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FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

214 Va. 427

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 8268

RUTH CUTHRELL,
Appellant

v.

ZAYRE OF VIRGINIA, INC., AND
TERESA K. CUSTER,
Appellees

JOINT APPENDIX

Albert C. Selkin
White & Selkin
1500 Virginia National Bank Bldg.
One Commercial Place
Norfolk, Virginia 23510
Counsel for Appellant

John W. Winston
Seawell McCoy Winston & Dalton
936 Wainwright Bldg.
Norfolk, Virginia 23510
Counsel for Appellee

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

RUTH CUTHRELL,	:	
Plaintiff,	:	AT LAW DOCKET
vs.	:	NO. 14619
ZAYRE OF VIRGINIA, INC., A Corporation	:	
Serve: James R. Farley Registered Agent 10 South Tenth Street Richmond, Virginia,	:	
and	:	
TERESA K. CUSTER, c/o ZAYRE'S 5112 Virginia Beach Boulevard Virginia Beach, Virginia,	:	
Defendants,	:	

MOTION FOR JUDGMENT

Plaintiff, Ruth Cuthrell, moves this Honorable Court for judgment and award of execution against the Defendants, Zayre of Virginia, Inc., a corporation, and Teresa K. Custer, jointly and severally, in the sum of Seventy Five Thousand ($75,000.00) Dollars, of which Twenty Five Thousand ($25,000.00) Dollars is for compensatory damages and Fifty Thousand ($50,000.00) Dollars is for punitive damages, plus court costs, and legal interest for the following, to-wit:

1. Plaintiff, Ruth Cuthrell, on or about June 8, 1970, was shopping in the store of the Defendant, Zayre of Virginia, Inc., which store is known as Zayre's and is situated at 5112

M. WHITE
EY AT LAW
OLK VA.

Virginia Beach Boulevard in Virginia Beach, Virginia.

2. At all times herein the Defendant, Teresa K. Custer was the agent and employee of the Defendant and was acting in the course and scope of her employment and agency.

3. That the Defendant, Zayre of Virginia, Inc., expressly and impliedly ratified, confirmed and approved the acts and conduct of the Defendant, Teresa K. Custer, as alleged herein.

4. The acts committed by the Defendants against the Plaintiff, alleged herein, occurred on or about and subsequent to June 8, 1970.

5. While in the store of the Defendant, Zayre of Virginia, Inc., the Plaintiff was confronted by the Defendant, Teresa K. Custer, who was then and there acting as an agent and employee of the Defendant, Zayre of Virginia, Inc.

6. The Defendants, and each of them, falsely and maliciously and without reasonable or probable cause, caused the Plaintiff to be arrested, which false arrest resulted in opporession, annoyance, humiliation, ridicule, pecuniary loss, emotional and physical harm and distress, and other injury and damage to the Plaintiff.

7. The Defendants, and each of them, falsely and maliciously and without reasonable or probable cause caused the Plaintiff to be prosecuted and tried before certain of the courts of this City and State on certain charges which were dismissed, all of which malicious prosecution resulted in opporession, annoyance, humiliation, ridicule, pecuniary loss, emotional distress, physical and emotional harm, and other injury and damage to the Plaintiff.

8. The Defendants, and each of them, falsely and maliciously caused the Plaintiff to be wrongfully detained, kept, held and imprisoned at and on the business premises of the Defendant, and at the police station in the City of Virginia Beach, all of which false imprisonment and detention resulted in great emotional and physical harm and distress, oppression, humiliation, ridicule, annoyance, pecuniary loss, and other injury and damage to the Plaintiff.

9. The Defendants, and each of them, wrongfully and forcefully committed assault and battery upon the body and person of the Plaintiff, while the Plaintiff was at and upon the business premises of the Defendant, all of which assault and battery resulted in great emotional and physical harm and distress and damage to Plaintiff's person and property and further resulted in oppression, annoyance and humiliation, ridicule, pecuniary loss and other injury and damage to the Plaintiff.

10. The Defendants, and each of them, spoke and published false, scandalous, malicious and insulting words to and about the Plaintiff which the Plaintiff or any reasonable person would construe and did construe as insults tending to induce violence and a breach of the peace in the presence of the Plaintiff and members of the public violative of statute and law, all of which insulting words have resulted in injury to Plaintiff's name, credit, and reputation and embarrassment, humiliation, mortification, emotional and physical disorder, anguish and anxiety, pecuniary loss, as well as other injury and damage to the Plaintiff.

11. The Defendants, and each of them, falsely and maliciously spoke and declaimed false, scandalous and malicious and defamatory words to and about the Plaintiff in the presence and hearing of the Plaintiff and members of the public, all of which slander and defamation has resulted in humiliation, embarrassment, mortification, pecuniary loss, and attack upon Plaintiff's good name, credit and reputation, and other injury and damage to the Plaintiff.

WHEREFORE, Plaintiff moves this Honorable Court for judgment and award of execution against the Defendants, jointly and severally, in the sum of Seventy Five Thousand ($75,000.00) Dollars, of which Twenty Five Thousand ($25,000.00) Dollars is for compensatory damages and Fifty Thousand ($50,000.00) Dollars is for punitive damages, court costs, and legal interest.

RUTH CUTHRELL

By: _____
Of Counsel

Robert M. White, p.q.
1500 Virginia National Bank Building
Norfolk, Virginia 23510

Filed in the Clerk's Office the 3 day of June, 19 71

W 15.00
F 30.00
I 1.00
Total Paid $ 46.00

Clerk

T M. WHITE

6-12-70 10:00 A.M. Pol

DOCKET NO. 19225

CITY OF VIRGINIA BEACH

vs. { WARRANT OF ARREST 14942
Ruth Esther Cuthrell

800 Washington Dr., Chesapeake, Va.

Executed this, the 8th day of June, 1970

Lt. A. E. Kuth

Upon the examination of the within charge, I find the accused

Bond $200
gmk

N.G.

FILED
AUG 10 1970
JOHN V. FENTRESS, Clerk
By _____ D.C.

Fine ..... $ .....

Costs 7.25

The following witnesses were recognized to appear before the Circuit Court of Virginia Beach, Virginia, at _____, Virginia, at _____ M., on the _____ day of _____, 19____, under penalty of $ _____

COSTS

Warrant	$
Trial	
Bail	
Arrest	
Mileage	
Clerk	
Jail Fee and Board	
Witness Attendance	
Summoning Witnesses	
Commonwealth Attorney	
Total Costs	$
Fine	

ATE OF VIRGINIA
TY OF VIRGINIA BEACH

} To-Wit:

No.

TO ANY CITY SERGEANT OR POLICE OFFICER:

Whereas, Robert L. Slater, Sp. Off., Zayre #536, Va. Beach, Va. 449-3736

s this day made complaint and information on oath before me, James B. Loftin, Jr.
NAME

Justice of the Peace of the said City, that Ruth Esther Cuthrell
TITLE

300 Washington Dr., Chesapeake, Va. in the said City

-d on the 8th day of June, 19 70: Unlawfully and wilfully take,

steal and carry away one Blue Hat of one Zayre and a value of 66 cents,

n violation of Sec. 23-27 of the Code of said City

Zayre

PLTF. DEFD. EXHIBIT

Cuthrell Zayre

DATE 12/8/72

gainst the peace and dignity of the Commonwealth of Virginia.

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and ing before the Municipal Court of the said City, City Hall, Borough of Princess Anne at Princess Anne, irginia, the body (bodies) of the above accused, to answer the said complaint and to be further dealt ith according to law.

Given under my hand and seal, this 8th day of June, 1970

James B. Loftin (SEAL)
TITLE OF ISSUING OFFICER

6

A Copy Teste: John V. Fentress, Clerk

By Doris S. Hale D. C.

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH

(To-Wit:

No. _____

TO ANY CITY SERGEANT OR POLICE OFFICER:

Whereas, Teresa K. Custer, Sp. Off., Zayre #536, Va. Beach, Va. 499-3796 has this day made complaint and information on oath before me, James B. Loftin, Jr. Justice of the Peace of the said City, that Ruth Esther Cuthrell, 800 Washington Dr., Chesapeake, Va. in the said City did on the 8th day of June, 1970: Unlawfully and wilfully take, steal and carry away one Blue Hat of one Zayre and a value of 66 cents, in violation of Sec. 23-27 of the Code of said City

against the peace and dignity of the Commonwealth of Virginia.

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Municipal Court of the said City, City Hall, Borough of Princess Anne at Princess Anne, Virginia, the body (bodies) of the above accused, to answer the said complaint and to be further dealth with according to law.

Given under my hand and seal, this 8th day of June, 1970

Signed by James B. Loftin, Jr. (SEAL)
Title of Issuing Officer
Justice of the Peace

A Copy Teste: John V. Fentress, Clerk

By Signed by Doris S. Hale, D. C.

PLTF. DEFD. EXHIBIT 10
Cathers Seymour
DATE 12/5/72
PLM

Sec. 23-27. Injuring, etc., property[8]—Generally.[9]

If any person, unlawfully, but not feloniously, take or carry away, or destroy, deface or injure any property, real or personal, not his own, he shall be guilty of a misdemeanor. (Ord. No. 25, § 12.)

Sec. 23-28. Same—Malicious, etc., injury to fences, trees, etc.

Every person who shall maliciously, wantonly or carelessly mark with chalk or daub with paint, cut, break or otherwise injure or deface any fence, wall, post, lamppost, lamp or lantern, tree, tree box, show window, house or other building or sidewalk in or upon any of the streets, lanes or public squares of the city, shall be guilty of a misdemeanor. (Ord. No. 25, § 29.)

Sec. 23-29. Lewd and lascivious cohabitation.[1]

If any persons, not married to each other, lewdly and lasciviously associate and cohabit together, or, whether married or not, be guilty of open and gross lewdness and lasciviousness, they shall be fined not less than fifty nor more than five hundred dollars; and, upon a repetition of the offense, and conviction thereof, they may also be confined in jail not less than six nor more than twelve months. (Ord. No. 25, § 28.)

Sec. 23-29.1. Major recreational equipment—Limitations on parking, storage and use, etc.

Defined. Major recreational equipment includes travel trailers, pickup campers or coaches, motorized dwellings, tent trailers, boats and boat trailers, amphibious houseboats and the like and cases or boxes used for transporting recreational equipment whether occupied

8. As to tampering with property of Virginia Beach patrol, see § 6-79 of this Code. As to injuring, etc., public refuse receptacles, see § 17-15. As to injuring traffic signs, see § 22-44. As to injuring, defacing, etc., parking meters, see § 22-158. As to breaking, injuring, defacing, etc., vehicles, aircraft and boats, see § 23-57. As to maliciously, etc., injuring, defacing, etc., books, records, etc., belonging to the public library, see § 27-12. As to tampering with or manipulating taxi meters, see § 34-58.

9. For state law as to property damage generally, see Code of Va., § 18.1-172.

1. For similar state law, see Code of Va., § 18.1-193.

Certified to be a true copy of the City Code of the City of Virginia Beach, Virginia.

Richard J. Webbon

Richard J. Webbon, City Clerk.

7

DOCKET NO. 19236

CITY OF VIRGINIA BEACH

vs. { WARRANT OF ARREST
Ruth Esther Cathrell

800 Washington Dr., Chesapeake, Va.

Executed this, the 8th day of June, 1970

Lt. A. E. Smith

Upon the examination of the within charge, I find the accused N.G. Disorderly Conduct

Appeal Noted
Cont. Bond

Fine	$10.00
Costs	8.75
Total	18.75

Judge White Presiding

The following witnesses were recognized to appear before the Circuit Court of Virginia Beach, Virginia, at _____, Virginia, at _____ M., on the _____ day of _____, 19____, under penalty of $_____

COSTS

Warrant	$
Trial	
Bail	
Arrest	
Mileage	
Clerk	
Jail Fee and Board	
Witness Attendance	
Summoning Witnesses	
Commonwealth Attorney	
Total Costs	$
Fine	
Total	$

8

STATE OF VIRGINIA
CITY OF VIRGINIA BEACH } To-Wit: No.

TO ANY CITY SERGEANT OR POLICE OFFICER:

Whereas, Teresa K. Custer, Sp. Off., Zayre #536, 5112 Va. Beach Blvd. Va. Beach, Va. [illegible]-3770

has this day made complaint and information on oath before me, James B. Loftin, Jr. (NAME),

Justice of the Peace (TITLE) of the said City, that Ruth Esther Cuthrell

800 Washington Dr., Chesapeake, Va. in the said City

did on the 8th day of June, 19 70: Unlawfully and wilfully act in a disorderly manner, in violation of Sec. 23-14 of the Code of said City

Cashier Zayre
DATE 6/8/70

against the peace and dignity of the Commonwealth of Virginia.

8970

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Municipal Court of the said City, City Hall, Borough of Princess Anne at Princess Anne, Virginia, the body (bodies) of the above accused, to answer the said complaint and to be further dealt with according to law.

Given under my hand and seal, this 8th day of June, 19 70

James B. Loftin (SEAL)
TITLE OF ISSUING OFFICER Justice of the Peace

9

A Copy Teste: John V. Fentress, Clerk
By [illegible] D. C.

STATE OF VIRGINIA (
(To-Wit: No. _____
CITY OF VIRGINIA BEACH (

TO ANY CITY SERGEANT OR POLICE OFFICER:

Whereas, Teresa K. Custer, Sp. Off., Zayre #536, 5112 Va. Beach Blvd., Va. Beach, Va. 499-3796 has this day made complaint and information on oath before me, James B. Loftin, Jr. Justice of the Peace of the said City, that Ruth Esther Cuthrell 800 Washington Dr., Chesapeake, Va. in the said City did on the 8th day of June, 1970: Unlawfully and wilfully act in a disorderly manner, in violation of Sec. 23-14 of the Code of said City

against the peace and dignity of the Commonwealth of Virginia.

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Municipal Court of the said City, City Hall, Borough of Princess Anne at Princess Anne, Virginia, the body (bodies) of the above accused, to answer the said complaint and to be further dealth with according to law.

Given under my hand and seal, this 8th day of June, 1970.

Signed by James B. Loftin, Jr. (SEAL)
Title of Issuing Officer Justice of the Peace

A Copy Teste: John V. Fentress, Clerk

By Signed by Doris S. Hale, D. C.

formance or is proceeding directly to his place of residence upon conclusion thereof, such officer shall make an immediate investigation for the purpose of ascertaining whether or not the presence of such minor on such street, road, avenue, alley, park or other public place is in violation of the provisions of this Code. If such investigation reveals that the presence of such minor on such street, road, avenue, alley, park or other public place is in violation of the provisions of this Code, then the officer shall cause the minor to be taken to his home or place of residence, and the minor and his parent, guardian or other adult person having the care, custody or control of such minor may be summoned to appear before the judge of the juvenile and domestic relations court to be dealt with in accordance with the provisions of this Code. If the officer deems that it will be for the best interest of the minor, he may be taken to the juvenile division of the bureau of police for further investigation, and if from such investigation the officer shall have cause to believe that the actions of the minor are such as to bring the minor within the purview of the juvenile and domestic relations court law, and if the minor cannot contact a relative bearing a good reputation or other person of good repute to exercise legal authority over the child within the corporate limits of the city, through his or the efforts of the officers of the juvenile bureau who will assume responsibility of the minor, then he shall be held at the detention home of the juvenile and domestic relations court and dealt with by the judge of the juvenile and domestic relations court in the manner provided by law. Should the investigation, however, show that the minor is probably not within the purview of the juvenile and domestic relations court law, and has not violated this or any other provision of law or ordinance, the minor shall be immediately released from custody and returned to his home, or to the custody of his parent, guardian or person having the care, custody or control of the minor. (Ord. No. 319; Ord. No. 323, § 3.)

Sec. 23-14. Disorderly conduct.[1]

Any person who shall within the limits of the city be guilty of disorderly conduct other than that set forth in other sections of this Code shall, upon conviction thereof, be fined not less than one dollar

1. For state law as to disorderly, etc., conduct, see Code of Va., §§ 18.1-254.01 to 18.1-254.12.

As to toleration of disorderly conduct in taxicab, see § 34-30 of this Code.

PLTF. DEFD. EXHIBIT No 3

Caldwell vs Zaczyk et al

DATE 9/15/72

10

nor more than five hundred dollars or be confined in jail not exceeding six months, either or both. (Ord. No. 25, § 16; Ord. No. 267.)

Sec. 23-15. Disorderly houses—Keeping, etc.

It shall be unlawful for any person in the city to keep, maintain or operate, for himself or as an officer of or agent for any corporation, association, club, lodge, or other organization, or under the guise of any corporation, association, club, lodge or other organization, any disorderly house or place where disorderly persons meet or may meet for the purpose of illegally dispensing or indulging in intoxicating liquors, gaming or boisterous or other disorderly conduct. In any prosecution for his offense, the general reputation of the place in question may be proved. (Ord. No. 25, § 17.)

Sec. 23-16. Same—Frequenting, residing in, etc.

It shall be unlawful for any person to frequent, reside in or visit any place as referred to in section 23-15 for the purpose of illegally dispensing or indulging in intoxicating liquors, gaming or boisterous or other disorderly conduct. (Ord. No. 25, § 17.)

Sec. 23-17. Disturbing the peace.

It shall be unlawful for any person to disturb the peace of others by violent, tumultuous, offensive or obstreperous conduct, or by loud or unusual noises, or by unseemly, profane, obscene or offensive language, or by threatening, challenging to fight, assaulting, fighting or striking another. (Ord. No. 25, § 18.)

Sec. 23-18. Drainage easements, etc. — Permission for alteration of existing surface.

It shall be unlawful for any person to alter in any way the existing surface of any public road, right of way, drainage easement or other public property in the city until such person, shall have first obtained permission for such improvement from the city planning commission. The city planning commission or its agent shall specify any and all such improvements to be made and shall also specify the condition upon which improvements shall be made in order to insure the satisfactory completion of such work in the interest of the general public.

This section shall be enforced by the city planning commission or its agent. (Ord. No. 25, § 5.)

Certified to be a true copy of the City Code of the City of Virginia Beach, Virginia.

Richard J. Webbon

Richard J. Webbon, City Clerk

. C.C. 19

e of Virginia, City of Virginia Beach, to-wit:

I, Teresa K.Custer, do solemnly swear (or affirm) that I will

ort the Constitution of the United States, and the Constitution of the State of Virginia, and that I

faithfully and impartially discharge and perform all the duties incumbent upon me as

pecial Police Officer Zayre Dept.Store on the premises of 5112 Va.Beach Blvd

ording to the best of my ability. So help me God.

Teresa K. Custer

I, Richard R.Garriott in and for the

City of Virginia Beach, in the State of Virginia, do certify

t Teresa K.Custer this 24th day of April,

70, personally appeared before me in my City aforesaid and took and subscribed

above oath.

Richard R. Garriott

DC

PLTF. DEFD. EXHIBIT

No X

Cathrell vs Zayre et al

DATE 12/5/72

PM

Know All Men by These Presents, That we, Teresa K.Custer
Principal and Fidelity & Deposit Co.of Maryland Surety

are held and firmly bound unto the Commonwealth of Virginia in the sum of One Thousand Dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. And as to this bond, we hereby severally waive our homestead exemption.

In Testimony Whereof, we hereunto subscribe our name and affix our seal this, the 24th day of April, 19 70

The Condition of the Above Obligation Is Such, That whereas, the above bound Teresa K.Custer,who was this day appointed Special Police Officer for Zayres Department Store,Va.Beach Va.

PLTF. DEFD. EXHIBIT
DATE

Now, therefore, if the said Teresa K.Custer as aforesaid, shall faithfully discharge the duties of the office, post or trust of Special Officer, then this obligation to be void; otherwise to remain in full force and virtue.

Teresa K. Custer [SEAL]
644 Spooner Rd [SEAL]
Va. Beach Va. 23462 [SEAL]
Fidelity and Deposit Company of Maryland. [SEAL]
By [SEAL]
Attorney-in-fact [SEAL]

Virginia:

In the Clerk's Office of the Circuit *Court for the* City *of* Va.Beach, *the* 24th *day of* April, *19*70.

This bond was executed and acknowledged by the obligors, and ordered to be recorded.

the suret therein having first justified on oath that estate, after the payment of all just debts, and those for which he bound as security for others, and expect to have to pay, worth the sum of Dollars, over and above all exemptions allowed by law.

Teste:

John L. Fentress, Clerk.
By: D.C.

C. W. WARTHEN CO., NO. 603-1

A Copy Teste: John L. Fentress, Clerk
By D. C.

KNOW ALL MEN BY THESE PRESENTS, That we, Teresa K. Custer Principal and Fidelity & Deposit Co. of Maryland Surety are held and firmly bound unto the Commonwealth of Virginia in the sum of One Thousand Dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. And as to this bond, we hereby severally waive our homestead exemption.

IN TESTIMONY WHEREOF, we hereunto subscribe our name and affix our seal this, the 24th day of April, 1970.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, THAT whereas, the above bound

Tersa K. Custer, who was this day appointed Special Police Officer for Zayres Department Store, Va. Beach Va.

Now, therefore, if the said Teresa K. Custer as aforesaid, shall faithfully discharge the duties of the office, post or trust of Special Officer then this obligation to be void; otherwise to remain in full force and virtue.

Signed by Teresa K. Custer (SEAL)

644 Spooner Rd.

Va. Beach, Va. 23462

Fidelity and Deposit Company of Maryland. (SEAL)

By Signed by RubyAnn Dunn (SEAL)
Attorney-in-Fact

/irginia:

In the Clerk's Office of the Circuit Court for the City of Va. Beach, the 24th day of April, 1970.

This bond was executed and acknowledged by the obligors, and ordered to be recorded.

the suret _____ therein having first justified on oath that _____ estate ___, after the payment of all _____ just debts, and those which ___ he _____ bound as security for others, and expect __ to have to pay, _____ worth the sum of _____Dollars, over and above all exemptions allowed by law.

Teste:

John V. Fentress ____, Clerk
By: Signed by
D. C.

A Copy Teste: John V. Fentress, Clerk

By Signed by Doris S. Hale _____D. C.

1 BY MR. SELKIN: ***

2 Q State your full name for the jury.

3 A Ruth Esther H. Cuthrell.

4 Q Where do you live, Mrs. Cuthrell?

5 A 800 Washington Drive.

6 Q In what city?

7 A Chesapeake, Virginia.

8 Q Mrs. Cuthrell are you married?

9 A Yes.

10 Q Do you have any children?

11 A Yes.

12 Q Is Juanita Harless one of those children?

13 A My youngest.

14 Q Is she married?

15 A Yes.

16 Q Was she married on June 8th, 1970?

17 A Yes, sir.

18 Q What is your occupation?

19 A Housewife and real estate salesman.

20 Q Calling your attention to June 8th, 1970,

21 did you have occasion to be in the store known as Zayre's at

22 5112 Virginia Beach Boulevard in the City of Virginia Beach?

23 A Yes. We had gone shopping for graduation

24 gifts for my grandchildren. They had passed. I promised

25 them a watch or something for passing.

1 Q Now, when you say we, who are you speaking of?
2 A My daughter, myself and my two grandchildren.
3 THE COURT: I don't think the jury is
4 hearing you. They have got to hear you, so you
5 better speak up.
6 THE WITNESS: Yes, sir.
7 THE COURT: All right.
8
9 BY MR. SELKIN:
10 Q Your grandchildren were how old at the time?
11 A Ten -- nine going on ten and eight going on
12 nine.
13 Q And what are their names? What are their
14 names?
15 A Well, we call one of them J.R. but he is
16 named after his father, Harry Gilbert, and the other was
17 Anita Ann.
18 Q Anita Ann?
19 A Right.
20 Am I speaking loud enough now?
21 Q No. I think you are going to have to speak
22 a little louder.
23 THE COURT: I think you are going to
24 have to speak a little louder. I don't think
25 it's too plain. The ladies and gentlemen have

1 got to hear you, if they don't they can't
2 help you any.
3 THE WITNESS: Yes, sir.
4
5 BY MR. SELKIN:
6 Q Mrs. Cuthrell could you tell us again why you
7 had gone to the store with your grandchildren and your
8 daughter.
9 A Shopping for them passing.
10 Can you all hear me?
11 A JUROR: Yes.
12
13 BY MR. SELKIN:
14 Q For their passing what in school?
15 A Yes, sir.
16 Q What kind of grades were you looking at?
17 A Well, I have got to admit Ann didn't do so
18 well, but J.R. was beautiful.
19 Q I see. And so you were shopping for them
20 as well as for yourself.
21 A No. I mean I did, but it wasn't -- the
22 expressed purpose was to shop for the children. You know
23 when women, I guess, go in a store they can't come out without
24 buying something.
25 Q All right. Now, had you been to any other

1 stores previous to going to Zayre's?

2 A. Best Company.

3 Q. Had you shopped there?

4 A. Yes.

5 Q. Did you come directly from Best Company to

6 Zayre's?

7 A. Yes.

8 Q. Were the grandchildren with you at Best

9 Company?

10 A. I'm sorry. We stopped and had lunch before we

11 went to Zayre's.

12 Q. All right. Did you make any purchases at Best?

13 A. Yes.

14 Q. Were they paid for?

15 A. Oh, yes.

16 Q. And now we are in -- let's put you in Zayre's.

17 You are walking in the front door. Tell us, as best you can

18 recollect, exactly what you did, what purchases you made,

19 any discussions you had. Just tell us what you can recall

20 during the time you were in Zayre's, as best as you can

21 recall now.

22 A. I don't know if it would be total recall. I

23 may have to backtrack to remember the incidents as they

24 followed each other.

25 We had gone there on the way to Zayre's because

there was a paper we had received, occupant, in the mail and there were some articles in there Mrs. Harless, my daughter, wanted to look at. There were some shoes, which were for Ann, she wanted to get. But we also went there with the expressed purpose of finding watchbands for the watches we had purchased at Best Company for the children, because they had the regular - what they call old timey bands and they wanted the mod bands. So we went to the watch counter. And being the last day of school we were all just shopping.

We kind of cut up a little bit. We were looking and making talk about this and that and the other. And the children picked out the bands. And there were some -- on the corner was a whirl around eyeglass, sunglass thing. Ann wanted a pair of the mod glasses and she was shopping for those. She picked up a pair and I said, "Ann they look better on mamma. Let her have those, Ann. You get another pair." So Ann picked up some other, the mod type and put them on and she wanted to keep them on, so we told her not until they were paid for.

And we shopped around the store for different things. There was a set of glasses and -- I'm sorry. I can't remember all the purchases and things that were made, but they were getting bundlesome.

My daughter was pregnant at the time and was not

1 supposed to be on her feet too much.

2 Q How many months pregnant was she, if you can

3 recall? This was June, 1970.

4 A That was June and she delivered in October,

5 but her pregnancy was not the normal -- she was having

6 troubles, because she was not supposed to be on her feet for

7 too long an occasion. But in shopping we had stayed out

8 longer than we really should have.

9 Q She delivered in October? Was that -- did

10 she deliver prematurely, or was that about on schedule?

11 A I believe it was a full term.

12 Q So she would have been approximately five

13 months pregnant at the time.

14 A Right.

15 Q All right.

16 A But I had had -- I was carrying the bundles

17 because she wasn't able to do it. I kept Ann with me. She

18 kept J.R. with her. I went back to the store, through the

19 store to the shoe department and in going to the shoe

20 department --

21 Q Excuse me. Did you shop separately in the

22 store?

23 A No. We stayed together all except for that

24 one time, because we had stopped and asked a lady in

25 reference to some shoes in front of the store. And to me --

Q Go ahead.

A Well, we didn't think they were substantial, so I decided to go to the back of the store and see if I could find some that would be more better quality. As I was going to the back I passed the hat rack. It's these soft summer hats, where you wear with the -- during the summertime, that are -- they are either one color underneath and another color on the top or pale, two tone of the solid color and --

Q One second, Mrs. Cuthrell.

MR. SELKIN: Do you have that hat, Mr. Winston?

(Whereupon, Mr. Winston produced the hat in question.)

BY MR. SELKIN:

Q Is this it?

A Yes, sir.

Q Is that the tag that was on the hat --

A Yes, sir.

Q -- at the time?

A Yes, sir.

Q What is the retail tag value?

A Well, it's a dollar, but I believe it's -- I don't have my reading glasses on. It's a dollar. I learned

1 later it was a dollar for sale, but it's -- sixty-six cents
2 is what Zayre's -- I believe they said was their cost
3 involved in it.
4 Q All right.
5 Q Anyway in buying it I didn't want it
6 crumpled or messed up, being the styled hat it was and having
7 my arms with bundles and my handbag and holding onto my
8 grandchild, so I put it on my head like that.
9 Q Did you have any other hat on your head at
10 the time?
11 A No, but I wear hats quite often. It wasn't for
12 the want of any other thing other than just to keep from
13 crushing it or messing it up so it would be so I could wear
14 it; well, because these are a little hard to iron up unless
15 you have the proper thing to put in the top of it.
16 Q Was it folded at the time?
17 A Oh, no. It was hanging on one of these metal
18 things like they have, you know, where they sit hats on a
19 holder.
20 Q And that was -- can you position that on your
21 head, if you can recall exactly how it was on your head? I
22 would like to see.
23 A Well, to be honest I just kind of picked it up
24 and put it on my head, you know, sort of picked it up -- I
25 didn't place it, because it was more or less someplace to

1 put it so I wouldn't mess it up.

2 Q I see.

3 MR. SELKIN: I guess we'll ask that this

4 be admitted into evidence, Your Honor, as

5 plaintiff's exhibit -- I don't know how --

6 THE COURT: It will be Plaintiff's

7 Exhibit One.

8

9 (Whereupon, the aforementioned hat
10 was received into evidence and
marked for identification as Plaintiff's
Exhibit One.)

11

12 BY MR. SELKIN:

13 Q And this yellow tag was the tag that was on

14 it?

15 A Yes, sir.

16 Q Did you take the tag off?

17 A No, sir. I didn't remove any tag from it.

18 Q The tag stayed on it.

19 A It's the same tag to my knowledge. But to be

20 honest -- I mean I saw the hat and I wanted it. The price

21 tag was on it. I just popped it on. I didn't even know

22 the price of it. I just popped it on my -- I just popped

23 it up on my head until I could get back to the counter to

24 pay for it.

25 Q Does this little inside tag that says "Large,

Made in Japan" indicate the back of the hat?

A. Yes, sir.

Q. I see. So the tag was in the back, is that right, of your head? The back of the hat that was on the back of your head, is that it?

A. No, sir. These hats, if you see, are sewn with the crease to the back rather than to the front, so you can put --

Q. So the --

A. The back seam goes to the back.

Q. The back seam goes to the back. All right.

A. Uh-hum.

THE COURT: Mr. Selkin put this on it. I found it. Now, put it underneath the tag.

BY MR. SELKIN:

Q. Now, Mrs. Cuthrell, after you had placed the hat on your head and proceeded from there, do you recall at that time what you had, what you were carrying at that precise moment?

A. Well, I had a good size, large bag, where we had already been through the check-out counters at one time, and I had a smaller bag and I had my handbag.

Q. And was that it?

A. Yes, sir.

1 Q Were you holding --

2 A It wasn't that. It was --

3 Q Oh, excuse me.

4 A It was right much that it weighed. It wasn't

5 so much that it couldn't have been carried, but it was the

6 contents, glasses and stuff like that, that made it -- you

7 had to be careful to -- carrying was a little bulky.

8 Q Is this your bag, or was this Juanita

9 Harless' bag?

10 A That is one of mine. That was a small one. I

11 had one that was larger than that.

12 Q This was the small bag?

13 A Yes, sir. I had one that was real wide.

14 Q Real wide?

15 Now, the purchases you had made in the store,

16 could you recount what those were? Would it help for you to

17 go through this bag?

18 A It might.

19 Q Well, here. I will give it to you. You just

20 tell us what you had bought and paid for, if anything,

21 before you had reached the check-out counter. Just take

22 your time. I realize there is a lot of merchandise there.

23 A That is the candy. I like those. My children

24 wanted this Fiddle-Faddle.

25 Q All right. Do you recollect -- had the

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A. Yes.

Q. I'm sorry. Let's put them away then.

A. What we did was just threw everything in one bag trying to get everything together.

Q. Let's put those away then.

A. These were -- we made a joke about these. Our husbands always -- we had to fix them two or three cups of coffee, so we fixed them -- we would fix them one and that would suffice. So we made a joke about buying a big cup.

Q. Was this purchased at Zayre's?

A. Yes.

Q. At that price of ninety-nine cents?

A. Yes.

We could also use them for soup bowls.

There are some large glasses missing. They were great big - about that tall and about that big around, ice tea glasses. They were avocado. It's about four of them I had. I don't know where they are at.

Q. And these items here were all purchased at Zayre's?

A. Yes.

Oh, yes. Here are the pair of my -- this was one of the mod watchbands we bought at Zayre's and this is the glasses for my granddaughter. They were all paid for. Here are some of the tickets.

Q These are some of the tickets showing purchases?

A Yes.

Q Do you know whether these receipts were obtained from the check-out counter in the front or --

A In the front.

Q In the front. -- or whether these were purchases throughout the store?

A Oh, no. You have to go through the front. There is only check-out counters in front of the Zayre's.

Q I see.

A And this is the blouse I had on that day. That is my blouse I had on that day.

Q I see. And does that -- is there anything else in those bags?

A No. As I say, there were some large glasses and there was supposed to be another pair of sunglasses, which belong to my daughter, which I bought for her, but --

Q There is some sort of a dish in here.

A Yes, uh-hum.

Q That was also purchased at Zayre's?

A Yes. All of this was gotten at Zayre's. Here is another.

Q Anything else in there? Another dish?

A I have some of the glasses at home; some of

them I don't have.

Q They gave you this flier when you were in Zayre's?

A They put that in the bag when you make the purchase, I imagine, or we may have picked it up in the store. I don't remember.

Q You don't remember. All right. Mrs. Cuthrell tell us after you had bought all these things, or at least after you had shopped for all of these things, did you take all of these things through the check-out counter at the front of the store?

A Yes.

Q And were they all paid for?

A Yes, sir.

Q And they were put in all these bags that we have here.

A Yes.

Q Can you tell me which things were actually brought through the check-out counter by you and which were brought through the check-out counter by your daughter, Mrs. Harless?

A All of it was brought through by me except the glasses. My daughter paid for my grandchild's glasses -- went ahead, because she wanted to put them on.

Q So the glasses were not paid for by you but by

1 your daughter.

2 A. No, sir. That's right.

3 Q. But all the rest of this merchandise was paid

4 for by you through the check-out counter.

5 A. Yes.

6 Q. Now, was this hat on your head at that time?

7 A. Not when I first went through the counters.

8 The first time no. I had spotted a pair of beads, which I

9 have home also, which I bought.

10 Q. Uh-hum. Where was this hat?

11 A. The hat was still in the store. I hadn't seen

12 that.

13 Q. Oh, I see.

14 A. Well, I had seen it and spoke to my daughter

15 about it, but I hadn't made up my mind to get it or not.

16 Q. Did you go through the check-out counter the

17 first time --

18 A. Yes.

19 Q. -- with all these things?

20 A. Yes, sir.

21 Q. Then you went back for something.

22 A. Well, I went back, as I said, to check on the

23 shoes, I believe, and that is when I saw the hat. We had

24 already checked out with some of this stuff.

25 Q. Uh-hum.

A. And I can't recall whether I had noticed the beads or what, but there were a pair of beads on the front. They were something like this only they were blue.

Q. Uh-hum.

A. And where they had been put together it was a flaw. I thought it looked like one of them had gotten melted. It didn't look right. That is when I went back through the check-out counter. I had some other things in that -- oh, that is why I went through the check-out counter the second time - to pay for those. I had them in my hand when I went back to take the shoes back. That is what it was. The mother didn't like the shoes. I took them back in the store. That is when I got the hat. I picked the hat up and put it on my head to pay for the beads.

When I paid for the beads -- I stopped at the -- I don't know if you would call it the information, or lay away desk, or what, but it's one right at the front. I stopped there and mentioned about the flaw in the beads. She told me to go over and speak to the girl and I did. We looked and they were all the same thing, so I figured it was just where they were put together.

Q. Was this after you had paid for the beads that you went to the lady at the information counter or before?

A. I am trying to remember whether I noticed it before or after, but it seems like to me it was after that.

I was going to exchange them for a pair that didn't have a flaw.

Q Did you have all these bundles in your hands, in your arms when you went through the check-out counter the second time --

A I did.

Q -- with the hat on your head, --

A I did.

Q -- the shoes, that you went back for, and the beads?

Were they in this box, the shoes?

A No. The shoes -- the mother and I decided they wasn't -- we didn't want them.

Q I see. You had already purchases those shoes, is that it?

A Yes.

Q I see.

Who had actually purchased those, you or Mrs. Harless?

A I did.

Q You did.

A Being a size eight -- that is my size, unless it's an eight child. Seems like to me it was a pair of sandles. I don't remember to be honest whether it was a sandle for me or a sandle for my grandchild.

1 Q I see. Now, after you -- you say you checked
2 out the second time. Did you pay for anything on that
3 occasion?
4 A The beads.
5 Q The beads. All right. And the hat was on
6 your head.
7 A Yes.
8 Q Did the lady at the check-out counter make
9 any reference to the hat?
10 A No and neither did the girl at the information,
11 when I stopped to ask her about the beads, you know, in
12 reference to the beads, exchanging them for a pair without
13 a flaw.
14 Q All right. Now, going through the check-out
15 counter the second time, do you know where your daughter,
16 Mrs. Harless, was on that occasion?
17 A She had left the store, because she was
18 fatiguing and not feeling well. She was going out to the
19 car and sit, wait for me. I kept Ann with me and J.R. went
20 with his mother.
21 Q So you went to the check-out counter with
22 Ann beside you.
23 A Yes.
24 Q All right. How far did you get and what
25 happened?

A. Well, after the bead routine and one thing or another, I went through the first set of doors and I started to go out the second set and there was a lady standing there. I thought maybe she had come into the store the wrong way, as in those stores sometimes you do, you know. You go in the out door and out the in door.

Q. Is the lady Mrs. Custer, the defendant, sitting over there?

A. Yes, sir, Mrs. Custer.

And I said, "Excuse me". I was going to go around her.

Q. Why did you say "Excuse me"?

A. Well, because I though she was coming in the out door.

Q. Oh. I'm sorry. All right.

A. So I said, "Excuse me" to get around her to go out and because she had her hands kind of like this. I thought she was just coming in the door, but obviously she was -- it was her -- the way to detain me, I guess, from leaving the store. And so, when I said "Excuse me", she said, "You are under arrest". And I thought she might be speaking to someone in back of me. I turned around to look. Wasn't anyone there. I done like that.

And she said, "Yes, you are under arrest."

And I said, "For what?"

1 And she said, "For the hat."

2 And that is when I remembered I still had the

3 darn thing on my head.

4 Q All right. What happened then?

5 A Well, --

6 Q What did she say to you and what happened?

7 A She asked me to come back in the door. I

8 stepped back inside the other set of doors, as you said

9 and the other gentlemen said. I stopped at the counter and

10 asked if I might --

11 Q What counter was this?

12 A Well, the information, or the lay away, or

13 whatever that --

14 Q -- counter is. All right.

15 A -- counter is. And I stopped there. When I

16 stopped she said, "No. Go to the office."

17 And I said, "Well, may I speak to you about

18 it?" I said, "I forgot to pay for it."

19 She said, "No. You are under arrest."

20 I said, "Well, may I speak to the manager?"

21 She said, "He is not here."

22 I said, "Well, may I speak to someone else,

23 who is in charge?"

24 She said, "No, you may not. You are under

25 arrest."

1 And so I asked her could I make
2 restitution, or pay for the hat, or just give her the hat,
3 or pay for it, or just take the hat back, or anything.
4 She said, "No. You are under arrest. No.
5 You are under arrest."
6 Q Did she give you any opportunity to explain?
7 A No.
8 Q Did you explain?
9 A I tried to. I didn't want to take and make a
10 scene. I imagine -- well, I didn't want to raise my voice
11 to make a scene. I didn't want to take and raise my voice
12 so she would listen, because I was getting -- I was
13 embarrassed because of being stopped like that and under the
14 situation -- there was, at that time, -- through the corner
15 of my eye -- some people had stopped and were kind of
16 staring.
17 Q All right. Then what occurred? What did you
18 say to her? What did she say to you? Tell us from that
19 point on giving us, as best you can remember, every detail.
20 A Well, I don't remember exactly how it went,
21 but I do recall telling her that I wasn't trying to leave
22 the store, that I was going with her to the office, but I
23 wanted -- would like to explain. And when eventually I
24 found that she wasn't going to let me explain, I asked her
25 to let me send my granddaughter for my daughter. She let her

go.

When my daughter came in --

Q She let Ann go?

A Yes.

Q So Ann went where?

A She went out to the car to get my daughter, Mrs. Harless.

Q All right. So your daughter, Mrs. Harless, was in the car.

A Yes.

Q All right. Then what happened?

A Well, my daughter came back in and she asked me -- said, "Mamma what is the matter?"

I said, "I forgot to pay for the darn hat."

Q Did you use the word darn?

A Yes, sir.

Q Go ahead. Tell us what transpired then.

A Well, it was mostly because I was embarrassed but mostly because I was exasperated -- I mean because she wouldn't let me explain and because also that I did such a stupid thing as forgot to do that which I had never done before, so that is the reason I used that tone and phrase.

So, when my daughter -- after that Mrs. Harless -- after I said that to Mrs. Harless, Mrs. Custer

said, "Yes. And you are under arrest for your little girl's glasses."

So my daughter said, --

Q. Was she referring to you?

A. No. She was referring to my daughter, Mrs. Harless.

Q. Oh, I see.

A. Because at first previous to that Mrs. Custer had accused me of my -- she thought Ann was my daughter. She had accused me of my grandchild's glasses being stolen.

Q. These glasses, or some other glasses?

A. Those.

Q. These glasses.

A. And I told her that she wasn't my grandchild -- that she wasn't my child, she was my grandchild and that the mother had paid for those glasses there.

Q. Where were those glasses, when she made that accusation?

A. Ann had them on with the price tag still on them. The mother had the ticket in her pocketbook.

Q. That's Mrs. Harless.

A. Yes.

Q. What did you say after that?

A. I didn't say anything on that, not on that

1 particular subject. When Juanita, Mrs. Harless, come in and
2 Mrs. Custer -- after I had spoken to Juanita and told her what
3 was the matter, Mrs. Custer told Mrs. Harless that she was
4 under arrest for the little girl's glasses.
5 My daughter said, "I beg your pardon. I
6 have the ticket right here in my pocketbook."
7 So, --
8 Q All right. Now, --
9 A So she showed her the ticket. Mrs. Custer
10 said, "Well, you are under arrest for disorderly conduct."
11 Well, I figured that was kind of --
12 Q Just one second.
13 MR. SELKIN: May we approach the bench,
14 Your Honor?
15 THE COURT: Sure.
16
17 (Whereupon, counsel approached the
18 bench and had a side bar conference out
19 of the hearing of the court reporter.)
20
21 BY MR. SELKIN:
22 Q All right. Mrs. Cuthrell continue from there,
23 please, from the point where your daughter came into the
24 store and that conversation about the glasses between your
25 daughter and Mrs. Custer had gone on. What happened then?

What was said then?

A. Well, after she had accused Mrs. Harless of the theft of the glasses of my grandchild and Mrs. Harless had proved that she had purchased them and had the ticket, Mrs. Custer told her she was under arrest for disorderly conduct. Whether it was because of the tone that Mrs. Harless had used in showing the ticket and stuff, which wasn't in my estimation what you would call disorderly conduct, -- it was more or less --

Q. All right.

MR. SELKIN: Well, if Your Honor please, at this point I believe her testimony as to what -- should I make a statement in chambers or before the court?

THE COURT: Something you want to ask her?

MR. SELKIN: No, sir. I would like to raise my objection, as I did previously, to the introduction of any testimony regarding the charge of disorderly conduct against Mrs. --

THE COURT: Well, you can ask the question without giving up any objection. If you want to you can put that in the record.

MR. SELKIN: Yes, sir. Well, that is the point.

****

don't see how you could waive it unless you just don't ask the question.

MR. WINSTON: I don't think he has any valid objection. I recognize his right to make one if he wants to.

MR. SELKIN: I make the objection and reserve my objection.

THE COURT: Objection is noted.

MR. SELKIN: All right. Thank you, Your Honor.

BY MR. SELKIN:

Q All right, Mrs. Cuthrell. Can you tell us what occurred from that point on?

A Well, I again tried to explain to Mrs. Custer. I wanted to try to rectify the whole thing right there, because I didn't feel it was that bad a situation that with an explanation it couldn't have been understood and absorbed. So the events took place that she wouldn't give me a chance to explain.

She took hold of my arm to tell me to go to the office. My daughter asked her to not to do that, that her mother was able to walk to go to the office. I had told her that I wasn't trying to leave the store, that I only wanted to make an explanation for the incident.

Q What had she done exactly? What had Mrs. Custer done?

A She just wouldn't give me a chance to explain. All she kept saying was, "You are under arrest. You are under arrest." Once or twice her voice raised a little.

Q All right. Did she at any time make any physical contact with you?

A She took hold of my arm once or twice as though she was going to lead me to the office.

Q All right. And did anything result from her taking your arm to lead you to the office?

A The last time yes, because I was becoming indignant, embarrassed, and I did not wish her to put her hands on me to lead me. I felt that I was capable and mentally intelligent enough to walk to the office.

Q All right.

A So when she put her hand on me, she pulled a little when she did. She didn't have a very good grip and it tore my blouse. The blouse was new. It wasn't old, or rotten, or faded, so it had to be pulled pretty hard to tear.

Q Did she pull you, or you pull away from her?

A She took my arm to pull. I didn't exactly pull back, but I did sort of restrain. I didn't move.

Q And what happened at that point?

A Well, my blouse tore.

Q Is this the blouse?

A Yes, sir.

Q And I take it this is the tear in the blouse.

A Yes.

MR. SELKIN: I suppose we'll introduce this in evidence.

THE COURT: Plaintiff's Exhibit Two.

(Whereupon, the aforementioned blouse was received into evidence and marked for identification as Plaintiff's Exhibit Two.)

BY MR. SELKIN:

Q Did Mrs. Custer apologize for tearing the blouse?

A No, sir.

Q What did she say, if anything?

A Nothing. She just demanded I come to the office, which at that point I did, because I felt that if it was getting to that point on her part that it might become worse. I felt that the best thing, at that point, was to go to the office.

Q How old was this blouse?

A I had worn it once before. It was new. I had purchased it only about a couple weeks before. I wore

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made a phone call.

Q Mrs. who?

A Mrs. Custer made a phone call. And some -- that is when the gentlemen, I believe, come to the office. He stood by the door. But my daughter, at that time, was doing right much of the talking, because she was disturbed about my grandchildren. They were in the car alone and it was very hot. She felt that they weren't old enough to be left out on a lot like that in the car alone. That is something we never do.

Q I see. Were you escorted into any car after that, subsequent to that?

A Yes.

Q And what type of car was that?

A The police car.

Q Were you taken down to a police station?

A Yes, sir.

Q Do you remember which one?

A It's on Independence Boulevard.

Q All right. And were you given this warrant or summons?

A I don't recall being given anything. I was just put in a back room and stayed there at least an hour before anything was done.

Q Were you given a copy of this warrant or

1 summons? Read it over.

2 A. I have read it and -- eventually I imagine we

3 were. I was too upset. My son-in-law took care of that

4 procedure.

5 MR. SELKIN: I move to admit this into

6 evidence, Your Honor, as Plaintiff's Exhibit

7 Four.

8 THE COURT: Any objection?

9 MR. WINSTON: No, Your Honor. That is

10 a copy.

11

12 (Whereupon, the aforementioned
warrant was received into evidence
13 and marked for identification as
Plaintiff's Exhibit Four.)

14

15 BY MR. SELKIN:

16 Q. And you were tried for this charge that is

17 indicated on this arrest warrant.

18 A. I was tried for the theft of the hat. I was

19 not aware there was a disorderly charge on me until my

20 son-in-law got the papers and until I was told about it.

21 Q. So you mean there was another charge of

22 disorderly conduct brought against you?

23 A. Yes. I was not told until after I got to the

24 station, or until my -- I don't recall when, but Mrs. Custer

25

or no one informed me of it until after I was at the station. I never learned until afterwards. Seemed like to me when I received the paper and read it on it -- I was not aware that I was being charged with the disorderly conduct.

Q And as you were -- what happened to you on the petit larceny -- taking, stealing and carrying away one blue hat?

A It was dismissed.

Q All right. And that dismissal is noted on the back of the warrant, is it not?

A Yes, sir.

Q Can you tell us what they had you do, what they -- what information they took from you, what actions there were taken against you at the precinct specifically?

A (No response from the witness.)

THE COURT: Did you understand the question?

MR. SELKIN: If Your Honor please, I think she is a little upset. It will take her just one minute.

THE WITNESS: I was fingerprinted and mugged. Is that all, please?

BY MR. SELKIN:

Q Had you done anything -- well, --

A I'm sorry.

1 Q Do you know for a fact that you now have an
2 arrest record? Is that it?
3 A Yes, sir.
4 Q Can you tell us what conduct that Mrs. Custer
5 testified to that was considered disorderly in the court?
6 What conduct did she testify to on your part?
7 A That -- I believe -- I think what she said was
8 that I tried to restrain arrest or something to that
9 effect.
10 Q Could you say it louder, because I can't hear
11 you.
12 A I think it was that I was trying to restrain
13 arrest or meant that.
14 Q Resist arrest?
15 A Yes.
16 Q Has anyone to your knowledge -- does anyone to
17 your knowledge know of the charges that were placed against
18 you?
19 A To my horror yes.
20 Q Who?
21 A It was read in the paper by the people down
22 there where I work with and around and a lot of stores that I
23 deal at.
24 Q When you say where you work, you mean as a real
25 estate saleswoman?

1 Q You obtained it from my table over there at
2 the beginning of the trial.
3 A My lawyer did.
4 Q And you put that hat on your head and then went
5 back to the check-out counter the second time.
6 A Yes.
7 Q And you went through the check-out counter
8 the second time.
9 A With the beads in my hand.
10 Q With the beads in your hand.
11 A Yes.
12 Q And these were beads that you had just
13 selected.
14 A Yes.
15 Q And did you pay for the hat, when you went
16 through the check-out stand?
17 A No, sir. I had forgotten I had it on my head.
18 Q Did you offer to pay for it, when you went
19 through the check-out stand?
20 A I had forgotten I had it on my head.
21 Q All right. When you left the check-out stand
22 the second time, you went over to the courtesy desk and
23 inquired about exchanging the beads, is that correct?
24 A Right.
25 Q And you then went over and attempted to exchange

1 the beads, concluded not to and then began to leave the
2 store.
3 A. Right.
4 Q. And it was while you were out in the foyer,
5 the area between the two double doors of the store, that you
6 were approached by Mrs. Custer.
7 A. Yes, sir.
8 Q. Now, did you know Mrs. Custer before this
9 date?
10 A. No, sir.
11 Q. You had never seen her before to your knowledge?
12 A. To my knowledge no.
13 Q. Did she indicate that she knew you at all?
14 A. No.
15 Q. And you didn't know who she was when she first
16 came up to you then.
17 A. No, sir.
18 Q. And did she identify herself?
19 A. She showed me a -- I guess -- do you call them
20 a badge?
21 Q. She showed you a badge. Did she show you a
22 card?
23 A. Well, it was a metal plate in a folded thing,
24 that's all.
25 Q. Did you look at it?

1 A. Yes, sir.

2 Q. And did that not identify her as a police

3 officer of the City of Virginia Beach?

4 A. Well, it identified her as, I thought, what

5 you call a store -- I don't know if she was a police

6 officer of Virginia Beach, but she was what I think we call a

7 store detective.

8 Q. You are not sure of that, or are you saying

9 that she -- that it did show she was a store detective, or

10 otherwise?

11 A. She was a store detective. Whether she was

12 an officer of Virginia Beach I don't know.

13 Q. But she did show you her badge and she did

14 show you a plate, which showed that she had some official

15 position.

16 A. Yes.

17 Q. All right. And at that point you say that

18 she told you you were under arrest.

19 A. Yes.

20 Q. And then you went back into the store area

21 beside the courtesy desk.

22 A. Yes.

23 Q. Is that correct?

24 A. Yes.

25 Q. And did you not tell Mrs. Custer that you

didn't want to go to the office until your daughter had arrived?

A. I did not say that. I asked her if I might take the time to explain, being as I had forgotten about the hat. I asked to speak with the manager so I could explain to him. And, as I said in my previous testimony, she informed me the manager was not in the store at the time. Then I asked to speak to anyone else in charge.

Q. You deny asking her to let you wait until your daughter arrived?

A. After I had asked her if my daughter could be sent for then I asked if I might wait, but up until then no.

Q. And did you send your grandson out to get your daughter?

A. Granddaughter.

Q. Your granddaughter, excuse me, out to get Mrs. Harless?

A. Yes.

Q. Did Mrs. Harless come into the store?

A. She did.

Q. At that point you and Mrs. Custer were standing near the courtesy desk just inside the doors.

A. Correct.

Q. And then Mrs. Harless entered into the

1 conversation.

2 A She did.

3 Q And you deny that she did anything disorderly.

4 The first thing that happened was Mrs. Custer said, "You are

5 under arrest too."

6 A That's right.

7 Q This is to Mrs. Harless I am talking about.

8 A Correct.

9 Q That was for disorderly conduct.

10 A Right. No. Her first charge was theft for

11 the little girl's glasses.

12 Q Theft for the glasses. And that was changed

13 to disorderly conduct as soon as Mrs. Custer found out the

14 glasses had been paid for, is that correct?

15 A Yes.

16 Q Is that what you say?

17 A Yes.

18 MR. SELKIN: You are speaking about the

19 charge against Mrs. Harless or Mrs. Cuthrell,

20 the disorderly conduct?

21 MR. WINSTON: It's my understanding, Your

22 Honor, she said Mrs. Harless was charged with

23 the theft of the glasses and that was changed

24 to disorderly conduct as soon as the ticket was

25 identified; is that correct?

THE WITNESS: Yes.

MR. SELKIN: Thank you.

BY MR. WINSTON:

Q At that point was there any commotion between you and Mrs. Harless?

A. None.

Q How about Mrs. Custer?

A. None.

Q None at all?

A. I mean except she kept saying I was under arrest and wanting me to go to the office and I kept trying to ask if she would give me time to explain.

Q And it was in the course of this discussion that she took hold of your arm and sought to urge you to go to the office.

A. Yes.

Q And did you say she took hold of your arm once or more than once?

A. More than once.

Q How many times, Mrs. Cuthrell?

A. It was at least a couple times. The first time she took over my arm she dropped it.

Q Do you remember testifying in this case on January 12th, 1972, in my office?

1 "Yes, sir." That was under oath and correct at that time.

2 A. Correct as to my memory.

3 Q. Your memory better now than it was in

4 January, 1972, about this incident?

5 A. Some incidents you remember later when you

6 think of them.

7 Q. Well, you had gone over this matter in your

8 mind and with Mr. Selkin before you testified, hadn't you?

9 A. It was new and it was still pretty upsetting

10 and still is.

11 Q. Now, during the time that you had your

12 encounter with Mrs. Custer and Mrs. Harless came up, where

13 was the hat?

14 A. I'm not for certain whether it was still on

15 my head at the time, or whether I had given it to Mrs.

16 Custer.

17 Q. Didn't you testify at that same deposition that

18 it was still on your head?

19 A. That's why I said I can't remember exactly

20 whether it was still on my head, or whether I had given it

21 to her.

22 Q. And didn't you further testify, at that time,

23 that when you went into Mrs. Custer's office that you took

24 off the hat and placed it firmly on the desk?

25 A. And that was another matter, which I later

remembered, because in the -- incidents had become sort of mixed up under the circumstances. I recall picking up the hat and saying, "All of this for" -- and I looked at the price. That is when I first learned the price of the hat. At that time I was mixed up something. I still had it on my head, but I didn't --

Q I am asking you did you not testify in my office in January, 1972, under oath that the hat was on your head until you arrived in Mrs. Custer's office and placed it firmly on her desk?

A At that time I answered under oath, at that time, as to my memory before reviewing it and recalling the incidents properly. Yes, I did.

MR. SELKIN: What page was that, counsel?

MR. WINSTON: Page thirty.

BY MR. WINSTON:

Q "Before you left the store did you pay for the hat?" Answer: "No, Mrs. Custer took it. Question: "How did Mrs. Custer obtain possession of the hat?" Answer: "Off of her desk."

That was correct at that time, was it not, Mrs. Cuthrell?

A It was correct at that time as to my memory

1 of it at that time.

2 Q And on page thirty-one you further answer:

3 "No, I didn't throw it at her. I just took it off like

4 that. I didn't actually throw it at you."

5 QUESTION: "You threw it down on the desk?"

6 ANSWER: "I didn't exactly place it

7 ladylike on the desk."

8 That was your testimony, was it not?

9 A. It wasn't placed ladylike, no.

10 Q. But it was placed by you on her desk.

11 A. I picked it up in an exasperated manner, sort

12 of slammed it on the desk and said, "All of this for" --

13 and I looked at the price.

14 Q. What I am asking you is you took the hat off

15 in Mrs. Custer's office and placed it not ladylike on her

16 desk.

17 A. I picked it up from the desk. When I -- yes.

18 In the deposition I stated that it was still on my head,

19 but I was not clear as to the facts then and I was mixed up,

20 as I said, because of the incidents.

21 Q. You were not clear after talking to Mr. Selkin

22 and your daughter and being under oath in my office a year

23 ago?

24 A. I was not clear as to how she obtained the hat,

25 because under the circumstances I was not remembering.

Q Could it be that you are not as clear today as you were in January, 1972, Mrs. Cuthrell?

A I am very clear as to how she came in possession of the hat and as to my actions in her office in reference to the hat. Yes, I am clear now.

Q Now, did you have occasion to leave the store before you were taken away by the police?

A No.

Q All right. This was all once incident then that occurred on the afternoon of June the 8th, 1970, wasn't it?

A Yes.

Q It occurred over a period of minutes while you and Mrs. Harless were in the store and before you left it, is that correct?

A Yes.

Q Is that correct?

A Yes.

Q And before you left the store, you were informed by Mrs. Custer that you had been charged both with petit larceny and with disorderly conduct, isn't that correct?

A No, sir.

Q Well, where is it incorrect?

A It's incorrect as to the disorderly conduct

charge. I was charged with petit theft only at that time and I was not aware of any other charge until my son-in-law told me about it at the station.

Q And Mrs. Harless was charged with disorderly conduct before you left the store, wasn't she?

A Yes, sir.

Q And you and Mrs. Harless went over to the precinct and were bonded out and then tried on the 8th -- excuse me, the 12th day of June of 1970, is that correct?

A I don't remember the day, but it was --

Q Would you say the 12th is correct, four days later?

A It was a few days later, yes.

MR. SELKIN: I think it's on Plaintiff's Exhibit -- on the warrant, the exact date of trial.

THE COURT: May we stipulate it was June the 12th, the day of trial?

MR. SELKIN: I'm sure it may, Your Honor. Just let me see the date. Yes. It says June 12, 1970.

BY MR. WINSTON:

Q Now, this incident was tried before Judge White in the Municipal Court then on the 12th of June, 1970,

1 is that correct?

2 A. Yes, sir.

3 Q. And both of the charges against you, petit

4 larceny and disorderly conduct, were tried at the same time

5 and on the same evidence, were they not?

6 A. Yes, sir.

7 Q. And Judge White dismissed the petit larceny

8 but convicted you of the disorderly conduct, is that also

9 correct?

10 MR. SELKIN: My objection as to the

11 conviction of the disorderly conduct --

12 THE COURT: He wants to object to it.

13 All right. And the court overruled his objection

14 and notes his exception.

15 MR. SELKIN: Note my exception.

16 BY MR. WINSTON:

17 Q. And your daughter was convicted of disorderly

18 conduct at the same time, was she not?

19 A. Yes, sir.

20 THE COURT: Mr. Winston you said the same

21 evidence, so therefore, I assume the same witnesses

22 appeared.

23 THE WITNESS: I'm sorry. I don't --

24 THE COURT: The witnesses in the lower court

25 they were all the same witnesses on both charges.

THE WITNESS: You mean my daughter and I?

THE COURT: Yes, ma'am.

THE WITNESS: Yes. My daughter and I were in court, Mr. White's court.

THE COURT: I understand. And the same witnesses testified as to the petit larceny and also the disorderly conduct, didn't they?

THE WITNESS: You mean when Mrs. Custer and --

THE COURT: Yes.

THE WITNESS: Yes.

THE COURT: Go ahead, Mr. Winston.

BY MR. WINSTON:

Q And that is a copy of the warrant that was served on you that charged you with disorderly conduct, was it not, Mrs. Cuthrell?

MR. SELKIN: Your Honor please note my objection and exception to all the questions here regarding the conviction of disorderly conduct regarding Mrs. Cuthrell.

THE COURT: Your exception will be noted.

MR. SELKIN: Thank you.

BY MR. WINSTON:

Q Is that the warrant under which you were charged and tried for disorderly conduct arising out of this incident?

A I guess so, because I don't ever remember seeing it.

MR. WINSTON: Do you disagree with that, Mr. Selkin?

MR. SELKIN: Same exception holds for --

MR. WINSTON: I would like to make that as Defendants' Exhibit One, please.

THE COURT: All right. Defendants' Exhibit One.

(Whereupon, the aforementioned warrant was received into evidence and marked for identification as Defendants' Exhibit One.)

MR. WINSTON: Your Honor at this same time I would like to offer the two sections of the Virginia Beach City Code that are related to the warrants that have been placed in evidence so that you may have a complete record of the warrants and of the charges on which they were based.

****

what? unless they involve moral turpitude. Felonies, all of those involve moral turpitude. Less serious crimes, misdemeanors? only if they involved moral turpitude.

He is trying to get into evidence matters, one, that do not involve moral turpitude. That is first; number two, trying to get in not only convictions but arrests. And we note our strong, strong objection to this. I submit to the court that it would take a lot more authority than that to convince the court that the question of prior -- now, don't forget what the lady complains of today.

THE COURT: I understand.

MR. SELKIN: The lady complains of embarrassment, insult and injury because of being taken down and booked for petit larceny. That's the complaint, nothing else.

THE COURT: Well, doesn't she say she is lilly white? Isn't that what she has said?

MR. SELKIN: She has never said -- I asked her if she had been convicted of any crime and she asked the court, "Well, is speeding a crime?" And the answer was, "No."

Whether the court feels that a domestic

1 the 1st of February, 1967, upon the payment of costs.

2 A. Is that a correct statement? Yes.

3 Q. And further that on December the 10th, 1967,

4 you were arrested upon the complaint of -- the dual complaint

5 of Juanita Harless and charged with simple assault and

6 separately with disorderly conduct, both of which charges

7 were withdrawn by your daughter on - during February, 1968,

8 upon the payment of costs; is that all correct?

9 A. Yes, sir.

10 Q. Now, one final question, the events which

11 gave rise to your being tried in the Municipal Court of the

12 City of Virginia Beach on the 12th of June all took place

13 during a period of time on the afternoon of the 8th of June

14 in the Zayre's store in Virginia Beach, did it not?

15 A. Yes.

16 Q. And the charges were jointly tried before

17 Judge White on the 12th of June, is that correct?

18 A. Yes.

19 Q. On the same evidence, is that correct?

20 A. What do you mean the same evidence?

21 Q. The same witnesses.

22 A. I think we went through that before, didn't we

23 Your Honor?

24 THE COURT: Yes, but do you see the

25 witnesses today that testified in the lower court?

1 THE WITNESS: Well, there was I and
2 my daughter and Mrs. Custer and Zayre's.
3
4 BY MR. WINSTON:
5 Q And it was on the basis of this testimony on
6 that date that Judge White dismissed the petit larceny
7 charge and convicted you on the disorderly conduct charge,
8 is that correct?
9 A Yes.
10 MR. WINSTON: Thank you very much.
11
12 REDIRECT-EXAMINATION
13
14 BY MR. SELKIN:
15 Q Mrs. Cuthrell how long were you detained at
16 Zayre's Department Store before the police arrived, your
17 best estimate?
18 A Approximately an hour.
19 Q That is before the police arrived?
20 A Forty-five minutes to an hour.
21 Q Mrs. Cuthrell --
22 MR. SELKIN: First let me say to the court
23 that the next series of questions will deal with
24 what Mr. Winston has brought out in cross-examination
25 as to the arrests of Mrs. Cuthrell but that the

A. No, sir.

Q. All right. Were you booked and fingerprinted -- were you fingerprinted and mugged for those charges that your daughter brought against you?

A. No, sir.

Q. Is the incident which we are here today the only time you have been fingerprinted or mugged by any police station, or any other adjunct of a city to your knowledge?

For a criminal charge is this the only time you have ever been fingerprinted or mugged, this petit larceny charge?

A. I have been fingerprinted before.

Q. Under what circumstances?

A. A charge my husband put on me under the influence of alcohol during the first years of our marriage.

Q. All right. And did any conviction ensue from that?

A. No.

Q. All right. All domestic?

A. Yes.

Q. All right. When you were in the Municipal Court of Virginia Beach, did any employee of Zayre's testify favorably to you?

A. Using the word favorably -- I appreciate that

the Municipal Court, were you not?

MR. SELKIN: Same objection, Your Honor.

THE COURT: I overrule you. I think she is on cross-examination. She can either admit it or deny it.

THE WITNESS: I have not had a chance to go to court, sir, due to my physical health.

BY MR. WINSTON:

Q Mrs. Harless you were convicted of disorderly conduct in the Municipal Court, were you not?

A Yes, sir.

Q And is it not a fact that at the time that the rip of the sleeve occurred of your mother's blouse that you were attempting to pull her away from Mrs. Custer at that point?

A No, sir, because it surprised me.

Q You deny that?

A Yes, sir.

Q You deny taking hold of Mrs. Custer?

A Yes, sir.

Q You deny grabbing her arm so that you left print marks on her arm?

A Yes, sir.

Q According to you there was no basis for the

Any further questions, Mr. Winston?

THE COURT: Anything else, Mr. Winston?

MR. WINSTON: (Counsel shaking head negatively.)

MR. SELKIN: Step down, Mrs. Harless.

(Whereupon, the witness was excused.)

TERESA K. CUSTER, the defendant, called as an adverse witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (ADVERSE)

BY MR. SELKIN:

Q. Your name, Mrs. Custer?

A. Teresa K. Custer.

Q. And you are the defendant in this suit.

A. Yes, I am.

Q. And the other defendant is Zayre of Virginia, Incorporated.

A. That's correct.

Q. And on or about June 8th, 1970, what was your occupation in connection with Zayre of Virginia, Incorporated?

1 A. I was a special police officer with the City
2 of Virginia Beach and a security officer for Zayre's.
3 Q. Were you paid by Zayre's for your work as a
4 special police officer and security officer?
5 A. Yes, I was.
6 Q. How much were you paid?
7 A. I don't know exactly. I would say roughly --
8 at that time approximately a dollar ninety an hour.
9 Q. Approximately a dollar ninety an hour?
10 A. Right.
11 Q. How long had you been employed by Zayre's?
12 A. Eight or nine months.
13 Q. How many hours a week did you work on an
14 average with Zayre's?
15 A. At that particular time I believe I was
16 working forty hours.
17 Q. Forty hours a week?
18 A. Yes.
19 Q. As a special police officer and security
20 officer for Zayre's, who was your supervisor, or who was your
21 boss, I suppose is the word?
22 A. Marilyn Reynolds.
23 Q. Marilyn Reynolds?
24 A. Yes.
25 Q. And who is she?

A. Mrs. Reynolds was the lead security officer.

Q. The lead security officer?

A. That's right.

Q. For Zayre's?

A. Yes, uh-hum.

Q. Does the commission, that you have as a special police officer out of the Circuit Court of Virginia Beach, enable you to act as a security officer for any other party other than Zayre's?

A. No. It's for Zayre's only.

MR. WINSTON: I must object to him asking whether it enables her to act as a security officer. It enables her to act as a special police officer only.

THE COURT: The jurisdiction there exhibits itself limited upon posting bond.

MR. SELKIN: Thank you, Your Honor.

BY MR. SELKIN:

Q. Your jurisdiction is limited to only Zayre's.

A. That's correct.

Q. Was there a fee that had to be paid for this special police officer position?

A. Yes, there was.

Q. And did you pay that?

1 A. I believe it was paid by the company.

2 Q. It was paid by Zayre's?

3 A. Yes.

4 Q. How much experience had you had with security

5 work or whatever you call it prior to June 8th, 1970?

6 A. Well, I had been at Zayre's nine months. I

7 had worked for Miller and Rhoads and G.E.X. previously.

8 Q. How many years roughly before June 8th of 1970?

9 A. I would say probably two years.

10 Q. I see. Why did you tell Mrs. Cuthrell she

11 was under arrest immediately as she walked out through the

12 foyer?

13 A. Sir, I did not.

14 Q. You did not?

15 A. No, I did not.

16 Q. What did you tell her?

17 A. When I approached Mrs. Cuthrell in the foyer

18 in the store, I showed her my badge and identification card

19 and I said, "Ma'am may I please speak with you in the office?"

20 Q. You didn't tell her that she was under arrest?

21 A. No, sir, I did not.

22 Q. Did you ask Mrs. Cuthrell any questions right

23 there at the foyer?

24 A. No, I did not.

25 Q. But you did stop her.

A. I did.

Q. And you did require her to come with you.

A. I asked her if she would please come with me to the office.

Q. Without any explanation?

A. She said to me, "Is it something the little girl has done?"

I said, "No, ma'am. It's the hat on your head."

Q. So in response to a question from her you gave her that explanation.

A. That's the answer I gave her, yes.

Q. Did you ask her -- did you make any inquiries at that point, any inquiries of Mrs. Cuthrell at that time?

A. No, I did not.

Q. You did not?

A. I had asked her to come to the office and discuss the situation.

Q. When did you tell her she was under arrest?

A. Mrs. Cuthrell was told she was under arrest after her daughter had come into the store, the shouting and the confusion. As soon as Mrs. Harless came into the store, she said, "Mother what have you done?"

And her mother turned to her and said, "Oh, hell, I forgot to pay for this damn hat."

And then Mrs. Cuthrell --

Q Wait a minute. That's not my question. I asked when did you tell her she was under arrest. The answer is unresponsive.

MR. WINSTON: If Your Honor please, I think she is entitled to answer -- she may be under cross-examination, but she is entitled to finish her answer.

MR. SELKIN: The question was, if Your Honor please, when she told her she was under arrest. She just told me and then went on further.

THE WITNESS: After all of this. I was going to tell you what was said and then when I told her.

BY MR. SELKIN:

Q All right. Go ahead. Explain it again.

A Of course then Mrs. Cuthrell went on to tell Mrs. Harless that I had accused her daughter with the sunglasses. I said, "No, ma'am, the sunglasses are not in question at this time."

Q No. The question was when did you tell her, Mrs. Cuthrell, she was under arrest.

MR. WINSTON: If you let her, she is

1 trying to tell you. She is trying to
2 relate the events.
3 MR. SELKIN: I don't think she is. I
4
5 BY MR. SELKIN:
6 Q I want to know when you told Mrs. Cuthrell
7 she was under arrest.
8 A After all of the discussion that I am trying
9 to tell you.
10 Q I'm sorry. Go ahead. Then let's hear all of
11 the discussion.
12 A Mrs. Cuthrell went on to tell her daughter
13 that I had made the accusation of the sunglasses. This is
14 when I said, "No, ma'am, the sunglasses are not in question.
15 It's the hat."
16 I again for the second time asked
17 Mrs. Cuthrell to please come to the office. After the hassle
18 with the blouse, my arm being dug, this is when I stated to
19 Mrs. Cuthrell she was under arrest for petit larceny and
20 disorderly conduct and "Mrs. Harless you are also under
21 arrest for disorderly conduct."
22 Q Where were you at that point?
23 A I was standing right next to them at the service
24 desk.
25 Q And that was after -- I take it this was after

1 Mrs. Harless had come back into the store --

2 A. Yes, sir.

3 Q. -- from out in the car.

4 A. Yes, sir.

5 Q. And only after all that explanation only then

6 did you tell her that she was under arrest?

7 A. Right.

8 Q. By what authority do you feel you have the right

9 to place people in custody without placing them under arrest?

10 A. Sir, Mrs. Cuthrell did state that she came back

11 in of her own free will. She came back into the store of her

12 own free volition. She came back in.

13 Q. Are you saying she walked back into the store

14 without your physically placing her in your custody?

15 A. Yes, she did.

16 Q. In other words, she just did it because she

17 wanted to do it.

18 A. No. I asked her if she would like to come to

19 the office and discuss the thing with the hat.

20 Q. You asked her if she would like to come to the

21 office and discuss things?

22 A. Yes, I did.

23 Q. You remember, of course, being in Mr. Winston's

24 office --

25 A. Yes, I do.

1 ANSWER: "The only statement I made was
2 that she was under arrest."
3 A. I believe if you read down further, sir, there
4 is a place where I asked to backtrack and that there was some
5 statement as to the sunglasses if I'm not mistaken.
6 Q. I'm sure that -- let me --
7 MR. WINSTON: Mr. Selkin start on page 23 and
8 carry on. You will find a full recitation of
9 what she has testified to on the stand. Please
10 don't take the questions and answers out of
11 context.
12 MR. SELKIN: I'm not. That was the
13 question on page thirty-five.
14 MR. WINSTON: I understand that. That is
15 only a portion of the testimony she gave.
16 MR. SELKIN: I know. I think -- well, I
17 am not going to argue with counsel. I will save
18 it for argument.
19
20 BY MR. SELKIN:
21 Q. What I am trying to understand is why you
22 waited for Mrs. Harless to come into the store, which
23 necessitated sending the granddaughter out of the store all
24 the way back. I think the evidence has been approximately
25 five minutes. Then after the conversation you then and only

1 then told her she was under arrest. Why?

2 A. Sir, Mrs. Cuthrell sent for her daughter

3 immediately at the time that I approached her at the door.

4 Q. Uh-hum.

5 A. Mrs. Cuthrell, when she came back into the

6 service desk, -- at one time I asked her would she please

7 like to come into the office and one of the employees would

8 direct her daughter into the office. She stated no, she

9 would wait right there.

10 Q. Uh-hum.

11 A. Of course we waited at the service desk

12 until her daughter arrived. It was not five minutes, sir.

13 She could have gone from the store to G.E.X. and back in

14 five minutes time. She went just directly in front of the

15 store and back in.

16 Q. What -- am I to understand you did not ask

17 Mrs. Cuthrell for an explanation of the hat on her head

18 with the price tag?

19 A. No, sir. I intended to discuss this in the

20 office in private, not out in front of the public in the

21 whole store.

22 Q. And that is why you stopped her?

23 A. To discuss the hat, yes sir.

24 Q. You never told her she was under arrest when

25 you stopped her?

1 A. No, I did not.

2 Q. And at that particular time, June 8th, 1970,

3 in Zayre's at that time it was your job to act as security

4 officer for Zayre's.

5 A. Yes, I was a security officer.

6 Q. And that entailed making arrests for crimes.

7 A. Sir, security does not entail just apprehending

8 shoplifters. Security entails many, many duties. Any way

9 that the company would have a shrinkage entails security.

10 It could be accidents on the premises. It could be

11 transferring of merchandise in and out of the store. It

12 could be counts by the sales clerks, any way at all

13 shrinkage could occur. These are the duties of a security

14 officer.

15 Q. But the duty -- insofar as Mrs. Cuthrell was

16 concerned, you were acting as an arresting officer for

17 the store, is that correct or incorrect?

18 A. I was working under the capacity as my

19 special commission. Sir, a crime was committed in my

20 presence.

21 Q. That's what I wanted to know.

22 MR. SELKIN: No further questions.

23 THE COURT: Anything of Mrs. Custer at

24 this time, Mr. Winston?

25

CROSS-EXAMINATION (ADVERSE)

BY MR. WINSTON:

Q Mrs. Custer the documents that you held up -- I think it was a badge and a card of some kind.

A Yes, Mr. Winston.

Q What is that? Does that say Zayre or say the City of Virginia Beach?

A It says special Virginia Beach police.

Q And the card, that you showed Mrs. Cuthrell, what does that show?

A It's an identification card from the Virginia Beach Police Department.

Q And by whom were you given those documents, that badge and that card?

A A Lieutenant Carlson.

Q Lieutenant Carlson? Is he an employee of Zayre or the City of Virginia Beach?

A No. He is with the City of Virginia Beach, sir.

Q And just for the record I would ask you if this document shows your signature and what that paper represents, please.

A Yes, sir, that is my signature and it's my oath of office.

1 Q As what?

2 A As a special police officer.

3 Q Of the City of Virginia Beach?

4 A Yes, sir.

5 MR. WINSTON: I would like to have that

6 marked as defendants' exhibit --

7 THE COURT: You didn't say what

8 number. How about four?

9

10 (Whereupon, the aforementioned
11 document was received into evidence
and marked for identification as
Defendant's Exhibit Four.)

12

13 BY MR. WINSTON:

14 Q And I would ask you to look at this next

15 paper and identify that for me, please.

16 A Yes, sir. This is my bonding form that goes

17 with my commission.

18 Q And this bond is for what amount and for what

19 purpose?

20 A This bond is for $1,000.00 and the purpose of

21 the bond is a security bond for the police department.

22 Q And this goes with what commission, your

23 commission as what?

24 A A special police officer.

25 Q Of the City of Virginia Beach?

1 A. Yes, sir.

2

3 (Whereupon, the aforementioned document was received into evidence and marked for identification as

4 Defendants' Exhibit Five.)

5

6 BY MR. WINSTON:

7 Q. And were you acting as -- in your capacity as

8 a special police officer of the City of Virginia Beach when

9 you arrested Mrs. Cuthrell?

10 A. Yes, I was.

11 Q. Did you know Mrs. Cuthrell before this

12 incident occurred?

13 A. No, sir. I had never seen Mrs. Cuthrell

14 before.

15 Q. Did you know her daughter, Mrs. Harless?

16 A. No, sir.

17 Q. Why did you choose to arrest her for petit

18 larceny and for disorderly conduct?

19 A. Sir, Mrs. Cuthrell did leave the premises of

20 the store with the merchandise, that had not been paid for, on

21 her head.

22 Q. And what was your intention by arresting her?

23 What did you have in mind doing? What were you trying to

24 accomplish?

25 A. Sir, I took an oath to carry out the law and

1 this was my reason for approaching Mrs. Cuthrell.

2 Q And I believe you said that she you felt had

3 committed two offenses in your presence.

4 A Yes, sir, she did.

5 Q How long did this incident take place on the

6 premises of Zayre's?

7 A Mrs. Cuthrell I would say had been shopping in

8 the store approximately a half an hour during the time I had

9 observed her. She was approached at the service desk I

10 would say approximately 4:00 p.m. I don't know exactly how

11 long it was before the patrol car arrived.

12 Immediately on going into the office

13 Mrs. Cuthrell was not cooperative. She refused any

14 identification or any information. I called for a car

15 immediately.

16 Q Well, can you give us an approximation of the

17 time that was involved between the arrest and the arrival of

18 the car?

19 A I'm not certain at this time, Mr. Winston,

20 whether there was any delay in the patrol car arriving or

21 not.

22 Q All right. Was it on the same afternoon that

23 you had placed her under arrest?

24 A Yes, sir.

25 Q Was it a matter of minutes?

A. Well, sir, this is four o'clock and it's change of shift time, so I would be willing to say that possibly it was a little bit longer with the car arriving this particular day. I'm not certain.

THE COURT: Would you estimate twenty, thirty minutes?

THE WITNESS: I don't think it was that long, Your Honor.

THE COURT: All right. I'm guessing too long.

BY MR. WINSTON:

Q. And then when the car arrived was she asked to leave with the officer and go to the precinct?

A. Yes, sir. I accompanied Mrs. Cuthrell and her daughter to the precinct in the patrol car.

Q. All right. Now, were both the petit larceny and the disorderly conduct charges against Mrs. Cuthrell tried at one time before Judge White?

A. Yes, sir.

Q. And in the Municipal Court?

A. Yes, sir.

Q. And Judge White is the judge of that court, is he not?

A. Yes, sir, he is.

1 Q And was that same evidence -- was there
2 evidence presented as to both cases simultaneously before
3 him?
4 A Yes, there was.
5 Q Did you testify at that hearing?
6 A Yes, I did.
7 Q Did anyone else from Zayre's testify at that
8 hearing?
9 A No, they did not.
10 Q Was anyone else from Zayre's present, other
11 than yourself?
12 A Yes. Mrs. Merritt was present, but
13 she did not testify.
14 Q And Mrs. Merritt is which of the ladies
15 sitting here in the back of the courtroom?
16 A Mrs. Merritt is the lady with the glasses.
17 Q And in the dark dress?
18 A Yes, sir.
19 MR. WINSTON: Mrs. Merritt would you
20 mind just holding up your hand or standing up
21 just a minute, please.
22 (Whereupon, Mrs. Merritt stood.)
23 MR. WINSTON: All right. You may sit
24 down.
25

1 BY MR. WINSTON:

2 Q And what was her job on this particular

3 afternoon at Zayre's?

4 A I might mention that it's no longer Mrs.

5 Merritt. It's Mrs. Bray.

6 Q I beg your pardon? Her name is what?

7 A Mrs. Merritt has remarried in the meantime

8 and her name is now Bray.

9 THE COURT: I think she has already

10 testified to it, but in order to clarify it in

11 my mind were both charges placed against

12 Mrs. Cuthrell at the same time by you?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right.

15

16 BY MR. WINSTON:

17 Q And what was Mrs. Merritt's job on the

18 particular afternoon of this occurrence?

19 A Mrs. Merrit was customer service

20 representative and she was standing at the service desk

21 at the time.

22 Q All right. Did any male employee of Zayre's

23 offer you any assistance that afternoon in connection with

24 this incident?

25 A Yes. Mr. Max Riley did, sir.

1 Q. Is he in the courtroom?

2 A. Yes, sir. Mr. Riley is sitting there in the

3 burgundy jacket.

4 Q. At what point did he come up?

5 A. Mr. Riley heard the confusion at the service

6 desk and came up to the service desk and assisted me in

7 accompanying Mrs. Cuthrell and Mrs. Harless to the security

8 office.

9 Q. What is this commotion you mentioned?

10 A. During the fuss about the sunglasses and being

11 accused and Mrs. Cuthrell's blouse being torn. All of this

12 occurred at the front of the store at the service desk.

13 Q. Well, was there any verbal commotion?

14 A. Yes, sir, there was. There was shouting and,

15 of course, the hell she forgot to pay for the dam hat and

16 "Did you say I didn't pay for the sunglasses?" by

17 Mrs. Harless. Just all this was going on.

18 Q. What was Mrs. Cuthrell's attitude during this

19 period when her daughter was up there?

20 A. She was very belligerent.

21 Q. What about Mrs. Harless, what was her attitude?

22 A. She was also belligerent.

23 Q. And was it after they acted in that manner that

24 you placed them both under arrest?

25 A. That's correct.

1 Q Did you ever arrest or state to
2 Mrs. Harless that she was under arrest for the theft of
3 a pair of sunglasses?
4 A. No, sir. It was told to Mrs. Harless
5 immediately the sunglasses were not in question. I had
6 never asked for a receipt and, therefore, there was never
7 no mention of arrest on the sunglasses.
8 Q Had you had occasion to observe the hat on
9 Mrs. Cuthrell's head before she went through the check-out
10 stand?
11 A. Yes, I had. I observed Mrs. Cuthrell put the
12 hat on her head.
13 Q And that was on the premises of Zayre's
14 back in the clothing area.
15 A. In the millinery section of the store.
16 MR. WINSTON: Your Honor I think
17 that's all I have at this time. If it
18 becomes necessary I would like to reserve
19 the right to put her back on later.
20 THE COURT: Mr. Selkin anything else
21 to add to this witness?
22 MR. SELKIN: No, sir. I would reserve
23 the right to cross-examine if Mr. Winston puts
24 her on at a later time.
25 THE COURT: All right. You may stand

1 MR. SELKIN: Yes, sir.

2 THE COURT: And I assume he has got a

3 motion.

4 MR. SELKIN: Yes, sir.

5 MR. WINSTON: On behalf of the defendants,

6 Zayre's and Custer, I wish to move the court to

7 grant summary judgment to the two -- strike the

8 plaintiff's evidence and to grant summary judgment

9 to both of the defendants for the reasons which

10 I will now recite.

11 In the beginning I would point out to the

12 court that this is an intentional tort case in

13 which the plaintiff has asserted in a sort

14 of shotgun motion for judgment causes of action

15 sounding in malicious prosecution, false

16 imprisonment, insulting words, slander and

17 assault. Practically all of these charges arise

18 out of the one incident, which occurred in the

19 Zayre's store on the afternoon of the 8th of

20 June, 1970, and resulted in the prosecution of

21 the plaintiff.

22 Now, briefly, as Mr. Selkin pointed out

23 to you earlier, the plaintiff has a heavy burden

24 in a case such as this, because it's the type

25 of action which the law does not approve of, but

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to hold in my judgment that the prosecution did not result favorably to her, that there was probable cause for Mrs. Custer to arrest these - this young lady and to prosecute her and that there was no malice in that regard.

Now I will address myself to the other point, but I think this one is dispositive of the case if Your Honor concurs with me. I would yield, at this point, to Mr. Selkin to let him respond.

THE COURT: All right. Mr. Selkin.

MR. SELKIN: All right. That was a lengthy dissertation, if Your Honor please, and I agree it's necessary in a case for what is at the heart, malicious prosecution.

I might say that I can disagree with authorities and I have them here and I can cite them and they are recent. As to Mr. Winston's statement of the question of malice, the question of probable cause, legal malice, the case I cite -- I advised the court, I think, earlier this morning that just so happened Judge Vakos' decision in the Circuit Court was upheld by the Virginia Supreme Court. Here it is in the advance sheet,

1 If the court is concerned about the two
2 charges, the closest case I have down --
3 THE COURT: That's what it's concerned
4 with, what the cases say.
5 MR. SELKIN: I thought Mr. Winston
6 covered malicious and probable cause and I did
7 want to cover -- there is the case in Virginia
8 that is as close as possible.
9 THE COURT: Malice is generally
10 inferred without any question, but according
11 to these cases --
12 MR. SELKIN: Yes, sir.
13 THE COURT: If you have two separate
14 offenses and that is where they are referring
15 to separate offenses -- petit larceny is a
16 separate offense from grand larceny. Receiving
17 stolen goods is a separate offense from grand
18 larceny.
19 MR. SELKIN: In those states --
20 THE COURT: As far as -- now, we haven't
21 got anything directly in point in Virginia.
22 MR. SELKIN: That case is very close to
23 it, if Your Honor please.
24 THE COURT: All right. Now, it just
25 seems to me -- and I don't want to cut you off.

1 I will give you all the time you want.

2 MR. SELKIN: Yes, sir.

3 THE COURT: But it seems to me there are

4 two elements that have been taken away from you.

5 One is malice and that because of the conviction

6 there is no question but the presence of probable

7 cause. There is two essentials right there,

8 either one of which --

9 MR. SELKIN: Yes, sir.

10 THE COURT: -- would make you go up to

11 see the seven wisemen.

12 MR. SELKIN: We'll accept that the jury

13 is normally --

14 THE COURT: I know, but if you -- the

15 Florida case even went further than the

16 Massachusetts case. There they had two different

17 offenses on different times, but they were tried

18 together. And the court there said the fact that

19 when they were tried together, where -- they

20 seem to carry what the Massachusetts court said.

21 Then you have absence of malice, because

22 one has been convicted. You have the presence of

23 probable cause, because been convicted of one.

24 Let me sustain his motion and let me give

25 you an exception. Then you have the young lady to

1 make up the record.

2 MR. SELKIN: Well, if Your Honor please,

3 these ladies don't have that kind of money, I

4 don't believe, but --

5 THE COURT: Well, I honestly believe from

6 these two cases if there are two separate offenses

7 tried at the same time, on one of which you are

8 acquitted, another which you are found guilty it

9 certainly takes away the malice. And you have

10 got probable cause the minute they find them

11 guilty. So you prepare the order and give you

12 your exception.

13 MR. SELKIN: Note my exception, if Your

14 Honor please.

15 MR. WINSTON: Your Honor did you say

16 prepare an order?

17 THE COURT: I think it would be better,

18 don't you?

19 MR. WINSTON: Be glad to.

20 THE COURT: I am going to strike his evidence

21 and enter up summary judgment for the defendants.

22 And I am going in and tell the jury I have done

23 all the work, listened to all the lawyers, and

24 let them go home.

25 (Whereupon, Court was reconvened at 4:43 p.m.)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

RUTH CUTHRELL,	:	
Plaintiff,	:	Law Docket
vs.	:	No. 14,619
ZAYRE OF VIRGINIA, INC. and TERESA K. CUSTER,	:	
Defendants.	:	

ORDER

This matter came on for trial before a jury in this Court on December 5, 1972. At the conclusion of the plaintiff's evidence and when the plaintiff had rested her case, the defendants, by counsel, moved the Court to strike the plaintiff's evidence and to enter summary judgment in their favor.

Thereupon the Court gave due consideration to the evidence as presented by the plaintiff and to the argument of each counsel, then sustained the motion before it by striking the plaintiff's evidence and granting summary judgment against the plaintiff and in favor of defendants Zayre of Virginia, Inc. and Tereas K. Custer.

To which ruling of the Court the plaintiff, by counsel, did note her exceptions.

Summary judgment having been granted the defendants, it is ORDERED that this cause be and hereby is DISMISSED WITH PREJUDICE, and the Clerk of this Court is directed to remove same from the Court docket.

Enter: 1-4-73

Date:

We ask for this:

John W. Winston

Seawell, McCoy, Winston & Dalton, p.d.

Seen and objected to:

White & Selkin, p.q.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

RUTH CUTHRELL,	]	
	]	
Plaintiff,	]	
	]	Law Docket
vs.	]	
	]	No. 14,619
ZAYRE OF VIRGINIA, INC. and	]	
TERESA K. CUSTER,	]	
	]	
Defendants.	]	

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

Notice is hereby given that Ruth Cuthrell appeals from a Final Judgment rendered by this Court entering summary judgment for the Defendants and dismissing the Plaintiff's case, and announces her intention of applying for a Writ of Error to the Supreme Court of Appeals of Virginia:

The Court erred in sustaining the Motion of the Defendants, Zayre of Virginia, Inc. and Teresa K. Custer, made at the conclusion of the Plaintiff's evidence, to strike the Plaintiff's evidence and to enter summary judgment on behalf of said Defendant.

Transcript of the trial is to be hereafter filed.

RUTH CUTHRELL

By _____
Of Counsel

WHITE AND SELKIN
1500 Virginia National Bank Bldg.
Norfolk, Virginia 23510

I certify that a true copy of the foregoing pleading was mailed to each counsel of record this 4th day of January, 1973.

_____

WHITE AND SELKIN
ATTORNEYS AT LAW
NORFOLK, VA.

FILED

JAN 4 1973

JOHN V. FENTRESS, Clerk

BY _____ D.C.

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JUL 20 1973
RICHMOND, VIRGINIA