually displayed and where customers come, is that
8 correct?
9 A This storeroom here?
10 Q The room in the front.
11 A Oh, the room in the front, yes.
12 Q And does the partition between that and the
13 storage behind go all the way to the ceiling?
14 A No, it does not.
15 Q Did you have any other space, other than those
16 two rooms, on one level?
17 A On that one level, uh, there were two bath-
18 rooms and hall space on that level.
19 Q Did you have any space on another level?
20 A Yes, there was a full basement.
21 Q I see. And what was the access to that base-
22 ment?
23 A There was a dumb waiter and a set of stairs.
24 Q Where was the dumb waiter located?
25 A It was in the storage area.

1 Q It was in the back of the store?
2 A That is correct.
3 Q This connected the storage room with the base-
4 ment level?
5 A Yes, sir.
6 Q Where were the stairs?
7 A The stairs were on the left wall, about two
8 thirds of the way back in the main room.
9 Q Mr. Johnson, in connection with these improve-
10 ments that you made from time to time at the Music Center,
11 did you ever request the assistance of persons who were not
12 employees, regular employees of the store?
13 A Yes, I did.
14 Q And could you tell us when and under what
15 circumstances before June twenty-third?
16 A Uh, before that time, on one occasion we
17 received a large shipment of tapes and some friends of mine
18 from Charlottesville were in the store and I asked them to
19 help price the tapes. And they helped me do that. And I
20 received a cabinet for displaying the tapes at one time and
21 it was rather heavy, and someone helped me move it to the
22 wall. And Chip Justis, at a time prior to the twenty-third
23 had helped me, as you mentioned in your opening statement,
24 fix a sliding door on a cabinet. It was sticking and troubl-
25 some.

1 Q And was any form of compensation paid for
2 these incidental chores?
3 A Uh, for most of the chores I would offer a
4 record, as a reward or something.
5 Q Just what?
6 A A record, a phonograph record.
7 Q Was this giving of a phonograph record cleared
8 with the management in Charlottesville?
9 A On some occasions, not on all, but generally
10 yes.
11 Q And who were the people in charge of the
12 operation in Charlottesville?
13 A The merchandising manager is Peter Dulles
14 and the manager of the three stores, the over-all manager,
15 is Dave Roberts.
16 Q You mentioned three stores; where are the
17 three?
18 A There is another store in Norfolk.
19 Q In Norfolk. Well, now, Mr. Johnson, with
20 regard to the events that are really the subject of this
21 action and this plea, how did the contact first come about
22 in which it was decided that shelves would be shifted and
23 installed at the back?
24 A It was a cooperative effort with Chip and
25 his father and myself.

1 Q How had it come up, do you recall?
2 A Not exactly, but generally we had a conver-
3 sation and Chip had already done some, uh, done the job on
4 the sliding door and he was handy with this and needed some-
5 thing to do, and, uh, Mr. Justis, uh, had suggested that, you
6 know, this area of the storeroom, uh, might be, you know,
7 better arranged. And, uh, we discussed it and he gave me a
8 lot of good suggestions for making it more efficient.
9 Q And what was the result of this conversation?
10 A Well, Mr. Justis, Chip's father, had looked
11 for some shelves and priced them and found a price and then
12 quoted that to me and then he also said that he had some
13 shelves that he would sell to me at a lower price. And he
14 would put them in, or have Chip put them in. And he designed
15 for me the arrangement and figured out what would go where.
16 Q Approximately when was this, do you recall?
17 A Uh, not specifically, but it was certainly
18 within, uh, well, the job occurred within a week or so after.
19 Q Well, what was the first step in the job?
20 A Well, the actual moving of the shelves from
21 Mr. Justis's storeroom or wherever he had them to the Music
22 Center.
23 Q And when did he bring those down?
24 A That was on a Saturday before the twenty-th
25 Q The twenty-third was a Wednesday; so this

1 would have been on the nineteenth?

2 A Nineteenth, yes, sir.

3 Q And who unloaded the shelves and where were

4 they put?

5 A Uh, Chip and his father, I believe, I don't

6 know of anyone else but there might have been, I don't know.

7 And they were put . . . I guess I helped them . . . they

8 were put in the back storage room.

9 Q And how were they brought down, what form

10 of transportation?

11 A A red pickup truck.

12 Q Do you know who it belonged to?

13 A It was Mr. Justis's.

14 Q Following the placing of the shelves in the

15 storage room, was any other work done on the nineteenth?

16 A No, not involving the shelves.

17 Q Well, what was the next step in connection

18 with this construction project?

19 A The next step was to remove the shelves that

20 were existing in the place where the new shelves were to go.

21 And that was done on Monday.

22 Q And who did this?

23 A Chip Justis, David Rose, and Jeff McCray and

24 I.

25 Q And what were the circumstances of getting

1 started on this? I gather now we are talking about Monday
2 morning, June twenty-first?
3 A The circumstances in . . .
4 Q Of getting started on the work on the shelves.
5 A Well, I opened the store and about half an
6 hour or an hour later, Chip came in with two of his friends.
7 Q And the two friends were Jeff McCray and
8 David Rose?
9 A That's right.
10 Q And then what took place that day?
11 A Well, let me first say that I hadn't expected
12 to see anyone else but Chip. And the remainder of the day
13 they worked in the back room, and disassembled and assembled
14 and I supervised as much as I could.
15 Q During that time, did you have other duties?
16 A Yes, I was, you know, as a salesman and the
17 store manager and taking care of customers.
18 Q Did any of the three boys come or go that
19 day?
20 A I can't say; really, I don't know.
21 Q Was any request made to you as to whether or
22 not the two boys might assist you?
23 A Yes. Monday morning, uh, when Chip came in
24 and said: These are my friends; may they watch and help?
25 Q I see. Well, you started to say and I believe

1 I cut you off, how much was accomplished that first day?
2 A The large shelf was disassembled and the new
3 shelves were partially put in.
4 Q Was there a work bench in the area?
5 A Yes. That was also disassembled.
6 Q What was involved in disassembling that?
7 A There were some, uh, some parts on it, uh,
8 that we took for salvage, and it was rather bulky so we
9 stripped it down.
10 Q Had any material been taken to or brought
11 from the basement on that day, that you recall?
12 A Yes, sir, the larger shelf that was dis-
13 assembled was moved to the basement.
14 Q Now, do you recall whether or not there was
15 any work done on Tuesday?
16 A Uh, there was no work done on Tuesday.
17 Q Well, tell the Court, if you will, what you
18 recall about the activities on Wednesday.
19 A Uh, Wednesday, uh . . .
20 Q Now we are talking about June twenty-third.
21 A Uh, as far as I recall, Chip arrived and I
22 believe that the other two boys arrived, uh, not together,
23 and finished fixing the shelf, the new shelves that were
24 put in, and moved the old shelf to the basement.
25 Q Do you recall any specifics of the boys

1 comings and goings during that day?

2 A Well, uh, not, you know, you mean leaving

3 the store, no, not anything specific that I could say, no,

4 sir, if somebody walked out.

5 Q Do you recall, then, what the situation was

6 leading up to the accident. And I don't believe you need to

7 go into the details, just to say it happened.

8 A Uh, I was, I had just, uh, checked what they

9 were doing and apparently they were all three in the back

10 room, and, as I said, I had to make a phone call because

11 I was planning to leave to go to Charlottesville. And I

12 was on the phone and the accident occurred.

13 Q Where were the boys at that time, do you

14 know?

15 A At the time of the accident, they had, you

16 know, uh, before the time of the accident, Chip and David

17 had gone to the basement.

18 Q And Jeff was on the upper level, in the

19 back room.

20 A In the storage room, right.

21 Q Do you know of your own knowledge what they

22 were doing right at that time?

23 A Uh, they were in the basement waiting for

24 the dumb waiter.

25 Q Waiting for what?

1 A For the dumb waiter, to be lowered.
2 Q And, in order to ask directly so we don't
3 have to go into details, were they in the course of working
4 on this project at the time the accident happened?
5 A Yes, they were finishing it.
6 Q What was the basement used for, Mr. Johnson?
7 A For the storage of merchandise, audio equip-
8 ment and so forth.
9 Q During the course of this, did you have
10 occasion to, you mentioned that you worked with the boys,
11 to supervise or instruct them in any way?
12 A I did supervise while the work was going on.
13 Q Mr. Johnson, what was the situation with
14 regard to any compensation any of these boys might have
15 gotten?
16 A Well, there had been no firm promise, but I
17 had indicated that, to Chip, that he would most likely get
18 a record for his, his, uh, service.
19 Q Most likely get the record?
20 A A record, yes.
21 Q Had you had any conversation with Jeff along
22 that line?
23 A Uh, not until I went, you know, right prior
24 to the time I went to the phone. And then I said that there
25 is nothing definite, but I'm going to call Charlottesville

1 and I would ask, for permission to, to give a record to, to
2 them, to the boys.
3 Q To the two other boys? And did you, in fact
4 make that request of the officer in Charlottesville?
5 A I believe I did. Things are really . . .
6 Q It was while you were on the telephone that
7 the accident happened?
8 A Yes.
9 Q Mr. Johnson, was a warrant issued against
10 you for employment of Jeff as a minor?

* * *

[p.25]

16 COURT: Gentlemen, I think I'm going to let
17 you put this in the record and I'm going to
18 reserve my feelings about, uh, views on the
19 admissibility of it. I think it should be
20 in the record for appeal purposes. At the
21 moment, I have some doubts as to whether I
22 should consider what happened in Municipal
23 Court in making a determination which we have
24 before us now, but I'm going to let you put
25 it in the record, and I will indicate at a

later time whether that is something that this Court considered in arriving at its decision on this particular point.

Q Mr. Johnson, to repeat, although it may be a slight rephrasing of my question, was a warrant obtained against you for employment of a minor in the Juvenile and Domestic Relations Court of the City of Staunton?

A It was.

Q And what was your plea in that proceeding?

A Nolo contendere.

Q And could you tell the Court whether or not you were convicted?

A I was heavily fined.

Q Do you recall approximately when that proceeding was?

A Uh, it was, I believe, in the fall or early winter of last year.

Q Did you testify in that case?

A No, I did not.

Cross - By Mr. Taylor:

Q Mr. Johnson, I believe you testified that

1 there was no formal previous arrangement for compensation
2 with any of these boys.
3 A That's true.
4 Q The way that the boys came in was more or less
5 a casual thing; they just came in to visit the store and, I
6 believe Jeff McCray was the first one--excuse me, I mean
7 Chip Justis--and then the first job he did was to fix the
8 door, is that right?
9 A Well, uh, would you repeat the question?
10 Q My understanding of your testimony was that
11 Chip Justis came into the store with his father, not for
12 the purpose of doing any work for you; but, during the course
13 of the conversation, it was mentioned that the door needed
14 fixing and, as a result of that conversation, Chip fixed the
15 door. Is that right?
16 A Well, on the first occasion of our meeting,
17 uh, it was not, you know, for work, it was that he came in to
18 see what I had in the store and that he was interested in
19 high fidelity and stereo and that sort of thing. And, you
20 know, over a period of time, it was mentioned that he was
21 handy with wood working and that sort of thing.
22 Q And on none of those occasions when he did
23 do any handy jobs for you there was there any previous
24 arrangement for compensation, was there?
25 A Uh, well, there was, you know, do a good job

1 and you might get a record. I think this is what I had said
2 on some previous occasions. But there was no definite or
3 absolute promise, right.
4 Q Now, with respect to the shelves. As I under-
5 stood your testimony, you made an agreement with Mr. Justis,
6 Chip's father, to sell and install some shelves for you, is
7 that correct?
8 A Uh, I made, I purchased, the store purchased
9 some shelves from Mr. Justis.
10 Q Right. And he installed them for you?
11 A Uh, Chip installed them, uh, under, uh,
12 Mr. Justis's guidance.
13 Q Right. And they were delivered to the store
14 by Mr. Justis?
15 A That's correct.
16 Q And he and Chip put them up, is that right?
17 A Uh, no. Uh, as I testified before, Mr. Justis
18 brought the shelves in with his son, you know, they delivered
19 them, and they were set up by Chip and his friends.
20 Q I see. Well, that was not under your super-
21 vision?
22 A I did watch them, yes, and I helped out, yes.
23 Q And did you pay Mr. Justis for the shelves?
24 A I did not personally pay Mr. Justis for the
25 shelves, no.

1 Q Your store did?
2 A Yes, sir, as far as I know.
3 Q And then the only boy who worked on that was
4 Chip, is that right?
5 A No. Chip and David Rose and Jeff McCray.
6 Are you referring to . . .
7 Q I'm talking about the shelves.
8 A You're talking about the shelves?
9 Q Right.
10 A You're not referring to the sliding door?
11 Q No. As I understood it, you said Chip was
12 the only one who worked on the door.
13 A Right.
14 Q But then when the shelves were delivered,
15 you say they were delivered on a Saturday?
16 A Yes.
17 Q And then it was on . . . was any installation
18 work done on Saturday, or was it just started on Monday?
19 A There was no installation work on Saturday.
20 Q But on Monday, did all three boys work on
21 it on Monday?
22 A Yes.
23 Q And that was the first day you had ever seen
24 Jeff McCray, right?
25 A Uh . . .

1 Q Or, the first day he had done any helping?
2 A Which is the question?
3 Q Jeff McCray, was that . . . well, was that the
4 first day he had been in the store?
5 A No. He had been there as a customer.
6 Q As a customer? Well, was that the first day
7 that he had done any work to help Chip or the other boy?
8 A As far as I know, yes.
9 Q And then he also worked on Wednesday?
10 A Yes, you mean . . .
11 Q Chip.
12 A Chip?
13 Q That was the second day that he had been there
14 to help Chip?
15 A That's correct.
16 Q And that is the day of the accident?
17 A Yes.
18 Q And the only statement that you made to any
19 of the boys with respect to any compensation was that you
20 were going to call Charlottesville to see if it would be okay
21 to give them a record?
22 A That statement was made very near the com-
23 pletion of the job.
24 Q Now, did Jeffrey McCray ever receive any
25 record or other compensation from you?

1 A Uh, no.
2 Q You didn't give him any on Monday?
3 A No.
4 Q Now, after the boys left on Monday, was any-
5 thing said about when the shelf installation was to be com-
6 pleted or who would complete it?
7 A Not that I can recall.
8 Q There was no definite understanding that they
9 would return the next day or the day after or any other spe-
10 cific time?
11 A As far as I can recall, I believe I was off
12 on Tuesday, uh, and obviously there was a mention, uh, that,
13 you know, it would be continued on another day because it
14 was not completed. And from what I can draw from this, you
15 know, said I guess we'll see you Wednesday. But I don't
16 remember saying that.
17 Q You don't remember whether Wednesday was
18 mentioned?
19 A I don't remember actually saying we'll see
20 you next Wednesday.
21 Q Who were you talking to on the phone when
22 the accident occurred?
23 A I was talking to Peter Dulles. He is the
24 merchandising manager of the Charlottesville Music Center.
25 Q In Charlottesville?

1 A Yes.

2 Q Now, on Monday, did all three boys come in

3 together?

4 A Yes, they did.

5 Q But they didn't on Wednesday?

6 A Not as far as I can recall.

7 Q Didn't Jeffrey McCray come in much later than

8 the other two? Or do you remember?

9 A Uh, that's very hazy; I'm really . . . I don't

10 know who came in at what time. I couldn't, you know, couldn't

11 say one came in at such and such a time. I couldn't tell you.

12 Q When, uh . . . well, I take it that Chip

13 Justis was the one who had been in the store most often prior

14 to the accident, wasn't he? Or, at least, he was . . . Well,

15 let's put it this way. Was he the only one who had helped

16 you with chores around the store?

17 A No. As I mentioned in my previous testimony

18 about the friends from Charlottesville and, uh, on another

19 occasion someone helped me move a tape case.

20 Q Was that party also from Charlottesville?

21 A No, not that I know of, he was just in the

22 store.

23 Q All right. Well, of these three boys--David

24 and Jeffrey and Chip--Chip was the one who had been there

25 most often?

1 A Yes, I would say so.
2 Q And when he came in on Monday before the
3 accident with the other two, had there been any prearrange-
4 ment between you and him that he would bring any additional
5 help with him?
6 A No, there was not.
7 Q Is Peter Dulles here today?
8 A No, he is not.
9 Q I think that's all, Your Honor.
10
11 Redirect - By Mr. Slaughter:
12
13 Q As I understand it, Mr. Johnson, Tuesday
14 was your day off, is that correct?
15 A Uh, remembering back, I believe that's correct.
16 At that time it was.
17 Q And thus, without you there to supervise, the
18 boys could not come back on that day?
19
20 TAYLOR: I think that's leading, Your Honor.
21
22 Q Could you say whether or not the boys were
23 to come back in your absence?
24 A I wouldn't allow that.
25 Q You would not allow that?

1 A No.

2 Q No further questions, Your Honor.

3

4 By Judge Moffett:

5

6 Q Mr. Johnson, I understand you bought the

7 shelving from a Mr. Justis?

8 A That's correct.

9 Q And what was your arrangement with him?

10 A I bought the shelves from him and, uh, he

11 helped me to figure out where to put them and the best lay-

12 out for the shelves, to get the most efficient use of the

13 space. And, uh, his son, Chip, was to help put the shelves

14 in.

15 Q Did I understand you to say that Mr. Justis

16 sold the shelves to you and was going to install them?

17 A Not personally install them, but . . .

18 Q Sir?

19 A Mr. Justis did sell the shelves to the the

20 store, and he was going to arrange for installation.

21 Q He was going to arrange for the installation?

22 A Yes, well, it was a mutual agreement between

23 the three of us, between--among the three of us--Mr. Justis

24 and his son and myself, to install the shelves.

25 Q What I'm trying to find out from you was your

1 agreement with Mr. Justis that he sell and install the shelves
2 or that he just sell them to you?
3 A I don't know, I can't state it that he was
4 to, that I agreed to have him sell me and install the shelves;
5 uh, it was, it's a little bit cloudy.
6 Q A little what?
7 A A little cloudy; there's no, you know, I
8 didn't say to him you sell me the shelves and install them.
9 Q I thought you testified on direct examination
10 that you, that Mr. Justis agreed to sell and install the
11 shelves for you. Is that not correct?
12 A I don't think I put it like that.
13 Q Can you now tell me what the arrangement was?
14 A Well, the arrangement was that he would sell
15 the shelves and Chip and I would put them in. And he gave
16 the, Mr. Justis had arranged and told me the best place to
17 put them.
18 Q Well, I understand that none of the money
19 that you paid Mr. Justis was for installation?
20 A That's correct.
21 Q What would be the approximate value of these
22 records that you speak of giving to these boys?
23 A Anywhere from four to seven dollars.
24
25 COURT: Any further questions, gentlemen?

1 SLAUGHTER: If it please the Court, I might
2 just ask Mr. Johnson to go a little further
3 and perhaps clarify the matter in your mind.
4 I think he mentioned this briefly at the be-
5 ginning of his testimony.
6
7 Redirect - By Mr. Slaughter:
8
9 Q Mr. Johnson, once Chip started coming in,
10 could you just tell the Court in your own words how you got
11 to know Mr. Justis and, in as much detail as you can remember,
12 I realize you can't remember every detail, how all of this
13 came about.
14 A Well, school was out and kids were coming in
15 and Chip came in and there was no work for him and he came in
16 just to listen to records and buy records. He was interested
17 in the music field and we got to be friendly and, uh, we were
18 discussing equipment and he mentioned that his father had a
19 Pilot stereo console and I remembered it because that is a
20 very good piece of equipment. And, uh, we, you know, dis-
21 cussed it and he said, uh, you know, discussing his interests
22 and he mentioned that his father had a wood working shop in
23 his basement and I think I might have mentioned that I had
24 this sticky sliding door. This was the first real mention
25 of any job or anything like that. Uh, then, uh, Chip's father

1 came in and, uh, we discussed stereo old and new and things
2 like that and, uh, his father and Chip, you know, kind of
3 mentioned to me and I mentioned to them that I had this
4 sliding door on this cabinet that was sticking and he said,
5 well, Chip is very good at this sort of thing, why don't you
6 let him do it. And I said all right, fine. And he came in
7 and brought his tools and, you know, fixed it so it would
8 slide easily, waxed it and everything.
9 Q Any compensation for that?
10 A I gave him a record.
11 Q The value of the record was . . .?
12 A Around five dollars.
13 Q And then, what generally was the circumstance
14 as you got to talking about the shelves?
15 A Well, I was . . . this was my first store and
16 I wanted, you know, to make it look good and make it easy for
17 me to . . . there were only two employees, and there would be
18 a lot of people in the store at one time and if somebody wanted
19 to buy something, I didn't want to go searching here and yon
20 for it. I wanted to be able to go back and pull it off the
21 shelf. And I had talked this over and, you know, the back
22 area was kind of a catch-all, and I wanted to put it in shape.
23 And we just discussed this, and he said, Mr. Justis said, uh,
24 you know, there were possible ways of dealing with this
25 wasted area, to move things around here and there and get more

1 use out of it.

2 Q Had he been encouraging you to use Chip in

3 various capacities?

4 A Yes, and I was agreeable to it. Chip needed

5 something to do and I had something for him to do.

6 Q Could you say whether or not your payment, in

7 terms of records, was to Chip? Could you say whether the

8 records you gave, or whatever compensation you gave, was to

9 Chip or to Mr. Justis?

10 A It was given to Chip.

11 Q I don't believe I have anything further,

12 Your Honor. I hope that clarifies it a little.

13

14 By Judge Moffett:

15

16 Q I have one or two more questions. Do you

17 know what business Mr. Justis is in?

18 A He's retired.

19 Q These shelves that you bought from him, were

20 they shelves that he had or that he, did he go out and procure

21 them, get them somewhere, and make them available to you?

22 A He indicated to me that he had these shelves.

23 He had gone out to price shelves and found that they had been

24 eight and nine dollars a shelf, and he offered these for less.

25 These were ones that he had had, some unused, you know, brand

1 new and some used.

2 Q Were these wooden shelves?

3 A No, they were metal ones.

4 Q Metal ones. And, so far as you know, they

5 were some that he had on hand?

6 A Yes.

7 Q That's all.

8

* * *

DANIEL MORRIS [p. 40]

5 Direct - By Mr. Slaughter:

6

7 Q Would you state your full name and address,

8 please?

9 A Daniel Kent Morris, 115 Rose Hill Circle.

10 Q Could you repeat that please, Danny?

11 A Daniel Kent Morris, 115 Rose Hill Circle.

12 Q That is here in Staunton?

13 A Yes, sir.

14 Q How old are you?

15 A Fifteen.

16 Q And how old were you on June twenty-third of

17 1971, approximately one year ago?

18 A Thirteen.

19 Q Danny, could you tell us generally what you

20 recall of your first contact with the Music Center after it

21 was opened under that name in March of 1971?

22 A Just comin' down and lookin' at merchandise.

23 Q Do you remember when you first started coming

24 down?

25 A Well, I had, I used to go down there a lot

1 before it was opened up under the new management, and I just
2 would keep comin' down there whenever I wanted to purchase
3 an album.
4 Q Did you ever do any, before the incident that
5 we have been talking about, did you ever do any odd jobs
6 around the store or were you ever given any merchandise or
7 any form of payment for those jobs?
8 A No, sir.
9 Q Would you tell us what you recall then of the
10 incidents during the four or five days before the accident
11 involving Jeffrey McCray?
12 A I didn't, I didn't know anything that they
13 were working there or anything, until the day that I, that
14 I came down there, that Wednesday, I came down at about
15 lunchtime.
16 Q And what did you observe and what did you do?
17 A The, uh, David Rose and Jeff and Chip were
18 taking down the shelves, the old shelves, and they were going
19 to put up the new ones that were in the basement, and, uh, I
20 was, I didn't ever have any agreements with anybody that I
21 was going to help, but I was just, I had an appointment for
22 a newspaper interview later on during that afternoon, and I
23 was just there and was helpin' a little bit.
24 Q What were you doing as you were helping?
25 A Just holdin' the shelves steady as they were

1 taking them down and movin' stuff around.

2 Q Approximately how long were you there?

3 A I don't really remember; I wasn't there but

4 an hour, maybe not even that long.

5 Q Did you go and then, go in there and then go

6 to lunch and come back, or were you just there one period?

7 A I think I ate lunch and then came down.

8 Q Do you remember approximately what time you

9 left?

10 A No, sir.

11 Q Do you remember any conversation concerning

12 payment, either to you or to any of the other boys?

13 A Do I remember anything said?

14 Q Yes.

15 A I remember Chip saying something about he

16 was getting albums, but it wasn't, I didn't hear anything

17 definite, anybody definitely say that anybody else was getting

18 anything.

19 Q And you mentioned that you left after approx-

20 imately an hour. Were you there in the store when Jeffrey

21 McCray's accident happened?

22 A No, sir.

23 Q When did you first learn of it?

24 A As I was coming back to the store, I met

25 David and Chip outside.

1 Q Approximately how long after the accident
2 was that?
3 A I'm not really sure, probably around fifteen
4 minutes, fifteen or twenty minutes.
5 Q As a result of your being there and helping
6 out, did you see Van Johnson?
7 A Yes, sir.
8 Q And do you recall what he was doing?
9 A No, sir; he, as I recall, I think he was, he
10 looked like he was, he had a lot to do, he was pretty busy.
11 Q In what terms?
12 A Well, he didn't stay in the room the whole
13 time, like he was in and out and . . .
14 Q While you were there?
15 A . . . it seemed like he was doing a lot of
16 other things that he had to do.
17 Q While you were there, did he actually help
18 out in the moving of the shelves or did he just watch?
19 A He was, he was helping; he was, kind of, you
20 know, he was supervising whenever he was back in there.
21 Q Do you recall whether any, whether he was
22 asked if you could help, or did you just join in?
23 A I just joined in. I was just watching, but
24 then I saw that help was needed, you know, so I just helped.
25 Q I have no further questions, Your Honor.

1 Cross - By Mr. Taylor:

2

3 Q Danny, when did you first start going in to
4 this store after the Charlottesville Music Center had taken
5 it over?
6 A Right after.
7 Q Right after? Did you go in right often?
8 A Yes, sir.
9 Q Did you have occasion to see either Chip or
10 Jeff there as a customer at different times?
11 A I'd seen them looking at albums; I can't say
12 that I saw them purchase anything.
13 Q Well, what I meant was did you see them in
14 the front part of the store looking over the merchandise as
15 a customer would?
16 A Yes, I saw Chip; I didn't know Jeff very well.
17 Q You didn't know him?
18 A I didn't see him very often.
19 Q You don't remember whether you saw him there
20 prior to the day of the accident?
21 A No, sir, I can't remember.
22 Q Do you know whether he was working at any
23 regular job anywhere else?
24 A No, sir. I don't recall that he was working
25 at that time.

1 Q But you don't know?
2 A Yes, sir, I don't know.
3 Q I have no further questions, Your Honor.
4
5 CALVIN JUSTIS, SR.
6 a witness called by and on behalf of the Defendant, testified
7 on his oath as follows:
8
9 Direct - By Mr. Slaughter:
10
11 Q Would you state your full name and address,
12 please?
13 A Calvin L. Justis, 216 North Coalter Street.
14 Q And that's here in Staunton?
15 A Yes, it is in Staunton.
16 Q What is your occupation?
17 A I took an early retirement from my employer,
18 a large fiduciary concern, Mercantile Safe Deposit and Trust
19 Company in Baltimore City. I act as a consultant to the
20 United Virginia Bank and National Valley in matters pertaining
21 to trust operations.
22 Q And could I ask your age for the record?
23 A Yes. Sixty-six.
24 Q And you are the father of Calvin Justis, Jr.,
25 sometimes referred to as Chip?

1 A That is correct.

2 Q Without prolonging the hearing too much, sir,
3 you, of course, heard the testimony so far. Could you simply
4 tell the Court what you recall of your first contact with
5 the Charlottesville Music Center with the Music Center here
6 in Staunton and with Van Medor Johnson?

7 A My son, like many others of his age, fre-
8 quents every music store that he can get into and likes to
9 review the new products and also has an interest in playing
10 musical instruments. So he went in the store on an occasion
11 or so before I was introduced to the store by him, having gone
12 in with him to look at the record players or whatever you
13 have.

14 Q And would you then go on and tell how it
15 developed that Chip began doing odd jobs for the store?

16 A Yes. Uh, I'd like to make this as brief as
17 possible and, of course, I am in the position I've got to
18 separate hearsay from what I know because I wasn't in the
19 establishment very much. I'd like to say this, that I did
20 not instigate any employment of Chip; I agreed that he would
21 be able to do these things that references are made for.
22 Uh, the matter of the shelving, it's a lightweight shelving
23 which . . .

24 Q Could I ask you, so the Court will get it
25 sort of in chronological order, could you tell us what

1 generally what the first conversations were that led to the
2 first odd jobs; I believe it was a shelf, cabinet doors.
3 A No, they were sliding doors, and they were
4 without sufficient clearance to pass the shelves--a very simple
5 job of grooving the doors so that the shelves, the door could
6 pass by the shelf.
7 Q Do you recall, uh, how that came up, what
8 the conversation was?
9 A Well, the conversation was that Van wasn't
10 able to, Van Johnson wasn't able to work the doors very well
11 and Chip said well, I could fix that.
12 Q And so then what happened?
13 A Well, uh, I agreed that he could and, uh, he,
14 uh, took some tools and he cut the simple little groove in
15 the doorframes surrounding the glass, and then that operated
16 without any difficulty.
17 Q Do you remember approximately when that was?
18 A That was, uh, uh, probably--this is not the
19 precise date of it--probably four or five days before the
20 Saturday of the nineteenth. It was during the week that
21 Saturday the nineteenth appeared.
22 Q Was anything said during your conversations
23 about Chip being compensated?
24 A None whatsoever.
25 Q And did you actually ever know that Chip

1 received anything for this?

2 A Yes, I did. My interest in his doing these

3 things is it's something that he likes to do; he's a youth

4 with considerable energy and I like him to do that rather than

5 be out where I'm not sure where he is or what he's doing.

6 Q Now, Mr. Justis, what was your next contact

7 with, say, the store or Mr. Johnson, in terms of any further

8 jobs that Chip might do after the sliding door job was com-

9 pleted?

10 A Well, the question of storage space that was

11 useful to have merchandise available so you could reach and

12 get it instead of being piled up in the basement came up

13 during the general conversation. Having recently moved

14 here--you may remember, Your Honor, that's the Wamsleys'

15 address I gave--I had these lightweight steel shelvings left

16 over from the former residence in November and no use for

17 them here. And, uh, so I suggested that they might be used

18 because they were both easy to handle and very inexpensive

19 in their value. And Van said that, Van Johnson said that he

20 would be glad to utilize them if he could get permission, as

21 I understand it--there I'm going into hersay--and, uh, uh, I

22 said all right I'll let you have them at my cost, which was

23 somewhere around five or six dollars a set. And, uh, I, uh,

24 took them there and, uh, took them out of the little truck

25 that we have as a hobby project, so to speak, and I set them

1 alongside the doorway and others took them in. That was on
2 a Saturday. Where they put them or what happened that Satur-
3 day is, I have no particular knowledge of it.
4 Q Was Chip with you that day, sir?
5 A Yes, yes, he carried them in or, if there was
6 anyone else there, they did, but I couldn't say whether Van
7 Johnson or anyone else picked up a package or not. My interest
8 then was to get them off of the bed of the truck and set them
9 there and go about my business.
10 Q When did . . . excuse me.
11 A Yes. Go ahead.
12 Q When did you next have any contact with the
13 store or with this project?
14 A Uh, I drove Chip to the store on Monday, the
15 following Monday. And he did not go to the store--that is
16 one thing I'd like to clarify--with any others; he went there
17 as an individual. Any others that came to the store at that
18 time had to come other than at the time that he did, because
19 I transported him there.
20 Q I see. And what, did you go in the store that
21 morning?
22 A Yes.
23 Q What do you recall of the project and just
24 tell us approximately what you saw and how long you stayed.
25 A It was pretty well established, without any

1 effort on my part, other than the general conversation, that
2 the shelves would be established and where they would be
3 established. My interest in going in the store on Monday
4 was to make sure that no one got hurt, that if they were to
5 be erected they were to be erected and fastened in such a
6 manner that there would be no accident. And I stayed a matter
7 of possibly thirty minutes or thereabouts.
8 Q And did you then go back into the store before
9 Jeff McCray's accident?
10 A No.
11 Q Then that was the last contact you had before
12 the accident?
13 A To my memory, yes. I could have possibly
14 gone in Wednesday morning, but I am not, I can't say definitely.
15 Q Do you recall whether or not you took Chip
16 down there that morning, on Wednesday?
17 A No.
18 Q Mr. Justis, I show you one piece of Xerox
19 paper. On top of it is a statement and on the bottom a
20 facsimile of a check, and I'll ask you if you'll identify
21 those.
22 A Yes.
23 Q What are those, sir, would you tell the Court
24 for the record, please, sir?
25 A I have written: Sold to, the name blank--

1 not knowing the official name of the company--six shelves, six
2 sets of steel shelves at six dollars each, and that is thirty-
3 six dollars. Please send check. The check is here with the
4 Paid stamps on it for thirty-six dollars issued by the Music
5 Center Division, Charlottesville Music Center Incorporated.
6
7 SLAUGHTER: I'd like to introduce this as our
8 first exhibit.
9
10 TAYLOR: No objection.
11
12 COURT: Very well, it will be received.
13
14 Q I have no further questions, Your Honor.
15
16 Cross - By Mr. Bobbitt:
17
18 Q Mr. McCray, uh, Mr. Justis, you, uh, most of
19 the other testimony has been concerned with your role and
20 Chip's role in the music store in relationship with the
21 music store. Could you tell the Court what relationship there
22 was between Chip and Jeff McCray?
23 A They were very close friends, probably as
24 close friends as any other person that he had become acquainted
25 with during our short stay here in Staunton prior to this

1 happening. We arrived, we moved here the October before this
2 June.
3 Q Do you know if Jeffrey McCray was employed
4 or working anywhere during that summer?
5 A Only as a volunteer to be of assistance at
6 Western State.
7 Q When would he work at Western State, or when
8 would he . . .
9 A Uh, I can't say which days, but it was in the
10 morning hours. The reason I know this is that he spent a
11 considerable amount of time with my boy and in fact, he even
12 had dinner at our house the Monday prior to Wednesday.
13 Q It would not have been possible then for him
14 to help out at the music store in the mornings?
15 A That is correct.
16 Q Did, uh, do you know, uh, if Chip ever
17 received anything for his, the things he did at the music
18 store?
19 A In my presence, when the first matter came
20 up, the manager of the music store said he had no authority
21 to compensate my son. I wasn't concerned about whether he
22 was compensated for his small efforts or not, but Van did
23 give him a record at that time, and he gave him, oh, a small
24 number subsequent to that time.
25 Q Do you know of your own knowledge if Jeffrey

1 McCray ever received anything?

2 A I know that he did not receive any, because

3 of a conversation as late as Monday evening. There were no

4 activities on Tuesday and the fatal occurrence on Wednesday.

5 Q Mr. Justis, on these shelves that you sold

6 to the music store, what was your feeling as to the arrange-

7 ment that you and the music store had. Did you feel that

8 the money that you received for the shelves included, was

9 for installing them as well as selling them?

10 A There was no particular feeling. The shelves

11 were occupying space, they were of no value, they represented

12 an opportunity for my son to have a project.

13 Q Well, did you feel personally obligated to

14 install or see that these shelves were installed?

15 A I felt that my son was obligated to install

16 them, in as much as I delivered the shelves and received

17 some compensation for them.

18 Q Did you feel that your son was going to

19 receive compensation for that work?

20 A I didn't know what he was going to receive

21 from the music company, but, uh, the money sort of went in

22 the pot to get records or musical instruments or whatever

23 he was interested in.

24 Q Did, uh, was there any definite arrangement

25 that anyone else was to help your son?

1 A There was no arrangement that anyone else
2 was to help.
3 Q Did the manager of the store, Mr. Johnson,
4 did he have any conversation, to your knowledge, with any of
5 the other parents of the boys who were often around the music
6 store to try to get their help? Do you know of anything
7 like that?
8 A There was no, to my knowledge, there was no
9 contact in any form with the parents of any other child.
10 Q I have no other questions.
11
12 SLAUGHTER: We have no further questions,
13 Your Honor.
14
15 CALVIN JUSTIS, JR.
16 a witness called by and on behalf of the Defendant, did testify
17 on his oath as follows:
18
19 Direct - By Mr. Slaughter:
20
21 Q Would you state your full name and address,
22 please?
23 A Calvin Justis, 216 North Coalter Street,
24 Staunton, Virginia. Calvin Justis, Jr.
25 Q What is your age?

1 A I'm seventeen.
2 Q Are you sometimes referred to as Chip?
3 A Yes, sir.
4 Q There has been a great deal of testimony, so
5 far, Chip, a lot of it repetitive, so I'll ask, if you will,
6 simply tell the Court as briefly as possible but still as
7 completely as possible what you recall of your first contacts
8 with the Music Center and Mr. Johnson.
9 A Okay. Well, I went down to the Music Center
10 one day to see what was going on down there, to see if any-
11 body I knew was down there, you know, and I started talking
12 to Van and nobody was with me at this particular time. And
13 he mentioned that he needed this sliding door fixed and there
14 were a few other odd jobs around there. So I said that I'd do
15 them. And so he made no promises of any compensation or any-
16 thing. So I fulfilled these tasks and I came back on other
17 occasions and rearranged the stock room downstairs in the
18 basement and other things like that and straightened up, you
19 know, just in general, you know, just helped out. I did get
20 records for some of these things and on one occasion he had
21 this old guitar stand lying in the basement, and I said
22 could I have it and he said yes. There have been a lot of
23 things coming out that aren't really right. On, uh, we took
24 the shelves down on Saturday and just put them, you know,
25 put them where we could get to them later. So Monday I went

1 down between ten and ten-thirty and started working on the
2 shelves. Jeff, since he was doing volunteer work at Western
3 State, I'd say he got out of there at one o'clock, if I recall--
4 I'm pretty sure it was one or one-thirty--so he got down there
5 sometime between one and two. And when he got down there
6 there was really no conversation as to, you know, would he
7 get paid or anything like there was with me; he just, you
8 know, helped me out. And there was nobody else there that
9 day besides him and I. So we worked that day and my father
10 came and picked us up and took us home and things like that.
11 So Tuesday I went down about the same time again. And I met
12 Danny Rose and, uh, I mean David--Danny Morris and David
13 Rose--down there. So they decided they didn't have anything
14 else better to do that day, so they helped me. And so Jeff
15 came in about the same time again, between one and two, some-
16 time, I'm not sure when, and we worked on these shelves.
17 And so, you know, as this went through, Danny left, I'd say,
18 about forty-five minutes before the accident because he had
19 some kind of appointment. And, so, then there was the
20 accident. And that's it. There was no agreement made, to
21 my knowledge and to Danny's knowledge or anybody else's know-
22 ledge, like, they were all in the same situation, you know,
23 in their helping out. They didn't have anything else to
24 do and we had a good time doing it.
25 Q And, thus, to the best of your recollection

1 two of you only worked on Monday?

2 A Yes. I know that two of us only worked on Monday

3 Q Worked on Monday. And then on Tuesday David

4 and Danny came in and helped out . . .

5 A Yes.

6 Q . . . in the morning, and Jeff came in in the

7 afternoon and helped out?

8 A Right.

9 Q And then on the next day, perhaps I missed it

10 and perhaps I should ask you to repeat, but what was the

11 sequence of who came in when on Wednesday, the day of the

12 accident?

13 A Well, David and Danny came in and they worked

14 for a while, and then I think Danny went and ate lunch and then

15 he came back and then he had his appointment. Then Jeff came

16 in last, sometime between one and two. But there was no

17 arrangement made for any pay or anything. They just came in

18 and didn't have anything else to do and we had a good time

19 doing it.

20 Q Was there any conversation with Van Johnson

21 concerning whether you would be paid or not, or whether you

22 would receive a record or not?

23 A Well, not really; I was more or less betting

24 that I would.

25 Q And do you recall any conversation about

1 whether the other three would be paid or not?
2 A There was no conversation, to my knowledge.
3 Q Without going into the facts of the accident,
4 just tell us what the three of you were doing. As I under-
5 stand, Danny Morris had left; and what were you and Jeff
6 doing immediately prior to the accident?
7 A Well, we were moving, let's see, I think,
8 we had to bring up some shelves out of the basement. So we
9 were more or less taking turns, you know, who walks down the
10 basement and loads the shelves and who gets to just stand
11 there and pull the rope that makes the elevator go, you know.
12 So it was Jeff's turn to pull the rope that makes the elevator
13 go, so we went down the basement, me and David Rose. We
14 loaded the . . .
15 Q How did you go down? By the stairs?
16 A By the stairs. So we were loading the shelves
17 and we were getting ready for the elevator to come down.
18 Q So you were all engaged in this work on the
19 shelves at the time it happened?
20 A Yes.
21 Q How many records do you recall having gotten
22 from the time you started with the sliding door?
23 A Up until what time?
24 Q Up until the day the accident happened.
25 A Four, or maybe five, I'm not sure, but there

1 were definitely four.

2 Q Do you know of anyone else who got records or

3 any other compensation?

4 A None of the others here got any compensation

5 for what they did.

6 Q To what extent was Van Johnson working with

7 you and supervising you during . . .

8 A Well, he had a lot of other things to do and

9 he had the store, you know, and didn't have much opportunity

10 to supervise us, except toward the end there, you know, like

11 the afternoon it was kind of early in the afternoon, not real

12 early but I'd say around three o'clock, and there wasn't too

13 much business right then and Brenda could take care of the

14 one or two people who were out front, so he was really helping

15 us then. Most of the morning there were enough people in

16 there that he just couldn't leave the store.

17 Q But do you recall his helping out at all?

18 A Yeah, he did help out some. All he wanted,

19 he wanted us to finish up, I think. And we would have.

* * *

9 Q And it is your testimony then that, to the
10 best of your knowledge, he never did receive any records?
11 A I know he didn't receive any records.
12 Q I have no further questions, Your Honor.
13
14 Cross - By Mr. Taylor:
15
16 Q To clarify one matter, I believe you testi-
17 fied that you worked on Monday on the shelves?
18 A Yes.
19 Q And then you said you went down on Tuesday
20 and you found David and Danny . . .
21 A No, it was Wednesday.
22 Q Well, that's what I wanted to find out.
23 A Nobody worked on Tuesday.
24 Q It was not Tuesday, but Wednesday?
25 A It was Wednesday.

1 Q And I believe you said that there was no pre-
2 arrangement of any kind . . .
3 A No.
4 Q . . . between you and Jeff that he was to come
5 in and work?
6 A Well, he said, well, there wasn't any pre-
7 arrangement Monday but he said he might just come down and
8 see what's happening Wednesday, but there wasn't any arrange-
9 ment that we were going to go down to really do anything.
10 Q That's all.

* * *

OLLIE THOMAS McCRAY [p. 65]

12 Direct - By Mr. Bobbitt:
13
14 Q Mr. McCray, will you state your full name,
15 please?
16 A Ollie Thomas McCray.
17 Q Where do you live?
18 A 212 Surrey Road in Staunton, Virginia.
19 Q Are you the father of Jeffrey McCray?
20 A Yes, sir.
21 Q What was Jeffrey's . . . was Jeffrey employed
22 as a volunteer worker during the summer?
23 A Yes, he was doing volunteer work at Western
24 State, helping with the patients.
25 Q What were his hours there?

1 A He worked from, I believe it was about eight
2 thirty, until one o'clock, I believe was the hours.
3 Q At the time of the accident, how old was Jeff?
4 A He was fifteen.
5 Q What year was he in school?
6 A He was a sophomore, he had just finished his
7 sophomore year.
8 Q At Lee High?
9 A At Lee High.
10 Q Did, uh, did you have any knowledge of any
11 sort of arrangement between Jeffrey and the music store that
12 he would go there and perform tasks?
13 A No, sir.
14 Q Did either you or your wife know that he was
15 going to go to the music store?
16 A Yes, he said he was going to the store, that
17 after he got off from work and ate lunch, that he was going
18 to go by the store, and give Chip a hand.
19 Q He said this the day of the accident?
20 A Yes.
21 Q Do you know if he ever received any compen-
22 sation for doing things at the music store?
23 A None that I knew of; I never saw any and he
24 never said he did, so I don't think he did.
25 Q Did he ever receive any records at any time?

1 A No.

2 Q Were he and Chip pretty good friends?

3 A Yes, he and Chip was good friends; Chip was

4 one of about three or four Jeff considered close friends.

5 Q Did your son have an interest in music?

6 A Yes, he had, oh, I'd say about six months

7 before that, no, I guess it was a little more than that, he

8 had just bought himself an electric guitar and so forth, and

9 he played with it, and he bought records and, more or less,

10 I guess you'd say chorded it and followed by ear, and also

11 he was taking music at the time.

12 Q Did, uh, was that the attraction with this

13 particular store, his interest in music?

14 A Yes, really it was.

15 Q Had he ever purchased anything from this

16 store, do you know?

17 A Now that I do not know. I know that he

18 bought records, but I believe he said he had bought records

19 at this store before. He said something about them being a

20 bargain, or something like that, that he bought them cheaper

21 than what the price was 'cause they was on sale, one of those

22 promotion sales.

23 Q We have no further questions.

24

25 SLAUGHTER: We have no questions, Your Honor.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF STAUNTON

OLLIE T. McCRAY, Administrator
of the estate of Jeffrey A. McCray, Plaintiff

v.

CHARLOTTESVILLE MUSIC CENTER, INC., et al, Defendant

ORDER

On the 8th day of September, 1972, came the parties, by counsel, to be heard upon the special plea of defendant Charlottesville Music Center, Inc. alleging that the exclusive remedy of plaintiff lies under the Workmen's Compensation Statutes of Virginia.

This Court then proceeded to hear evidence on behalf of defendant Charlottesville Music Center, Inc., and all questions as to the admissibility of evidence preserved by either party are noted in the transcript of the proceedings, which has been typed and filed with the papers in this action, except the following which this Court doth here note. Counsel for defendant Charlottesville Music Center, Inc. sought to introduce evidence of the conviction of an agent of such defendant in the Fourth Regional Juvenile and Domestic Relations Court on a charge of violating the Child Labor Laws of Virginia for employment of plaintiff's decedent at the time of the accident in which he died. The Court received such evidence to vouch the record and reserved its decision as to the admissibility of such evidence until a later time. Counsel for defendant Charlottesville Music Center, Inc. also sought and received leave of the Court to

introduce at a later time an abstract of such conviction in the Fourth Regional Juvenile and Domestic Relations Court, such abstract not having been available from such court without permission of the presiding judge of such court.

Thereafter, counsel for defendant Charlottesville Music Center, Inc. obtained permission from the judge of the Fourth Regional Juvenile and Domestic Relations Court to obtain such an abstract, and, in accordance with a suggestion made by this Court, submitted such abstract to this Court under cover of a letter with copies to other counsel. Counsel for plaintiff objected to the admission of such abstract on the ground that such abstract was hearsay evidence, that it was a self-serving declaration, and further that it did not name plaintiff's decedent as the minor for whose employment defendant's agent was convicted. Thereafter, however, while counsel for plaintiff preserved its objection to introduction of evidence as to the conviction of such defendant's agent on the remaining grounds noted above, the objection to the admissibility of the abstract on the ground that it did not name plaintiff's decedent was abandoned by counsel for plaintiff.

The Court having maturely considered the question of whether such conviction and the abstract thereof should have been admitted in evidence doth find that such evidence should not be admitted and sustains plaintiff's objection to the

admissibility of any evidence relating to such conviction. Counsel for defendant Charlottesville Music Center, Inc. preserves its objection to the failure of the Court to admit such evidence and the abstract thereof on the ground that the evidence on which such conviction was based made necessary a decision on the identical issues as that before the Court presently, and on all other grounds preserved in the record.

The Court having further maturely considered the evidence of defendant Charlottesville Music Center, Inc., evidence introduced on behalf of plaintiff, the arguments of counsel, the memorandum filed on behalf of defendant Charlottesville Music Center, Inc., the memorandum filed on behalf of plaintiff, and the reply memorandum filed on behalf of defendant Charlottesville Music Center, Inc. doth ADJUDGE and ORDER that such special plea be, and it hereby is overruled, to which action of the Court defendant Charlottesville Music Center, Inc. objects on the ground that under the law and the evidence, plaintiff's decedent was at the time of his death an employee of defendant within the meaning of the Workmen's Compensation Statutes of Virginia and that, therefore, plaintiff's sole and exclusive remedy lies within the provisions of those statutes.

But the Court doth, as provided by the Rules of the Supreme Court of Virginia, retain jurisdiction over this matter, reserving the right unto itself to enter such further orders

as it may deem appropriate concerning the foregoing decision until the final order shall be entered in this action and 21 days thereafter.

ENTER: _____

DATE:

We ask for this:

_____
William E. Bobbitt, Jr.
Counsel for plaintiff

Seen and objected to:

McGUIRE, WOODS & BATTLE

By _____
Edward R. Slaughter, Jr.
Counsel for defendant

730 554

SUPREME COURT OF VIRGINIA
RECEIVED
JUN 1 1973
RICHMOND, VIRGINIA

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF STAUNTON

OLLIE T. McCRAY, Administrator of the Estate of Jeffrey A. McCray, Plaintiff

v.

CHARLOTTESVILLE MUSIC CENTER, INC., Defendant

TRANSCRIPT

Opening of Trial - Voir Dire, Initial Questions of Court not Recorded

Tape begins with final questions of Mr. Taylor about which no question exists. The first clearly audible portion is the opening statement by Mr. Slaughter in beginning his voir dire:

May it please the Court, Gentlemen of the Jury, Ladies and Gentlemen of the Jury, as Judge Moffett has indicated, Mr. Landin and I are from Charlottesville and consequently, of course, don't know you, and you don't know us as you would know local counsel in the community. I would therefore ask these questions. Are any of you acquainted with the McCray Family?

(A juror raises his hand)

Questions by Mr. Slaughter.

Q. Could I ask your name, Sir?

A. Robert Landes.

Q. I realize this is a difficult question to answer, Mr. Landes, but could you tell us how well acquainted with the family you

are?

A. Inaudible (Mr. Landes responded generally that he knew Mr. McCray through contacts between their two companies).

Q. Are you in contact with him on a day-to-day basis?

A. No, I haven't had contact with him for several months.

Q. I see. Do you see them socially?

A. No.

Q. Have any of you read newspaper accounts or been aware by other means of this accident? Could I have your names, please?

A. Five jurors indicated that they had; names inaudible.

Q. In order to try to be just as brief as possible. I'll ask those of you who had been aware of it generally questions, but then if any of you have individual statements otherwise I would appreciate it if you would so state. As to each of you who has heard of the case, now one lady mentioned she had read it out of the newspaper (juror interrupts-inaudible), it is my understanding that others of you have read of it in the newspaper. Could I have your name, please?

A. Joan Rule.

A. Eunice Sheets.

Q. Are there others who read it in the newspaper?

A. Answer inaudible, but other jurors indicate they had.

Q. Perhaps I should put it another way. Is there anyone who hasn't gathered from the newspaper some knowledge of this

accident? Could I ask your name?

A. (Answer inaudible).

Q. Do I understand that Mr. Houff and Frances Berry are the only ones who have not had any prior knowledge of the accident before?

A. No audible response; then a question from juror as to when accident occurred.

Q. Yes, it was in June of 1971.

A. (Inaudible).

Q. Has anyone, and I think some of you have, but could those of you tell me who may be acquainted with this accident other than from the newspaper, by conversation?

A. (Inaudible).

Q. Court asks if counsel have any further questions.

A. Mr. Slaughter: I have no further questions, Your Honor.

A. Mr. Taylor: I have no further questions, Your Honor.

Mr. Slaughter: Could Your Honor indulge us in Chambers a moment?

The Court: Yes, sir.

Mr. Slaughter: Thank you, sir.

Argument before the Court in chambers. Counsel for defendant moves for exclusion of all jurors with previous knowledge of the facts of the accident from the media and other sources on the grounds that prior knowledge from newspaper accounts which are by their nature incomplete and slanted would render them partial to the cause of

plaintiff.

Reply by Mr. Taylor: May it please the Court, the plaintiff takes the position that it would be difficult, if not impossible, to obtain a jury, none of whom had read the newspapers. The only members of society who would be eligible for jury service would be the uneducated and the illiterate. A juror is not disqualified simply because he knows that the accident has occurred; he is disqualified if what he knows has caused him to form an opinion or prejudice which would prevent him from giving both sides a fair and impartial trial. At this point we do not know what the newspaper articles stated or what opinion if any was created in the minds of the jurors. We feel that Counsel for the defendant will have to go further and explore the question whether the jurors have in fact been prejudiced by what they may have read about the accident. We submit that the simple fact that they had read a newspaper account of the accident is not sufficient in and of itself to disqualify them.

The Court overrules the motion of the counsel for defendant and notes his objection thereto. Return to Courtroom.

Questions by Mr. Slaughter

Q. I would like to ask two or three further questions somewhat along the lines that Mr. Taylor asked you. One - it really is a key question- just knowing now that most of you have read accounts of this accident in the papers over fifteen months ago, I would simply ask again if you have not formed or expressed an opinion as to the case previously, perhaps now that your recollections have

been refreshed as a result of the questions?

(No juror responded affirmatively).

Q. Do each of you feel that you have not formed or expressed an opinion as to the case?

A. (No juror responded affirmatively).

Q. And that in no way have you prejudged the case as between naturally bereaved parents who are certainly objects of sympathy by everyone and the defendant corporation, by definition impersonal?

A. (No juror responded affirmatively or negatively).

Q. And I would further, again corresponding to Mr. Taylor's initial question, do you feel that no award can be given or that a lesser award than the greatest amount you can give can be awarded?

A. (No juror responded affirmatively or negatively).

Q. Do any of you have any quarrels or personal compunction against an award for the defendant or an award of a lesser amount?

A. (No juror responded affirmatively).

Q. I take your silence to mean that you can give the defendant a fair trial and that you do not hold any prejudice against either side?

A. (No juror responded affirmatively or negatively).

Questions by the Court

Q. Does Mr. Taylor have any more questions to ask right now?

Answer by Mr. Taylor: No, Your Honor.

Counsel for each party proceeded to strike alternately three jurors, leaving seven jurors.

The names of the following jurors were announced by the Clerk as those who should stand down:

Joan R. Rule
Lilly B. Echols

Margaret P. Archer

Robert S. Landes

Edward M. Willson

George R. Diehl

The Clerk then continued:

Q. Will each of you answer present as your names are called, please.

James E. Houff

Audrey S. Fitzpatrick

Thomas J. Sheehan

Frances J. Berry
Laura R. Killingsworth

L. D. Wease

Eunice R. Sheets

Will each of you stand and raise your right hands, please? Do you and each of you solemnly swear that you will well and truly try the issues joined between Ollie T. McCray, Administrator of the Estate of Jeffrey A. McCray and Charlottesville Music Center, Incorporated and a true verdict rendered according to the law and the evidence, so help you God? You are all sworn, you may be seated.

The Court then stated, although his exact words are not clearly audible, that one juror would be prevented from leaving on a trip over the weekend if the case could not be concluded in one day. The Court then asked counsel for each party whether or not he felt the case could be tried in one day. The Court then suggested that the remaining three jurors be called, that each side be given one strike, and that the remaining juror take the place of Mrs. Killingsworth.

Counsel for both parties having agreed to such a procedure, the Clerk stated as follows:

As I call your name, please come forward: B. Alwyn Jacob, III, Martha S. Grafton and Calvin C. Craig. Would the three of you please stand and raise your right hands. Do you and each of you solemnly swear that you will make true and perfect answers to the questions which the Court shall propound to you so help you God? You may be seated.

The Court then directed the questions required by law to the three members of the jury panel who had come forward.

The Court then stated:

Q. Mr. Taylor, do you have any questions?

Answer by Mr. Taylor: No, Your Honor.

Questions by Mr. Slaughter

Q. I am sorry to prolong this conference, but due to Mr. Jacobs' hearing difficulty. Have you ever heard, and I will ask this of the three of you although I shall speak directly to Mr. Jacobs, have you any knowledge, that is before you came to this courtroom today, have you any knowledge of this accident?

A. (inaudible).

Q. Two of you have read of it in the paper. Have you had knowledge of it from any other source?

A. (inaudible).

Q. I think the Court has already asked this question in a slightly different way, are any of you socially acquainted or social acquaintances with the McCrays?

A. (no audible response).

Q. Are any of you clients or do you know Mr. Taylor or Mr. Bobbitt?

A. (no audible response).

By Mr. Slaughter:

The exact words of Mr. Slaughter's next statement to the Court are not clear on the tape, but in substance he stated that, in order to save time, he made the same objection concerning the jury that he made in chambers.

By the Court:

Are these jurors (I spoke to the Clerk a minute and I may have missed the answers to one of the questions) did any of these prospective members of the jury indicate that they had read newspaper accounts?

Answer by Mr. Slaughter: It is my understanding that all three have.

By the Court:

All three have?

Answer by Mr. Slaughter: Yes, sir.

Mr. Slaughter continuing: Mr. Bobbitt and Mr. Taylor asked the jury panel at the beginning whether if the required facts were proved, you could give a verdict for the entire amount allowed under the law and therefore I would ask the panel correspondingly, if you feel that despite the fact that you had knowledge of this case and I know that you have been asked by the Judge whether you have formed or expressed an opinion about the cases, do you feel that you can fairly try a

case which will necessarily involve bereaved parents who are reoresented by lawyers locally and a corporation (remainder of question inaudible)?

A. No audible response.

Q. I take it by your silence that you feel that you can?

Q. Then I ask a further question (remainder of questioning inaudible as well as initial remark of the Court thereafter).

Counsel for each party then proceeded to strike one of the remaining jurors. The Clerk then stated:

The following named will please take their seats back in the courtroom:

B. Alwyn Jacobs, III and Martha S. Grafton. Mr. Craig, will you stand and raise your right hand please? Do you solemnly swear that you will well and truly try the issue joined between Ollie T. McCray, Administrator of the Estate of Jeffrey A. McCray and Charlottesville Music Center, Incorporated and a true verdict render according to the law, so help you God? You may be seated.

The Court Reporter was then sworn as well as all witnesses who were in the courtroom.

Filed in the Clerk's Office of the
Circuit Court of the City of Staunton
Date: 5/9/73 Time: 11:00 A.M.
Teste:
Edith M. Paytour Clerk.

* * *

TRANSCRIPT OF TRIAL [p. 7]

WALTER E. BROWN

Direct examination by Mr. Taylor:

Q. Will you state your name, please?

A. I am Walter E. Brown, Lieutenant, Staunton Police Department.

Q. How long have you been with the Staunton Police Department?

A. Just over nine (9) years.

Q. And, you are a Lieutenant of Police?

A. Yes, sir.

Q. Lieutenant Brown, were you a member of the Police Department on June the 23rd, 1971?

A. Yes, I was.

Q. And, on that date, were you on duty?

A. Yes, I worked the eight (8) to four (4) shift that day.

Q. Will you tell us whether on that day you had occasion to investigate an accident that had occurred on the premises of the Charlottesville Music Center?

A. Yes, I received the call to go to the Charlottesville Music Center at 23 North Central Avenue at approximately 3 o'clock.

Q. In the afternoon?

A. In the afternoon, that's right.

Q. I believe this was a Wednesday, is that right? Do you recall?

A. I don't recall the day of the week; it was in the middle of the week, I know this.

Q. Now, will you describe what you found at the Charlottesville Music Center?

A. When I arrived there I was met by Mr. Johnson, and there was a saleslady also there and said that a young man had been injured in - and he

was in the basement of the building; that there was something happened to the elevator in the back and he had been injured. I proceeded to the basement and I found Mr. McCray lying in the floor of the building just outside the elevator - uh, his head --

Q. Well, without going into details, was he alive or dead at that time?

A. At this point he was dead.

Q. Now, will you tell us what you found - but, first, let me ask you this. Could you describe the hoist or dumbwaiter in general terms?

A. In general terms it was wooden - a box approximately 3 1/2 to 4 feet wide by the same depth. It's a wooden box of wood construction, it has a motor hoist combination on the top.

Q. Is this what is commonly referred to as a chain hoist?

A. Yes, that's what I would call it, a chain hoist, electrical chain hoist.

Q. Well, now, where was the box or case part of the lift or dumbwaiter when you arrived?

A. The case part of it was in the basement of the building.

Q. At the bottom of the shaft?

A. The bottom of the shaft.

Q. And where was the motor?

A. The motor was lying on top of the cage portion of it.

Q. Now, are you familiar with this type of hoist or chain hoist?

A. Yes, I'm familiar with it.

Q. Well, in it's normal state where is the motor placed with reference to the case?

A. It would be at the top of the shaft, and then the chain moves, not the motor.

Q. The chain goes from the motor to the cage?

A. One on the right and one on the left.

Q. And, I believe you said the motor is operated by electricity?

A. Yes, sir.

Q. All right sir, now what did you - what was the condition of the box part of the elevator at the time you arrived?

A. It had fallen; it had some broken wood, some of the parts was broken, the - it was still in tact in general but you would find a board broken here, the board broken there - this type of thing.

Q. And, did I understand you to say that the

motor was lying on top of it?

A. Lying on top of it and there was 2 by 4s and 2 by 6s around it.

Q. How was the motor normally suspended from the top, were you able to tell from looking at it?

A. From looking at it apparently it was suspended through a hook; there was a hook in the very top - it wasn't all the way to the ceiling - I might state here - the shaft does not go all the way to the ceiling on this particular lift, but up over the first floor it's some 2 by 4s and 2 x 6s and 2 by 8 type of construction, in the shaft - and this had a pin through it with a hook on the end. This motor was hooked the same way over the hook in this type of fashion (connecting his two index fingers in a hook position).

Q. Like that (connecting his two index fingers in a hook position)?

A. Yes, sir.

Q. Lieutenant Brown, did you make any examination of the hook at the top of the motor that hung from the overhead hook?

A. Yes, sir, I did.

Q. Can you describe its condition at that time?

A. Normally the hook would be bent say in approximately 100 in 360 degrees not completely connection, but it was an open type hook bent completely around; this had straightened out in a more or less L shape, a general L shape.

Q. Would it be fair to say that in normal position it was something like the top of a coat hanger?

A. Right, sir, yes.

Q. And, it was no longer in that shape?

A. It was no longer in that shape.

Q. Did you take a picture of the motor at that time?

A. Yes, sir, I did.

Q. Can you identify this picture? (Hands witness the photograph)

A. Yes, sir, this would be one of the photographs I took at the scene.

Q. Did you take it yourself at the scene?

A. Yes, sir, I took it at the scene, yes, myself.

Q. And, is this, I take it is your shoes -- ?

A. Yes, my shoes.

Q. Lying on the basement floor?

A. Yes, - No, sir, this is lying on the first floor. The motor did not go all the way to the basement;

now, when this elevator is all the way down, you have climb over the top in order to get to the first floor.

Q. Did you make any observation of the shaft or hoistway?

A. Yes, sir, I did.

Q. Tell us whether there were any beams or anything along the side of the hoistway as guides?

A. Yes, sir, there were wooden members approximately 4 by 4 in size that worked a little shaft - another little shaft inside on the side of the elevator. This was used as a guide to keep it from swinging out of control.

Q. And you say they were wooden?

A. Yes, sir, they were wooden.

Q. Did you make any observation as to the condition of any of those wooden guides?

A. Yes, sir, I did. One if you were standing facing the elevator to your right was like a warped --

Q. You call it what?

A. Warped, just turned weak.

Q. Warped?

A. Warped, right. It was twisted at the top out of shape.

Q. Did you take a picture of that beam?

A. Yes, sir, I did.

Q. Can you identify this picture?

A. Yes, sir, this is the same picture I took.

Q. This is standing down looking up?

A. This is standing on the first floor looking at the beam.

MR. TAYLOR: If it please the Court, I tender these two photographs and ask that they be received in evidence marked as the plaintiff's Exhibits One and Two.

JUDGE MOFFETT: The Court will receive and so identify.

Continuation of Direct examination by Mr. Taylor:

Q. Lieutenant Brown, what - could you tell from the structure of cage of the elevator whether the top was enclosed - whether it was closed over or whether it was open?

A. It was an open top; had some 2 by 4s - uh, 2 by 6s a large piece of wood, but it was an open construction.

Q. The top was open?

A. Yes, sir.

Q. What was the construction on the front of it if you faced it, was it open or was there a door?

A. It was open as you faced it.

Q. Now, did you - can you tell us whether you saw any paper posted on or about the cage of the hoist or the lift itself?

A. Yes, sir, there was a letter -

MR. SLAUGHTER: I object (inaudible)

MR. TAYLOR: All right.

Q. Could you tell us whether or not you saw any writing posted on or about the frame or the lift itself?

A. Yes, sir, there was a sheet of paper in the back as you face directly into the elevator; posted right on the very back of it.

Q. Was that on the outside or inside?

A. Inside of the cage itself.

Q. So, if you were facing it - the open door of the cage, where would it be with reference to you?

A. Directly in front of you. Approximately eye level.

Q. What did it relate to?

A. It related to an inspection of this elevator.

Q. Do you recall or did you notice what the date of the inspection was?

A. The date on this letter was dated February, 1946. February 15th I believe would be the

exact date.

Q. Tell us whether you were able to find any evidence about the lift of any later inspection?

A. There was no other information as far as a later inspection on it.

Q. This store is within the City of Staunton, is it not?

A. Yes, sir.

Q. Mr. Brown, I believe you testified that this motor was suspended overhead and there was a chain which ran from the motor down to the hoist itself or to the cage?

A. Yes, sir.

Q. Describe just generally what kind of chain that was?

A. In general, if you are familiar with a bicycle chain, let's say it's a real heavy bicycle chain. It's the same type of construction, but it would be heavier, not heavier, but I'd say four or five times stronger.

Q. So that chain unwinds and winds to lift and lower the hoist?

A. Yes, sir, it works in the same principal as a bicycle chain except it's not a complete

circular chain, it would be one that - it's not a circular chain but it's the same type of construction of a bicycle chain and it works on sprockets just like - at the motor end.

Q. Was there any difference in the chain itself, anything of any difference in the appearance of one part of the chain from that of another?

A. Yes, sir, there was. The chain, after being used there was grease and so forth had worn off - looked like the chain had wear, uh, the chain had looked as if it had unwound approximately I'd say - I made a approximation at the time of 8 to 12 inches somewhere along there; I believed it measured to be 16 inches. There was a difference between a used portion of the chain and the portion that had really never received any use.

Q. Which was measured to be 16 inches?

A. Sixteen (16) inches of used portion.

MR. TAYLOR: Excuse me just a moment.

Q. Okay, did you examine the electrical cord going to the motor?

A. Yes I did. The - when the hoist fell it broke the connections. All the electricity was

turned off to the hoist when it came down.

MR. TAYLOR: I believe that's all, your Honor.

Cross-examination by Mr. Slaughter:

Q. Lieutenant Brown, as I understand it, in order to recapitulate a little to be certain the jury understands; this hoist was encased in a sort of form of a shaft and ran from the basement up to about half way between the first floor and the ceiling of the first floor. Is that correct?

A. This is correct.

Q. And built over the top of the shaft was a form of roof done in some manner by trusses, I think you said 2 by 4s or maybe 4 by 4s, at the top and through that structure was what we might call an eye or an eye hook?

A. Right, sir.

Q. Fairly heavy type of eye hook. Can you describe so the record can pick it up approximately how thick the metal would be on such a hook?

A. Okay, I would say this eye hook in the ceiling was made of - oh let's say 5/8ths to 3/4 inch bolt type material, it's a heavy steel material.

Q. And on the motor of which you have taken a

picture there was also a bolt or a hook of which the picture shows had straightened, and could you tell us approximately how thick that hook was?

A. I'd say this was a little thinner, approximately half inch, I was just making a guess of a half inch. It would be a little thinner - that's probably accurate.

Q. And in the condition that this hoist was operating the hook on the motor was attached to the eye hook in the ceiling?

A. Right.

Q. And then the chain came down from that and was fixed or had been affixed prior to this accident to - in some manner to the top of the car which went up and down in which material could be transported, is that correct?

A. Yes, sir.

Q. Do you recall how the chain was fixed to the top of the hoist?

A. It was fixed - I did not unwrap it - this had a piece of tape around it, it was a block that apparently was through that came through the wood with a bolt on the backside of it. This block of wood was fixed to the car itself, then out of this there was a hook - uh,

these two was hooked together and this had all been taped up and I didn't untape this at all; it showed no signs of any strain or any damage to this point.

Q. Do you recall whether or not the block under the roof of the car which held this lower connection of the chain in place had been removed or had come off ~~when~~ in the accident or was that still affixed to the remaining top of the car?

A. This had come off for some reason during the accident and how it got knocked off I don't know, but it was off when I first got there and as I recall it was hanging down with this loose from the car.

Q. But there was no evidence that any of that connection had pulled free?

A. No, sir. This was apparently hooked - maybe I'm giving an opinion, I don't know - well it was hooked, there was members across like this and this was across both the bottom side of the members and approximately 16 penny nails which were along through there and it was still in, it didn't come apart and that was all connected.

Q. And the chain itself did not part?

A. No, sir, the chain was still in good condition.

Q. Now, you've mentioned that there was a portion of the chain which had a different appearance from the other part?

A. Yes, sir.

Q. This isn't the way, of course, you took the picture, but I think it might be easier to the jury to see. Could I ask Lieutenant to come up close to the jury so I can ask him to testify to the picture?

JUDGE MOFFETT: Nods yes.

MR. SLAUGHTER:

Q. Again Lieutenant Brown, I'm going to have to ask you to educate me a little because it's somewhat difficult to get in perspective the chain that you see going down the motor, and I'm holding the picture really sideways. But in its vertical position, it, of course, is shown there still attached to the motor. Could you indicate to the jury how the chain goes into the motor and comes out of the motor, and on which, if possible, which length of chain the hoist would have been attached, or which segment?

A. Okay, this works on a sprocket wheel just like a

bicycle wheel, maybe I can refer to it something like that.

Q. Would you hold it up so all the jurors can see it?

A. Right in here there's some kind of gears in there, but right in here this part where this chain comes across the sprocket wheel, which one of these was attached to the block I can not think definitely right here; I'd have to look at the other photograph. But, one of these chains, if you'll notice, one of them is a little shiny at the end than the other one, uh, this may come from the light here, I don't know, but if you just look at it natural just looking at it, one of them has grease, consistent grease all way over it with no sign of wear - if you rub something across it - up to a certain point in one of them there the a grease had been worn, this is the reason why we said it had dropped itself over 8 to 16 inches.

Q. Now, when in its normal operation the hoist winds the car - winds up so the car would be raised, would the chain that would be taken up into the hoist fall down again the way the block and tackle would or would the chain wind up inside the motor?

A. No, it fell back down towards where the block and tackle, which wind up on a chain.

Q. I see. And where was this 16 inches of chain that had a difference of color or consistency, was that at it's fartherest point away from the car or close to the car on the chain?

A. Uh, judging from the way I'm looking at the photograph I would say this would be the car here - this chain here would be the one that is not - is the loose end. It's this right there, it's 16 inches that I'm referring to, I believe it would have been on this end; it was the portion that would have been away from the car.

Q. In other words the chain apparently was - had been pulled to the point that it was extended 16 inches longer than normal? Is that correct?

A. No, I think you are getting the wrong impression.

Q. I'm affraid I am.

A. The chain itself had - the car come up so far, normal use would bring it up and down, this same portion which is normally used in a length or two of each other all the time

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'cause this one comes down to the floor when it stops. Now, on this particular - when I looked at it there was a portion of this normal used portion that had come down to indicate that the car had come down - the chain had released itself supposedly to drop the car approximately 16 inches.

Q. Oh, I see, so let's assume the car then -

A. It indicates the car had started moving down close to the opening in the hoist.

Q. I see, then the car, at least the chain had paid out by 16 inches?

A. Right/

Q. I see, over the normal amount of chain that would have been required to hold the car at the first floor?

A. Right.

Q. It had paid out 16 inches and then at that point the motor had apparently fallen and so it had paid out no further?

A. Right, sir. This disconnected the electricity so it was cut off.

Q. Right, I see.

MR. SLAUGHTER: That's all I have for the picture. I've thought of a question that didn't relate to the picture.

Q. Lieutenant Brown, I was referring before to plaintiff's exhibit #1, and I should have identified it in talking about the chain in the motor, now I'm referring to plaintiff's exhibit #2 which shows the 4 by 4 member which served as an elevator guide in which you pointed out before was twisted or warped; across the bottom of that photograph or close to the bottom you can see vertical - what appear to be vertical wood members and then a horizontal frame. Could you say whether or not that is approximately the point where the top of the car was located when it was in its position on the main floor or when it was at its highest position?

A. That would be approximately correct. I couldn't say for sure, but I would say approximately correct.

Q. And thus the twisting or the bending of that member is above the point where the car --

A. I'm sorry, uh, I was thinking about this was something - I'm not sure, I think this would be approximately correct, I can't say right now positively.

Q. I understand, but the car did not go - ever go all the way to the top of the hoist, is that correct?

A. Not all the way up to right here, but there was worn places to indicate it had been up in there some kind of way.

Q. I see.

A. You can see them brightly on the photograph. There's a different color than on the end, this up there to indicate the car had been up behind.

Q. But, unless the light plays tricks on us the guide down here shows a sort of constant wear up there only very sporadic?

A. Correct, sir.

Q. So the twisted part in that photograph is toward the top of the hoist beyondwhere the car would normally go?

A. Yes, sir.

MR. SLAUGHTER: We have no further questions.

Re-direct examination by Mr. Taylor:

Q. Did I understand you to say Lieutenant that this was apparently a homemade elevator or lift? It was not apparently a commercial or --

A. There was no indication to be a - of one of the commercial brands or maintenance, it was just something somebody put together.

MR. TAYLOR: I have no other questions.

MR. SLAUGHTER: We have no further questions your Honor; we have no objections to Lieutenant Brown being excused if the plaintiff wishes to so move. I would ask it be possible if he would remain available for us if we should need him this afternoon.

JUDGE MOFFETT: I have no objections to excusing Lieutenant Brown. Thank you gentlemen.

MR. TAYLOR: Calvin Justis, Jr..

CALVIN JUSTIS, JR., being first duly sworn, testified upon his oath as follows:

Direct examination by Mr. Bobbitt, Jr.:

Q. Mr. Justis, would you state for the jury your name and age, please?

A. I'm Calvin Lee Justis, Jr. and I'm eighteen (18).

Q. Where do you live?

A. 216 North Coalter Street, Staunton, Virginia.

Q. Could you speak up just a little bit, please? Are you generally known as Chip?

A. Yes.

Q. What - are you in school, Chip?

A. Yes, sir.

Q. What grade are you in?

A. Senior at Lee High.

Q. Were you a friend of Jeffrey McCray's?

A. Yes, sir.

Q. Do you know what Jeffrey's age was at the time of the accident?

A. I believe he was fifteen (15), sir.

Q. How old were you at that time?

A. I was sixteen (16).

MR. SLAUGHTER: I would ask that he speak a little louder so the jury can hear him.

JUDGE MOFFETT: Would you speak into the microphone, please sir.

MR. BOBBITT:

Q. What grade were you in at the time this accident occurred?

A. I was, uh, Junior, between a Sophmore and Junior.

Q. It was in the summer between your Sophmore and Junior year?

A. Yes, sir.

Q. Were you at the music store the day this accident took place?

A. I was..

Q. Could you tell what lead you to be involved in the music store. What lead up to your involvement with the store?

A. Well, I went in one evening and Van was there,

like, I started talking to him about hi-fi equipment, and he was complaining about this door (inaudible) and so I said, "I'll fixit"; so I fixed that and a couple days later and then I did a few more errands and then he told me he was going to put in some new shelves, so I said I'd help him. My father's shelves ---

Q. He said he wanted to do what?

A. He wanted to put in some new shelves.

Q. This is the manager of the music store that you are referring to?

A. Yes, sir.

Q. Was anybody else engaged on these little projects with you?

A. No, most of the projects no one else was engaged except on the shelves. Jeff McCray came down that Monday, and he ---

Q. On the shelf project, did you arrange to have these shelves placed in the music store with the manager? You got his permission to do this?

MR. SLAUGHTER: If the Court pleases, it might be clearer and certainly wouldn't be grounds for objection if Chip could simply tell what happened, and, uh, in sequence I believe that Mr. Bobbitt is leading him, and I would have to object to that.

MR. BOBBITT:

Q. Chip, could you tell in a little more detail how you became involved on this shelf project?

A. Well, Van said that he needed some shelves in the back, and so I said that I thought I could put them up, and I said my father had some shelves that he'd sell to the music store, so -

Q. Who are you referring to as "Van"?

A. Mr. Johnson.

Q. And Mr. Johnson, what was his position at that time?

A. He was the manager of the music store.

Q. Could you continue on with what this project involved?

A. Well, we moved the shelves down there Saturday, and we went down to start working on them Monday, and so Monday we went down and started working on them, and this project consisted on moveing the other shelves that were already there so we did that; and we got most of these shelves up, so then that Monday we got the old shelves down and the new ones up - and there's this work bench in the back which was taking up space in the room of the old shelves - where the work bench was, except while we were working

on the - uh, putting up the other shelves, we didn't have enough room left there so we put them down in the basement.

Q. How did you do that?

A. Well, we put them on the elevator, to take them down we put them on the elevator.

Q. How did you know how to operate the hoist?

A. Mr. Johnson showed me.

Q. When did he show you that?

A. A long time before the accident.

Q. Had you operated this before you started on the shelf project?

A. I think just a couple of times.

Q. Well, on the Monday that you started that project was anyone else helping you at that time?

A. Well, Jeff came in that afternoon to help me some. He came in about 1 or one o'clock or one thirty, some time around there.

Q. What time did you start that day?

A. I started around I'd say between 10 and 11.

Q. Did Jeff help you in the morning?

A. No, sir.

Q. Where was he in the morning?

A. He was doing volunteer work for Western State hospital.

Q. Did you come back and do any work on the shelves

on Tuesday?

A. No.

Q. When was the next day you returned?

A. I came back Wednesday morning about the same time. Jeff came in at the same time, one o'clock or so.

Q. Well, when you say you came in at the same time, what was that?

A. A little after - between 10 and 11 o'clock.

Q. Was anyone else with you at that time?

A. Nobody was there at that time, a little while after I got there some other friends of mine came and helped me put the shelves- (inaudible). I stayed a little after --

Q. What time did Jeffrey McCray arrive?

A. He arrived - well, he got from Western State about one o'clock so I'd say well, between 1 or 1:30 Jeff got there.

Q. Did you explain what you did from the time that Jeffrey arrived until the accident?

A. We were working on the shelves, that's what we were doing.

Q. What process did you go through?

A. Like, after he got there we were starting to bring the other shelves up out of the basement - the ones we took down the day before,

to get them out of the way; now, we had a place to put them because we took them apart with this big work bench and we were bringing them up so we could put them together.

Q. During the course of doing this did Jeffrey operate the dumbwaiter?

A. I think before the accident, I think maybe 1 or 2 times.

Q. Did anyone show him how to operate it?

A. I think I did. It's pretty simple, all you have are these two (2) ropes, you pull one it goes up, you pull the other it goes down. It had sort of a makeshift brake which would keep the elevator car on the second floor.

Q. How did - where did these ropes hang, the control work?

A. They hung - well, the elevator car was down and they were back where the chain was, and the elevator car came up since you were pulling them outside the door, the elevator car came up that's where it ought to be placed, outside the door.

Q. Well, when the elevator was down in the basement, could it be - could the lift be cut on from the basement?

A. No, sir.

Q. Had to be on the first floor?

A. Yeah, be on the first floor.

Q. Did - how would you go about getting it to raise?

A. You pull the rope.

Q. Would you have to lean into the shaft to do that?

A. Well, not really, all you have to do is just reach into the shaft.

Q. Well, when it was in the first floor position then what would you do to pull the rope to make it go down?

A. Well, when the car came up it sort of - the way you had the ropes you pulled them outside of the shaft; and when the car came up you sort of held the ropes outside the shaft so you didn't actuallyreach into the shaft or anything when the car came up.

Q. And you would - there were two (2) ropes you say?

A. Yes, sir.

Q. Can you explain a little bit more about what you refer to as brakes, what did that look like?

A. Well, I don't know, it must be a brake. It was this piece of wood it was pivoted on about

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a 3/8ths inche bolt on side of the car, like if you moved it out a little bit it sort of keep the car from going down. I don't know whether it was meant for a brake all I know it worked that way.

Q. Chip, did you have any knowledge beforehand that Jeff McCray was coming to help you on these dates that he came?

A. Well, I told him I was going to be down there Monday, so I sort of, you know, half expected him to come down there and Wednesday we had an agreement that he would come, not an agreement just said he'd be there Wednesday.

Q. On the Monday that he worked there did the store manager, Mr. Johnson, know that he was present at that time?

A. I feel pretty sure he did.

Q. Why do you say that?

A. He talked to him that day, so I know he knew he was there.

Q. He talked to Jeff McCray?

A. I think he did.

Q. Did Mr. Johnson know what you were doing at that time?

A. What do you mean?

Q. That you were working on these shelves in the

back of the store?

A. Yeah, he asked us to do it.

Q. Did he know Jeffrey was there with you?

A. Yes.

Q. Did Mr. Johnson ever object to anyone helping you?

A. No, he didn't.

Q. Who was there Wednesday at the time the accident took place?

A. Well, the people there, me and Mr. Johnson, Jeff and David Rose.

Q. David Rose?

A. Yes, sir.

Q. Where is Mr. Rose now?

A. I don't know.

Q. Did - do you know if he's out of the country?

A. Well, I heard he came back from Germany, so I don't really know, but the last time I really heard I'm sure he was in Germany.

Q. Was Mr. Johnson involved in the work in the back of the store with you at the time of the accident?

A. Not at the time of the accident, he was talking to some people on the phone.

Q. Did - at the time of the accident actually took place, who was involved in the back room work?

A. Well, David and I were downstairs putting the stuff on the - putting the shelves on the elevator when it came down. Jeff was bringing was suppose to bring the elevator down.

Q. What would be the procedure then - one person would stay upstairs then what would you all do?

A. We'd go downstairs by steps.

Q. And would the person upstairs come around then and come downstairs?

A. No, we'd load the elevator and he'd bring it up and we'd come up by steps.

Q. Well on this particular occasion what happened?

A. Well, Dave and I went downstairs started moving this stuff toward the elevator so we could put it on when it came down and when we were ready Jeff would bring it down , he said he'd bring it down.

Q. Okay, then what happened?

A. He said the elevator won't move, and I said "Well, take the brake off" and the elevator came down.

Q. Did you actually see the accident happen?

A. Yes, sir. I saw from the bottom what happened.

Q. Could you see what Jeff McCray was doing prior to the accident?

A. No, sir.

Q. Did, uh, you stated that the elevator came down, do you mean by that that it fell at that point?

A. Yes.

Q. And that was when Jeffrey McCray was injured?

A. Yes.

Q. You said you could see the accident, what, without going into any great medical detail what could you see of the accident?

A. Well, I saw the car come down and I saw Jeffrey come down and I saw the motor come down. Jeffrey came out the door of the elevator and landed on the basement floor.

Q. And then you left?

A. Yes, we went upstairs to tell Van what happened.

MR. BOBBITT: I have no further questions.

Cross-examination by Mr. Slaughter:

Q. Chip, just a few questions just to be sure that this is completely clear. You, of course, had, as I understand it, done certain odd jobs for Van Johnson, the manager, before this series of days when you worked on the shelves, is that correct?

A. Yes, sir.

Q. And, Van had stated that he didn't have any place to store his equipment or merchandise in the back, and between you and your father you suggested that there were some shelves that your father had and that you could put them up; is that correct?

A. Yes, sir.

Q. And thus your father sold the shelves to Van --

A. He didn't sell them to Van, he sold them to the music store.

Q. Sold them to the music store, right; and brought them down with you on a Saturday and left them there, is that correct?

A. Yeah.

Q. So then you came in on Monday initially by yourself, is that correct?

A. That is.

Q. And when you did you started disassembling the old shelves?

A. Yes.

Q. And, at what point did someone else come in that day?

A. Jeff came in after I had all the old shelves down and was putting the new ones up.

Q. And where were the old shelves at that point?

A. They were down in the basement, most of them, a couple parts were took up, to get them out of the way.

Q. And you, working by yourself, had gotten them moved down to the basement?

A. Yeah.

Q. Are these all metal shelves, both the old and the new?

A. Yes, sir.

Q. And what's the distinction in order to save time, is the distinction the newer shelves are smaller and the older shelves larger?

A. Yes.

Q. But once disassembled each piece of shelving is relatively light, is that correct?

A. Yeah.

Q. So you had then been able to load these pieces of old shelving onto the hoist and then you would operate the hoist and it would take the shelves to the basement and then you would go around and take the shelving off?

A. Yes.

Q. Well, at what point did someone come in to help you?

A. Well, Jeff came in while I was starting to put up the new shelves.

Q. That was between 1 and 2 on Monday afternoon?

A. Yes, sir.

Q. And just for identification Saturday was the 19th and that Monday was the 21st, is that correct?

A. I don't know.

Q. I think mathematically that will work out. Now did anyone else come in to help you that Monday?

A. Uh, no, sir.

Q. So just you and Jeff working through the afternoon?

A. Yes, sir.

Q. And what did you do that afternoon?

A. Put up new shelves.

Q. Did that require all afternoon?

A. Well, we worked on them (inaudible) well, we worked on the shelves and then about - then we put all our stuff away, our tools in the locker, and then we put all kinds of boxes on the new shelves.

Q. You sort of helped restock the shelves?

A. Yes.

Q. And the old work bench which was over on the far wall was still there as I understand?

A. Yeah.

Q. Now, in order that the jury can understand, as you walked from the front of the store through the door which was to the right of the partition, is it fair to say that the old shelves had originally been just to your left along the partition that separated the front from the back door?

A. Yes, sir.

Q. And the old work bench was right ahead along the wall to your right as you entered the room, is that correct?

A. Yes.

Q. And the hoist, and I think either one or two rest rooms was on either side of the hoist, took up the left wall?

A. Yes.

Q. And then on the back wall were just miscellaneous items and there was a door for loading and unloading cargo on the right of the back wall?

A. There was a door, yes.

Q. Yes, and that was sort of right - as you walked through from the front of the store to the back, you were walking right toward that door, but you couldn't walk straight because of the work bench there; is that correct?

A. Right.

Q. So at the end of the first day, the new shelving was up and stacked, the old work bench was there and the old shelves or larger shelving was down in the basement disassembled?

A. Yes.

Q. Did you work on Tuesday?

A. No, sir.

Q. Why, do you recall?

A. No.

Q. Do you recall whether or not it had anything to do with Van having the day off?

A. Tuesday's he had off. (Inaudible).

Q. And so you weren't to be in there when Van wasn't there; weren't to be in there working on your project, is that correct?

A. I don't believe we weren't suppose to, Van said we didn't have to come in.

Q. I see, so then on Wednesday, I think I misunderstood you, you said you came in about the same time; do you mean the same time as you had come in on Monday - say about 10 or 11, something like that?

A. Nods yes.

Q. And as I understand nobody was with you at first, is that correct?

A. Yaah.

Q. But, thereafter David Rose and Danny Morris came in; did they come at the same time or

A. did they come separately?

A. They came in about the same time, and there were some more people with them, some people looking at a phonograph, things like that (inaudible).

Q. Approximately how many people came in all together?

A. Oh, three or four.

Q. Do you remember who the others were?

A. No, I don't, one of them was named, I think it was Mike, I'm not sure.

Q. Approximately what time was that?

A. It was in the morning before lunch.

Q. How long did they stay around?

A. Well, the other two people besides Danny and Dave, well, they left about 1½ hour I think, something like that.

Q. Did they ever come back to the store as far as you know or recall that day?

A. No, sir.

Q. In other words they did not come back to the store, is that correct?

A. No.

Q. Alright, then David and Danny remained with you until about when?

A. Well, David stayed there until the accident, I'd say about 1/2 hour before the accident Danny had to go see about - City Hall - for some reason, and right after the accident he - after David and I left after the accident we met him, he was coming back.

Q. Then approximately how long did you work that morning?

A. I worked until the time of the accident.

Q. And did - how long did the boys work with you?

A. I think a couple of hours.

Q. How long did you knock off for lunch?

A. About an hour.

Q. Do you remember whether you all sort of went out to lunch together or came back or went separately or ---

A. No, we all went separately.

Q. And how far along with the project when you knocked off for lunch?

A. Well, we were still - I think we had the work bench moved, we took all the parts off that we could so we could put up the other shelves; I think we were thatfar.

Q. And where did you - were you going to and where did youultimately put the work bench?

A. I don't know.

Q. So far as you know was it still in the room when

the accident happened or had you put it somewhere else?

A. I don't ---

Q. Had you disassembled the work bench or simply moved it after you took the items off of it that had been attached to it or had been on it?

A. I really don't recall.

Q. Alright, now, in any event by after lunch the space was clear to bring the others - the shelves up?

A. Yes.

Q. And you remember how many of the old shelves you had gotten up from the basement when the accident happened?

A. I think we had just about all of them up. We had some of them together we were bringing --

Q. Do you know approximately how many times you had brought the hoist up?

A. Four or five.

Q. That's four or five since lunch?

A. Yes.

Q. And to get an idea in taking the shelves down can you estimate to the jury how many times you had used the hoist?

A. I'd say about ten or so.

Q. Did you have any procedure for how you changed the - for who operated the hoist ; did one person

generally operate the hoist and the others run around to the basement down the steps?

A. I think it was more or less sort of a ----

Q. So every one by that time had operated the hoist at least some, it that correct?

A. Yes, I think so.

Q. Had youhad any problem with the hoist up to that time?

A. No.

Q. You mentioned this piece of wood as you faced the hoist on the left side fastened by a bolt which, if I understand correctly, rotated roughly in this fashion? That is for the record that the bolt was approximately in the middle and you could swing the 2 x 4 frontward and backward.

A. Yes.

Q. So that the top would come out over the floor of the main floor level or the basement actually, or it could be swung back to the car, is that correct?

A. Yes.

Q. Do you recall how you had come to consider that as a brake; is that what someone told you it was or whether you had----?

A. Well, I don't think anybody told us, we just sort of figured it out because that looked like a prop

to stop the car; it was there so I just used it as a brake.

Q. And thus, did you start the - did you try using the brake when the car was in the up position?

A. No.

Q. So you never had used the brake for such? But the car had remained in its position on the main floor without using the brake?

A. Yeah.

Q. Before you all went down stairs, just before the accident, did the - did you happen to look at that 2 by 4 to see what position it was in?

A. No, but it was stopped as far, you know, just the slightest bit out.

Q. In other words if you had brought it down you would have noticed that before it would present a problem?

A. No, I mean it would just hang there.

Q. You mean they would have had to stop the car, I see. As I understand your testimony Jeff said the car wouldn't operate and you said, I believe I don't have the words exactly but were generally, "Try the brake"?

A. Yeah.

Q. And immediately the car fell?

A. Yeah.

Q. The car fell and Jeff came down onto the floor of the basement and the motor came down on top

of the car?

A. Yeah.

Q. And at that time Van had gone to the front of the store to use the telephone, is that correct?

A. Well, the telephone is not in front, it's right by the partition.

Q. Right, but it was actually physically in the front room?

A. Yeah.

Q. And out of sight of the hoist?

A. Yes, sir.

MR. SLAUGHTER: We have no further questions, your Honor.

Re-direct examination by Mr. Bobbitt:

Q. Chip, what was the load on the dumb waiter at the time the accident occurred, was it empty or was it loaded at all?

A. No, sir.

Q. It was empty?

A. Yes, sir.

Q. How long had Jeff been there Wednesday before the accident occurred?

A. I think about 2 hours or so.

Q. Had he operated the lift before on that day?

A. I believe so.

Q. You said the hoist had been used you approximated about 10 times during the course of this shelf

work, did you mean by that the work on Monday and Wednesday?

A. Yes, sir.

Q. Do you know how many times Jeff operated the lift on Wednesday?

A. No, I'm pretty sure he operated it at least once.

MR. SLAUGHTER: We have no further questions.

JUDGE MOFFETT: Mr. Justis, you may be excused.

MR. TAYLOR: Call Mr. Hunt, please.

JUDGE MOFFETT: At this point I think we'll break for a five minute recess.

GEORGE HUNT, being first duly sworn, testified upon his oath as follows:

Direct examination by Mr. Taylor:

Q. Will you state your name, please sir?

A. George Hunt.

Q. Your age and your residence, please Mr. Hunt?

A. I'm 63 years old, I reside in Powhatan County, just 15 miles west of Richmond.

Q. What is your occupation, please?

A. I am a professional engineer.

Q. And how long have you been so engaged as an engineer?

A. I went to school in the University of Cincinnati, in the early 30s, and worked for Industrials up

until the War and during the war I came to Richmond, went with the firm of consulting engineers in Richmond until 1957 when I retired and went in private practice.

Q. So you are still in practice?

A. Yes, I am.

Q. As a consulting engineer?

A. That's right.

Q. Would you describe generally the nature of your work as a consulting engineer?

A. That's rather involved, but I do principally work for industrial concerns and/am retained by Froehling & Robertson, Inc. the testing laboratories in Richmond, and other people usually in the mechanical and electrical field.

Q. Now, in connection with that will you tell us whether or not you are familiar with the construction, installation and operation of such things as elevators and hoists?

A. Yes, I am.

Q. Now, Mr. Hunt, will you tell us whether or not at my request that you went to the premises on North Central Avenue, in the City of Staunton, where the Charlottesville Music Center store is and there examined the apparatus which we refer to as a hoist or dumbwaiter?

A. Yes, I did.

Q. Do you remember the date of that examination?

A. Well, I --

Q. Do you remember this? (Mr. Taylor hands him a paper).

A. It was a week or so ago, October 23rd according to my report.

Q. Now, will you just describe for the jury, generally, what type hoist this was?

A. This was a - an elevator that was constructed apparently of wood entirely by a carpenter and consisted of a cage of somewhere between 4 feet square in floor plan approximately 6 feet high, and it was mounted and went up and down between the first floor and the basement floor onto timbered guides and was powered by means of an electric chain hoist.

Q. Now, would you tell us generally what was the structure of the cage or box that was actually used for the lifting of such?

A. The cage was constructed of timbers and plywood.

Q. What was the condition of the top of it? Was it open or closed?

A. Well, it was partially open and partly closed. Three timbers didn't butt together and there was openings in the top of it and some of those timbers when I examined it had been displaced

apparently when the cage fell.

Q. Well, can you tell us from your observation whether the top of it was such that when looking up you could see on up to the top of the hoist?

A. Yes, you could.

Q. Alright, now, I wonder if you could describe or perhaps sketch on the blackboard the, just for the jury, a rough sketch showing the relationship of the motor and the box itself and how it was assembled?

A. I'll be glad to attempt to. (Proceeds to go over to the blackboard). I'll first make a sketch of the elevation of the hoist --

MR. SLAUGHTER: If it please the Court may we come around up here so we can see?

JUDGE MOFFETT: You may, yes sir.

MR. Hunt: This being the basement floor level and here the first floor level and the elevator cage was constructed of plywood in this fashion, it was enclosed with door openings, of course, looking at the front of it; I'll draw them in so they don't obscure what I will draw behind, and this cage on the enclosure on top did not go all the way to the first floor ceiling, but the - uh, there were two (2) timber guides on each side of

the elevator cage itself and then there were boards, 2 by 4 boards that were framed out from the elevator that caught onto these guides such that the elevator could slide up and down. Perhaps if I make a plan view of it this will be the outside wall and this would be the enclosure part, there were two (2) timbers on each side and the elevator cage then fit in here in this fashion and there were boards fastened here to the elevator cage on each side such that it made a sliding guide for the elevator going up and down. This is a view looking right down on top of it. The chain that was attached to the center of the cage in the top, if this was the cage then it ran up to the chain hoist that was up here which was electrically operated. (This is his description of his drawings)

MR. TAYLOR:

Q. Now, Mr. Hunt, could you show us how the motor or the hoist itself was suspended from overhead?

A. Yes, it was suspended a beam that could be seen looking up the shaft and there was a hook, I couldn't see this end of it, but presumably it went through with a nut on it and it was a steel hook ---

Q. Wait a minute, now which end you say you couldn't see?

A. The, how it was fastened to the beam.

Q. That's overhead?

A. That's overhead, yes.

Q. This is underneath?

A. This is looking at the side of it; and then the chain hoist hook went through that and, in this fashion, this was the chain hoist.

Q. All right, sir, well I think you could return to the stand now. Now, Mr. Hunt I show you a photograph which is identified as Plaintiff's Exhibit No. 1 and ask you whether this depicts the chain hoist or motor itself?

A. Yes, it does.

Q. Can you make any observation with respect to this thing here that appears to be a hook?

A. That is a hook from which the hoist is suspended and the hook here is opened up almost straight, not being in hook form.

Q. That is the hook that hooks into the overhead hook that is suspended from the overhead beam?

A. That's correct.

Q. And what would be its normal contour?

A. It would be approximately 100 and 50 degrees of curvature; here it's bent almost straight out.

Q. Now, what would the condition of it, the straightened condition of it, as shown in this photograph, indicate to you?

A. That it had been severely overloaded.

Q. Now, were you able, did you make a careful examination of the hook itself?

A. Yes, sir, I did.

Q. Please tell us what your findings were with respect to that examination?

A. My findings were that the hook had a pattern of wear on the inside of the hook up near the tip, 2 inches from the end which would indicate that it had been overloaded some previous time and had been working in this position on the upper hook for a good while such that this wear pattern would develop.

Q. Well, Mr. Hunt, do I understand then that the hook was not in the normal place where it should have been, but was farther out toward the end?

A. That is correct.

Q. Which indicated that the hook had straightened out some time previously?

A. That is correct.

Q. Now, do you have any way of estimating how long previously that had been?

A. None, whatever, but a good while I would say, but this, of course, would depend upon the frequency of use of the elevator which I have no knowledge.

Q. Now, did you - let me ask you this; did you examine the cage of the lift or elevator itself?

A. I did, sir.

Q. And what did you discover with respect to its condition?

A. I noted that the, as you face the front of the elevator cage, that the guide timber which was approximately 4 inches square had warped and had become twisted up near the top.

Q. Well, let me hand you a Plaintiff's Exhibit No. 2 and ask you if you can tell what that depicts?

A. This depicts the timber which I just attempted to describe.

Q. Now, can you tell us whether or not the warped area of this timber was in such a place that it would normally be expected to come into contact with the cage when it was on the first floor? Can you tell us whether that ---

A. Yes, the wear pattern of the guides that are attached to the cage itself extended up into the warped area.

Q. Now, referring again to the picture of the motor and the hook, now, were you informed that the elevator had fallen?

A. Yes.

Q. Based on your examination of the hoist and the hook and the shaft and so forth, can you tell us whether you have a professional opinion as to what caused the elevator to fall?

MR. SLAUGHTER: I object to the question on the grounds

that the examination over a year later Mr. Hunt could not, even with his expertise or knowledge, give an opinion as to why the hoist fell, which would be admissible in evidence. Perhaps it would be better if we were heard out of the presence of the jury, Sir.

MR. TAYLOR: I'll take it up with the Court in Chambers.

MR. TAYLOR:

Q. Mr. Hunt, I'll withdraw the last question and get at it in this way. Did you make an examination of the sprocket chain?

A. Yes, I did.

Q. And would you tell us what you discovered with respect to the chain?

A. The chain had been - had played out or had come out of the hoist beyond its normal distance, the up distance; a distance of approximately 17 inches showing that the hoist had been operated for that distance before the collapse occurred.

Q. Well, let me ask you this before I forget, what is the size of this hook?

A. The hook was measured and it is three quarters of an inch indepths across the hook and it is about three-eighths in thickness.

Q. Three-eights of an inch in thickness?

A. Yes.

Q. All right, sir, now then ---

A. This is at the point where the hook had been operating where the wear pattern was located.

Q. I see. Now, then, do I understand you to say that apparently the chain had paid out 17 inches and then the hoist had fallen?

A. It paid out for a distance of 17 inches.

Q. That was prior to the fall?

A. Yes.

Q. Let me ask you this, do you have an opinion as to what happened to the hook to cause the fall?

A. Well, first perhaps I'd ---

MR. SLAUGHTER: I object on the grounds stated in chambers.

Q. Go ahead.

A. Perhaps I'd better describe first the characteristics of these hooks.

Q. All right?

A. These hooks are of a malleable nature rather than a hard and brittle nature such that when they are overloaded they tend to straighten out so as to give indication that they are overloaded and are becoming dangerous. Whereas if a hook could very easily be made of a hardened steel that would not bend readily, but which would fracture and collapse all of a sudden. The fact that this hook is straightened out is most indicative, conclusive proof that the hook had been overloaded.

Q. Now, then, do you have an opinion as to whether the hook straightened out momentarily before the fall?

A. Well, in my opinion it did not by virtue of this waar pattern on the hook beyond its normal location would indicate to me very strongly that this hook was in substantially the same condition prior to the fall as after the fall, and that it was not as the result of the fall that it was straightened out but rather that it was in this condition before.

Q. And I believe you said that it had been in that condition for some time?

A. It was determined by the wear pattern on the hook itself that it had been in that condition depending on the frequency of use of the elevator for quite some time.

Q. And did I understand you to say that the wear pattern of the hook indicated that it was hanging at a ---

MR. SLAUGHTER: If it please the Court, counsel is leading his witness and I object.

MR. TAYLOR: I strike the last question and ask you this.

Q. Do you have an opinion based on your observation and training and experience as to what caused

this hook to come off the other?

A. It would appear and so this is an opinion, of course, solely, I was not there, it would appear that the cage for some reason stuck in the guides when the chain hoist was operated and that the chain hoist paid out some amount of chain which we roughly determined to be approximately 17 inches of chain from it's normal upper most point; and then the cage became unstuck and the cage dropped which snatched on the chain and snatched on the hook of course and its supporting timbers above and just in the bounce the hook became unhooked up above rather than straightening out and came off.

Q. Well, could such, can you tell us whether such a disengagement could have happened had the hook been in its normal contour?

A. Yes, it could. It could in my opinion have become disconnected also, but not as readily. If the hook been deeper and it was hooked right down in the base of the hook it would have to jump up further to get off, but because the hook was nearly straight it took very little to disengage the hooks, in my opinion.

Q. All right, now, will you tell us whether in its normal position or hanging up this hook would be visible from the cage of the elevator or from the floor when the elevator is at the floor?

A. Through openings in the roof of the cage it could be seen, yes.

MR. TAYLOR: That's all.

Cross-examination by Mr. Slaughter:

Q. Mr. Hunt, if you are wondering why I'm standing so close to you, that explains it. Mr. Hunt, of course you never saw this hoist until a week ago Monday?

A. That's correct, yes.

Q. And thus, your reconstruction is the same as perhaps any of ours except for the faat that you as an engineer are able to determine this hook, at least in your opinion, had become straightened in a earlier day because of an overload?

A. Yes, that is my opinion, sir.

Q. That's your professional opinion, but going beyond that to reconstructing ... how the accident happened, you, well, you have to reconstruct that just based on what you have heard and what you observed about the hook, is that correct?

A. Yes, that plus previous experiences and judgment of the matter, yes.

Q. Now, Mr. Hunt, the car was pretty evidently damaged, was it not?

A. Yes, it was.

Q. In the fall. And I believe it was clear even from the examination when you were there that the connection which held the bottom of the chain to the top of the car had come loose, it was a block with nails sticking out of it?

A. Yes, it had. It had been snatched off the top of the car.

Q. Is it not true that the car had been, had a substantially solid roof prior to this time. In other words, in looking up toward where the hook had been you look through slats that had been broken, is that not true?

A. It appeared to me as though there were openings in the top of the car, although, of course, this is - I can't say with any certainty, for the reason that I never saw the car before it fell.

Q. Yes, sir. And, at least in so far as we can tell at that time there was no light in the shaft, is that correct?

A. No, sir.

Q. And it was necessary to obtain a flashlight to look up through the top?

A. That is correct.

Q. In fact from the bottom of the shaft it - if even with a flashlight it was relative difficult to see and thus it was necessary to look from the first floor level using a flashlight directing

it up to the top of the hoist?

A. That's right.

Q. In order to see the hook which it still remains there which suspended the - which was the top part of the attachment to which the hook on the motor was attached; is that correct?

A. That is correct.

Q. And, when the motor was in place the motor would have substantially, except on very close inspections obscured this hook from view, would it not?

A. It might not, depending upon the angle of view, yes, sir.

MR. SLAUGHTER: That's all.

Re-direct examination by Mr. Taylor:

Q. Mr. Hunt, did you observe on the motor itself anything to indicate what the load capacity of it was?

A. Yes, sir. The template information on the motor indicated that it had a capacity of 1,000 pounds.

Q. I see, now if the hoist - the dumbwaiter or elevator itself were on the basement floor would there be anything to obstruct the view from the first floor up to the overhead?

A. No, there were no doors on either the floor or upper level so far as I could determine.

MR. TAYLOR: All right, that's all.

Re-cross examination By Mr. Slaughter:

Q. Even on the top level, if you were standing on top of the main level, and the car were at the lower level so as you look in the door you would see the chain going up - the chain hoist would still be underneath the hook, the two hook connection, would it not?

A. To some extent sir, I believe that it would be possible to see it from that location however.

Q. But the motor would still --

A. No, not as far as getting up to it, of course.

Q. All right, but it would still remain there; in other words, just to be sure that the jury understands, the motor itself didn't go up and down, it remained affixed to the top?

A. That's right. May I be excused?

MR. SLAUGHTER: We have no objections, your Honor.

JUDGE HOFFETT: You may, sir.

A. DOUGLAS ADDISON, being first duly sworn, testified upon his oath as follows:

Direct examination by Mr. Taylor:

Q. Will you state your name, please?

A. A. Douglas Addison.

Q. Where do you live Mr. Addison?

A. Parkwood Apartments, Staunton, Virginia.

Q. Will you tell us whether you were formerly employed by National Cash Register Company?

A. Yes, I was.

Q. When was that?

A. 1948 to 1957, in Staunton.

Q. Now, during the time you were so employed, where was the store or place of business of National Cash Register?

A. Where the music center is now. Morgan Music was before that and Singer Sewing Machine was before that and we were before them.

Q. You were before Singer and then after Singer was Morgan?

A. No, after Singer, yeah, after Singer was Morgan.

Q. And then Charlottesville Music Center?

A. Yes.

Q. So it was the same store?

A. Yes.

Q. Now, you said you were there from '46 to '57?

A. No, '48 to '57.

Q. Excuse me, '48 to '57. Now, at the time you were working there what was your capacity?

A. I was accounting machine manager selling bookkeeping machines.

MR. SLAUGHTER: I'm sorry I didn't understand.

A. I sold bookkeeping machines.

Q. You say you were accounting machine manager?

A. Yes.

Q. Now, do you know whether at the time you began working on those premises whether there was a freight elevator or dumbwaiter in there?

A. Yes, there was.

Q. Where was it located?

A. Oh, I'd say toward the back of the store, say 3/4 (quarters) length back from the front door.

Q. Was it a commercial or homemade job?

A. I think it was a homemade "Jerry built" job.

Q. Well, was it powered by, I realize this is leading, but I think it is already in the record; was it powered by an overhead chain hoist motor?

A. Yes, it was.

Q. Now, can you tell us whether that same hoist was there the entire time that you were connected with them?

A. While I was there, yes.

Q. Now, what use did your company make of that hoist?

A. To haul used machines or trade-in machines to the basement. The factory came in several times a year and picked up the machines and take back to Dayton, Ohio, and the place was used for

storage and my office was down there.

Q. Well, you used it to haul machines up and down?

A. Yes, that's it.

Q. What were the weights of the loads that were used?

A. I'd say a cash register would go a couple hundred pounds and some of the stuff I sold like a bank machine would weigh close to a ton.

Q. Close to a ton?

A. Yes.

Q. What was the frequency with which this hoist was used by your company?

A. I'd say almost every day. Maybe only once or twice a day, but almost every day.

Q. Almost every day?

A. Yes.

Q. Can you tell us whether to your knowledge any inspections of the hoist were made during the period of your occupancy?

A. Never. Not to my knowledge.

MR. TAYLOR: I think that's all.

Cross-examination by Mr. Slaughter:

Q. Mr. Addison, as I understand it, you were there for nine (9) years?

A. About 9 years, yes.

Q. You know of no inspections during that time?

A. I know of none, no.

Q. And do I infer from that that the hoist operated satisfactorily during that time?

A. No, she hung up at times.

Q. You say she hung up at times, were there any problems getting it ---

A. No, when you were trying to get her in down position it would stick and hang, then, if you knew what you were doing, we'd finally bring her up. What we were doing we'd turn it to "up" position which reversed that lock which would unlock it and then it would go down.

Q. And how often would that happen?

A. Oh, gee, say once a month.

Q. And that was true until you left?

A. Yes, until '57 which is when I left, to my knowledge.

Q. Have you had any connection with it since?

A. Never, not since '57.

MR. SLAUGHTER: No further questions.

MR. ADDISON: Am I dismissed.

Re-direct examination by Mr. Taylor:

Q. When you refer to lock what do you mean?

A. It locked into position, I'm not that much of an electrician, it locked, it wouldn't move.

Q. Are you referring to the little 2 by 4 handle?

A. No, no, I mean the - you're trying to get it to

go down and she wouldn't go down so the trick we used was to make it go up which we, I call it a lock ---

Q. You're talking about something in the mechanism?

A. Yes, something in there.

MR. TAYLOR: All right, that's all.

Re-cross-examination by Mr. Slaughter:

Q. And thus, I think Mr. Taylor made it clear, but it had nothing to do with the hoist itself it was just the functioning of the motor?

A. Yes, the electrical motor, yes.

MR. SLAUGHTER: No further questions.

MR. TAYLOR: We have no further questions.

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* * *

W. VAN METER JOHNSON [p. 74] (Plaintiff asked to call him as an adverse witness)

MR. SLAUGHTER: If the Court pleases, Mr. Johnson is not a party defendant, he is a representative of the Music Center and I would simply raise the question whether he is actually adverse.

JUDGE MOFFETT: You do not raise the question?

MR. SLAUGHTER: I do raise the question whether he is adverse. I think until he is proven adverse, he shouldn't be taken as an adverse witness.

MR. TAYLOR: Well, your Honor, as the defendant is a corporation and Mr. Johnson was an employee, in fact the manager of the store at the time this accident happened, I think he would be adverse. (Inaudible).

JUDGE MOFFETT: Suppose you proceed, suppose you go ahead with the examination and see how we get along.

MR. TAYLOR: All right, sir.

CLERK: Will the Court hold for just a moment.

Direct examination by Mr. Taylor:

Q. You will state your name, please?

A. W. VanMeter Johnson.

Q. And, Mr. Johnson, I, where do you live?

A. I live at Route #4, Box 832, in Charlottesville.

Q. And where are you employed?

A. At the music center, Hi-fi House in Charlottesville.

Q. That's the Charlottesville Music Center?

A. Yes.

Q. How long have you been so employed by Charlottesville Music Center?

A. Since March 20, of '71.

Q. Now, will you tell us whether or not you were employed in the store here in Staunton in 1971?

A. Yes, I was.

Q. And during what period of time?

A. I can't give you the exact date, but it was between the first time I was employed of March 20th and April 1st, toward the end of that period, of about say, March 29th until a few

days after the date of the accident, I was working in Staunton.

Q. The accident, I believe was on June 23rd, so--?

A. That's correct.

Q. So you were employed from some time the latter part of March until about the end of June?

A. That's correct.

Q. And what was your capacity in the Staunton store?

A. Store manager.

Q. Mr. Johnson, the Charlottesville Music Center as I understand it did not own that property but leased it, is that correct?

A. To my knowledge, that is correct.

Q. Are you or were you at that time familiar with the lease?

A. No, I wasn't.

Q. Well, ----

MR. SLAUGHTER: If the Court please, if he wasn't familiar with the lease, I don't think it's fair for Mr. Taylor to ask him to identify or to testify to the lease.

JUDGE MOFFETT: There was a lease signed?

MR. SLAUGHTER: Yes, that't correct.

MR. TAYLOR:

Q. Well, Mr. Johnson, let me hand you this and let you look at it and see if you can tell me what it appears to be?

(Hands Mr. Johnson a copy of the Lease)

A. ---

MR. SLAUGHTER: I don't want to be technical if the Court pleases, but he said he didn't know anything about the Lease or how - I don't think reading a zerox copy would be required to put in the evidence.

JUDGE MOFFETT: I don't know what Mr. Taylor is trying to get at.

MR. TAYLOR: There is just one provision of the Lease that I want brought into evidence, your Honor, and I - in the absence of the stipulation I take it would have to be proven by some witness and this witness is the only one who is the agent of the defendant.

JUDGE MOFFETT: Do you have any objection if Mr. Slaughter so stipulates?

MR. TAYLOR: Makes no difference to me.

JUDGE MOFFETT: Mr. Slaughter.

MR. SLAUGHTER: I raise the question whether the Lease has anything bearing on the case or not, I may be wrong. The landlord is not a party.

Continuation of Direct examination:

Q. All right sir, can you tell us what this documant appears to be?

A. It appears to be a Lease between the music center, Charlottesville Music Center and the First Virginia Bank Building,

Q. Now, what's the date of it?

A. Well, there are several dates on here.

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A. Well, there are several dates on here.

Q. What's the date at the top?

A. Oh, 30th of April.

Q. What year?

A. 1971.

Q. Now, did---

MR. SLAUGHTER: If it please the Court I would like to simply preserve for the record my objection to his - the fact that he is simply reading from a document; he doesn't know or state what the provisions thereof.

JUDGE MOFFETT: Very well, I understand. Mr. Taylor, I don't quite understand your reasoning for this. I don't - will you get to it.

MR. TAYLOR:

Q. Do you recall is that the date the company leased the store here in Staunton?

A. I wasn't involved in that transaction.

Q. Well, you said you came here the latter part of March?

A. Right.

Q. And when did you open the store?

A. WEll, I was first here in the latter part of March, there were several people here before that.

Q. And when was the store open?

A. I couldn't give you the exact date.

Q. Well, was it open when you came over here?

A. Yes, it was.

Q. All right, sir, now will you tell us whether the premises described here in paragraph One (1) are the premises where the store was operated?

A. I haven't read that.

Q. Have you read paragraph One?

A. I'll read it again. What is your question pertaining to? I don't understand.

Q. Does this describe the premises that were used as your store here?

A. You mean the address and everything?

Q. Yes.

A. Yes.

Q. All right, now, I'll ask you to look at paragraph Seven (7)? Would you read the first part of that sentence down to the comma?

A. Down to this comma (Pointing to the Lease)?

Q. Right.

A. "The tenant covenants that it will maintain said demised premises in a good state of repair," .....

Q. And then you can read the next one?

A. "... ordinary wear and tear excepted,"...

Q. All right.

MR. TAYLOR: That's all I wanted to ask you about the lease.

MR. SLAUGHTER: If the Court pleases, I state once again it's irrelevant to the case, and object and ask for an omission on the part he read.

JUDGE MOFFETT: Mr. Taylor, just what was your point?

MR. TAYLOR: Well, it was introduced simply to show, your Honor, that this was not property owned by the defendant, but was property that was leaded by the defendant and it was introduced to show that under the lease defendant was charged with the responsibility of keeping the premises in repair and the question, of course, is what duty it owed persons on its premises. I think that the fact that if it were the owner, of course, there would be no question about it, but since it was the lessee, the tenant, I feel it is material to show that as part of its lease agreement it had undertaken the obligation to keep the premises in repair.

JUDGE MOFFETT: Mr. Slaughter, do you have any objections?

MR. SLAUGHTER: No, your Honor.

JUDGE MOFFETT: Let the evidence stand, and I preserve your objections, Mr. Slaughter.

MR. TAYLOR:

Q. Now, Mr. Johnson, you said you came over here

the latter part of March?

A. That's correct.

Q. And, I believe I understood you to say that some others from the company had come before that time?

A. That is correct.

Q. Do you know who they were or in what capacity they came?

A. Yes. One was Peter Dulles and the other was Dave Roberts.

Q. Well, were they officers of the corporation, or what?

A. No, they were management personnel.

Q. Management personnel?

A. And, I believe they came over to open and get ready the store.

Q. I see. Do you know to what extent they may have looked over and inspected the premises?

A. No.

Q. Did you when you came over go around the premises and look them over?

A. I did look the premises over, yes.

Q. Did you inspect both the first floor and the basement floor?

A. Yes, I did.

Q. What about the hoist, when did you become aware that the hoist was there?

A. The first day I was there.

Q. Did you look it over?

A. Yes, I looked at it.

Q. Now, I believe from your testimony you all were in business pretty much from the time you first came over which was the latter part of March?

A. Yes, business was being carried out as we were preparing the store.

Q. As you were moving merchandise in and preparing the store?

A. Yes.

Q. Right, now, were you there on a daily basis?

A. No, not until the latter part of the month, in March.

Q. Well, that's what I mean, after you came over the latter part of March were you there on a daily basis?

A. Yes, right.

Q. Were any other management personnel in the store after you came over the last part of March?

A. Only occassionally. One would substitute for me on my day off.

Q. I see. Now, with reference to the physical layout of the store, would you just describe the main floor, how many rooms there were?

A. Well, it's a long, a building that's longer

than it is wide, and it's one main floor and, well, it's one room with a partition about seven (7) feet high . Near the back of the room, on the left side of the partition, is a bathroom, toward the right side is a doorway which leads into the back storage area; and the, in the far left-hand corner beyond the dumbwaiter is another bathroom and there's a door leading out on the record side of the room.

Q. So the one partition is near the rear and the dumbwaiter or the hoist is behind that in a little room to the rear that's partitioned off?

A. Yes.

Q. And is there any way to get to the street except through the front of the store?

A. Well, not really because the rear exit is Bocked.

Q. So the only entrance ---

A. It's locked and bolted.

Q. So the manner of getting to the street is through the front of the store?

A. That's correct.

Q. So you had to go throught the front and walk the length of that room to get to the back

area was - where the dumbwaiter was?

A. Yes.

Q. Now, when, from the time you came over and you say that business was being transacted and at the same time you were making your preparations for the store; in connection with that work, will you tell us whether or not you used this hoist or dumbwaiter?

A. Yes, I used it to lower boxes, primarily empty boxes, but some with extra stock in them to the lower level.

Q. And did you use it often?

A. Maybe twice a week.

Q. Now, let me ask you this Mr. Johnson; would you say you used it as often as often as every two or three days?

A. I'd say twice a week.

Q. Well, calling your attention to your previous deposition, I ask you did you answer then that you used it about every two or three days?

A. Yes.

Q. And, would you say that you used it that often continuously from the time you started until the fatal day or not?

A. No, I would say it was sporadic use of it. It was only used when merchandise came in and it didn't come in every day, about every

two or three days.

Q. You used it more at the beginning than you did later on?

A. Yes, sir. Well, you know, there were various

Q. periods of time when I would use it more than the rest.

Q. Will you tell us whether you operated the hoist yourself?

A. Yes, I had operated it.

Q. Now, will you tell us whether or not you had experienced any previous difficulty with the hoist before June the 23rd?

A. Yes, to the extent that a previous witness from the cash register company mentioned, that it was peculiar and that once in a while you had to move the down lever and up lever to get it to move.

Q. You mean once in a while it would get stuck or wouldn't move?

A. Right.

Q. And then you would press the other buttons...?

A. Well, yeah, move the up lever and then back to the down lever to get it going. It was a peculiarity of the device.

Q. How often did that happen?

A. Not with any regularity, I don't, you know, every three weeks or so, I don't know.

Q. Well, then do I assume that it was more than once, several times?

A. I would say it happened at least twice.

Q. Now, then, with respect to Jeffrey McCray, but first let me get to this, Chip Justis testified that he had done some odd jobs for you prior to June the 23rd; is that correct?

A. Yes, he did that.

Q. And is it correct that he did that?

A. Yes.

Q. Just to save a little time, is it correct that you got some shelves from Chip Justis's father, and Chip was going to help you assemble them or put them in?

A. That's true, yes.

Q. Now, the day of the accident was June 23rd, which I believe was a Wednesday, is that correct?

A. I believe that's correct.

Q. I think Chip testified that it was a Wednesday?

A. Yaah.

Q. Well, do you remember when the work on those shelves started? With respect to that day?

A. Well, I concur with the previous testimony that they were brought down on a Saturday, and they were begun, work was begun on Monday.

Q. On Monday?

A. And there was no work on Tuesday.

Q. And, who worked on them on Monday?

A. Uh, I know Chip did, but I couldn't - well, I know there were other people around, but, you know, I can't absolutely ....

Q. Can you tell us whether you saw Jeffrey McCray come in the store on that day?

A. On Monday?

Q. Yes.

A. I believe so. There is one thing that is firm in my mind that I recall that they were all three appeared at one time.

Q. On Monday?

A. I'm not certain it was Monday, but I do remember all three of them coming in at one time.

Q. I see. At any rate is it fair to say that Jeff McCray was helping with the shelves on Monday and that you knew it?

A. Yes, I would say so.

Q. All right then, I believe you were off the following day?

A. That's correct.

Q. And then on Wednesday tell us what boys were working on the shelves on Wednesday?

A. The same three that were there on Monday as far as I remember.

Q. You were aware that they were all three there working on them?

A. Yes.

Q. Now, this work, was it with your approval?

A. My approval and supervision.

Q. Your approval and supervision?

A. Yes.

Q. All right, sir, now can you tell us how any of these boys learned to operate the hoist?

A. In all likelihood, they saw me use it.

Q. Well, can you tell us specifically whether you ever showed any of them how to operate it?

A. I operated it in front of them, uh, so I would assume that they knew how from my operation.

Q. Will you tell us whether or not; let me phrase it this way. As part of the operation of putting these new shelves in, can you tell us whether it was necessary to move any shelving or merchandise from the first floor to the basement and vice versa?

A. I don't, didn't at the time think it was necessary, but it had been done.

Q. Can you tell us whether you were aware of the fact that the boys were using the hoist to move things up and down?

A. I was aware that they were doing that after they started doing it. After they started moving

it. On Monday.

Q. On Monday?

A. That's when, yeah.

Q. That's when it started. And I take it you did not disapprove of that? Or express any disapproval to them?

A. Well, they were doing it and, you know, it had already started; they had already started to move the shelves down. I guess I gave my tacit approval.

Q. You gave your tacit approval?

A. Yes.

Q. All right?

A. In other words, I didn't say anything about it.

MR. TAYLOR: Would the Court indulge with us for just a moment?

MR. TAYLOR: No further questions.

Cross-examination by Mr. Slaughter:

Q. Mr. Johnson, I hope I'm not asking you to repeat yourself, but do you ever recall when you first went to the store anyone discussing the hoist with you or pointing out the hoist and its use?

A. Yes.

Q. Do you remember whether that was Mr. Dulles or Mr. Roberts?

A. I don't remember which it was, it was probably Mr. Roberts.

Q. You yourself never talked to the rental agent or the representative of the landlord or anyone of that sort who was involved in the rental of the building to the Music Center?

A. Concerning the rental of the building?

Q. Yes.

A. No.

Q. Or concerning any of the fixtures inside it?

A. I had talked to Mr. McIntyre about the heat once, but nothing about -- that's all.

Q. But, in connection with the hoist, can you recall when was the first time it was discussed or if it was never discussed when was the first time you used it?

A. The first day I was there I was shown to pull the rope one way for down and the other way for up.

Q. In observation did you see anything that gave you cause for concern?

A. No, not that I know of.

Q. Other than This see-saw action with the rope from time to time, I think you said at least twice during the time you used it, was there any other problem that you noticed with it during the operation?

A. No.

Q. At any time did anyone come into the premises who was making repairs such as to light fixtures

or to anything else?

A. Yes.

Q. Who was that?

A. I don't recall his name at the moment.

Q. Well, what capacity did he come in?

A. He was an electrician, and he came to repair some plugs that seemed to be arcing that we had in the floor to make sure they worked.

Q. You know who asked him to come?

A. I did.

Q. At anyone's direction in particular?

A. No.

Q. In other words you noticed this problem and so you asked someone to come in?

A. Yes.

Q. During the course of his period of his time there did any question come up about other fixtures or other appliances within the store?

A. Yes, he was a Fire Marshall and he said someone ought to take a look around, so I said to go ahead and look around, and he went down into the basement and he looked on the first floor.

Q. Did he ever make any statements as to whether or not he found any problems or defects?

A. No, not that I remember.

Q. Do you recall when you talked to him after he made his inspection?

A. Well....

Q. I'm not asking, I'm not going to ask him what he told him; I'm simply asking whether there was a conversation or whether the man just went out?

MR. TAYLOR: Well, I question the materiality of inspections of the premises in general as to fire hazards and so forth because I don't think that has anything to do with this case.

MR. SLAUGHTER: If the court pleases, the whole thrust of the case is that the employees, the officer of the music center should have known that there was some problem, and if they should have, then they simply disregarded it. This is certainly, if the Court please, proper evidence as to what steps were taken in connection with the premises during the two and a half months that they were there, at the music center there.

JUDGE MOFFETT: I think an answer should be given to your question.

MR. SLAUGHTER: Yes, sir; thank you.

MR. SLAUGHTER:

Q. Do you recall, Mr. Johnson, whether there was any conversation at the end of this tour that was made by this gentleman?

A. I'm trying to think. I'm fairly certain that there was, but I do not know the content.

Q. But in any event you were not aware after that of any steps that should be taken in connection

with the premises?

A. Nah.

Q. Do you recall why there was no work by these young men on Tuesday?

A. I was off.

Q. Do you recall what was said to them with regard to whether or not they should come in?

A. Well, as far as I can recall I said that no work without me around.

MR. SLAUGHTER: We have no further questions of this witness, but we'd like to reserve the right to recall him as our witness.

MR. TAYLOR: I forgot to ask him one thing.

Q. Mr. Johnson, after the accident, what was done with the dumbwaiter - the apparatus?

A. It was boarded up.

Q. The entrance of it was boarded up?

A. Yes.

Q. Now, the motor and the cage itself, what became of them?

A. They were left there, yes.

Q. Left there in the building where they were?

A. As far as I know, yes.

MR. TAYLOR: All right.

MR. SLAUGHTER: We have no further questions, your Honor.

JUDGE MOFFETT: You may step down Mr. Johnson.

LIEUTENANT BROWN (Recalled).

Direct examination by Mr. Taylor:

Q. Lieutenant Brown, I just want to ask you a couple of questions; first, you testified that you took a picture of the motorof the hoist itself on the day of the accident?

A. Yes, sir, I did.

Q. And, will you tell us whether or not you were present the latter part of October on the day that Mr. Hunt, the engineer, went up to the store to examine the apparatus?

A. Yes, sir, I was.

Q. Did you observe it on that day?

A. Yes, sir.

Q. Will you tell us whether there was any noticeable change between the hoist as you saw it on the day of the accident and the day on which Mr. Hunt examined it?

A. There was no noticeable change. It was the same hoist and looked to be in the same position as far as the chain is concerned.

Q. I want to ask you one other question. Can you tell us whether, well, did you - can you tell us whether you stood on the first floor and looked upward into the shaft?

A. Yes, I did.

Q. And was that when the cage, well of course

this is after the accident and the cage was in the basement?

A. Yes, sir.

Q. Tell us whether or not you could see the overhead hook?

A. Yes, sir, you could see it from the, uh, looking up into the shaft; it's enough so you can see that.

MR. TAYLOR: That's all.

Re-cross-examination by Mr. Slaughter:

Q. Lieutenant Brown, recalling the construction of the cage, you, of course, only went into it and looked up after the accident had happened?

A. That's correct.

Q. And certain of the members of the roof of the cage had been broken had they not, by the fall of the motor?

A. Uh, there was some pieces of material laying on top of the cage itself. I assume it came from up there, but I couldn't be positive because I couldn't see where they actually came from.

Q. Do you recall whether or not these spaces in the top of the cage were or appeared to have been created from boards or planks that had come disledged or whether the construction had

been such that you could see through the top? Before the accident?

A. Right now, I couldn't tell you sir. (Inaudible)

Q. The motor, however, was on the top - had fallen and was on top of the cage when you first inspected it was it not?

A. Yes, yes it was on top of the cage and there was some boards 2 by 6s and 2 by 8s, something of this size that was laying around it and maybe one across it as I recall.

Q. And as you looked up through these spaces, in the roof of the cage to the hook at the top; of course, at that time the motor was no longer under the hook, it had fallen on top of the cage?

A. That's right.

Q. I hate to ask you this question, but I'm affraid it may be material. Was there any evidence on the top of the cage of any portion, and you don't have to say, of Jeffrey McCray's body?

A. On top of the cage?

Q. Yes.

A. Yes, sir, it was.

MR. SLAUGHTER: No further questions, your Honor. I had better ask one more question.

Q. Again I hate to; was this a portion of his head?

A. Yes, sir, and also his watch was found on top of the cage.

MR. SLAUGHTER: Thank you. No further questions.

MR. TAYLOR: No further questions.

MR. TAYLOR: I have one witness who is on his way down; I'll take a look in the hall to see if he is here.

ALFRED S. MORGAN, being first duly sworn, testified upon his oath as follows:

Direct examination by Mr. Taylor:

Q. Will you state your name, please?

A. Alfred S. Morgan.

Q. Where do you live Mr. Morgan?

A. 309 Sherwood Avenue.

Q. Here in Staunton?

A. Yes.

Q. Will you tell us where you formerly operated the store known as Morgan's Music Center?

A. I did.

Q. Where was it located, the last location?

A. 23 North Central Avenue.

Q. 23 North Central Avenue?

A. Yes, sir.

Q. Is that in the bank building?

A. In the, uh, it belongs to the Staunton Industrial Bank Building, they own that.

Q. Were you, can you tell us were you the tenant immediately prior to the Charlottesville Music Center?

A. Yes.

Q. When did your lease expire?

A. First of May, 1971, or within thirty days of that I'm sure.

Q. Will you tell us whether in the back part of the store there was a chain hoist or dumbwaiter that ran from the basement to the first floor?

A. There was a dumbwaiter that went from the first floor to the basement.

Q. Was that there when you took over the premises?

A. Yes, sir.

Q. And was it still there when the Music Center took over, the same one?

A. Yes.

MR. TAYLOR: That's all.

Cross-examination by Mr. Slaughter:

Q. When did you move into the premises Mr. Morgan?

A. Well, I'd say May 1st, 1969. I was there two (2) full years.

Q. And who was the previous tenant?

A. Singer Sewing Machine.

Q. Now, did you discuss the hoist with anyone when you moved in?

A. Never, no, sir.

Q. But it was there and did you simply infer how to operate and in fact learn to operate it that way?

A. That's right.

Q. Who was the rental agent who leased the premises to you?

A. W. T. McIntyre.

Q. And who was the landlord?

A. The bank was the landlord, and I don't know whether they have changed names then, and there was two change of names within a couple of years, but it was the Staunton Industrial Loan Building.

Q. I see. As far as you know it was the same entity with a change of name?

A. Right.

Q. Did you ever deal with anyone representing the bank or the landlord other than Mr. McIntyre?

A. For the building?

Q. Yes?

A. No, sir.

Q. And did you use this hoist during your two years of occupancy?

A. We used it some but, I would say, very little because we had no heavy merchandise to go down-

stairs.

Q. Why didn't you store heavy merchandise downstairs?

A. Well, I kind of operated on a shoe-string, and my turnover was pretty fast, and I very seldom had enough to put down there, I just kept supplies like bags and that sort of things.

Q. And when you had occasion to bring them up or down you simply used the hoist?

A. Yes.

Q. Approximately how often would you say you used the hoist?

A. When we moved in that year we probably used it all day long for two or three days, just taking display material and boxes and things down; but, after that, I would say we didn't use it over four or five times a year maybe six at the most.

Q. Did you experience any difficulty in using it?

A. No, sir.

Q. Did anyone, I think you testified that no one mentioned it at all when you moved in, and did other employees use it without difficulty or?

A. Well, to answer that I would say fortunately the first year I was there I had a man who I hired that was very good mechanically, he understood everything and knew everything about what was

going on and I never touched it for a year myself, and at the end of the year he did not stay with us and I kind of had it after that.

Q. But he operated it apparently without any difficulty?

A. Yes.

MR. SLAUGHTER: No further questions of this witness, your Honor.

MR. TAYLOR: I have no further questions.

JUDGE MOFFETT: May we excuse Mr. Morgan gentlemen?

MR. TAYLOR: It's all right with me.

MR. SLAUGHTER: No objection, your Honor.

JUDGE MOFFETT: Thank you, Mr. Morgan.

(Inaudible)

OLLIE THOMAS McCRAY, being first duly sworn, testified upon his oath as follows:

Direct examination by Mr. Bobbitt:

Q. Mr. McCray, would you state your full name, please?

A. Ollie Thomas McCray.

Q. How old are you?

A. Forty-five (45).

Q. Where do you live?

A. 212 Surrey Road, in Staunton.

Q. What is your occupation?

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A. Office manager of Staunton Machine Works.

Q. How long have you held that job?

A. I've been there for 21 years. I've had this job for 15 years.

Q. Have you always lived in Staunton?

A. Only since we've been married (inaudible).

Q. What's your relationship to Jeffrey McCray?

A. Father.

Q. Mr. McCray, did you qualify as Administrator of Jeffrey's estate after his death?

A. Yes.

Q. Are you serving in that capacity now?

A. Yes.

Q. In connection with your serving as Administrator do you know what his funeral expenses were?

A. Yes, I do.

Q. What was the amount of funeral expenses?

A. One Thousand Six Hundred Eighteen and 70/100 Dollars ($1,618.70).

Q. Did, uh, how old was Jeffrey at the time of this accident?

A. He was fifteen (15).

Q. What grade was he in in school?

A. He had just finished his Sophomore year, at Lee High going into his Junior year.

MR. DOBBITT: I have no further questions Mr. McCray.

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MR. SLAUGHTER: No questions, your Honor.

JUDGE MOFFETT: You may be excused.

GERALDINE D. MCCRAY, being first duly sworn, testified upon her oath as follows:

Direct examination by Mr. Bobbitt:

Q. Mrs. McCray, I ask you to state your full name, please?

A. Geraldine D. McCray.

Q. If you don't mind, I'd like to ask your age?

A. Thirty-eight (38).

Q. Where do you reside?

A. 212 Surrey Road, Staunton.

Q. Are you employed?

A. Yes, I am.

Q. Where do you work?

A. Virginia Employment Commission.

Q. What was your relationship to Jeffrey McCray?

A. Mother.

Q. Do you have any other children?

A. No.

Q. Can you tell the jury what Jeffrey's age was at the time of the accident?

A. Fifteen (15).

Q. And what grade was he in school?

A. He was a Sophomore.

Q. This was in, this accident took place in the

summertime; he had just completed his Sophomore year?

A. Yes, that is correct.

Q. Where did he go to school?

A. Lee High School here in Staunton.

Q. How did he get along in school?

A. He was a good student, perhaps better than average I'd say.

Q. Do you remember what his grades usually averaged?

A. Well, depending on the subjects or things he really like, he made As and Bs and occasionally a C, but no difficulty.

Q. Did you know if he intended or had any plans for college?

A. We had assumed he would go, we had nothing specific in mind yet.

Q. Did he have any particular hobbies or interests outside of school?

A. Yes, he had a number of interests. He collected rocks and he enjoyed looking for Civil War battle grounds and collecting relics associated with Civil War, reading, music.

Q. Did you and your husband ever engage in these activities with your son?

A. Well, not music. We took him around museums and to the battle grounds; whenever we traveled we would stop at the points of interest that he liked.

Q. Did you all usually vacation together?

A. Yes, we did.

Q. Did you and your son spend much time together?

A. Yes, quite a bit I'd say.

Q. When did he become interested in music?

A. He had been taking music lessons roughly a year before the accident, I can't remember the exact date he started, but around a year I'd say.

Q. Did he have a guitar of his own?

A. Yes, he did.

Q. During the summer of 1971, was he doing anything?

A.. He had started to work as a volunteer aide at Western State Hospital.

Q. What were his hours in that work?

A. I forget exactly, but it was something like maybe 8:30 to 1:00, something in that neighborhook.

Q. Did you usually know where he was going to be?

A. Yes, he usually kept us pretty well informed of his whereabouts.

Q. Did you all attend any church?

A. Yes, we go to McKinnley United Methodist Church.

Q. Where is that located?

A. About 18 miles west of Staunton on beyond the Middlebrook area.

Q. Would Jeff usually go with you?

A. Yes, he would.

Q. How did he get along with your friends, the friends of your age?

A. Very well I think.

Q. Did he have any friends of his own age; was he well liked do you think?

A. Yes, I think so he had a number of close friends maybe half a dozen who came to the house, but he seemed to have a lot of other young ones he knew, just acquaintances that, oh, seemed like they were on friendly terms.

Q. Did they seem to get along together?

A. Yes they did.

Q. On the date of the accident did you know where he was going?

A. Yes I did.

Q. Where did he go that morning?

A. He went to Western State, I remember taking him down there on my way to work.

Q. And did you know where he was going after he got off from Western State?

A. Yes, I did.

Q. What type of work was this at Western State?

A. Really he had only been there for a short time and they were still training the youngsters, but, I guess the best I understood the situation if the patient wanted to go to the canteen

they, you know the aides would maybe walk them over or just talk with the patient or whatever else they needed or, of course whatever involved him. I remember one day that he said he almost forgot the patient and left her at the canteen so he ran back to get her.

Q. Did he seem to be gatting along with that type of volunteer work all right?

A. Yes, I think so he said he enjoyed it very much.

Q. Had he ever mentioned to you before that day that he was going to Charlottesville Music Center?

A. Yes, he did.

Q. It was not unusual then for him to go there?

A. No, uh, he had been in there to look at some records. Wherever there were records that's where he wanted to go.

Q. Mrs. McCray how did you find out about the accident?

A. The newspaper boy told me.

Q. How did he tell you?

A. He said, "Did you hear about the kid that got killed at the music center".

MR. BOBBITT: That's all right. I have no further questions.

JUDGE MOFFETT: Mr. Slaughter?

MR. SLAUGHTER: Nods, no.

MRS. MCCRAY: May I be excused?

MR. TAYLOR: If your Honor please, Mr. Slaughter and I are willing to stipulate that if Mr. William McIntyre were called as a witness, he would testify that the hoist or lift in question which was involved in the accident was the same hoist that had been there all along, and he would further testify that to his knowledge no tenant had reported to him any difficulty about the hoist. With that stipulation your Honor, the plaintiff rests.

* * *

THOMAS DAVID ROBERTS

Direct examination By Mr. Slaughter:

Q. Mr. Roberts would you state your full name and address please?

A. Thomas David Roberts, 2908 Oliver Road, Charlottesville.

Q. What is your occupation Mr. Roberts?

A. Manager of Charlottesville Music Company.

Q. Does that have more than one outlet center sir?

A. We have a store in Norfolk and Waynesboro.

Q. As well as the one in Charlottesville?

A. Yes.

Q. And are you in charge of all three stores?

A. Uh, no.

Q. And are you thus at this time manager of the Charlottesville store?

A. Yes, I am.

Q. In order to save time I may lead on preliminary

matters; Mr. Roberts, as I understand it, you and the Charlottesville Music Center in effect succeeded Morgan's Music Company here in March of 1971, is that correct?

A. I'm not sure exactly (inaudible)

Q. Could you speak up as if you're talking to the Clerk, I have to stand here ----

A. I'm not sure of the date exactly, but around that time.

Q. And at that time were you and Peter Dulles in charge of opening the store here?

A. Yes.

Q. And with whom did you negotiate with in order to take over the premises here?

A. Well we first, of course, talked with Mr. Morgan in regards to the store itself, and then to Mr. McIntyre.

Q. And during the course of that time did you make an inspection of the premises?

A. Uh, --

Q. Not your first conversations, but at some point did you come over and look at the store?

A. Yes.

Q. Do you know how many times you went into the store before you assumed the operation of it?

A. Two or three times, I'd say.

Q. And during the course of that time did you become aware that there was a hoist or lift

or cargo lift in the back of the store?

A. Yes.

Q. Was there a discussion between you and Mr. Morgan about the lift?

A. Only to the fact as to how to operate it.

Q. He showed you how to operate it?

A. Yes.

Q. Did you ever talk to Mr. McIntyre about the lift?

A. Not to my recollection.

Q. And Mr. McIntyre was the agent, the representative of the landlord?

A. Yes, sir.

Q. Once you had assumed the operation of the store, how frequently were you here right at the beginning?

A. Well, it was split up between Mr. Dulles and myself.

Q. Who would come when and what was your pattern?

A. Well, no definite pattern, but we sometimes come every other day and sometimes two days in a row.

Q. And when you were first opening up was there a time when you would both be over here working?

A. Yes.

Q. During that period or during the period when you first started; was the cargo lift used?

A. Yes.

Q. In what manner did you use it, for what?

A. Well, taking empty boxes down when we were redoing the stores and such things.

Q. You didn't store merchandise down there, just stuff?

A. No there wasn't any merchandise stored downstairs, - at the time we took over.

Q. I see, as time went on did you use the hoist later?

A. Maybe once or twice personally.

Q. Was there a time when you were using it as you were moving in, say, for an entire day on a Sunday?

A. Yes, in fact my son, he used it to help us straighten up the store.

Q. How old is he?

A. Well, he is sixteen (16) now.

Q. And he used it without incident?

A. Yes, sir.

Q. Were you aware of any difficulty in the operation of the hoist up to the time of this accident?

A. Not to my knowledge.

MR. SLAUGHTER: We have no further questions your Honor.

Cross-examination by Mr. Taylor:

Q. Mr. Roberts, did I understand you to say you

came over here two or three times prior to opening the store for business?

A. Yes.

Q. And then you came over here at various times after the store was open for business?

A. Yes, sir.

Q. Did you inspect the premises pretty thoroughly before the store was opened?

A. A, yes as far as the - what rooms were, and we had a basement for storage such as this - not appliances but what we could use and what we couldn't use.

Q. Well, did you see this hoist on the first visit over here?

A. No.

Q. Was it before you opened the store that you saw it?

A. Yes.

Q. And did I understand you to say that the only conversation you had with Mr. Morgan about the hoist was with respect to how to operate it?

A. That, yes.

Q. And you operated it yourself?

A. Yes.

Q. When did you stop coming over here?

A. I still come over here.

Q. Well, okay. How long were you coming over here

with any irregularity?

A. We were probably coming over for a month or so I'd say.

Q. Fairly regularly?

A. Yes.

Q. How often a week?

A. Well, I would come over at least three times a week I'd say.

Q. And did you operate the hoist yourself during that period?

A. I can't say definitely; I'd say probably once or twice.

Q. Did you talk to Mr. McIntyre about the hoist?

A. No, sir.

Q. Did Mr. Johnson ever report to you that he had had any difficulty with the hoist?

A. No, sir.

Q. Did he tell you that it had been sticking?

A. No, sir.

MR. TAYLOR: I believe that's all.

MR. SLAUGHTER: We have no further questions your Honor. Defense rests.

JUDGE MOFFETT: You may be excused.

MR. TAYLOR: Recall Mr. Hunt, Please.

Re-direct examination of Mr. Hunt by Mr. Taylor.

(Recalled)

Q. Mr. Hunt, just one matter I want to question you about; since you testified, two witnesses

have testified about occassions when this hoist would stick, would not move down, and that they were able to get it to move down by pressing the button for the up lift and then have it go back down; so, I want to ask you something about that, will you tell us whether or not there was anything or were you able to determine when you examined the motor of this hoist whether there was anything about the motor to indicate that a problem within the motor itself could have caused it to stick?

MR. SLAUGHTER: If the Court please, unless it can be shown that Mr. Hunt made an - a test of the motor would be like functioning the motor with electricity or with power applied to it, and I certainly think it would be a disadvantage to test it in that sort, and I object to the questioning for that purpose of making an examination without further laying of foundation.

JUDGE MOFFETT: This is a rebuttal testimony, and I would like your reasoning for asking this.

MR. TAYLOR: Well, your Honor, the testimony of Mr. Addison was, I feel was not my testimony because it was elicited on cross-examination which was beyond my direct.

MR. SLAUGHTER: Well----

JUDGE MOFFETT: (To Mr. Slaughter) What are your

feelings toward that?

MR. SLAUGHTER: Well, regardless whether it was or was not, your Honor, it was before the Plaintiff rested, your Honor, and Plaintiff recalled Mr. Hunt in order to present additional evidence, it's not in rebuttal to any of our testimony. The two witnesses to whom he referred were his own witnesses who brought out the point that he raised down on cross, but I don't think that makes them my witnesses and certainly it wasn't raised during my presentation of evidence.

JUDGE MOFFETT: Mr. Taylor, do you have anything further?

MR. TAYLOR: Yes, sir. I would say that the other witness that did not, I asked the court's permission to call as an adverse witness and, of course, I don't believe that matter was ever ruled on as to whether he was or was not.

JUDGE MOFFETT: I don't think this is proper rebuttal testimony and I'm not going to let it in over objection.

MR. TAYLOR: All right, sir, I'll save the point.

MR. SLAUGHTER: I would permit at least this question. (Inaudible) as far as my objection goes. Whether Mr. Hunt plugged the machine in and made any attempt to test it ----

MR. TAYLOR: Well, I'll ask him this way;

Q. Can you tell us whether, well, first would it be

necessary in order to tell whether there was anything in the motor itself which would have caused it to stick, would it have been necessary for you to see it running or from the physical appearance of it - the motor itself - could you have formed that conclusion?

A. Of course the proper way to go about it would have been to test it thoroughly which we did not. We did not operate it we only examined it outwardly, did not disassemble it in any fashion, but my experience with these devices would lead me with my examination of it to come to the conclusion that there was nothing wrong with the hoist itself that would cause the elevator to stick. If it has been testified that they could hear the motor run then in my opinion the, uh, the hoist was functioning properly; if they did not hear it run then there was some fault in the - with the hoist.

MR. TAYLOR: I have no other questions.

MR. SLAUGHTER: I have no objection to the witness being excused. That's all.

MR. HUNT: Thank you and may I be excused this time.

JUDGE MOFFETT: Yes, sir, you may.

MR. HUNT: Thank you, sir.

JUDGE MOFFETT: This Court will reconvene 9:30 Monday morning promptly.

(Transcript from the Judge's Chambers)

JUDGE MOFFETT: Gentlemen, the evidence which the Court has before it to, in making the determination and whether or not the exclusive remedy of the Plaintiff was under, what was Workmen's Compensation statutes, is considerably different from the record in this case; and while we do have that evidence here, I want to point out that I feel that we went into that matter much more thoroughly, and I think the evidence is quite different. The evidence was heard in connection with that matter and I just want to make that observation for the record.

MR. SLAUGHTER: May it please the Court, I might inquire I realize that there was a good deal of, probably, synthesizing today, but I wasn't aware of any significant differences in the evidence.

JUDGE MOFFETT: Well, there's no - this record today is - does not show at all the background of how these young men happened to be there. The fact that Mr. Justis sold these shelves with the understanding that his son would erect the shelving; that's a (inaudible - major) and then following that the friends, the high school friends, of young Justis just converged and started helping him do what he had undertaken to do as a part of his father's contract with the salefor the shelves.

Now there is none of that in this record today, and, to me, that was the kernel of the evidence upon which the other decision was made, and I just want to make clear comment on that.

MR. DOBBITT: I think Jeffrey McCray, I mean Chip Justis did testify to his father had supplied these shelves and that he was working on the shelves that his father had .....

JUDGE MOFFETT: He did, but it was done in such a manner that it made, I'm sure, very little impression on the jury, and there is certainly nothing in there, I think, there is nothing in there as to whose responsibility it was to erect the shelves, and the erection of the shelving was really part of the purchasing of the shelving by the Charlottesville Music Company from Senior Justis. So, I think, I just want the record to be absolutely clear on this thing because the things that stood in my mind as important in deciding the first issue were sort of glossed over in the evidence today; and fortunately we do have a record of that testimony. I just want to call that to your attention.

MR. SLAUGHTER: Yes, sir; I'd like to mention just so there is no question about our not being freely open with the Court on all these points earlier this morning.

It had been my feeling at the end of the first hearing that it had been clear that the, while there had been discussion about finding work for Chip to do, and Mr. Justis therefore saying he would sell - he had some shelving he would sell; it seemed to me that it was clear in the first hearing that it was not a contract by Mr. Justis with the Music Center to sell the shelving and have Chip arrange it or erect it, and as I have understood the evidence all along and while I was concerned at the first hearing that it did - was not going in right, I went back in considerable detail on re-direct to try to be sure it was clear. This was a three way arrangement as I understood it with, through Mr. Justis, Chip and Van Johnson with the arrangements being made directly between Chip and Van as to the erection and that Mr. Justis simply stated he had some shelves he would supply for this to be done. And, I think the record today also reflects that general arrangement.

JUDGE HOFFETT; I think I asked Mr. Justis a question, Senior Justis, a question of whether there was any responsibility on his part or on Chip's part to install these shelves, and it was - as a result of his sale. Of course, this thing is a very small thing, you're talking about Ten

Dollars ($10.00) or whatever it is. As I recall he said yes he did feel that there was a responsibility on his part to have his son install these shelves. I think that's in the record, but I say it isn't any major thing, but I did normally want to call attention to the fact that I think that there is less evidence in this record today which would assist us in arriving at a proper verdict on this preliminary question.

MR. SLAUGHTER: Yes, sir, may it please the Court because of my failing memory I may just like to take a moment to move the Court's conclusion of all the evidence to strike the Plaintiff's evidence on the foreground stating the concern original motion and in addition, while I only mentioned this in my rebuttal argument on the ground that it detects with any misleaden,(inaudible) but not discoverable by the Lieutenant, and, of course on the final ground, althoughtI don't know if this is necessary to mention it at this time, that the evidence has shown clearly that Jeffrey McCray was an employee in the legal and technical sense at the time of the accident and thus the Plaintiff is shown by his own evidence that the sole remedy of the Administrator of the estate of Jeffrey McCray to be under Workmen's Compansation Acts of Virginia.

MR. TAYLOR: May it please the Court, we take the position that, first of all with respect to the special plea of Workmen's Compensation, that the Court was correct in their ruling and the evidence clearly shows that Jeffrey McCray was not an employee and speaking more of the evidence taken at the hearing on that special motion and the evidence today because frankly we felt that much of the evidence relating to the question of it's statis had no bearing today, and for that reason it was not of use today. As to the principal contention or perhaps I should say the contention with respect to negligence and contributory negligence and we feel that in assumption of risk, we feel that at least the Plaintiff has made out a jury issue as to whether there was negligence on the part of the Defendant which possibly resulted in the death of the decedent, and we feel that at the most the evidence of any contributory negligence or assumption of risk presents a jury issue we feel it certainly falls short of showing contributory or assumption of risk as a matter of law (inaudible).

MR. SLAUGHTER: I have no further statement.

JUDGE MOFFETT: Gentlemen, I would feel that I should overrule your motion. I do so note your exception to save your point. And, in connection those instructions reading them over it seems to

me that principal determination we will have to make is what was the statis of this young man on the premises; whether he was a licensee or whether he was an invitee, and it seems to me that we might just iron that out right now.

MR. TAYLOR: I think that is the principal question.

JUDGE MOFFETT: And then proceed from there. You gentlemen take opposite positions on it and I take it with ... Mr. Taylor do you have some thoughts about something on your mind?

MR. TAYLOR: It's in Am. Jur. 2d here about the premises liability.

JUDGE MOFFETT: In light of the discussion which we have just had, it is the conclusion of the Court that at this - that this deceased young boy was an invitee rather than a mere licensee, so I think we should be guided by that in working out instructions, and I would suggest we go with instructions one at a time considering the Plaintiff's instructions first and then those offered by the Defendant and then as we - I don't know how you gentlemen like to proceed, whether you just like to wait until we get through all of them and put all your objections in the record or whether you want to put your objection in for each instruction as - in entirely

immaterial to me. We will have it understood that every instruction which is objected to by anybody carrys his appropriate exception and no (inaudible)

MR. SLAUGHTER: I would reserve my position, of course, that the evidence has shown that the Plaintiff was a licensee at the time of his death on the premises of Charlottesville Music Center and in view of the Court's position it would preserve my objection to the Court's ruling.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF STAUNTON
MARCH 14, 1973.

OLLIE T. McCRAY, Administrator of the Estate of Jeffrey A. McCray, Plaintiff

v.

CHARLOTTESVILLE MUSIC CENTER, INC. Defendant

ORDER

On the 3rd day of November, 1972, came the parties plaintiff and defendant in person and by their respective counsel and all necessary and proper pleadings having been filed in this action, issue was joined.

Thereupon, came a jury of thirteen who were examined by the Court upon their voir dire and upon questions propounded by counsel. And it appearing that members of the jury panel had prior knowledge of the occurrence of the accident through newspaper accounts, the panel was further questioned by the Court and by counsel as to its ability to render a fair and impartial verdict. And although the members of the panel indicated that they had formed no opinion and that they could render an impartial verdict, counsel for defendant objected to the use of any such member of the jury panel as a juror on the grounds stated in the transcript of the proceedings. The objection by counsel for defendant was overruled by the Court which preserved defendant's objection and grounds therefor.

Thereupon, came the following jury of seven, the same being a portion of venire summoned for the trial of civil cases during the current term, namely: James E. Houff,

Audrey S. Fitzpatrick, Thomas J. Sheehan, Frances J. Berry, Laura R. Killingsworth, L.D. Wease, and Eunice R. Sheets.

And it appearing to the Court that a juror, Laura R. Killingsworth, should be excused for personal reasons, it was determined that three additional members of the jury panel should be called forward and examined by the Court and by counsel. And that from these three members of the jury panel, by allowing each counsel one strike, the remaining member should be substituted for the said Laura R. Killingsworth. Although these members of the jury panel also had prior knowledge of the occurrence of the accident through newspaper accounts, they indicated to the Court that they had formed no opinion and that they could render an impartial verdict. However, counsel for defendant renewed his objection to the use of any of these persons as jurors on the same grounds noted above, which are more fully and properly set out in the transcript of the proceedings. This objection was overruled by the Court, which preserved defendant's objection and grounds therefor. Thereafter, Calvin Craig was sworn to sit in place of Laura R. Killingsworth.

Following the opening statements of counsel for all parties, evidence was adduced on behalf of plaintiff. Counsel for defendant objected to the admission of certain evidence by plaintiff, including, but not limited to the testimony of plaintiff's expert witness, on grounds more fully and properly preserved in the transcript of the proceedings. The Court overruled and noted the objection of counsel for defendant. Thereafter, at the

conclusion of plaintiff's evidence, defendant moved to strike plaintiff's evidence and enter judgment for defendant on the grounds stated in the transcript of the proceedings. Upon due consideration of the arguments of counsel, the motion was overruled, the Court noting defendant's objections.

Defendant then presented evidence on its behalf; and again at the conclusion of all of the evidence, defendant moved the Court to strike plaintiff's evidence and enter judgment for defendant on the grounds more fully and properly stated in the transcript of the proceedings. This motion was overruled by the Court and defendant's objections preserved.

The Court and counsel then considered the instructions offered by plaintiff and the instructions offered by defendant, counsel for the parties having made various objections and having taken various exceptions to the granting, refusing and amending of certain instructions, which objections and exceptions appear more particularly in the transcript of the proceedings.

The instructions, as finally approved by the Court, were then read to the jury and final arguments were made by counsel for plaintiff and counsel for defendant respectively.

Whereupon the jury retired to the jury room to consider the testimony of the witnesses, the instructions of the Court and to reach their verdict. After a relatively short period of deliberation, the jury returned to the Court and rendered their verdict for plaintiff in the maximum statutory amount of

$25,000.00 solace for sorrow, suffering and mental anguish to be divided equally between decedent's father and mother and the further sum of $500.00 for the funeral expenses of the decedent. Upon request of counsel for defendant, the jury was polled, after which they were discharged.

Counsel for defendant then moved to set aside the verdict as contrary to the law and the evidence, without evidence to support it and plainly wrong; and further moved the Court to order a new trial on the ground that the verdict was excessive and on other grounds more fully and properly preserved in the transcript of the proceedings. On January 5, 1973, the Court heard argument by counsel on defendant's motion to set aside the verdict. Thereafter, upon consideration of the argument and authorities of counsel, the Court denied the motion made on behalf of the defendant, to which action of the Court defendant excepted on all grounds properly preserved in the record and in this order.

Upon all of which in accordance with the jury verdict, the Court doth hereby ORDER that the plaintiff recover and have judgment against the defendant in the amount of $25,000.00 to be divided equally between the decedent's mother and father and $500.00 for the funeral expenses of the decedent, with interest thereon from November 6, 1972, the date of the jury's verdict, together with their reasonable costs in this behalf expended.

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But it appearing to the Court that the defendant has indicated his intention to petition the Supreme Court of Virginia for a writ of error and supersedeas to this judgment, on motion of the said defendant, by counsel, it is ORDERED that the execution of judgment against defendant be, and the same hereby is, suspended for a period of (4) four months from entry of final judgment and if such petition is presented within such period, the operation of the judgment is suspended thereafter until such court shall have acted on the petition, provided that the defendant or someone for him within (30) thirty days from entry of final judgment shall enter into bond in the penalty of $25,500.00 with security to be approved by the Clerk of this Court, conditioned and payable as the law directs, according to the provisions of §§8-477 and 8-465 of the Code of Virginia, 1950, as amended, and by agreement of counsel, the Court hereby directs the transcript of this trial when prepared and filed in the office of the Clerk shall become a part of the record in this case as provided in Rule 5:9 (a) of the Rules of the Supreme Court of Virginia.

ENTER: Jas. S. Kincheloe, Jr.
Judge

Date: 3/14/73

We ask for this:

J. FORESTER TAYLOR

WILLIAM E. BOBBITT, JR.,

Counsel for plaintiff

Seen, objection noted:

McGUIRE, WOODS & BATTLE

By David Craig Landin
David Craig Landin
Counsel for Defendant

A COPY,

TESTE: Edith M. Paxton CLERK

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF STAUNTON

OLLIE T. McCRAY, Administrator
of the Estate of Jeffrey A. McCray, Plaintiff

v.

CHARLOTTESVILLE MUSIC CENTER, INC. Defendant

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

To: The Honorable Edith H. Paxton, Clerk of the Circuit Court of the City of Staunton

NOTICE OF APPEAL

Notice is hereby given pursuant to the provisions of Rule 5:6 of the Supreme Court of Virginia that defendant Charlottesville Music Center, Inc., appeals the final judgment entered in this action on March 14, 1973, and will apply to the Supreme Court of Virginia for a Writ of Error and Supersedeas.

ASSIGNMENTS OF ERROR

The following errors are assigned.

The Circuit Court of the City of Staunton erred:

I. In failing to rule under both the law and the evidence presented at a preliminary hearing on defendant's special plea and in the trial of the case that plaintiff's decedent was at the time of his death an employee of defendant

within the meaning and intention of the Workmen's Compensation statutes of Virginia and thus, in failing to rule that plaintiff's sole exclusive remedy lies within these statutes.

II. In not setting aside the verdict as excessive, contrary to the law and the evidence, without evidence to support it, and plainly wrong, in not entering final judgment for the defendant, and in entering judgment for the plaintiff.

III. In not setting aside the verdict and entering summary judgment for the defendant or ordering a new trial in that the jury was not impartial in the legal sense as all but two members of the panel had previous knowledge of the accident and as the verdict, which was rendered quickly and in the full amount of plaintiff's claim, showed that the jury was swayed by sympathy.

IV. In failing to strike the evidence of plaintiff and entering summary judgment for defendant at the conclusion of plaintiff's evidence and at the conclusion of all the evidence, and in failing to set aside the verdict and enter final judgment for the defendant on the grounds that:

A. Plaintiff failed as a matter of law to prove the defendant was guilty of any negligence or of negligence which proximately caused the injuries to plaintiff's decedent; more specifically, but not limiting other matters properly preserved,

1. In failing to show how the accident occurred, and

2. In failing to show by a preponderance of the evidence that the defect in the mechanism of the cargo hoist located on defendant's premises was patent and that defendant's agents in the exercise of ordinary care should have observed it.

B. Upon consideration of the law and the evidence, plaintiff's decedent was a licensee on the premises of defendant at the time of his death and plaintiff failed as a matter of law to show that defendant was guilty of any negligence which would render it liable to a licensee.

C. Upon consideration of all the evidence, plaintiff's decedent was himself guilty of negligence which was the sole proximate cause of the accident or which proximately contributed to cause the accident resulting in his death; more specifically but not limiting other matters properly preserved, in trying to force the hoist to operate when it had apparently malfunctioned and would not operate of its own accord.

V. The Court should have admitted certain evidence of the defendant which was refused and refused to admit certain evidence of plaintiff which was admitted, objections to which action of the Court are properly preserved in the transcript of the proceeding; and more specifically, but not limiting other matters properly preserved, that the testimony of plaintiff's expert concerning the manner in which the accident occurred was not properly the subject of expert testimony since the jury was as well qualified to draw inferences from the evidence as to the cause of the accident, as was such expert.

VI. In granting:

A. Plaintiff's instruction 1-a, which instructed the jury as to the duty of defendant to use ordinary care to render the premises safe and to warn of unsafe conditions, on the

grounds that there was no evidence to indicate that defendant had failed to exercise ordinary care or that the defendant knew of any dangerous condition of which it failed to warn plaintiff's decedent.

B. Plaintiff's instruction 2, which instructed the jury on the duty owed an invitee on defendant's premises, on the ground that plaintiff's decedent was either an employee or a mere licensee at the time of his death.

C. Plaintiff's instruction 7, which instructed the jury on the damages which it might award plaintiff, on the ground that it unnecessarily went beyond the statutory language to add repetitive phrasing which emphasized improperly the idea of a sympathetic verdict to the jury.

VII. In refusing to grant:

A. Defendant's instruction B, which instructed the jury as to the inability of an employee to proceed with an action for damages at law, on the ground that the evidence demonstrated that plaintiff's decedent was an employee as defined in the workmen's compensation statutes of Virginia at the time of his death.

B. Defendant's instruction C, which instructed the jury on the duty owed a licensee, on the ground that plaintiff's decedent, under the law and the evidence, was a licensee on defendant's premises.

C. Defendant's instruction H, which instructed the jury on assumption of the risk on the ground that the evidence clearly

showed that plaintiff's decedent voluntarily placed himself in the hazardous situation from which his death resulted.

A transcript of the testimony and other incidents of the action will hereinafter be filed with the Clerk of the Circuit Court of Staunton.

Respectfully submitted
CHARLOTTESVILLE MUSIC CENTER, INC.
By Counsel

Counsel:

McGUIRE, WOODS & BATTLE
Court Square Building
Charlottesville, Virginia

By _____
Edward R. Slaughter, Jr.

CERTIFICATE

I do hereby certify that a true copy of the foregoing notice of appeal and assignments of error was delivered to William E. Bobbitt, Jr., at the law offices of J. Forester Taylor, 11 South New Street, Staunton, Virginia, counsel for plaintiff, on this 20th day of March, 1973.

_____
Edward R. Slaughter, Jr.