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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE SUPREME COURT OF VIRGINIA

Marion C. Owens, Plaintiff in error,

v. Record No. 730780

Cecil Redd, Individually; Charles Redd, Individually; Cecil Redd and Charles Redd, t/a Redd's Supermarket; Norfolk Coca Cola Bottling Co., Inc.; and Allegheny Beverage Corporation Defendants in error.

APPENDIX

Robert E. Gillette
Counsel for Plaintiff in error
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AMENDED MOTION FOR JUDGMENT

Plaintiff moves the Circuit Court of Isle of Wight County, Virginia, for a judgment and an award of execution against defendants, jointly and severally, in the amount of TWO HUNDRED FIFTY THOUSAND and 00/100 DOLLARS ($250,000.00), plus interest and costs, for this, to-wit:

1) Prior to and on June 24, 1971, defendants, Cecil Redd and Charles Redd, individually and t/a Redd's Supermarket, owned and operated a certain grocery store or supermarket business in a certain building in the Town of Windsor, Isle of Wight County, Virginia.

2) On June 24, 1971, at approximately 12:30 p.m., plaintiff was a business invitee in and upon the said supermarket premises owned and operated by defendants, Cecil Redd and Charles Redd, individually and t/a Redd's Supermarket, at which time said defendants were conducting a "Grand Opening" of said premises in connection with the promotion of their business.

3) At the said time and place, defendants, Cecil Redd and Charles Redd, individually and t/a Redd's Supermarket, jointly and severally, negligently, carelessly and recklessly were permitting large crowds of people to enter upon their said supermarket premises and were further, jointly and severally, negligently, carelessly

and recklessly permitting said large crowds of people to wander at will in, about and through said premises, without taking any precautionary or safety measures to prevent injuries to said business invitees, and specifically by allowing glass bottles of coca-cola, pepsi-cola and other merchandise packaged in glass to be or remain on display on said supermarket premises at heights up to five (5) and six (6) feet, well-knowing that such glass containers were likely to be knocked or to fall from their display racks or stands onto the floor and thereby causing injury to some business invitee.

4) Defendants, PepsiCo, Inc., Allegheny Beverage Corporation and Pepsi-Cola Bottling Co. of Central Virginia, by and through their agents, servants and employees, had on or before June 24, 1971, negligently, carelessly and recklessly placed or caused to be placed in the said supermarket, two certain wire and metal racks approximately six (6) feet in height, upon which bottles of Pepsi-Cola, Coca-Cola and other beverages under pressure would be displayed for sale. Said defendants not only placed said racks in the aisle of said supermarket where large numbers of people would pass and congregate, but also the said racks were in fact unsafe, dangerous and a hazard to business invitees upon and in said supermarket.

5) Defendants, Norfolk Coca-Cola Bottling Co.,

Inc., PepsiCo, Inc., Allegheny Beverage Corporation and Pepsi-Cola Bottling Co. of Central Virginia, by and through their agents, servants and employees, had on or before June 24, 1971, sold to the defendants, Cecil Redd and Charles Redd, individually and t/a Redd's Supermarket, a quantity of coca-cola, pepsi-cola and other beverages in glass bottles under pressure and had in fact delivered said bottles of coca-cola, pepsi-cola and other beverages under pressure to the said supermarket premises, and had negligently placed said bottles of coca-cola, pepsi-cola and other beverages under pressure on the aforesaid wire metal display racks or stands in said Redd's Supermarket, well-knowing that defendants, Cecil Redd and Charles Redd, individually and t/a Redd's Supermarket would be conducting a "Grand Opening" of said supermarket on June 24, 1971, and well-knowing that the aforesaid display racks or stands and the said glass bottles of beverages situate thereon were in fact unsafe, dangerous and a hazard to those entering onto the said supermarket premises.

6) Defendants, Norfolk Coca-Cola Bottling Co., Inc., PepsiCo, Inc., Allegheny Beverage Corporation and Pepsi-Cola Bottling Co. of Central Virginia, negligently, carelessly and recklessly failed to take any safety or precautionary measures to prevent said bottles of coca-cola, pepsi-cola and other beverages under pressure from

falling or being knocked from their display racks or stands during the said "Grand Opening", well-knowing that with a large crowd of business invitees in and about said supermarket, said bottles of coca-cola, pepsi-cola and other beverages under pressure were likely to be knocked or fall from their high display racks or stands and thereby injure some business invitee.

7) Defendants, Norfolk Coca-Cola Bottling Co., Inc., PepsiCo, Inc., Allegheny Beverage Corporation and Pepsi-Cola Bottling Co. of Central Virginia, by and through their agents, servants and employees were further negligent, careless and reckless in placing or helping to place said coca-cola, pepsi-cola and other beverages in bottles under pressure on the display racks and stands high off the floor, of said Redd's Supermarket, irrespective of and notwithstanding said "Grand Opening", and the unsafe condition of said racks or stands.

8) While plaintiff was a business invitee upon the premises of said Redd's Supermarket, as aforesaid, an agent, servant or employee of defendants Cecil Redd and Charles Redd, individually and t/a Redd's Supermarket, while carrying a tray at a position above his shoulders, negligently, carelessly and recklessly struck and knocked or caused to fall from the aforesaid display racks or stands a large glass bottle of coca-cola, under pressure,

causing said glass bottle of coca-cola to strike the floor of said supermarket with great force and to thereby explode shooting and driving with great force and violence fragments of the broken coca-cola glass bottle deeply into plaintiff's leg, greatly injuring plaintiff.

9) As a direct result and legal and proximate cause of the negligence, carelessness and recklessness of defendants, jointly and severally, plaintiff was seriously and grievously injured, was caused to sustain serious and permanent injuries, was caused to suffer great physical pain and mental anguish and will in the future be caused to suffer great physical pain and mental anguish, has sustained permanent disability and deformity, has sustained and incurred great financial loss for necessary expenses incurred for the treatment of the personal injuries which she received and will in the future incur great financial loss and expenses for the necessary treatment of her said personal injuries, has been completely deprived of her lawful undertakings and will in the future be deprived of her lawful undertakings, has been deprived of her society with her friends and others, and has in fact been rendered for all practical purposes incapable of doing anything, whether it be for work or pleasure, by herself, and has been totally deprived of her future earning capacity.

10) At the time and place plaintiff was injured, as aforesaid, the agent, servant or employee of Cecil Redd and Charles Redd, individually and t/a Redd's Supermarket, was then and there acting within the scope of his employment or lawful undertakings with the said Redd defendants.

WHEREFORE, plaintiff respectfully asks this Court for a judgment and an award of execution against the defendants, jointly and severally, in the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00), plus interest and costs, as aforesaid.

MARION C. OWENS

By /s/ Robert E. Gillette
Of Counsel

Filed October 20, 1972

JOINT DEMURRER AND MOTION FOR SUMMARY JUDGMENT OF PEPSICO, INC. AND ALLEGHENY BEVERAGE CORPORATION

Now come the defendants, Pepsico, Inc., and Allegheny Beverage Corporation and demur to the action filed herein and say that the plaintiff has not stated a cause of action against them for the following reasons:

1. That even had these two defendants negligently placed or caused to be placed in the supermarket wire and metal racks six feet in height, which were unsafe as alleged in paragraph four of the motion for judgment, the plaintiff alleges in paragraph three of the motion for judgment that the defendants, Cecil Redd and Charles Redd were negligent in allowing bottles of Coca-Cola, Pepsi-Cola and other merchandise packaged in glass to be or remain on display on the supermarket premises at heights up to five and six feet well-knowing that such containers were likely to be knocked from the display racks and thereby causing the injury. If there was any negligence upon Pepsico, Inc. and Allegheny Beverage Corporation, which these two defendants deny, then the negligence of Cecil Redd and Charles Redd in allowing the bottles to be placed and remain in a dangerous position was an intervening cause which superseded the negligence, if any, of Pepsico, Inc. and Allegheny Beverage Corporation and as a matter of law these defen-

dants would not be liable.

2. In paragraph eight of the plaintiff's motion, the plaintiff alleges that an agent, servant or employee of the defendant, Cecil Redd and Charles Redd, negligently knocked a bottle of Coca-Cola, a product of one of the co-defendants to the floor and that said Coca-Cola was caused to explode as a result, thus injuring the plaintiff. Such negligence of the defendants, Cecil Redd and Charles Redd, was an intervening cause and superseded the negligence, if any, of the defendants, Pepsico, Inc. and Allegheny Beverage Corporation.

WHEREFORE, these defendants move for judgment in their favor for the reasons stated and pursuant to Rule 3:20 of the Rules of the Supreme Court of Appeals of Virginia.

PEPSICO, INC. and ALLEGHENY BEVERAGE CORPORATION

By /s/ William M. Harris
Of Counsel

Filed November 14, 1972

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF NORFOLK COCA-COLA BOTTLING WORKS, INC.

Now comes the defendant, Norfolk Coca-Cola Bottling Works, Inc., and moves for Summary Judgment in their favor in the action filed herein and says the plaintiff has not stated a cause of action against them for the following reasons:

1. In paragraph 4 of the Amended Motion for Judgment plaintiff alleges that Pepsi-Cola Inc., Allegheny Beverage Corporation, and Pepsi-Cola Bottling Company of Central Virginia placed or caused to be placed in the supermarket wire and metal racks approximately six feet in height upon which bottles of Pepsi-Cola, Coca-Cola, and other beverages were displayed for sale. The plaintiff does not allege that Norfolk Coca-Cola Bottling Works, Inc. placed or caused to be placed wire and metal racks wherein the various bottles of beverages were displayed for sale. On the basis of the plaintiff's Amended Motion for Judgment Norfolk Coca-Cola Bottling Works, Inc. had nothing to do with the wire and metal racks whereon the bottles of beverages were displayed for sale and the negligence of placing the wire and metal racks, if any, was due to the actions of persons or firms other than this defendant and Norfolk Coca-Cola Bottling Works, Inc.

had no participation in or control over the placing of the metal and wire racks wherein the beverages were displayed for sale.

2. That even if this defendant was negligent in allowing the bottles of Coca-Cola to be placed in the wire and metal racks erected by others, the defendants, Cecil Redd and Charles Redd were negligent in allowing bottles of Coca-Cola, Pepsi-Cola, and other merchandise packaged in glass to be or remain on display on the supermarket premises at heights up to six feet knowing that such containers were likely to be knocked from the display racks and thereby cause injury. If there was any negligence on Norfolk Coca-Cola Bottling Works, Inc. which this defendant denies, the negligence of Cecil Redd and Charles Redd in allowing the bottles to be placed and remain in this dangerous position was an intervening cause which superseded the negligence, if any, of Norfolk Coca-Cola Bottling Works, Inc. and as a matter of law this defendant would not be liable.

3. In paragraph 8 in the plaintiff's Amended Motion for Judgment the plaintiff alleges that an agent, servant, or employee of the defendant, Cecil Redd and Charles Redd negligently knocked a bottle of Coca-Cola to the floor and said Coca-Cola was caused to explode as a result thus injuring the plaintiff. Such negligence of the defendants,

Cecil Redd and Charles Redd, was an intervening cause and superseded the negligence, if any, of the defendants, Norfolk Coca-Cola Bottling Works, Inc.

Wherefore this defendant moves for a judgment in its favor for the reasons stated in pursuant to the Rule 3:20 of the Supreme Court of Appeals of Virginia.

NORFOLK COCA-COLA BOTTLING
WORKS, INC.

By /s/ Philip E. Landrum
Of Counsel

EXCERPTS OF TESTIMONY FROM THE DISCOVERY DEPOSITIONS:

CHARLES L. REDD, SR.

Direct Examination - By Mr. Landrum

****

[page 5] Q. In connection with this grand opening did you have any special racks or stands or anything set up to handle the bottled drinks that you were selling on this occasion? A. We had a regular rack on the end of the "condola."

Q. Spell that last word.

MR. RUSSELL: I think that is really "gondola." It is a grocery store name for the shelving.

By Mr. Landrum: Q. Do you agree with that? A. Yes, sir.

Q. Where were these special racks set up that were holding these drinks? A. I think on the fourth aisle.

[page 6] Q. Draw for me a little diagram showing the way the shelves were set up in the store and where the racks were located. A. (Draws) The drink rack is right here, on the end of this one, and I think the cookie rack is here. (Thereupon, an off-the-record discussion was held, after which the following occurred:)

By Mr. Landrum: Q. How many drink racks were there set up, the best you can recall? A. There was a double drink rack, wasn't there, Cecil?

By Mr. Russell: Q. Just state the best you can recall. A. It was right here (indicating).

By Mr. Landrum: Q. Were there drink racks set up on both of these aisles here? A. No.

Q. Just on one? A. That is right.

Q. Will you draw an arrow to that and mark [page 7] it "Drink Rack"?

A. (Draws)

Q. Will you write the words "Drink Rack" up here (indicating)? A. (Does)

Q. Where was the cash register and the checkout place in the store? A. (Indicates)

Q. So I take it from your diagram here that the drink racks were at the back part of the store. Is that correct? A. That is right.

Q. How large were these drink racks, or how would you describe the drink racks? A. To the best of my recollection it was a three or four-rack compartment.

Q. How tall were they? A. I would say four feet.

Q. What were the length and width of these racks, if you know, as best as you recall? A. The best that I could recall, I would say probably 26 inches wide and 3 or 3-1/2 feet long.

Q. What kinds of racks were they? By that I mean were they steel or aluminum or wood? A. Steel racks, I would say.

[page 8] Q. Would you call them wire racks? How would you describe them? A. I guess you would say wire racks - heavy metal.

Q. Were these racks open so that you could see through them when there were not any drinks in there or not? A. Yes. You could see through this way (indicating) and up to the back end.

Q. Where did these racks come from? A. The best I recall, they were Coca-Cola racks.

Q. Where did you get them from? A. Here in Suffolk. The Suffolk office or plant brought them up there.

Q. Did you buy them or rent them? A. They furnished the racks. All drink companies furnish the racks.

Q. Did you ask for these racks for this particular occasion, or were they furnished to you to use all the time? A. That is a permanent thing.

Q. A permanent thing? A. Permanent.

Q. How long had you had them?

[page 9] A. I got them in the day before.

Q. At the time the accident occurred were there drinks in these racks or not? A. Yes, sir.

Q. What kinds of drinks were in the racks? A. Coca-Cola and Pepsi.

Q. Were there any other kinds of drinks? A. If there were any others in there it would be whatever Coca-

Cola put out and Pepsi put out - just those.

Q. Who put the drinks in the rack? A. Whichever company it was; the Pepsi Cola driver and the Coca-Cola driver.

Q. When were the drinks put in the rack? A. The day before the opening.

Q. Did you actually see the Coca-Cola representative putting drinks in the rack? A. We checked everything.

Q. Did you actually see the Pepsi Cola man putting drinks in the rack? A. Yes, sir.

Q. What distribution was made of the drinks in the rack, or how was it decided who was going to put what and where in the rack? A. I don't recall. We just said, "Put 50-50."

[page 10] Q. Do you still have these racks or not? A. As far as I know they are still there.

Q. Were you present at the time the accident occurred? A. Yes, sir. I was on the cash register.

Q. Tell me everything that you saw and heard from just before the time the accident occurred until after the accident occurred. A. When I knew anything Mrs. Owens was up there - Mrs. Marion Owens.

Q. Was up where? A. She came up there and said that a bottle fell off and a piece of glass had gone in her leg.

BY MR. GILLETTE: Q. Who said that? A. (Points to the plaintiff.)

BY MR. LANDRUM: Q. Did she say anything about somebody having hit the rack and knocked the bottle off? A. I don't recall whether she did or not. Like I say, I was realbusy at the cash register.

****

[page 16] *** Q. Do you know what all of these folks were doing at the time the accident occurred?

A. All I can say is that they were working. I think my wife was in the Meat Department. I think Cecil's wife was in the Meat Department, the best I can recollect. Sandra Duck, I know that she was giving everybody free Coca-Colas in a little paper cup.

****

[page 18] *** Q. Do you recall whether or not this lady said anything except the fact that a bottle had fallen off a rack and had struck the floor?

A. To the best of my recollection that was what she said: that a bottle fell and bursted, and a piece of glass went in her leg. I asked her, I said, "Let's go to the doctor or to the hospital." At that time she did not think there was anything but just a cut. In fact, I think I got a Band-Aid - I am not sure - I think I got a Band-Aid, or somebody did.

****

[page 20] ***BY MR. HARRIS: Q. When she came up and told you about the drink bottle having fallen, did she say that she actually saw it fall? A. Not to my recollection.

****

[page 21] ***Q. The stand that we are speaking of you say is about 4 feet tall. Was it substantial? It wasn't rickety or anything like that, was it? A. No,sir.

**** Q. While he is getting that, did she say something about having bumped the stand, herself? A. No, sir.

Q. That was all that she said, that a bottle dropped? A. That it dropped.

Q. Was it just a scratch on the foot or the leg? A. Like I said, I was real busy -

Q. You did look at it?

[page 22] A. Yes, sir.

Q. It did not cause you any alarm, did it? A. No, sir.

Q. You say that you got a Band-Aid to put on it, as near as you can recall? A. As near as I can recall.

Q. Did she put the Band-Aid on it? A. As near as I recall, she did.

Q. Did she then continue to go about her business, and so forth. A. I don't recall what she did after that.

CHARLES L. REDD, SR.

Q. If you recall, can you tell me whether or not she was pushing a grocery basket at the time? A. I don't recall.

Q. Drinks that were in the stand, were they in what we call six or eight packs - that is, the cardboard containers? A. No, sir. They were quart bottles.

Q. They were quart bottles? A. Yes.

Q. They were all quart bottles? A. Yes, sir.

Q. Although you can't estimate the number of people who had been in the store, with an opening like that you would say there were right many?

[page 23] A. Yes, sir.

Q. And right many of the quart bottles, whether they were Cokes or Pepsis, had been sold that morning? A. I could not recall on that part.

Q. In the normal course of selling, staying open from 8 o'clock until this incident happened around 11, or something like that, ordinarily there would be a lot of drinks sold? A. Yes.

Q. There was no one from Pepsi Cola or from Coca-Cola on the premises at the time; is that right? A. Not that I recall.

Q. The lady did not say anything about the stand, itself, having tipped over, or anything of that sort? A. No.

Q. She did not say anything about drinks having fallen, but one had fallen? A. That was all.

Q. Did she mention where it had fallen from - that is, what shelf? I see here in the photograph which has been handed to me by Mr. Gillette - one, two, three, four, five - about five racks high. They appear to be taller than 4 feet. Are these the racks that you speak of? A. (Examines) Yes, sir.

[page 24] Q. They have the Pepsi Cola name on them; is that right? A. Yes, sir.

Q. Were they the only racks in the store at the time? A. Yes, sir.

Q. In another photograph that Mr. Gillette has handed me I see Schwepps and Dr. Pepper and Coca-Cola. That is all I can make out with my eyesight. But all kinds of quart drinks were there; is that right? A. Coca-Cola and Pepsi Cola for the grand opening. That was all.

Q. But no Schwepps? A. No.

Q. Was there an assignment of any special shelves for the different drinks? A. I don't recall. I know that Coca-Cola had them on one-half and Pepsi on the other. I could not even tell you which side was which.

Q. When you started opening for business that morning were the racks full? A. Yes, sir.

Q. Had they been filled the day before? A. Yes,sir.

Q. Of both Pepsi Cola and Coca-Cola; is that [page 25] right?

A. Yes.

Q. If you did go back to look at the racks after this was over with, were there a considerable number of drinks gone? A. To tell you the truth, I don't even recall going back there, because I was on the cash register.

MR. HARRIS: I believe that is all.

MR. RUSSELL: I don't care to ask him any questions.

BY MR. LANDRUM:

Q. Mr. Redd, here are a series of photographs that were given to us by Mr. Gillette. I ask you if they were the racks that were there at the grand opening which we are talking about? A. Yes, sir.

Q. These are the racks here? A. Yes, sir.

Q. Look at all the photographs, if you will. A.(Examines)

Q. These racks have the name "Pepsi Cola" on them; is that correct? A. They are the same racks that were there on the opening day.

****

[page 27]**Q. It is my understanding that you were a partner in Redd's Supermarket when this accident occurred on June 24, 1971. Is that correct? A. Yes.

Q. That was the grand opening of the store which was operated by you and your two brothers; is that correct? A. One brother.

Q. I thought Wilbur Redd was a partner at the time the accident occurred. A. No.

Q. He was not? A. No.

Q. It is my understanding that you all had made arrangements for drinks to be put in your store. Is that correct? A. That is right.

Q. Did you make arrangements for these stands that we are talking about here? A. Yes, sir.

Q. With whom were those arrangements for the stands made? A. It was with Pepsi Cola. The guy was out [page 28] of Norfolk. Now where, I don't know. He came by and brought the racks, and then he came and set them up the day before.

Q. The racks were installed the day before? A. Right.

Q. When were the drinks put in the racks? A. The day before.

Q. Who put the drinks in the racks? A. Pepsi put them on one-half and Coca-Cola on the other.

CECIL RAY REDD

Q. Did they have any arrangement or understanding or agreement as to who was going to put what drinks where, as far as you know, or not? A. Yes. Pepsi Cola put them on the side toward the gondolas, and Coca-Cola put them on the side toward the dairy case.

Q. Would you show me in one of these photographs where Coca-Cola and Pepsi Cola were supposed to put their drinks? A. Coca-Cola was on this side and Pepsi Cola was on this side (indicating).

Q. Coca-Cola was on the righthand side and Pepsi Cola was on the lefthand side? A. Yes.

Q. This photograph I will mark "No. 1" and date it December 22, 1972. When were the drinks

[page 29] actually put in the racks? A. The day before we opened.

****

[page 31]**Q.Do you recall making the statement to anybody that she had sued the wrong company, that it was actually a Pepsi Cola that fell and struck her? A. That was not exactly what I said. They were showing me where the drink fell from. If it fell from there, it had to be a Pepsi, was what I said.

Q. Who was showing you this? A. He said that he was a supervisor - oh, who showed me?

Q. Who showed you where the drink fell from? A.After

I found it out, two or three said that they heard it came from there; that it fell off that corner, that was what they said.

Q. Who told you that the drink fell off of that corner? A. I don't recall.

Q. Was it one of the employees of the store, as far as you know, or not? A. I really don't know.

Q. Was that where the Pepsi Colas were located, at the place they pointed out? A. Yes.

****

[page 33]**Q. You have seen a series of eight photographs here; is that correct? A. Yes.

Q. Are they the racks that were in the store at the time this accident occurred? A. (Examines) Yes, sir, they are all of the racks.

Q. Do you know where those racks came from that happened to be in the store? A. They came from Pepsi Cola.

[page 34] Q. Who made the arrangements for the racks? Do you recall? A. I don't know who it was.

Q. Who made arrangements on behalf of the store for the racks? Was it you or your brother? A. All I know is that the Pepsi Cola representative came there and asked me did I want two racks to put in the store, and I said "Yes." He brought them by and put them in. Who he was, I don't know, but it seemed like at the time he said he was

from the Norfolk Division. I don't know.

Q. Were there any soft drinks in the store other than the ones that were in these racks? A. They were all put in the day before we opened: Coca-Colas and Pepsis.

Q. Where were the other drinks located? A. Right behind those two racks.

Q. What were they sitting on? Were they sitting on the floor or the counter, or what? A. There were regular shelves for them.

****

[page 36]**Q. Were there any drinks in these racks at the time the store opened other than the Pepsi Colas and the Coca-Colas? A. There were Coca-Cola, Pepsi Cola, Sprite - whatever Coca-Cola puts out - on one-half, and whatever

[page 37] Pepsi Cola puts out was on the other half. I am sure there were some orange and grape High Rock which is put out by Pepsi.

Q. What was the surface of the floor in the area where the racks were located? A. What do you mean?

Q. Was it asphalt tile or vinyl tile, or what? A. I don't know whether it is asphalt - no, it is not asphalt. I believe it is vinyl tile.

Q. What was the condition of the surface of the floor on the morning the store opened - that is, was it

cleaned and waxed, as far as you know, or not? A. Yes.

Q. Was it slippery, as far as you know, or not? A. No.

Q. With what had it been cleaned and waxed, if you know? A. Beach Chemical Company out of Norfolk. That was where I got the wax and cleaner.

Q. Do you still use the same thing on the floor now that you were using then? A. Yes, sir.

Q. Was any comment or statement made by

[page 38] anybody that this person slipped, or might have slipped, and struck the rack or not? A. No, sir.

****

[page 40]**Q. Were you paying pretty close attention to these racks during that morning when all of these people were in there? A. Well, I was looking.

Q. Did you have to refill the racks at any time? A. No, sir, I didn't.

Q. Did you notice that both racks were emptying? A. I did not notice, but I am sure that they were.

Q. Of course you don't know whether the Pepsis were on the right and the Coca-Colas were on the left, or vice versa, or whether somebody might have taken a Coca-Cola bottle and put it in the other rack? There were many customers there; is that right? A. I know which side they were

put on, but I don't know whether they were changed.

Q. You have no idea where they were when this happened?

[page 41] A. Right.

****

[page 42] BY MR. GILLETTE

Q. Looking at that photograph as you are now looking at it, did I understand you to say that the Coca-Colas were placed in the rack to your right as you look at the pricture? A. That is correct.

Q. And the Pepsi Colas and related products would have been in the rack to your left as you look at the picture? A. Right.

MR. GILLETTE: O.K. That was what I wanted to clear up.

MR. RUSSELL: By "right" I think we should get which side he means.

BY MR. GILLETTE: Q. By "right" you mean your right as you face the picture?

[page 43] A. Correct.

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BY MR. HARRIS: Q. Mr. Redd, there wasn't anything flimsy about these stands? They did not wiggle back and forth, or anything like that, did they? A. Not that I could tell.

Q. And they were strictly level with the shelves?

A. (No answer).

Q. Did you see them being put in - that is, when the man brought them the day before? Did you see

[page 44] them being put in? A. Yes, I saw them putting them there. As far as noticing them that good, I didn't. All I know is that they just put them in and put the drinks in them.

Q. They did not put the drinks so that they set out over the shelves, or anything like that,did they? A. No.

Q. They were put in neatly, both Coca-Cola and Pepsi? A. That is right.

Q. Had you ever had any difficulty in the past in something just falling off for no reason, unless it was knocked off? A. No.

Q. Then all the Coca-Cola bottles and Pepsi Cola bottles had flat bottoms, as far as you know? A. As far as I know.

****

[page 45]**BY MR. LANDRUM:

Q. So if the accident occurred between the hours of 8 and 12 you would have been on the premises; is that correct? A. No. I went to the bank at least two times that morning.

Q. Were sales that good? A. Yes.

Q. You went to the bank- A. to get change and to cash checks.

Q. During the course of the day did you sell all of the drinks that were in the racks, as far as you know, or not? A. I could not say.

Q. As far as you recall did you have a pretty good sale of drinks from these racks or not? A. Well-(Pause)- I could not say how they

[page 46] sold that day. I will put it this way: they will sell out in two or three days' time normally. How they sold that day I could not say.

Q. What is your recollection of the volume that day? Did you have a good day or a moderate day or a slow day? A. I thought it was a good day.

Q. You have a record of the sales volume I would assume. Is that correct? A. Yes, sir.

Q. You pointed out that the Coca-Colas were on the righthand side of the rack and the Pepsis were on the left. Is that correct? A. That is correct.

Q. And the person who pointed out to you where the drinks fell from, I assume he pointed out the lefthand side. Is that correct? A. Correct.

Q. Have you had any other bottles to fall from these racks, as far as you know, or not? A. I think there

have been some to fall, but it was hit with a grocery cart or something.

Q. But you don't know of any bottles actually falling from these racks unless somebody bumped into them; is that correct?

[page 47] A. No, sir.

****

BY MR. RUSSELL:

Q. Mr. Redd, you were asked the question - and you never got your answer out - whether the racks were level or not. A. Level?

Q. Yes. Did you have an opportunity to examine them carefully, say, in the past few months?

MR. HARRIS: I object to this. The question is did he examine them when they were put in the store?

MR. RUSSELL: He has already answered that.

MR. HARRIS: Did he say he did?

MR. RUSSELL: He said he did not.

MR. HARRIS: I object to what he did three months ago.

[page 48] BY MR. RUSSELL:

Q. Go ahead and answer the question. What have you observed about the racks being level? A. Well, since it all happened and everybody has been in there looking at

CECIL RAY REDD:

them, they are tilted a bit - the shelves. But that is the design of the thing. It is not because the floor is unlevel. I think that is the way it is. It is in order to get the drinks out.

Q. Which way does it tilt: toward the front or the back? A. Toward the front.

Q. By "the front" do you mean the area that you would remove the drink from? A. Yes, sir.

MR. RUSSELL: That is all.

BY MR. LANDRUM:

Q. Mr. Redd, did anybody put any chocks or any blocks or anything under these racks when they were set up or not? A. No, sir.

Q. At any time has anybody put any chocks or blocks under these racks to level them up? A. There was one put under the righthand one - the lefthand one.

[page 49] Q. The lefthand one? A. Right.

Q. When was it done? A. I don't know. It was done after the grand opening. I really don't recall. I did not do it.

Q. So the chock was put under the rack on the lefthand side; is that correct? A. Yes, the lefthand side.

Q. Which corner was it put under? A. The two front.

Q. The two front? A. Yes.

Q. There wasn't any chock put under the rack on the righthand side; is that right? A. No.

MR. LANDRUM: That is all I have.

BY MR. HARRIS:

Q. You had been in the grocery business for some time, had you not? A. Yes.

Q. You had seen these racks used before: is that right? A. Not that particular one.

Q. You never saw this before?

[page 50] A. I had seen them.

Q. Like this? A. Yes, in a supermarket.

Q. When the Pepsi Cola people came there, and when the Coca-Cola people came there, did you examine to make sure that these shelves were level? A. No.

Q. What? A. No, sir.

Q. In other words, you could tell that they were level, weren't they? A. Correct.

Q. The bottles were sitting straight up? A. Yes.

Q. You say that these shelves tilted a little bit when you examined them. Was that three months ago? A. Six months ago.

Q. Six months ago? A. Yes.

Q. The Pepsi Colas and Coca-Colas were not just falling off the shelves, were they? A. No. They never fell off that I know of unless they were hit.

Q. And that had happened before this

[page 51] accident, that when they were hit they would fall off? A. Yes. I have seen them fall when they were hit.

MR. RUSSELL: Off the record.

(Thereupon, an off-the-record discussion was held, after which the following occurred):

BY MR. HARRIS:

Q. You have seen them fall off since? A. Since?

Q. Yes. A. Yes.

Q. When they were hit? A. If they were hit.

Q. When they were hit how hard? A. I don't know that. I don't know how hard.

Q. I suppose you could grab the thing and pull it down if you wanted to. Is that right? A. Right. I heard it and I looked around. A cart had hit it.

Q. That tilted the drink over? A. Yes.

[page 52] BY MR. GILLETTE:

Q. You say that Cokes were being given away on the opening day? A. Yes.

Q. Would it be correct to say that many people came to the store that day that did not necessarily buy anything? A. Well, I am sure that was so as far as kids and all, but I think most grown people bought something, anyway.

Q. Is it correct that you had more people in the

store on grand opening day than you have had at any other time? A. No. We had just as many the next day and the next day.

Q. Would it be correct to say that during the grand opening, the several days it ran, that you had more people than you have ever had in the store at any one time since? A. I had more at the grand opening than have been in there, except one day. There has been one day when there were more.

Q. Was that a special event? A. The first anniversary.

Q. There is a considerable amount of noise [page 53] in a grocery store at most times, is there not?

A. Some.

Q. Are you telling us that it is really not unusual for a grocery cart to bump into a display stand or rack? A. Right.

Q. Would you also say that the pictures showing the racks, as you have seen them today, show the racks exactly as they were on the day that the accident happened, except for the chocks under the fronts of the left stand? A. They are not like they were as far as the drinks on them.

Q. Except for the types of drinks that are on the stands in the pictures, are they as they were on June 24, 1971, except for the chocks under the fronts of the left rack as you face the photograph? A. Yes, they are in the

same position.

Q. Let me show this photograph to you.

MR. GILLETTE: Perhaps counsel would like to see it first. (Examined by counsel.)

BY MR. GILLETTE:

Q. I ask you first if that shows a side view [page 54] of the right rack? A. (Examines) Yes.

Q. That would be a side view of the rack that the Coca-Colas were in on the grand opening day? A. Correct.

Q. Can you tell us whether or not that photograph in any way shows what you meant by the shelf not being exactly level? A. It is not that the rack is not level. The shelves go down a quarter of an inch, maybe.

Q. Is it correct that as you look at the photograph -

MR. HARRIS: Let him answer the question.

MR. GILLETTE: Fine.

A. As far as the racks, the racks were, you know, straight, other than there might have been a quarter of an inch tilt to it from here to here (indicating).

BY MR. GILLETTE:

Q. You are saying that due to the way the rack is built, from the back of the rack to the front of the rack, the shelf goes down a little bit? A. Yes.

Q. You say that that is approximately a quarter of

an inch?

[page 55] A. Yes.

****

BY MR. HARRIS:

Q. Did you measure it, Mr. Redd? A. No, sir.

Q. That is just by your eye? A. Just by my eye.

MR. HARRIS: That is all.

BY MR. LANDRUM:

Q. Mr. Redd, had you advertised that free Cokes were going to be given away that day? A. Yes, sir.

Q. You had? How did you advertise? A. Do you mean what did I advertise in?

Q. Yes, sir. How did you advertise? How did the people that were coming there know that they were going to get a free Coca-Cola or free Pepsi Cola? A. I advertised with handbills, in the Virginian-Pilot, the Tidewater News and by radio.

Q. I assume that you had a little stand or booth or something set up to give out the free Coca-Colas. Is that correct? A. Yes. It was a table. It was a thing that [page 56] Coca-Cola furnished.

Q. These drinks were being given out in paper cups? A. Yes.

Q. Where was that table or stand with reference to the racks that we are talking about here? A. Right in front

of these racks.

Q. How far was it from the racks? A. 7 feet,maybe.

****

BY MR. GILLETTE:

Q. Mr. Redd, do you know who put the chocks under the left rack? A. I really don't know. I don't know whether my brother did or who. I don't know.

Q. Is it your testimony that you really had not examined the racks closely until after the accident? A. That is correct.

Q. That was when you noticed the things about

[page 57] which you testified? A. Right.

Q. Would it also be true that it is not unusual for customers or shoppers in the store to bump into merchandise? A. Right.

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MARION C. OWENS

Direct Examination

BY MR. LANDRUM:

**

[page 64] Q. It is my understanding that you were on the premises of Redd's Supermarket when you were injured on June 24, 1971. Is that correct? A. Yes, sir.

Q. Who was with you at that time? A. My daughter-in-law, Nancy Lowe.

Q. Is she the lady who is here today? A. Yes, sir.

[page 65] Q. Was there anyone else with you? A. No, sir, not with me.

Q. What is Mrs. Lowe's address? A. Franklin.

Q. Franklin, Virginia? A. I don't know what route or box it is.

Q. Was anyone else with you or not? A. No, sir.

Q. How did you happen to come upon the premises of Redd's Supermarket? Did you come there for the opening, or what? A. Well, I live right across the road in front of it. I hadn't bought groceries, so we went over to buy groceries.

Q. At what time did you arrive there? A. I think I went in about 12 o'clock.

Q. 12 noon? A. Somewhere around about that.

Q. Had you seen the activities going on there that day prior to the time you went over? A. Sir?

Q. You were aware of the fact that there was a grand opening; is that correct? A. Yes, sir.

Q. Did they have any flags outside or streamers

[page 66] outside, or anything, or not? A. They just had the little streamers out, but no flags.

Q. Had you observed the store from time to time that day before you actually went over there, yourself? A. Yes, sir.

Q. Was there a pretty big crowd over there? A. Yes, sir. They had a tremendously big crowd over there.

Q. Is it fair to say that there was a good turnout, that there were a large number of people who had been in and out of the store before you went over? Is that correct? A. Yes, they had a good business.

Q. Would you say there had been several hundred people or more who had been to the store that you could see before you got there? A. It would be hard to say.

Q. It would be hard to say? A. Yes.

Q. Did you see people going to and from the store during the morning before you went there? A. Yes, sir.

Q. Tell me everything that happened from the time you started from your place until this accident occurred.

[page 67] A. I went over in the store and got a cart and started picking up my groceries. I had finished my grocery shopping. They had a dairy box back there, just a little, small box with salads and cottage cheese, and things like that, in it. I use a lot of that. So I had gotten some of them and was putting them in my cart. I was getting ready to go on around. I would have come around the back aisle to the checkout stand. This man came out from the back door with a tray. He had a tray balanced on his hand like this (illustrating). He came around in front of my cart and walked around by me. The tray just

struck the bottle up on the corner of that shelf. The bottle wasn't sitting back on the shelf. When he struck it, it just fell off and exploded and went in my leg.

Q. This man, was he a white man or a Negro man? A. Yes, sir, he was a white man.

Q. Could you describe him? A. No, sir, I cannot, because I wasn't paying that much attention to him. I just know that he had on a gray uniform. That is all I can tell you.

Q. When you say "a gray uniform", what do you mean by that? A. Gray pants and shirt. I would say it [page 68] was a uniform - pants and shirt.

Q. Was he a young man or old man? A. Sir, I could not tell you.

Q. Do you recall the color of his hair? A. No, sir, I can't, because I wasn't paying that much attention to him. I wasn't looking at his face.

Q. Did he have a name plate on the front of his shirt, by any chance, or not? A. I don't know, sir. I can't tell you.

Q. Did he have a name of any kind on the back of his shirt? A. Not that I know of.

Q. Do you recall in which hand he had the tray? A. In the right hand.

Q. Do you recall what kind of tray it was? A. It was a gray plastic type tray and had a curved rim. He

just had it balanced up on his hand.

Q. Do you recall what was on the tray? A. Sir, I do not know. It was about this deep (indicating).

BY MR. HARRIS:

Q. Let's see that again. Show us how deep

[page 69] it was. A. About that deep (indicating).

MR. HARRIS: Can we all agree that that is about 5 or 6 inches?

MR. LANDRUM: Yes.

A. It was just about that deep.

BY MR. LANDRUM:

Q. You do know that he had something on the tray, and the tray was about 5 to 6 inches deep. Is that correct? A. Yes, sir. I did not see what was on the tray. I don't know.

Q. Do you recall whether it was boxes? A. No, sir.

Q. Or vegetables, or what? A. No, sir. Just the tray was all I noticed.

Q. What was on the tray that was 5 to 6 inches deep? A. I could not see in it - see what was in it. I have no idea.

Q. Are you telling me that the tray was 5 to 6 inches deep? A. Yes, sir. It was a tray, or more of a

[page 70] pan. We used those trays at the restaurant sometimes to pick up dishes and things off the tables. It was something of that type.

MARION C. OWENS

Q. Could you tell whether the tray was empty or loaded? A. No, sir, I could not tell.

Q. Was he holding it with one hand or both hands? A. One hand, like this (illustrating).

MR. HARRIS: Let the record show that she is holding her hand with the palm up and close to her ear, over her right shoulder.

BY MR. LANDRUM:

Q. Was he walking slowly or fast? A. He was walking pretty rapidly as if he was in a hurry.

Q. Had you seen that man in the store before this accident occurred? A. No, sir, I hadn't. I had not noticed him in there.

Q. Can you tell us where he came from with reference to where these racks were? Describe his path from the time you first saw him until he struck the bottle. A. The door to the back was on the right.

[page 71] He came out of that door, right in front of me, in front of my basket, as to make a turn to come back in there to go out that aisle. I don't know where he was going or what he was doing.

Q. Did he pass on your right or your left? A. He came around in front of me and came back on my left like that (indicating).

Q. I don't mean to confuse you, but I don't understand exactly what you mean. Can you take a piece of paper

here and draw a little diagram showing the aisles of the store and then the position of your cart, and then make a line showing his path, if you will?

MR. GILLETTE: I have a photograph, if that will help.

MR. LANDRUM: I would rather see a diagram.

A. The dairy bar with the milk and butter and things is right here, back over here like this (indicating).

BY MR. HARRIS:

Q. Mrs. Owens, as you mark everything will you write down what it is - for instance "dairy bar"? A. Yes, sir. There is an open space. The meat counter is over here like this.

[page 72] BY MR. LANDRUM:

Q. Mark that. A. (Does) The door that comes out of the back is right here.

Q. Draw the door. A. I am sorry.

Q. That is fine. Mark that door, if you will. A. All right, sir. (Does) They had the little machine where they were giving out free Pepsi Colas. It was at the end of this meat counter. They had this little dairy box, just a little open icebox, right here beside this where the salads and things were.

Q. Mark that "Salads." A. (Does)

Q. Draw the counter also where the racks or stands were. A. That is what I am getting ready to do right now. Right here is the counter. These are the soft drinks here (indicating).

Q. Mark that. A. (Does) They were on both sides. This rack is right here and this rack here (indicating).

Q. Mark that "Drinks". A. (Does)

[page 73] Q. Will you draw your basket and draw your position at the time the accident occurred. A. I would say this would be my basket right here and this would be me right here (indicating).

Q. You were standing behind the basket? A.Yes, sir.

Q. Take the pencil and draw his path from the door until the time the accident occurred. A. All right, sir. (Draws)

BY MR. HARRIS:

Q. Put an arrowhead on that. A. (Does)

BY MR. LANDRUM:

Q. Did you actually see him come out of the door here? A. Yes.

Q. Did you see him walk around in front of you? A. Yes, sir.

Q. You saw him walk around to here (indicating); is that correct? A. Yes.

Q. Did you actually see him strike the bottle.

[page 74] A. Yes, sir.

Q. Which shelf was the bottle on that he struck, if you know? A. It was on the fourth shelf. The bottle was right here, hanging over. It was on the fourth shelf.

Q. It was on the fourth shelf? A. Yes, sir.

Q. You say it was hanging. What do you mean when you say it was hanging? Do you mean that it was on the shelf? A. It wasn't sitting back on the shelf.

Q. I see. A. It was sitting more on the edge of it.

Q. There wasn't any part of the bottle hanging over the shelf, was there? A. Yes, sir.

Q. How much of the bottle was hanging over the shelf? A. I would say about that far (indicating).

Q. But the bottle, though, was staying there by itself until he struck it, wasn't it? A. Yes, sir.

Q. Were there any other bottles in close proximity to this one bottle here that we are talking about? A. The whole rack was lined with bottles.

[page 75] Q. Could you see the racks there without any trouble? A. Yes, sir.

Q. Did you notice whether or not there were many bottles missing from the racks? A. Sir, I don't think there were too many missing from there.

Q. But there were some missing; is that right? A. Yes, sir.

MARION C. OWENS

Q. Tell me then, were there any bottles next to that one on the corner here, as far as you know, or not? A. I don't think there was one here (indicating), but they were in back of it here.

Q. There were bottles in back of it; is that correct? A. Yes, sir. I don't think there were any right next to it here.

Q. The bottles that were in back of it, as far as you could see were they back snug in the rack or not? A. They were just all on the shelf there, placed on the shelf there.

Q. As to the rest of the bottles, did they

[page 76] appear to be back against the rack as far as you could tell or not? A. Yes, sir, back.

Q. Do I understand your testimony to be that there was only one bottle that appeared to be a little forward on the shelf? Is that correct? A. Yes, sir, the one right there in the corner.

Q. There were no bottles next to that bottle; is that correct? A. No, sir, I don't think there were any right next to it. I think there was a space of maybe two bottles in there and then the others.

Q. What kinds of bottles were in the racks? A. I don't know of anything but the Coca-Cola bottles. That was

the only thing. I don't remember seeing anything but Coca-cola bottles.

Q. You never saw any Pepsi Cola bottles? A. I don't drink any drinks. I wasn't paying any attention to them. But I know that these were Coca-Cola bottles, I do know that. There might have been some Pepsi Cola bottles up there, but I am not going to say either way, because I can't be definitely sure. But I know there were Coca-Cola bottles.

Q. Did you see the bottle actually fall on [page 77] the floor? A. Yes, indeed.

Q. Did you see the bottle break? A. Yes, sir.

Where was the glass after the bottle broke? A. On the floor.

Q. Where was it on the floor? A. Just about here (indicating).

Q. Draw a circle there, if you will. A. (Does)

Q. And mark that "Bottle". A. (Does)

Q. How far was the glass from that rack? A. I will say approximately 3 feet.

Q. Was the glass all in one place or not? A. No, sir. It just shattered, because it made an explosion like when it hit. It shattered.

Q. Could you estimate the circumference of the area where the glass was located? A. It was a good size area.

MARION C. OWENS

I would say it would cover most of this here (indicating) where it shattered. It just shattered and went all over everywhere.

Q. Do I understand from your testimony that it was in a rather large circle? Is that right?

[page 78] A. Yes, sir.

Q. If I understand your testimony, the glass hit at a point about 3 feet from the rack; is that correct? A. Yes, sir.

Q. Is it fair to say that the center of the glass would be about 3 feet from the rack? Is that correct? A. Yes, sir.

Q. How far were you from the rack? A. I would say I was about 4 feet from the rack.

Q. When you say "4 feet," do you mean from the point here to this edge of the rack (indicating)? A. Yes, sir.

MR. LANDRUM: Let the record show that she is indicating the perpendicular distance from where she was standing to the edge of the rack.

BY MR. LANDRUM:

Q. Where did the bottle strike with reference to the point where you were standing? A. I am not a very good judge of distance.

Q. Approximately? A. I would say about 2 feet behind me.

Q. In which direction were you looking at

[page 79] the time the bottle hit? A. I was here waiting for him to get around me so that I could go on around here and come out at the checkout stand which was back this way (indicating).

Q. In which direction were you facing at the time the bottle hit? A. This way (indicating).

You were facing in this direction here (indicating)? A. Yes, sir.

Q. So you could see him all right? A. Yes, sir.

Q. You could see the racks O.K.? A. Yes, sir.

Q. And the bottle hit about 2 feet behind you? Is that correct? A. Yes, sir.

Q. Directly behind you or off to one side or the other? A. I would say directly behind me.

Q. Did you see the bottle strike. A. Yes, indeed.

Q. How did you see the bottle strike if you were looking down here and the bottle fell behind you?

MR. HARRIS: When you say "down here",

[page 80] why don't you say "toward the dairy box"?

A. He came around and hit that bottle. How are you going to miss seeing it?

BY MR. LANDRUM:

Q. How did the bottle get from this point here to about 3 feet away? A. It was just the way he struck it with that tray.

MARION C. OWENS

Q. How would you describe what happened when he struck the bottle - that is, was he walking fast and struck it hard and knocked it off? Was that what happened, or did he pick it up and carry it along on the tray for awhile? A. No, sir. The tray just struck it.

Q. I see. A. And knocked it off.

Q. Where did the glass strike you? A. On my leg.

Q. Which leg? A. The right leg.

Q. Where on the right leg? Show me, if you will. A. (Does) It was right here.

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[page 85] **Q. Did you tell him about somebody knocking off a bottle? A. Yes, sir, I did.

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[page 86] Q. Could you see what kind of bottle it was? A. Yes, sir.

Q. What kind of bottle was it? A. It was a Coca-Cola bottle.

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[page 87] **Q. Now the man in the gray uniform that you were talking about, did you see him later that day or not? A. No, sir. I did not see him any more. I don't know whether he went out of the store or not. I did not see him.

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[page 110] BY MR. RUSSELL:

Q. Mrs. Owens, going back to the man who came out of the back of the store with the tray- A. Yes, sir.

Q. - can you describe the size of that tray? You told us that it was approximately 6 inches deep. Approximately how long and how wide do you remember its being? A. The tray was about this long and about so wide (indicating).

MR. RUSSELL: One and a half by one?

MR. HARRIS: Yes.

A. I can show you one at the restaurant where I used to work.

BY MR. RUSSELL:

Q. It is the same type that you use to pick up dirty dishes? A. Yes. I would not say it is exactly the same size.

Q. You have already testified that you didn't know what was in it. But from the way he was carrying it did it appear that it had something in it, or could you tell?

[page 111] A. I could not tell.

Q. Was it a plastic or metal tray? A. It was a plastic type tray.

Q. A plastic type? A. Yes.

Q. From your experience with that type tray, do you have any idea what it would weigh empty? A. No.

Q. Are they light? A. Not too light, no, sir, because it has a heavy edge to it - a curved rim.

Q. He passed in front of you and then went around on your left? A. Yes, sir.

Q. And then he struck the drink bottle? A. Yes, sir.

Q. You mentioned that he had on a brown shirt and pants like a uniform? A. Gray.

Q. Gray? A. Yes, sir.

Q. Was this the jacket type or was it shirt and pants, or do you remember? A. I don't remember. I just know that it was gray. I took it to be a shirt.

[page 112] Q. It was a uniform type of thing? A. Yes,sir.

Q. You have lived in Windsor how long? A. I have been there five years the 15th of November.

Q. When you went over to Mr. Redd's supermarket you knew most of the employees by sight, anyway, didn't you? A. No, sir, I didn't know them. I had seen the Redd brothers, because I know that they have a store in Walters. I had stopped there several times for bread and gasoline, and things. I had seen them there.

Q. Have you ever seen any of his employees in such a getup or uniform as this? A. No, sir.

Q. Have you ever seen any delivery people, delivering bread or milk, that wore a uniform similar to that? A. I haven't paid that much attention to them.

Q. You are in there all the time, aren't you? A. I go in and out all the time, yes, sir.

Q. But you paid attention to this man on this day? [page 113] A. From the way he came around by me, because I had to stop and push my basket for him to go around in front of me.

Q. When he went around in front of you the tray was in his right hand? A. Yes, sir.

Q. By the time he got next to the drink bottles he would have been between you and the tray; is that not true? A. Yes, sir.

Q. What I don't understand is how could you actually see the bottle at the moment the tray struck it? I can see that you could see him coming toward the bottle, but it would look like to me that as he struck it he would have been in between. A. The way he was holding the tray-it wasn't back like this (indicating), but he was holding his hand up like this.

Q. Up even with his shoulder? A. I would not say even with his shoulder exactly, but up this way. The tray being that long would protrude out from his hand. It

hit the corner. There was no way in the world to miss seeing it.

Q. Was the tray at least shoulder height? A. Yes.

[page 114] Q. Was this man taller than you or shorter?

A. About the same height.

Q. How tall are you? A. 5-8.

Q. You think that he was about the same height as you? A. Just about.

Q. The bottle came off of which shelf? A. The fourth shelf.

Q. The fourth shelf? A. Yes, sir.

Q. You testified - and I am sure it is true - that you don't drink soft drinks? A. No, sir.

Q. There would be nothing about a soft drink stand that would have any interest to you, whatsoever? A. No, sir.

Q. Then isn't it a little odd, Mrs. Owens, that you would pay particular attention to the way one bottle was sitting on the shelf? A. No, I don't think so.

Q. Do you remember how the tomato cans were sitting that day? A. Yes. They were all stacked up. Things stay on the shelves pretty neat.

[page 115] Q. Do you remember how the peas were stacked?

A. No, because I don't buy those, so I don't notice them.

MARION C. OWENS

Q. Isn't it true, Mrs. Owens, that the first thing which attracted your attention to the drink stand was when he hit that bottle and knocked it off? A. No, sir. I had seen the drink bottle. There was no way you could miss it, because it was right there in the aisle.

Q. On what shelf were the orange drinks? A. I did not see any orange drinks.

Q. On what shelf were the grape drinks? A. I did not see anything but the Coca-Cola bottles.

Q. If they were there you would have seen them, wouldn't you? A. Yes, sir. If they were there I would have seen them.

Q. As far as you are concerned there was nothing there except Coca-Cola bottles? A. That was the only thing I know of.

Q. If there had been others there you would have seen them? A. I think so.

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[page 117] BY MR. HARRIS:

Q. I believe you said that you were rolling your basket along when this man came from your right out of that door? A. Yes, sir. I had just bought my salad.

Q. Was that a swinging door? A. No, sir, it was not a swinging door.

[page 118] Q. It is just pushed open, the way the man was going who had the tray? A. It opens from the back into the store.

Q. Into the store? A. Yes.

Q. Is that a place for employees only where he came from? A. So far as I know.

Q. You had not seen customers going back there? A. No, sir, I hadn't seen customers going back there.

Q. This man had on a light gray uniform? A. Yes,sir.

Q. With no signs or anything on it? A. Not that I noticed.

Q. You would have noticed, because you have been right astute in noticing everything else. You would have noticed that, wouldn't you? A. I think I would have noticed it if there had been anything on it.

Q. There was no sign on it? A. No, sir.

Q. What color hair did he have? A. Sir, I can't tell you.

[page 119] Q. Did he have hair? A. I could not tell you that, either.

Q. Do you know that it was a man? A. Yes, sir. He had on pants, anyway.

Q. That is all you know, that he had on pants; is that right? A. Yes, sir.

Q. That is the reason you say he was a man? A. Yes,

sir.

Q. About your height? A. Yes, sir.

Q. When he came out that door you had to stop suddenly with your cart, didn't you? A. I would not say I stopped suddenly. But when I went to move he came around in front of me, and I could not push the cart against him.

Q. You stopped, didn't you? A. Yes, sir.

Q. Was he rushing or walking rapidly? A. He was making pretty good time.

Q. What do you mean by "pretty good time"? A. I would say he was like he was in a hurry.

Q. He attracted your attention; is that right?

[page 120] A. Yes.

Q. You just kept your eyes right on him as he circled around to your left? A. I would not say that I kept my eyes right on him.

Q. What was so unusual about him that you were following him around and watching all of the drinks and everything at one time? A. When he walked in front of me I thought it was kind of silly for him to come out and walk around in front of me. I had to stop my basket for him to come around me.

Q. Did he pause or slow down, or anything? A. No,sir.

Q. He kept right on? A. He did not stop.

Q. He was making a short turn to his left, wasn't he? A. Yes.

Q. Did he slip? A. No.

Q. You are sure of that? A. I am sure he didn't slip.

Q. Do you know what kinds of shoes he had on? A. No, sir.

[page 121] Q. Did he have a moustache? A. I could not tell you.

Q. Did he have on glasses? A. Not that I know of. I am not sure.

Q. How old did he appear to be? A. Sir, I could not tell you.

Q. Was he a youngster? A. No, he wasn't a young boy.

Q. Could you say approximately how old? A. I would hate to say.

Q. Why? A. Because I really don't know.

Q. You said that he wasn't a young boy? A. No, he wasn't a young boy, but I can't judge anybody's age. I couldn't do it.

Q. You mean that you won't do it, or you can't do it? A. Really I don't know.

Q. Because you did not see him? A. Yes, I saw him.

Q. In his right hand he had this tray that was about

6 inches deep? A. Yes.

Q. Was it up by his eyes? A. No, sir.

[page 122] Q. Did he swing the tray away from his shoulder when he made that turn? A. No, sir.

Q. When was it that you noticed the bottle sitting up there? Was it before this or after? A. I noticed the bottle sitting on the shelf, off the edge of the shelf, before he came out.

Q. Were you the only person around? A. No, I wasn't the only person around.

Q. Did you do anything about the bottle sitting there? A. No.

Q. Did you push it back on the shelf? A. No.

Q. You stood right there? A. I was busy. I was getting my groceries. It wasn't up to me to push that bottle back.

Q. So when he came out and made that sudden right turn you saw the tray strike that bottle. Is that right? A. Yes, sir, I did.

Q. And you say that it hit hard enough so that it knocked it at least 3 feet out in front of the stand? A. Well, I won't say it hit it so hard, sir, but that was where it landed.

[page 123] Q. Did it hit it? A. Sure, it hit it.

Q. You saw it, didn't you? A. Yes, sir.

Q. And you said that it went from the shelf which was the fourth shelf up? A. Yes, sir.

Q. It went at least 3 feet out onto the floor? A. Yes, sir.

Q. Was that what happened? A. Yes, sir.

Q. So it had to hit it hard enough to knock it 3 feet forward, didn't it? A. That was where it hit.

Q. That was where it hit? A. That is right.

Q. And your left side was to all of that? A. Yes, sir.

Q. You have no idea by whom this man was employed, if he was employed? A. No, sir, I don't.

Q. He was just another person as far as you knew; is that right? A. I don't know. I can't say.

[page 124] Q. You don't know. That is right.

MR.HARRIS: That is all I have.

MR. RUSSELL: No further questions.

BY MR. LANDRUM:

Q. Mrs. Owens, I would like for you to write your name on this (diagram) and date the diagram, please, if you would. A. Date it today?

Q. Yes, ma'am. A. (Does)

MR. HARRIS: I would like to ask her a couple more questions.

MR. LANDRUM: I would like to introduce this as "Defendants' Exhibit No. 1" and file it with the original depositions.

BY MR. HARRIS:

Q. Mrs. Owens, you say that you did notice that bottle sitting up there before the man came out the door and knocked it off? A. Yes, sir.

Q. How far away were you when you noticed that? A. Not too far from it.

[page 125] Q. That does not tell me a thing. About how far were you away from it? Was it the length of this room? A. No.

Q. Half the length of this room? A. When you are in a place like that you notice the different groceries or displays on the shelves. I picked up the salad right at the meat counter. Then I turned, because I wanted to see what was on that side, because they had good bargains in there that day.

Q. How far away were you from that? A. I would say approximately 5 to 6 feet.

Q. And that was when you saw the bottle up there? A. Yes, sir.

Q. Was the bottle teetering or moving back and forth? A. No, sir.

Q. It was sitting right up there, but solid on the shelf? A. Just like that (indicating with a paper cup).

Q. It was just a tiny bit over? You recognized it as being something that could be dangerous; is that right?

[page 126] A. Well, I guess it could have been. But I was like everybody else. Nobody else was doing anything about it.

Q. But you walked up closer to it, anyway, didn't you? A. No closer than when I went by there to pick up my groceries.

Q. That was closer, wasn't it? A. I was as close to it as some of the others.

Q. You walked up closer to it after you saw it sitting there on the shelf that way, didn't you? A. I went on by it. I did not walk up any closer to it.

Q. You said that you were about 4 feet away from it when this happened, but you were 6 feet away when you saw it sitting there? A. Well, I went over there by the salad counter. I probably was a little bit closer to it as I went by to pick up my salad.

Q. Where was the salad counter? Was that right behind you as you walked by it? A. On the side.

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[page 138] BY MR. LANDRUM: Q. Did you ever tell them about

the man with the tray knocking off the bottle? A. Yes, I did.

Q. To whom did you tell it? A. I told both of the Messrs. Redd that have been in here today.

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NANCY NIXON LOWE

Direct Examination - By Mr. Landrum

[page 142] Q. It is my understanding that you were
[page 143] present on the premises of Redd's Supermarket when Mrs. Owens was involved in an incident on or about June 24, 1971. Is that right? A. Yes, sir, that is correct.

Q. At what time did you get to the premises of the supermarket? A. It was, say, 12:30 or 1 o'clock. I don't remember the exact time.

Q. How far did you live from the supermarket? A. Just across the street.

Q. You were aware of the fact that they were having a grand opening; is that correct? A. Yes, sir.

Q. Had you looked out and seen the store from time to time during that morning before you went over there or not? A. Yes, sir.

Q. Did you see other people going to and from the

store? A. Oh, yes, sir. I could not help it. I was across the street.

Q. Was there a large number of people going to and from the store? A. Yes, sir.

Q. Would you say there had been at least

[page 144] several hundred people in and out before you got there? Is that a fair statement or not? A. I could not say how many were there, but they had a nice grand opening.

Q. At the time you arrived were there other people in the store? A. Oh, yes.

Q. Was the store pretty crowded? A. Oh, yes.

Q. Is it fair to say that there were people in all the aisles of the store, walking back and forth? A. Shopping, yes.

Q. Were there children running up and down the aisles, playing, back and forth or not? A. I don't remember. Anyway, children will do this, yes.

Q. Is it fair to say that you saw a large number of people in the store and a large number of children? Is that correct? A. Yes.

Q. Tell me everything that happened from the time you came in the store until this accident occurred. A. Well, we entered the store. Of course it was new, so we

did not know where anything was. So

[page 145] naturally we were looking and shopping at the same time.

At the time of the accident we were standing between the cold storage case and the Coca-Cola rack where the drinks were stored. The gentleman carried the tray like this (illustrating) over his head and walked by and a bottle fell on the floor and glass went everywhere.

Q. Where was the man with the tray when you first saw him? A. I wasn't noticing the man. I did not notice him until I saw him walk by and then the bottle fell. I could not tell you what he had on. All I know is that he did have a tray over his head. He was holding it up like this (indicating).

Q. Was he a young man or old man? A. I did not notice him.

Q. Was he white or a Negro? A. He was white.

Q. What color hair did he have? A. I could not tell you. I would not be able to tell you what color hair your hair is when I leave here.

Q. Did he appear to you to be around twenty-one years of age? A. A young person I would say. I say "young" because I feel that I am young. I don't imagine he was much

[page 146] younger than I am.

Q. What color clothes did he have on? A. I could not tell you. To be honest, I can't remember what color he had on.

Q. Did you see his face or not? A. Oh, I saw his face, but I could not tell you what color his eyes were.

Q. Did he have on glasses? A. I could not tell you.

Q. Did he have any sign or name or anything on the front of his shirt? A. I did not notice.

Q. Did he have any sign or name on the back of his shirt? A. I could not tell you that, either.

Q. Where was he when you first saw him? A. He was going by. He passed between my mother-in-law and the rack. He walked like this (illustrating). I don't know where he was going. He went down that aisle.

Q. Where were you standing at the time he walked by? A. I was standing beside her with my little girl.

Q. Were you standing on the right of her or [page 147] on the left of her? A. On the left.

Q. On the left of her? A. Yes, sir. I am not sure, but I am pretty sure.

Q. What is your best recollection as to where you were standing? A. I was standing next to the cold storage case, so I would have to say that I would be on her left.

Q. Did you have a clear view of your mother-in-law?

A. Oh, yes. She was standing right there beside me.

Q. Did you have a clear view of the drink racks? A. I would say yes.

Q. Could you look and see the drink racks without any trouble? A. Yes, sir.

Q. Were the drink racks filled up, or were there some bottles missing in the drink racks? A. There may have been a few missing. I can't say. But it was pretty full. After all, it was the grand opening. They were keeping things stocked up.

Q. Had you seen them stocking anything up?

[page 148] A. Oh, yes. That was what the gentleman with the tray was doing. He was restocking.

Q. What was he restocking? A. I don't know. I did not stop and ask him.

Q. How do you know he was restocking? A. Because he was carrying the tray, just like any other store would use to restock with. I don't know what he had in the tray. At the time of the incident it wasn't that important to us. We did not realize what damage it had actually done, so we did not worry. We were not concerned with these little details.

Q. What did he have in the tray? A. I don't know. I could not tell you. I assume that that was what he was doing. I don't know.

Q. Did you see the drink rack before he got to the

drink rack? A. Oh, yes. I had seen it before he ever appeared.

Q. Had you walked pretty close to the drink rack before the accident occurred? A. I had walked by it.

Q. How close had you gotten to it? A. I would say 2 or 3 feet from it, anyway.

Q. And you looked at it?

[page 149] A. Yes, sir.

Q. Did you see anything in the drink rack to cause you any concern or not? A. No. It was just an ordinary drink rack.

Q. Did the drinks appear to be in place, other than the missing bottles? A. Like I said, it was stocked pretty well full.

Q. Did you see any drinks laying on their sides, or anything like that? A. No. I did not see any laying down. They were all sitting up.

Q. They were all sitting up? Did you see any drinks hanging over the edge of the shelf or not? A. I would say there might have been a few. I could not swear to it. This particular bottle was hanging over the edge, but it was full.

Q. Pardon? A. The rack was full. Maybe there were one or two bottles missing, but it was pretty full.

Q. How many bottles did you see hanging over the

edge? A. I could not tell you. I am not even going to give you a number, because I couldn't.

Q. Did you see any bottles at all hanging

[page 150] over the edge? A. There were all kinds of bottles in that rack.

Q. What kinds of bottles were in the rack? A. Coca-Cola, Pepsi and 7-Up. The rack was full with different kinds of bottles.

Q. Did you see any drinks at all hanging over the edge before this man passed by? A. I can't answer that question because I don't know. I did not look at the rack close enough to tell whether the bottle was hanging over the edge or not. That is as honest as I can be. I am sorry if you want something else, but that is the best I can do.

Q. Is it fair to say that you did not see any drink bottles hanging over the edge? A. No, it would not be fair to say that, either.

Q. Did you see any drink bottles hanging over the edge? A. What do you mean by "hanging"? Do you mean half off or what?

Q. Assuming that this is a drink rack and the bottles are back there sitting in the rack, and this is the side of the rack, did you see any bottles hanging over the edge like

that or not?

[page 151] A. There wouldn't be any hanging over that far; is so, I surely would have noticed it.

Q. Did you see any hanging over at all? A. There could have been some hanging just a little bit over the edge. There could have been. I am not saying there was.

Q. So you don't know if there were any drink bottles hanging over the edge; is that right? A. I don't know.

Q. Describe the path of the man with the tray, and what happened from the time he walked by you until the bottle broke. A. The best of my recollection is that my mother-in-law was standing here and I was standing here. My little girl was with me, of course. To my recollection he walked between the drink rack and my mother-in-law with the tray. Just as he passed by the bottle fell.

Q. Did he bump into the rack? A. I could not tell you.

Q. Did he strike the rack? A. I could not tell you that, either.

Q. Did you see the tray strike any bottles on the rack? A. No, sir. As I said, I did not notice it that much. I did not even notice him when he went by until

[page 152] the bottle fell. So I don't know whether he hit the bottle or the rack, or what he hit. All I know is that as he went by the bottle fell.

Q. Did you see the rack shake or move as he passed by? A. No.

Q. Did you see any part of his body or uniform come in contact with the rack? A. No.

Q. Did you see any part of the tray come in contact with the rack? A. No.

Q. Where was the bottle when you first saw it? A. It was sitting on the rack, naturally. It was close to the edge. I can't say whether the bottle was hanging over the edge or not. I want you to understand that. But it was at the front of the rack, as all of them were.

Q. Then when did you next see the bottle? A. When it hit the floor and shattered.

Q. Did you ever see the bottle in the air before it struck the floor? A. No, I did not.

Q. Where was the man when the bottle struck [page 153] the floor? A. I don't know, to be honest.

Q. Where did the bottle hit? A. As he walked by the rack the bottle fell. He turned, I guess.

BY MR. HARRIS:

Q. Don't guess. If you saw it happen,say so, but don't guess. A. I am only telling you what -

Q. - what you saw, and do not guess at anything. A. I can only guess at the feet, because I did not measure them.

Q. You say that you guess he turned around. If you saw him turn around, that is all right. A. All right, strike it then. I don't know whether he turned around or not. I will put it that way. But I am pretty sure that if I heard something break I would turn around.

Q. State just what you saw. A. O.K. He was about 2 or 3 feet I would say past the rack when I heard the bottle fall. O.K. Is that all right?

[page 154] BY MR. LANDRUM:

Q. You say that you heard the bottle fall? A. Yes.

Q. Was that what attracted your attention that a bottle had fallen? A. Yes. I was looking in the cold storage case at the time. When the bottle hit I was more concerned with my daughter than I was my mother-in-law, until I saw the blood on her leg.

Q. Where did the bottle hit with reference to where your mother-in-law was standing? A. It hit almost right in front of her.

Q. Right in front of her? A. Yes, sir.

Q. How far from her? A. I could not say. It could not have been more than a foot or foot and a half.

Q. Where was your mother-in-law looking or pointing at the time the bottle fell - that is, was she pointing toward the rack or down the aisle, or where? A. No, she

wasn't turned toward the rack. Her side was to it, to the rack.

Q. Her side was to the rack? A. Yes, her right side.

Q. Where did the bottle fall? You said that [page 155] her right side was turned toward the rack? A. Yes, sir. I think now. I am pretty sure it was, yes.

Q. Where did the bottle fall with reference to where she was standing? A. It fell I would say in front - like catercornered to here.

Q. In front of her or on the side of her? A. I will show you the best I know how.

Q. Let's do that. A. She was standing like this, and the bottle fell like this (indicating).

Q. Draw a diagram, if you will, showing the counters and the door to the back of the premises. A. I don't know anything about the door to the back of the premises. I haven't been in there but twice.

Q. Draw a diagram of the interior of the store and the racks, the best you can. A. O.K. (Draws) This is the drink rack. I do know that. The cold storage is along in here. I am not very artistic. Right here, if I remember correctly, they had a case that had Camellia foods in it, like potato salad, cold slaw and stuff old that. What they have now I don't know. All along here they had a meat

counter.

Q. What is this right here that you have

[page 156] drawn? A. That was where they had the meats and stuff.

Q. Write "Meats", if you would. A. (Does)

Q. What was over here? A. That was where they kept eggs, hot dogs, bologna, milk, orange juice - stuff like that.

Q. Write that on there, if you would. A. (Writes)

Q. "Dairy Products" is all right. What is this right here? A. That is where they had a special, Camellia foods.

Q. Write "Camellia foods" there, if you will. A. (Does) This is the drink rack.

Q. What was behind the drink rack? A. There is a counter right along here, unless they have moved it. Anyway, it was there then. This had cookies and stuff like that.

Q. Draw a square or rectangle, the best you can, showing where your mother's cart was located at the time the accident occurred. A. I can't remember even having a cart. I don't think we had a cart. I am not sure. I can't [page 157] swear to it. But I could show you where my mother-in-law was standing.

Q. Draw a circle showing where your mother-in-law was standing. A. This is approximately where she was

standing (indicating). I was right here with my daughter, as I remember.

Q. Draw a line showing where the man was from the time you first saw him until the accident occurred and he left the area where the accident occurred. A. As I remember he came from back here, which is the storage room. He came from back here and came around like this. That is the way I remember it.

Q. He came around like that? A. Yes.

Q. Put an arrow in front of that. A. (Does)

Q. And mark opposite that "Direction of Man." A. (Does)

Q. Assuming that the circle there is your mother-in-law, point with an arrow the direction in which she was looking, if you will. A. She was looking like this (indicates). She was talking or something.

[page 158] Q. Write over here "Mrs. Owens." A. (Does)

Q. To whom was she talking? A. Mr. Spence.

Q. Mr. Spence? A. Yes, sir.

Q. I see. Where was Mr. Spence standing? A. Right here, I imagine (indicating).

Q. Draw a line out from that and mark that "Mr. Spence." A. I don't even know his full name.

Q. Draw a circle where the bottle fell, or where you saw the glass. A. Right here (indicating). Of course

that was where it hit and splattered. That was where most of the glass and Coca-Cola was.

Q. Draw an arrow away from that bottle. A. (Does)

Q. As I understand your diagram, your mother-in-law was looking in this direction here? A. Yes, sir.

Q. Which would mean that her right side would be toward the point where the bottle fell; is that correct? A. Yes.

[page 159] Q. And he went in this direction here; is that correct? A. Yes, sir.

Q. How far was the point where the bottle hit from the drink rack? A. I would say maybe a foot or foot and a half, not any more.

Q. In which hand did he have the tray that we are talking about here: the right hand or the left hand? A. I could not tell you. I do know that I saw him carrying it over his head like this (illustrating), but I could not tell you what hand he had it in. I honestly couldn't.

Q. And you were with her? A. I was with my mother-in-law.

Q. Did you see any counters anywhere close by where they were giving free Pepsi Colas or free Coca-Colas? A. I can't remember. I am pretty sure I did, but I don't remember.

Q. Did you see any free Coca-Colas being given away?

A. I don't know.

Q. Did you see any free Pepsi Colas being given away?

[page 160] A. I don't remember.

Q. Do you remember anybody asking you all if you wanted a free Pepsi? A. I don't remember that.

Q. Do you recall what your mother-in-law was talking to Mr. Spence about? A. No, sir. I wasn't listening.

Q. What happened to the gentleman who had the tray after the bottle fell? A. As I say, he went on down the aisle. Where he went then I don't know.

Q. Did he come back or not? A. I don't remember.

Q. I wonder if you would write your name on this diagram and date it, please. A. What is the date of today?

BY MR. RUSSELL:

Q. The 22nd, all day.

MR. LANDRUM: I would like to have this marked for purposes of identification, also. (Marked by the reporter "Defendants' Exhibit 3 for Identification.")

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[page 163] BY MR. LANDRUM:

Q. Could you tell what kind of bottle it was? A. It was a Coca-Cola bottle. To the best of my knowledge it was.

Q. What color was the bottle? A. It was red with a big white Coca-Cola sign on it - one of those big 32 ounce

bottles, I guess was what it was.

Q. Did you actually see "Coca-Cola" written on this glass that was lying on the floor? A. Yes. I think I would be correct if I said "Yes."

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[page 165] BY MR. RUSSELL:

Q. Just two or three little quick questions. The identity of the man who had the tray you really don't know at all, do you? A. No, sir. I could not tell you.

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[page 167] BY MR. HARRIS:

Q. Mrs. Lowe, I have just a couple of questions. I tried to pick up your testimony. At one time you said you were not paying particular attention, and then again you seemed to know right much about what happened. Let me ask you this now. Your mother-in-law has stated that she did have her eyes on this man who was coming out of the door, and that he did have the tray up. A. Yes, he did.

Q. And that he was walking hurriedly, at a fast pace. A. Yes.

Q. Not running, but was walking at a fast pace as if he were in a hurry to get somewhere. A. Yes.

Q. And that he swung around in front of her and she saw the tray hit the bottle and knock it off the rack. Were you in a position to see whether or not it actually hit the

bottle, or would you agree with her that it did hit the bottle and knock it off? A. I am going to have to say that I can't agree with either one of you, because I don't know.

Q. You just don't know? A. No, sir. I did see the man with the tray, and he did walk -

[page 168] Q. Was he between you and the rack when he went by? A. When he went around he went around my mother-in-law, see, with the tray.

Q. So you would not say that he did not hit the bottle? A. No.

Q. And you would not say that he did hit the bottle? A. No, sir.

Q. And the reason for that is that you couldn't see; is that right? A. That is right.

Q. Either that or you were not paying that much attention? A. But I did see it when it hit the floor, and it was in front of my mother-in-law.

Defendant's Exhibit 1
(TMP - 12/22/72)

Defendant's Exhibit 3 for Id

Nancy N. Lowe
Dec. 21, 1972

Direction
Man
Wire
Fence
Wire
Fence
Barn
Barn door
Barn door
Barn door

Filed February 8, 1973

MOTION FOR SUMMARY JUDGMENT

Comes now the defendant, Allegheny Beverage Corporation, and pursuant to Rule 3:20 of the Rules of the Supreme Court of Virginia, moves this Honorable Court for summary judgment by reason of the following:

1. That paragraph eight of the plaintiff's Motion for Judgment states that an agent, servant or employee of the defendant, Cecil Redd and Charles Redd, while carrying a tray at a position above his shoulders, negligently, carelessly and recklessly struck and knocked or caused to fall from the display racks alleged to have been set up by this defendant, a large glass bottle of Coca-Cola under pressure, causing said glass bottle of Coca-Cola to strike the floor of said supermarket with great force and to thereby explode shooting and driving with great force and violence fragments of the broken Coca-Cola glass bottle deeply into plaintiff's leg.

2. That on December 22, 1972 a deposition of the plaintiff, Marion C. Owens, was taken at the law offices of her attorney.

In this deposition, copy of which is enclosed and begged to be read as part of this motion, the plaintiff testified unequivocally, at length, without hesitation and on several different occasions throughout the deposi-

tion that a man she could not identify came from a door in back of the store with a tray balanced on his hand up by his shoulder, came around in front of her cart at a rapid pace and that the tray struck a bottle on the corner of the shelf and that when he struck it, the bottle fell off and shattered.

This defendant refers specifically to pages 67 through 80, pages 110 through 115 and pages 117 through 126 of the deposition in support of its motion.

3. That under the facts and circumstances elicited both from the pleadings and the plaintiff's own testimony the proximate cause of the accident and injury was the negligence of a person unidentified except by way of allegations in the Motion for Judgment which alleges in paragraph eight that the unidentified person who knocked the bottle from the stand was an agent, servant or employee of the defendants Cecil Redd and Charles Redd, individually and t/a Redd's Supermarket.

WHEREFORE, the defendant, Allegheny Beverage Corporation moves this Honorable Court for summary judgment and dismissal from this case.

ALLEGHENY BEVERAGE CORPORATION

By /s/ William M. Harris
Of Counsel

Filed February 8, 1973

MOTION FOR SUMMARY JUDGMENT

Comes now the defendant, Norfolk Coca-Cola Bottling Co., Inc., and pursuant to Rule 3:20 of the Rules of the Supreme Court of Virginia, moves this Honorable Court for summary judgment by reason of the following:

1. That paragraph eight of the plaintiff's Motion for Judgment states that an agent, servant or employee of the defendant, Cecil Redd and Charles Redd, while carrying a tray at a position above his shoulders, negligently, carelessly and recklessly struck and knocked or caused to fall from the display racks alleged to have been set up by another defendant, a large glass bottle of Coca-Cola under pressure, causing said glass bottle of Coca-Cola to strike the floor of said supermarket with great force and to thereby explode shooting and driving with great force and violence fragments of the broken Coca-Cola glass bottle deeply into plaintiff's leg.

2. That on December 22, 1972 a deposition of the plaintiff, Marion C. Owens, was taken at the law offices of her attorney.

In this deposition, copy of which has previously been forwarded to this Honorable Court and begged to be read as part of this motion, the plaintiff testified unequivocally, at length, without hesitation and on several

different occasions throughout the deposition that a man she could not identify came from a door in back of the store with a tray balanced on his hand up by his shoulder, came around in front of her cart at a rapid pace and that the tray struck a bottle on the corner of the shelf and that when he struck it, the bottle fell off and shattered.

This defendant refers specifically to pages 67 through 80, pages 110 through 115 and pages 117 through 126 of the deposition in support of its motion.

3. That under the facts and circumstances elicited both from the pleadings and the plaintiff's own testimony the proximate cause of the accident and injury was the negligence of a person unidentified except by way of allegations in the Motion for Judgment which alleges in paragraph eight that the unidentified person who knocked the bottle from the stand was an agent, servant, or employee of the defendants Cecil Redd and Charles Redd, individually and t/a Redd's Supermarket.

WHEREFORE, the defendant, Norfolk Coca-Cola Bottling Co., Inc. moves this Honorable Court for summary judgment and dismissal from this case.

NORFOLK COCA-COLA BOTTLING CO., INC.

By /s/ Philip E. Landrum
Of Counsel

Filed April 2, 1973

April 2, 1973

Messrs. Robert E. Gillette and G. Blair Harry, Attorneys at Law
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Mr. Joseph C. Russell, Attorney At Law
200 West Grace Street - Room 426
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Mr. Philip E. Landrum, Attorney at Law
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Norfolk, Virginia 23510

Mr. William N. Harris, Attorney At Law
Virginia National Bank Building
Norfolk, Virginia 23510

Mr. Allan S. Reynolds, Attorney at Law
One Main Plaza East
Norfolk, Virginia 23510

Re: Marion C. Owens

v.

Cecil Redd and Charles Redd, t/a

Redd's Supermarket, et al.

Gentlemen:

After reviewing the transcript and the authorities submitted I am of the opinion that the motion for summary judgment should be sustained for the defendants: Norfolk Coca-Cola Bottling Company, Incorporated; Pepsico, Incorporated; and Allegheny Beverage Corporation, The motion for summary judgment is denied as to the other defendants.

It is apparent that there will be some conflict as to the agency of the employee or person who actually knocked the bottle off the shelf and caused the injury. With regard to the corporate defendants, they certainly could not have foreseen that someone would knock a bottle off the shelf. The plaintiff by her own deposition exonerates the corporate defendants from any liability in this case. There is no evidence that this bottle would have fallen for any other reason than the fact that it was knocked off the shelf by a man carrying a tray who came from the back room of the store. The bottle was struck with such force that it landed at least three feet out in the aisle. The evidence further discloses that the bottles were placed on the rack some two or three days earlier and that some bottles had been removed. The space between the bottles at the time of the accident indicates that someone either bought or moved other bottles. Certainly there is no evidence to indicate that any of the corporate defendants, their agents, or employees, played any part in this.

The negligence of the man with the tray was the proximate cause of the accident. The bottle would not have fallen but for this act of negligence.

I would appreciate Mr. Harris' preparing the necessary order, preserving plaintiff's exception to the Court's ruling.

It was my understanding when the motions were heard that Pepsi-Cola Bottling Company of Central Virginia which was represented by Francis Clark would be non-suited. I would appreciate Mr. Gillette's forwarding to me an order non-suiting Pepsi-Cola Bottling Company of Central Virginia.

Yours very truly,

/s/ James C. Godwin

James C. Godwin, Judge

JCG:E

Filed May 16, 1973

O R D E R

This day came the defendants, Cecil Redd, Individually, Charles Redd, Individually, Cecil Redd and Charles Redd, t/a Redd's Supermarket, Norfolk Coca-Cola Bottling Co., Inc., Pepsico, Inc., Allegheny Beverage Corporation on their individual motions for summary judgment and Marion C. Owens, the plaintiff, all by counsel, and was argued.

After argument and after reviewing the transcript and the authorities submitted and studied, it is

ORDERED that the motions for summary judgment be sustained as to the defendants Norfolk Coca-Cola Bottling Co., Inc., Pepsico, Inc., and Allegheny Beverage Corporation, and they are herewith dismissed.

It is further ORDERED that the motion for summary judgment is herewith denied as to the defendants Cecil Redd, Individually, Charles Redd, Individually and Cecil Redd and Charles Redd, t/a Redd's Supermarket.

To all of which action by the Court the plaintiff, Marion C. Owens and the defendants, Cecil Redd, Individually, Charles Redd, Individually and Cecil Redd and Charles Redd, t/a Redd's Supermarket, respectfully except.

5/16/73

/s/ James C. Godwin

Judge

Filed May 23, 1973

NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS

Plaintiff, Marion C. Owens, hereby gives notice of appeal from the order rendered in this case on May 16, 1973, to the Supreme Court of Virginia and hereby assigns the following errors:

1. The Court erred in entering its order sustaining the motions for summary judgment as to the defendants, Norfolk Coca-Cola Bottling Co., Inc. and Allegheny Beverage Corporation.

2. The court erred in ruling that there were no material facts genuinely in dispute.

3. The court erred in ruling that the defendants, Norfolk Coca-Cola Bottling Co., Inc. and Allegheny Beverage Corporation could not have been negligent in causing plaintiff's injuries.

Pursuant to Rule 5:6 of the Supreme Court of Virginia, a transcript of facts and testimony is to be hereafter filed in accordance with Rule 5:9.

Respectfully,

Marion C. Owens

By /s/ Robert E. Gillette
Counsel

CERTIFICATE OF SERVICE

This is to certify that, at the time of filing the Brief of the Plaintiff in error with the Clerk of the Supreme Court of Virginia, twenty-five copies of the foregoing Appendix were filed in the office of the Clerk of the Supreme Court of Virginia, by mailing same on December 17, 1973, and that three copies of the foregoing Appendix were mailed to each of the following: Joseph C. Russell, 200 West Grace Street, Room 426, Richmond, Virginia 23220, Counsel for Defendant in error, Cecil Redd, individually, Charles Redd, individually, Cecil Redd and Charles Redd, t/a Redd's Supermarket; Philip E. Landrum, 519 Board of Trade Building, Plume and Atlantic Streets, Norfolk, Virginia 23510, Counsel for Defendant in error, Norfolk Coca-Cola Bottling Co., Inc.; and William M. Harris, 1440 Virginia National Bank Building, Norfolk, Virginia 23510, Counsel for Defendant in error, Allegheny Beverage Corporation, all done this 17th day of December, 1973, pursuant to Rule 5:35 of the Rules of the Supreme Court of Virginia.

Robert E. Gillette