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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTINE F. MELTON,

Plaintiff,

v.

FOOD LION, INC.,

SERVE: Edward R. Parker
Registered Agent
5511 Staples Mill Road
Richmond, Virginia 23228
(City of Richmond),

Defendant.

CC 92-263

MOTION FOR JUDGMENT

Now comes the plaintiff, Christine F. Melton ("Mrs. Melton"), by counsel, and for her motion for judgment against the defendant Food Lion, Inc. ("Food Lion") states as follows:

1. On or about April 19, 1991, Mrs. Melton entered a grocery store owned by Food Lion located in Henrico County, Virginia.
2. While in the store, Mrs. Melton made certain purchases and at all times acted properly and lawfully.
3. Upon exiting the store, Mrs. Melton was accosted by a security guard.
4. Upon information and belief, the security guard was an agent and employee of Food Lion.
5. The security guard falsely accused Mrs. Melton of having stolen meat from the store, repeatedly and in a belligerent

accusatory voice stating "are you sure there is no meat in your purse?", "are you sure you didn't put any meat in your purse?", "are you sure you don't have meat in your purse?" and/or other words to that effect and import. The security guard's words from their usual and common accepted meaning were and are construed as insults which would tend to lead to a breach of the peace.

6. In the context of the statements and the surrounding circumstances, it was clear to Mrs. Melton and the persons who witnessed the encounter that the security guard was accusing Mrs. Melton of shoplifting.

7. The security guard threatened to call the police and proceeded to display a badge to Mrs. Melton. Throughout the encounter the security guard intended, with success, to intimidate Mrs. Melton and to impress upon her that she was not free to leave unless he was allowed to search Mrs. Melton's person and that if she refused, force could be used against her. Mrs. Melton was thereby detained for a period of time.

8. The object and purpose of the security guard's actions and statements were to impugn Mrs. Melton's integrity and to accuse her of shoplifting, a criminal offense involving moral turpitude.

9. Mrs. Melton had not engaged in shoplifting. However, in her terrified state and after repeatedly denying any wrongdoing, Mrs. Melton allowed the security guard to search her purse.

10. The search proved that Mrs. Melton had not shoplifted.

11. There was no probable cause or reasonable basis for the security guard's accusations, statements, actions or purported belief that Mrs. Melton had engaged in shoplifting.

12. The security guard's aforesaid statements and conduct were overheard and witnessed by a number of persons who were entering and exiting the store.

13. At all times relevant hereto, the security guard was acting within the scope of his employment with and as an agent for Food Lion and his actions and statements were done on behalf and benefit of Food Lion.

14. Prior to the security guard's accosting Mrs. Melton, he had engaged in similar outrageous conduct while acting on behalf of Food Lion. By April 19, 1991, Food Lion knew or should have known that the security guard would unjustly and without basis mistreat Food Lion's customers and accuse them of stealing.

15. All of the foregoing actions and statements by the security guard and Food Lion proximately caused Mrs. Melton to suffer great humiliation, embarrassment, pain, suffering, anxiety, stress, severe distress, nervousness and damage to her reputation. The actions complained of have required Mrs. Melton to seek and receive medical attention as well as incur expenses.

16. The actions and statements of the security guard were done with malice, and were intentional, willful, wanton and in reckless and willful disregard of Mrs. Melton's rights.

COUNT I

(Defamation)

17. The plaintiff reaffirms and realleges paragraphs 1 through 16 as if fully set forth here.

18. Food Lion, by its employee and agent, has defamed Mrs. Melton causing her great injury as set forth above.

19. Food Lion, through its actions and inactions, has ratified, condoned and endorsed the aforesaid actions and statements of its security guard.

WHEREFORE, the plaintiff demands judgment against the defendant, Food Lion, Inc., in the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) compensatory damages and FIFTY THOUSAND DOLLARS (\$50,000.00) punitive damages plus interest and costs.

COUNT II

(Insulting Words)

20. The plaintiff reaffirms and realleges paragraphs 1 through 19 as if fully set forth here.

21. Food Lion, by its employee and agent, has rendered insulting words to Mrs. Melton causing her great injury as set forth above, all in violation of Virginia Code Section 8.01-45.

22. Food Lion, through its actions and inactions, has ratified, condoned and endorsed the insulting words of its security guard.

WHEREFORE, the plaintiff demands judgment against the defendant, Food Lion, Inc., in the sum of FIFTY THOUSAND DOLLARS

(\$50,000.00) compensatory damages and FIFTY THOUSAND DOLLARS (\$50,000.00) punitive damages plus interest and costs.

COUNT III

(Intentional Infliction of Emotional Distress)

23. The plaintiff reaffirms and realleges paragraphs 1 through 22 as if fully set forth here.

24. Food Lion, by its employee and agent, has intentionally and recklessly inflicted emotional distress on Mrs. Melton, causing her great injury as set forth above.

25. Food Lion, through its actions and inactions, has ratified, condoned and endorsed the intentional and reckless infliction of emotional distress upon Mrs. Melton by its security guard.

WHEREFORE, the plaintiff demands judgment against the defendant, Food Lion, Inc., in the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) compensatory damages and FIFTY THOUSAND DOLLARS (\$50,000.00) punitive damages plus interest and costs.

COUNT IV

(False Imprisonment)

26. The plaintiff reaffirms and reallege paragraphs 1 through 25 as if fully set forth here.

27. Food Lion, by its employee and agent, falsely imprisoned Mrs. Melton causing her great injury as set forth above.

28. Food Lion, through its actions and inactions, has ratified, condoned and endorsed the false imprisonment of Mrs. Melton by its security guard.

WHEREFORE, the plaintiff demands judgment against the defendant, Food Lion, Inc., in the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) compensatory damages and FIFTY THOUSAND DOLLARS (\$50,000.00) punitive damages plus interest and costs.

COUNT V

(Negligence)

29. The plaintiff reaffirms and realleges paragraphs 1 through 28 as if fully set forth here.

30. Food Lion was independently negligent in continuing to allow the security guard to act as a security guard in its store since Food Lion knew or should have known that he would engage in such outrageous conduct.

31. Food Lion's negligence has proximately caused Mrs. Melton great injury all as set forth above.

WHEREFORE, the plaintiff demands judgment against the defendant, Food Lion, Inc., in the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) compensatory damages plus interest and costs.

TRIAL BY JURY IS DEMANDED.

CHRISTINE F. MELTON

By 
Counsel

William H. Shewmake
Samuel Baronian, Jr.
COATES & DAVENPORT
5206 Markel Road
P. O. Box 11787
Richmond, Virginia 23230
(804) 285-7000

V I R G I N I A :

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTINE F. MELTON,)	
)	
Plaintiff,)	
)	
v.)	Case No. CL92-263
)	
FOOD LION, INC.,)	
)	
Defendant.)	

FOOD LION, INC.'S GROUNDS OF DEFENSE

Defendant, Food Lion, Inc., by counsel, responds to the allegations contained in plaintiff's Motion for Judgment as follows:

1. Food Lion admits that a woman who is believed to be the plaintiff entered a Food Lion store in Henrico County on April 19, 1991. Food Lion denies that it is, or ever was, the owner of a grocery store in Henrico County, but Food Lion admits that it leases premises in Henrico County.

2. Food Lion lacks knowledge or information sufficient to admit or deny the allegations of paragraph 2, and calls for strict proof thereof.

3. Food Lion denies that the plaintiff was "accosted" by a security guard. Food Lion admits that a woman who is believed to be the plaintiff was stopped as she was leaving the store by a Food Lion loss prevention agent.

4. Food Lion admits that the loss prevention agent who stopped the plaintiff was an agent and employee of Food Lion.

5. Food Lion denies the allegations of paragraphs 5 and 6.

6. Food Lion admits that the loss prevention agent displayed his identification card to the plaintiff. All other allegations contained in paragraph 7 are denied.

7. Food Lion denies the allegations contained in paragraph 8.

8. Food Lion admits that the loss prevention agent was unable to verify that the plaintiff had shoplifted. Food Lion denies the remaining allegations of paragraph 9.

9. In response to paragraph 10, Food Lion denies that the loss prevention agent searched the plaintiff or her purse, and admits that he was unable to verify that the plaintiff had shoplifted.

10. Food Lion denies the allegations of paragraph 11.

11. Food Lion is without knowledge or information sufficient to admit or deny the allegations of paragraph 12 and calls for strict proof thereof.

12. Food Lion admits that the loss prevention agent was a Food Lion employee and that he was acting within the scope of his employment.

13. Food Lion denies the allegations of paragraphs 14, 15 and 16.

COUNT I
(Defamation)

14. Food Lion incorporates and realleges its responses to paragraphs 1 through 16 of the Motion for Judgment as if fully set forth herein.

15. Food Lion denies the allegations of paragraphs 18 and 19.

COUNT II
(Insulting Words)

16. Food Lion incorporates and realleges its responses to paragraphs 1 through 19 of the Motion for Judgment as if fully set forth herein.

17. Food Lion denies the allegations of paragraphs 21 and 22.

COUNT III
(Intentional Infliction of Emotional Distress)

18. Food Lion incorporates and realleges its responses to paragraphs 1 through 22 of the Motion for Judgment as if fully set forth herein.

19. Food Lion denies the allegations of paragraphs 24 and 25.

20. Food Lion further denies that the plaintiff has suffered any physical or bodily injury which would support a claim for intentional infliction of emotional distress.

COUNT IV
(False Imprisonment)

21. Food Lion incorporates and realleges its responses to paragraphs 1 through 25 of the Motion for Judgment as if fully set forth herein.

22. Food Lion denies the allegations of paragraphs 27 and 28.

COUNT V
(Negligence)

23. Food Lion incorporates and realleges its responses to paragraphs 1 through 28 of the Motion for Judgment as if fully set forth herein.

24. Food Lion denies the allegations of paragraphs 30 and 31.

25. Food Lion denies that it is liable to plaintiff in any amount or for any reason whatsoever.

26. Food Lion affirmatively alleges that its loss prevention agent had probable cause to believe that the plaintiff had engaged in shoplifting and that all counts of the plaintiff's action are therefore barred by Va. Code Ann. § 18.2-105.

27. Food Lion reserves the right to assert all other lawful defenses to plaintiff's claim.

WHEREFORE, Food Lion, Inc., by counsel, moves the Court to dismiss all counts of the plaintiff's Motion for Judgment and to award it costs expended in defense thereof.

FOOD LION, INC.

By:

Robert M. Buell
Counsel

Robert M. Buell, Esquire
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
(804) 775-4386
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Food Lion, Inc.'s Grounds of Defense was mailed, first-class postage prepaid, this the 6th day of April, 1992, to William H. Shewmake, Esquire, Coates & Davenport, 5206 Markel Road, Post Office Box 11787, Richmond, Virginia 23230, counsel for plaintiff.

Robert M. Buell

V I R G I N I A :

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTINE F. MELTON,)	
)	
Plaintiff,)	
)	
v.)	Case No. CL92-263
)	
FOOD LION, INC.,)	
)	
Defendant.)	

**FOOD LION, INC.'S RESPONSE TO
THE PLAINTIFF'S REQUEST FOR ADMISSION**

Food Lion, Inc., by counsel, pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia, responds to the plaintiff's Request for Admission as follows:

1. Admit that the defendant owns the store in question.

Response: Denied.

2. Admit that the defendant owned the store in question on April 19, 1991.

Response: Denied.

3. Admit that during his encounter with the plaintiff on April 19, 1991, the security guard referred to in the plaintiff's Motion for Judgment was employed by the defendant.

Response: Food Lion admits that the loss prevention agent referred to in the motion for judgment was employed by Food Lion.

4. Admit that Food Lion, Inc. is the defendant's correct and full name.

Response: Admitted.

5. Admit that at the time of the plaintiff's encounter with the security guard referred to in the plaintiff's motion for judgment, the security guard was acting within the scope of his employment with the defendant.

Response: Food Lion admits that during all times relevant to this action, the loss prevention agent was acting within the scope of his employment with Food Lion.

FOOD LION, INC.

By: Robert M. Buell
Counsel

Robert M. Buell, Esquire
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
(804) 775-4386
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Food Lion, Inc.'s Response to the Plaintiff's Request for Admission was hand-delivered this the 6th day of April, 1992, to William H. Shewmake, Esquire, Coates & Davenport, 5206 Markel Road, Post Office Box 11787, Richmond, Virginia 23230, counsel for plaintiff.

Robert M. Bull

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

CHRISTINE F. MELTON

Plaintiff,

v.

FOOD LION, INC.

Defendant.

CASE NO. CL92-263

MOTION TO AMEND FOOD LION, INC.'S GROUNDS OF DEFENSE

Defendant, Food Lion, Inc., by counsel and pursuant to Rule 1:8 of the Rules of the Supreme Court of Virginia, hereby requests leave of Court to amend its Grounds of Defense for the reasons stated in the accompanying memorandum of points and authorities in support of this motion.

By: *H. Carter Redd*

Of Counsel

H. Carter Redd
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion to Amend Food Lion, Inc.'s Grounds of Defense was mailed this 17th day of November, 1993, to William H. Shewmake, Coates & Davenport, 5206 Markel Road, Richmond, VA 23230, counsel for the plaintiff.

W. H. Shewmake

Mulkey\U:\P0060

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTINE F. MELTON,)	
)	
Plaintiff,)	
)	Case No. CL92-263
)	
v.)	
)	
FOOD LION, INC.,)	
)	
Defendant.)	

MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF DEFENDANT'S MOTION TO AMEND
FOOD LION, INC.'S GROUNDS OF DEFENSE

INTRODUCTION

Defendant Food Lion, Inc. ("Food Lion") has discovered that its Grounds of Defense bears no relation to the incident alleged by Plaintiff. The incident of which Plaintiff complains, as described in her Motion for Judgment, is very similar to another incident that occurred at the Food Lion store in question. The Food Lion employees involved in the latter incident confused it with Ms. Melton's alleged incident. Since Food Lion is a large grocery store chain which must rely on the memories of individual employees, it prepared its Grounds of Defense based on its employees' recollections of an incident unrelated to the case at hand. Accordingly, in the interests of justice, Food Lion petitions the Court for leave to file Food Lion, Inc.'s First Amended Grounds of Defense.

FACTS

Plaintiff's Motion for Judgment alleges that a security guard, acting as the agent and employee of Food Lion, accosted her outside a Henrico County Food Lion store and accused her of having stolen meat on or about April 19, 1991. Derrick Slater was the Loss Prevention Agent for the relevant Food Lion during the general time period surrounding that date. Troy Sutorka was the assistant manager at the time of the alleged incident. They recall an incident during which Slater did stop a woman whom he had probable cause to suspect of stealing meat. When Food Lion prepared its Grounds of Defense it did so based on that incident.

Christine Melton filed her Motion for Judgment in March of 1992. Depositions did not take place until October of 1993. Now that depositions have proceeded, Mr. Slater realizes that the incident that he recalled did not involve Plaintiff, whom he has now seen face to face during deposition. The incident he recalled involved a woman in her thirties. Ms. Melton is considerably older. Mr. Sutorka concurs that the incident that they recall involved a younger woman than Ms. Melton.

Neither Mr. Sutorka nor Mr. Slater has any recollection of the incident that Ms. Melton alleges occurred or of Ms. Melton shopping at Food Lion. Therefore, Food Lion seeks to amend its Grounds of Defense to reflect its correct responses to Plaintiff's Motion for Judgment now that Food Lion is in a position to understand that motion more fully.

ARGUMENT

Rule 1:8 of the Rules of the Supreme Court of Virginia requires leave of Court before an amendment can be made to a pleading, but states that "[l]eave to amend shall be liberally granted in furtherance of the ends of justice." This liberality extends to grounds of defense. See, e.g., Chitwood v. Prudential Insurance Co. of Am., 206 Va. 314, 143 S.E.2d 915 (1965) (affirming leave of court to amend grounds of defense to allege facts learned during discovery, and affirming summary judgment based on the newly alleged facts); Herndon v. Wickam, 198 Va. 824, 97 S.E.2d 5 (1957) (affirming a grant of leave to amend grounds of defense eleven days before trial to plead a statute of limitation defense which proved dispositive).

Defendant Food Lion's Grounds of Defense is incorrect because of similarities between two separate incidents. That those incidents are not the same has come to light only after discovery. To refuse Food Lion the chance to correct its Grounds of Defense would not serve justice because the record would remain incorrect. To allow Food Lion to amend would correct the record and allow the case to proceed in accordance with the facts as the parties understand them. Surely correction of a pleading to state the true nature of the case is in furtherance of the ends of justice.

CONCLUSION

For the above reasons Food Lion, Inc. requests leave of the Court to amend its Grounds of Defense.

FOOD LION, INC.

By *[Signature]*
Of Counsel

H. Carter Redd, # 34392
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
Richmond, VA 23219
(804) 775-1165

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum of Points and Authorities in Support of Defendant's Motion to Amend Food Lion's Grounds of Defense was mailed, postage prepaid, this 17th day of November, 1993 to William H. Shewmake, Coates & Davenport, 5206 Markel Road, Richmond, VA 23230.

[Signature]

Mulkey\U:P0059

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

CHRISTINE F. MELTON)	
)	
Plaintiff,)	
)	
v.)	CASE NO. CL92-263
)	
FOOD LION, INC.)	
)	
Defendant.)	

FOOD LION, INC.'S FIRST AMENDED GROUNDS OF DEFENSE

Defendant, Food Lion, Inc. ("Food Lion"), by counsel, with leave of court to amend its Grounds of Defense, responds to the allegations in plaintiff's motion for judgment as follows:

1. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 1 and calls for strict proof thereof.

2. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 2 and calls for strict proof thereof.

3. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 3 and calls for strict proof thereof.

4. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 4 and calls for strict proof thereof.

5. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 5 to the extent they

state alleged facts and calls for strict proof thereof.

Defendant denies the legal conclusion stated in paragraph 5.

6. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 6 and calls for strict proof thereof.

7. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 7 and calls for strict proof thereof.

8. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 8 and calls for strict proof thereof.

9. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 9 and calls for strict proof thereof.

10. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 10 and calls for strict proof thereof.

11. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 11 and calls for strict proof thereof.

12. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 12 and calls for strict proof thereof.

13. Defendant denies the allegations of paragraph 13 and
14.

14. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 15 and calls for strict proof thereof.

15. Defendant lacks knowledge or information sufficient to admit or deny the allegations of paragraph 16 and calls for strict proof thereof.

COUNT I

16. Defendant incorporates and realleges his responses to paragraphs 1 through 16 of the Motion for Judgment as if fully set forth herein.

17. Defendant denies the allegations of paragraphs 18 and 19.

COUNT II

18. Defendant incorporates and realleges his responses to paragraphs 1 through 19 of the Motion for Judgment as if fully set forth herein.

19. Defendant denies the allegations of paragraphs 21 and 22.

COUNT III

20. Defendant incorporates and realleges his responses to paragraphs 1 through 22 of the Motion for Judgment as if fully set forth herein.

21. Defendant denies the allegations of paragraphs 24 and 25.

COUNT IV

22. Defendant incorporates and realleges his responses to paragraphs 1 through 25 of the Motion for Judgment as if fully set forth herein.

23. Defendant denies the allegations of paragraphs 27 and 28.

COUNT V

24. Defendant incorporates and realleges his responses to paragraphs 1 through 28 of the Motion for Judgment as if fully set forth herein.

25. Defendant denies the allegations of paragraphs 30 and 31.

26. Defendant denies that it is liable to plaintiff in any amount whatsoever.

27. Food Lion affirmatively alleges that if Food Lion was involved in the alleged incident, it or its agent had probable cause to believe that the plaintiff had engaged in shoplifting and that all Counts of the plaintiff's actions are therefore barred by Virginia Code Ann. § 18.2-105.

28. Food Lion affirmatively alleges that the plaintiff consented to some or all of the actions alleged in plaintiff's Motion for Judgment.

29. Food Lion affirmatively alleges that if it was involved in the alleged incident, some or all of its actions were justified by its common law right to defend its property.

30. Defendant reserves the right to assert all other lawful defenses to plaintiff's claim, including but not limited to the Statute of Limitations.

WHEREFORE, Food Lion, Inc., by counsel, moves the Court to dismiss all counts of the plaintiff's Motion for Judgment and to award defendant costs expended in defense thereof.

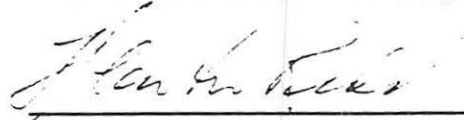
By: *H. Carter Redd*

Of Counsel

H. Carter Redd
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Food Lion, Inc.'s First Amended Grounds of Defense was mailed this 17th day of November, 1993, to William H. Shewmake, Coates & Davenport, 5206 Markel Road, Richmond, VA 23230, counsel for the plaintiff.



Mulkey\U:\P0062

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

CHRISTINE F. MELTON

Plaintiff,

v.

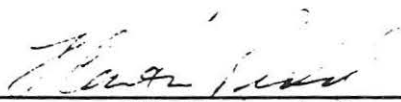
FOOD LION, INC.

Defendant.

Case No. CL92-263

MOTION TO AMEND FOOD LION, INC.'S RESPONSE TO
PLAINTIFF'S REQUEST FOR ADMISSIONS

Defendant, Food Lion, Inc., by counsel and pursuant to Rule 4:11, hereby requests leave of Court to amend Food Lion, Inc.'s Response to Plaintiff's Request for Admission by filing Food Lion, Inc.'s Amended Response to Plaintiff's Requests for Admission for the reasons stated in the accompanying memorandum of points and authorities in support of this motion.

By: 
Of Counsel

H. Carter Redd
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion to Amend Food Lion, Inc.'s Response to Plaintiff's Request for Admissions was mailed this 17th day of November, 1993, to William H. Shewmake, Coates & Davenport, 5206 Markel Road, Richmond, VA 23230, counsel for the plaintiff.

[Signature]

Mulkey\U:\P0067

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTINE F. MELTON,)	
)	
Plaintiff,)	
)	Case No. CL92-263
)	
v.)	
)	
FOOD LION, INC.,)	
)	
Defendant.)	

MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF DEFENDANT'S MOTION TO AMEND
FOOD LION, INC.'S RESPONSE TO THE
PLAINTIFF'S REQUEST FOR ADMISSION

INTRODUCTION

Defendant Food Lion, Inc. ("Food Lion") has discovered that Food Lion, Inc.'s Response to the Plaintiff's Request for Admission ("Response") is in error. The incident of which Plaintiff complains, as described in her Motion for Judgment, is extremely similar to another incident that occurred at the Food Lion store in question. The Food Lion employees involved in the latter incident confused it with Ms. Melton's alleged incident. Since Food Lion is a large grocery store chain which must rely on the memories of individual employees, it prepared its response based on its employees' recollections of an incident unrelated to the case at hand. Accordingly, in the interests of justice, Food Lion petitions the Court for leave to file Food Lion, Inc.'s Amended Response to The Plaintiff's Requests for Admission,

amending Response Nos. 3 and 5 of Food Lion, Inc.'s Response to the Plaintiff's Request for Admission.¹

FACTS

Plaintiff's Motion for Judgment alleges that a security guard, acting as the agent and employee of Food Lion, accosted her outside a Henrico County Food Lion store and accused her of having stolen meat on or about April 19, 1991. Derrick Slater was the Loss Prevention Agent for the relevant Food Lion during the general time period surrounding that date. Troy Sutorka was the assistant manager at the time of the alleged incident. They recall an incident during which Slater did stop a woman whom he had probable cause to suspect of stealing meat. When Food Lion prepared its Response, it did so based on that incident.

Accordingly, Food Lion admitted that "the loss prevention agent referred to in the motion for judgment was employed by Food Lion." Response No. 3. Mr. Slater and Mr. Sutorka believed, based on their memory of a different incident, that plaintiff's motion for judgment and requests for admission referred to Mr. Slater by the erroneous term "security guard." Food Lion does not and did not employ a security guard at the subject store. Mr. Slater was the only loss prevention agent associated with that store at the relevant time. Under this reasoning, Food Lion also admitted that "during all times relevant, the loss

¹A copy of Food Lion, Inc.'s Amended Response to the Plaintiff's Request for Admission is attached as Exhibit A.

prevention agent was acting in the scope of his employment with Food Lion." Response No. 5.

Christine Melton filed her Motion for Judgment in March of 1992. Depositions did not take place until October of 1993. Now that depositions have proceeded, Mr. Slater realizes that the incident that he recalled did not involve Plaintiff, whom he has now seen face to face during deposition. The incident he recalled involved a woman in her thirties. Ms. Melton is considerably older. Mr. Sutorka concurs that the incident that they recall involved a younger woman than Ms. Melton.

Neither Mr. Sutorka nor Mr. Slater has any recollection of the incident that Ms. Melton alleges occurred or of Ms. Melton shopping at Food Lion. Plaintiff's references to a "security guard" refer to a person and incident unfamiliar to Sutarka and Slater, or to anyone else at Food Lion. The "loss prevention agent" referred to in the Response is not the "security guard" mentioned in the Requests. Therefore, Food Lion seeks to amend its Grounds of Defense to reflect its correct responses to Plaintiff's Requests for Admission now that Food Lion is in a position to understand those requests.

ARGUMENT

Under Rule 4:11 of the Rules of the Supreme Court of Virginia this Court may permit withdrawal or amendment of admissions "when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment

will prejudice him in maintaining his action or defense on the merits."

Amendment of Food Lion's Response will subserve the presentation of the merits of the case. The Response is in error because it refers to the wrong incident and is pertinent only to questions about an incident that is not the subject matter of this action. An amended response would be pertinent to questions about the correct incident. To allow truthful answers about the correct incident can only promote the presentation of the merits.

Furthermore, amendment will not prejudice Plaintiff's ability to maintain her action on the merits. Responses based on an incident other than the one giving rise to the action cannot affect Plaintiff's presentation of the truth about the proper incident one way or the other. Moreover, Food Lion's Response is framed in terms of a "loss prevention agent," while Plaintiff's Requests speak only of a "security guard." On their faces the two documents do not relate to each other in this respect. Amendment to reflect a truthful relation between them can only help the Plaintiff's ability to maintain her action on the merits.

CONCLUSION

For the above reasons Food Lion, Inc. requests leave of the Court to file Food Lion, Inc.'s Amended Responses to Plaintiff's Requests for Admission, amending Response Nos. 3 and 5 of Food Lion, Inc.'s Response to The Plaintiff's Request for Admission.

FOOD LION, INC.

By *[Signature]*
Of Counsel

H. Carter Redd, # 34392
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
Richmond, VA 23219
(804) 775-1165

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum of Points and Authorities in Support of Defendant's Motion to Amend Food Lion, Inc.'s Response to The Plaintiff's Request for Admission was mailed, postage prepaid, this 17th day of November, 1993 to William H. Shewmake, Coates & Davenport, 5206 Markel Road, Richmond, VA 23230.

John P. ...

Mulkey\U:P0068

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

Christine F. Melton)	
)	
Plaintiff,)	
)	
v.)	CASE NO. CL92-263
)	
Food Lion, Inc.)	
)	
Defendant.)	

FOOD LION, INC.'S AMENDED RESPONSE TO
THE PLAINTIFF'S REQUESTS FOR ADMISSION

Food Lion, Inc., by counsel, pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia, amends its response to the plaintiff's Request for Admission as follows:

1. Admit that the defendant owns the store in question.

Response: Denied.

2. Admit that the defendant owned the store in question on April 19, 1991.

Response: Denied.

3. Admit that during his encounter with the plaintiff on April 19, 1991, the security guard referred to in the plaintiff's Motion for Judgment was employed by the defendant.

Response: Denied.

4. Admit that Food Lion, Inc. is the defendant's correct and full name.

Response: Admitted.

5. Admit that at the time of the plaintiff's encounter with the security guard referred to in the plaintiff's motion for

judgment, the security guard was acting within the scope of his employment with the defendant.

Response: Denied.

FOOD LION, INC.

By: *[Signature]*
Counsel

H. Carter Redd, Esquire
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
(804) 775-1155
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Food Lion, Inc.'s Amended Response to the Plaintiff's Requests for Admission was mailed this 17th day of November, 1993, to William H. Shewmake, Coates & Davenport, 5206 Markel Road, Richmond, VA 23230, counsel for the plaintiff.

John P. Lee

Mulkey\U:\P0070

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

-----X	
CHRISTINE F. MELTON,	:
	:
Plaintiff,	:
	:
	:
v.	: Case Nos. 92-263
	: 92-518
	:
FOOD LION, INC.,	:
	:
and	:
	:
DERRICK SLATER,	:
	:
Defendants.	:
-----X	

Before: L. A. HARRIS, JR., JUDGE

March 11, 1994
9:10 a.m.

Richmond, Virginia

HALASZ & HALASZ
Court Reporters
P.O. Box 223
Richmond, Virginia 23202
(804) 741-5200
Reported by: Joseph C. Spontarelli

HALASZ & HALASZ

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APPEARANCES:

SHEWMAKE & BARONIAN, P.C.
By: William H. Shewmake, Esquire
5413 Patterson Avenue
Richmond, Virginia 23226
On Behalf of the Plaintiff

McGUIRE, WOODS, BATTLE & BOOTHE
By: H. Carter Redd, Esquire
One James Center
Richmond, Virginia 23219-4030
On Behalf of the Defendant

P R O C E E D I N G S

THE COURT: Are these the same case,
just against different people?

MR. SHEWMAKE: They have been
consolidated.

THE COURT: All right.

There is a motion to amend the Grounds
of Defense. Is that what we're here for?

MR. REDD: Yes, Your Honor.

Good morning, Your Honor. My name is
Carter Redd. I represent Food Lion and Mr. Slater.

The background of this case is that the
plaintiff, Mrs. Melton, has sued Food Lion and then
Mr. Slater claiming that a Food Lion employee
apprehended her in the parking lot at a shopping
center at the corner of Parham Road and Route 1 and
asked her if she had meat in her purse. After a
certain length of time she voluntarily opened her
purse and show him she did not have meat in her
purse, at which point he apologized and she went
home. This was a Friday.

She then developed a headache which
continued throughout the weekend. She went to the
doctor and she has a \$35 medical bill and claims that
she has a continuing fear that if she opens her purse

1 in a supermarket she'll be accused of shoplifting.

2 We are here today to amend or to request
3 that we be granted leave to amend our Grounds of
4 Defense and Admissions on behalf of Food Lion and the
5 Grounds of Defense on behalf of Derrick Slater.

6 I have Mr. Slater and a Mr. Sutorka, who
7 was the assistant manager of the store in question,
8 here to testify as to how the investigation of the
9 incident was conducted to show that we came up with
10 the wrong incident.

11 Food Lion investigated it based on the
12 Motion for Judgment which stated that there was a
13 women involved, meat involved, shoplifting on or
14 about April 19, 1991 and based on those facts Food
15 Lion ultimately talked to Mr. Slater and to
16 Mr. Sutorka, who recollected a different incident.

17 THE COURT: You want to amend the
18 Grounds of Defense to reflect this incident --
19 whatever your defense is -- and amend your Admissions
20 in the same light, is that what you want to do?

21 MR. REDD: That's correct.

22 THE COURT: Is the case set for trial?

23 MR. SHEWMAKE: Yes, sir, Your Honor, on
24 March 24th.

25 MR. REDD: We had this scheduled for

1 early February but the ice storm knocked it out.

2 MR. SHEWMAKE: Your Honor, this incident
3 occurred on April 19, 1991. Substantially before the
4 one-year Statute of Limitations I contacted Food
5 Lion, had some discussions with their adjuster and
6 advised them in writing that although I wanted to
7 continue settlement negotiations I needed to get
8 discovery going because when Mrs. Melton had called
9 the store and asked for the manager and he got on the
10 phone, he indicated that Food Lion didn't have
11 jurisdiction over the loss prevention agent. I
12 feared that person would be an independent
13 contractor.

14 I filed, well within the Statute of
15 Limitations, all my discovery, Request for Production
16 of Documents, Interrogatories and Request for
17 Admissions. McGuire/Woods called me. At that time
18 it was Rob Buell who was handling it. He asked for
19 an extension to the Grounds of Defense. I made it
20 clear that as a professional courtesy I would be glad
21 to give him the extra week, provided he answered my
22 discovery by April 6, 1992. He agreed to that.

23 On April 6, 1992 he filed his Grounds of
24 Defense, which I had agreed to, and he admitted in
25 the Request for Admissions that it was a Food Lion

1 employee acting within the scope of the employment
2 but he did not provide me with the Interrogatory
3 Answers.

4 I immediately did a B-6 deposition
5 notice prior to the running of the Statute of
6 Limitations for the corporate designee. One of the
7 things I asked for was any person who could testify
8 as to the identity of the employee that accosted
9 Mrs. Melton. I talked with Mr. Buell and indicated
10 that if he would provide me with those Interrogatory
11 Answers before that statute would run I would agree
12 to postpone the deposition. He did that. He named
13 Derrick Slater as the defendant. In consideration of
14 that I wrote a letter saying I would agree to
15 indefinitely postpone that deposition.

16 From that time this case changed hands
17 several times at McGuire/Woods. It was first
18 Mr. Buell then it was Miss Butterworth then Mr. Redd
19 and that caused a delay.

20 They claimed surprise at the October
21 1993 deposition that Mrs. Melton is an older lady.
22 On May 5, 1992 I sent Mr. Buell a letter where I
23 pointed out there were some discrepancies in their
24 Interrogatory Answers and my client's version of what
25 happened. I also described Mrs. Melton in detail.

1 Specifically I said Mrs. Melton is a 70-year-old
2 Caucasian widow who has white hair, small and thin,
3 has a mild voice and comes across as the perfect
4 grandmother.

5 In July of that year Mr. Buell responded
6 and rejected my settlement offer. I also noted to
7 him the conversation that Mrs. Melton had with the
8 manager when he said, this is the second time it's
9 happened. I'm sorry, but I don't have any
10 jurisdiction over this man. At no time did Mr. Buell
11 indicate that he was taking issue with that. His
12 letter to me simply said that wasn't admissible or
13 relevant.

14 Since all this happened, the first time
15 I hear that there is any problem is in October of
16 '93, a year and a half later. To this date they have
17 not identified the employee who accosted her. Indeed
18 they have changed their defense now, more than two
19 years after the statute has run, to say we don't know
20 who it is. We don't have any documents. They
21 haven't come forward to identify who it is.

22 If the Grounds of Defense and the
23 Request for Admissions were amended, the Statute of
24 Limitations would have run on the individual
25 defendant and it would have greatly prejudiced our

1 ability to locate the person who did accost her.

2 THE COURT: What is your comment along
3 that line? What do you do now when you have admitted
4 he is the person, they go along the way and the
5 Statute of Limitations has now run?

6 MR. REDD: Your Honor, there is always
7 the possibility of waiving the statute.

8 THE COURT: Do you know who the person
9 is?

10 MR. REDD: Food Lion has no record of
11 this incident whatsoever. Food Lion has no one who
12 recollects this incident. Our answers to those
13 questions are based on an incident that is not
14 related to this case.

15 The Court clearly has the discretion to
16 grant us the leave pursuant to Rule 1:8. I frankly
17 don't see how it could possibly be in the interest of
18 justice to hold Food Lion to answers that have
19 nothing to do with this case.

20 THE COURT: Maybe Food Lion should
21 investigate a little more. How could it be in the
22 interest of justice to allow Food Lion to answer
23 saying yes, this is the man and then go along and the
24 Statute of Limitations runs and now you're saying we
25 are were wrong, it really isn't him. Now they don't

1 have any cause of action personally against whoever
2 it may be when Food Lion is saying they are not
3 responsible for the person regardless of whoever it
4 may be.

5 MR. REDD: Your Honor, Food Lion would
6 waive the Statute of Limitations.

7 THE COURT: I assume Food Lion is
8 agreeing to be responsible for any personal action
9 against the employee who is responsible?

10 MR. REDD: If that's what it would take.

11 Food Lion doesn't even know that this
12 was a Food Lion employee. Whoever it was did not
13 identify himself as a Food Lion employee to
14 Mrs. Melton.

15 MR. SHEWMAKE: If I may, Your Honor,
16 there are two issues in this, one, whether we can
17 identify it is a person who was acting within the
18 scope of employment for Food Lion and then there is
19 the probable cause defense. What Mr. Redd is saying
20 at this late date is not only do I not have a cause
21 of action against the person who accosted her but
22 they are trying to say we can't prove it was an
23 employee.

24 THE COURT: Can you?

25 MR. SHEWMAKE: It depends. I had the

1 statement from the manager -- they say they can't
2 recall a phone conversation -- where she calls the
3 store, the woman says I'll get the manager. Someone
4 gets on the phone. She tells him what happens. This
5 is on the day. The person on the phone says that's
6 the second time he's done that but I'm sorry, I don't
7 have jurisdiction over it. In depositions that's
8 what comes out. The manager of a store doesn't have
9 jurisdiction over the loss prevention agent.

10 THE COURT: Obviously you know who the
11 manager of the store was at that period of time.

12 MR. SHEWMAKE: We have the assistant
13 manager.

14 THE COURT: I assume you know.

15 MR. REDD: We had a manager and Food
16 Lion has talked to the manager who has no
17 recollection of that phone call. We have the
18 assistant manager here today because he is the person
19 who assisted in the investigation because he
20 remembered the incident along with Mr. Slater.

21 THE COURT: What incident?

22 MR. REDD: The incident that is not a
23 part of this case involving a younger woman and
24 shoplifting and meat. How it was discovered this
25 case does not relate to that incident was when

1 Mr. Shewmake asked to have the depositions of
2 Mr. Sutorka and Mr. Slater at his office because his
3 client was old and didn't want to go downtown. I
4 then informed Mr. Slater and he said, wait a minute,
5 this was a younger woman we were talking about.

6 THE COURT: When is this case set for
7 trial?

8 MR. REDD: March 24th.

9 Your Honor, Mr. Shewmake has said it is
10 our duty to come forward with whoever did this.
11 Surely he has some burden in this matter.

12 MR. SHEWMAKE: Your Honor, we set out
13 the facts. I asked for all documents. The
14 deposition testimony is they don't keep these
15 records. They can't tell me who the loss prevention
16 agent is in that store.

17 Mr. Slater in fact testified in his
18 deposition I wouldn't have worked on a Friday. I
19 know I wasn't in the store because I didn't work on
20 Fridays. Then I have my May 1992 letter describing
21 my client in detail. Other than through Food Lion I
22 have no idea how I can discover what he is saying.
23 He hasn't come forward with who it was. He hasn't at
24 least made the proffer they will admit whoever it was
25 who accosted her was an employee acting within the

1 scope of employment.

2 I anticipate they are going to try to
3 convince a jury at this late date we can't prove it
4 was an employee. That would be incredibly unfair in
5 that since the filing of this litigation I did all
6 the discovery I possibly could, Your Honor.

7 THE COURT: What is the admission that
8 you're concerned about?

9 MR. REDD: We have admissions that she
10 was at the store. We don't even know that.

11 THE COURT: What else?

12 MR. SHEWMAKE: I can read two of them.
13 Admit during his encounter with the plaintiff on
14 April 19, 1991 the security guard referred to in the
15 Plaintiff's Motion for Judgment was employed by the
16 defendant, Food Lion. Admit at the time of the
17 plaintiff's encounter with the security guard
18 referred to in the Plaintiff's Motion for Judgment
19 the security guard was acting within the scope of his
20 employment with the defendant. Food Lion admits that
21 during all times relevant to this action the loss
22 prevention agent was acting within the scope of his
23 employment with Food Lion. That was propounded on
24 April 6, 1992. Also in Interrogatory Answers where
25 they identify Mr. Slater.

1 MR. REDD: We have amended those
2 Interrogatories or rather supplemented them.

3 Your Honor, that is the gist of the
4 matter. We have admitted based on our recollection
5 of an incident that has nothing to do with the case
6 that Mrs. Melton was a shopper there and that the
7 security guard that the Motion for Judgment refers
8 to -- whoever the person was -- was a Food Lion
9 employ. In fact, there is no record of this
10 incident.

11 THE COURT: Let me ask you this: Is
12 Food Lion willing to accept any liability for an
13 individual -- let's assume, Mr. X was involved in
14 this incident. Is the defense one of the Statute of
15 Limitations can run against that person?

16 MR. REDD: Your Honor, if that's what it
17 takes to amend these, yes.

18 MR. SHEWMAKE: Your Honor, the problem
19 with that is at this late date what I expect their
20 defense to be is we can't prove it was an employee
21 and they deprived us of that opportunity.

22 THE COURT: Tell me how you have been
23 deprived? What can you not do now that you could
24 have done then?

25 Suppose they would have answered we

1 don't know anything about this -- that's the bottom
2 line?

3 MR. REDD: Yes, Your Honor.

4 THE COURT: What could you have done
5 that you cannot do now?

6 MR. SHEWMAKE: Quite frankly, they say
7 the manager can't recollect the conversation. This
8 all came out two and a half, three years out. They
9 haven't produced any records to show who the managers
10 were in the store at the time.

11 THE COURT: You're going to need to do
12 that.

13 MR. REDD: We have produced a record of
14 who all the employees were during the timeframe.

15 THE COURT: Certainly it shouldn't be
16 real hard for you to find out who the manager was.

17 MR. REDD: That's stated in deposition
18 testimony.

19 MR. SHEWMAKE: They don't know which one
20 it was at any given time. He can't remember it. I
21 think at the very least if Mr. Slater is let out or
22 allowed --

23 THE COURT: I'm not letting anybody out
24 at this point.

25 MR. SHEWMAKE: If he is allowed to amend

1 his Grounds of Defense, Food Lion, at the very least,
2 should not be able to, at this late date, say it was
3 not an employee acting within the scope of the
4 employment.

5 THE COURT: If they don't know that it
6 was and they got the incidents mixed up, is that in
7 the interest of justice?

8 MR. SHEWMAKE: Yes, sir, Your Honor. In
9 May of '92 I identified her at length and they do not
10 respond. At this point they are saying nobody can
11 remember anything two and a half, three years down
12 the road. That may very well have not been the case
13 less than a year down the road.

14 The other issue that to me is critical
15 to the case, there should be no objection to
16 Mrs. Melton describing what the person showed her and
17 also the conversation she had.

18 THE COURT: She certainly can testify to
19 that. There would be no objection to that.

20 MR. REDD: To what the person showed
21 her?

22 THE COURT: Yes, and what the
23 conversation was.

24 MR. SHEWMAKE: There is no objection to
25 her testifying concerning the phone call she placed

1 to Food Lion on that date?

2 MR. REDD: I haven't given that matter
3 much thought. It strikes me as hearsay.

4 THE COURT: It's an exception. It's
5 your party. Food Lion is a party. Whether the jury
6 accepts it or not is something else. I think this
7 will be admissible.

8 MR. SHEWMAKE: I don't want them saying
9 she didn't physically see them, it was over the
10 phone.

11 THE COURT: If she testifies that she
12 called Food Lion and they identified themselves as so
13 and so and what-have-you, all that conversation will
14 come in. Whether the jury chooses to accept it or
15 not, that's up to them.

16 MR. REDD: Your Honor, I would also
17 state that if Mr. Shewmake feels they need further
18 time to investigate --

19 THE COURT: I'll give you further time
20 based on the amended Pleadings. If you want a
21 continuance of the trial date, I'll certainly give
22 you that without question.

23 MR. SHEWMAKE: May I have just a moment
24 with my client?

25 THE COURT: Here is what my thinking is:

1 I'm allowing the amendment to the Grounds of Defense
2 and the Admissions on the condition that Food Lion
3 accepts any responsibility that can be shown against
4 an individual employee, person or what-have-you. We
5 all know what we're talking about -- that a defense
6 of Statute of Limitations would allude to. I'm not
7 sure I said that real well. I hope everybody
8 understands what I'm saying.

9 MR. REDD: I brought an order this
10 morning but it does not have that language in.

11 THE COURT: In other words, if he finds
12 out Mr. Smith was the person and brings an action
13 against Mr. Smith and Mr. Smith says hey, the Statute
14 of Limitations has run and he can prove everything
15 else in the case, then Food Lion's going to be
16 responsible for whatever damages are shown.

17 MR. SHEWMAKE: As part of the ruling I
18 can still submit as evidence their previous
19 Admissions? It goes to the weight of the evidence.

20 THE COURT: Exactly right. Obviously
21 you can put on evidence of this is the reason why.
22 It's a matter of evidence, exactly right.

23 Why don't we pass it by for a few
24 minutes and you-all can talk about it.

25 (Recess.)

1 THE COURT: Where are we, Mr. Shewmake?

2 MR. SHEWMAKE: Your Honor, my client
3 doesn't want to have this case continued. She wants
4 to get this over with.

5 For the record, I would like to
6 introduce some of the letters and so forth that I was
7 referring to in the hearing.

8 THE COURT: For this hearing or do you
9 want to save them for trial?

10 It's kind of an unusual situation. I
11 don't know why I had this hearing set with me.
12 Unfortunately I have a capital murder case during
13 that same period of time.

14 MR. SHEWMAKE: That's why it concerns
15 me; that if the conversations are admissible and Your
16 Honor isn't the Judge --

17 THE COURT: It's March 24th. Hang on.

18 (Recess.)

19 THE COURT: Tell me the conversation
20 that you wish admitted into evidence.

21 MR. SHEWMAKE: On the afternoon that
22 this occurred my client went home and shortly
23 thereafter she phoned this store --

24 THE COURT: She called Food Lion?

25 MR. SHEWMAKE: Yes. Someone picked up.

1 She said she needed to talk to the manager and
2 started describing what happened. The person said,
3 wait, let me get a manager. Some man came to the
4 phone.

5 THE COURT: Who identified himself?

6 MR. SHEWMAKE: Not by name but
7 identified himself as a manager of Food Lion;
8 confirmed that the person worked for Food Lion but he
9 wasn't -- he didn't have jurisdiction over him and
10 this is the second time that he's done something like
11 this. That's the conversation that we went on --
12 given three years of saying they can't recollect.

13 THE COURT: All right.

14 Your would put on evidence through your
15 client that this conversation took place?

16 MR. SHEWMAKE: Yes, sir, Your Honor.

17 THE COURT: Would you have an objection
18 to that?

19 MR. REDD: Your Honor, the objection
20 would be hearsay but my understanding is that would
21 be an agent of Food Lion.

22 THE COURT: Exactly. I think you're
23 exactly right.

24 I would allow that conversation into
25 evidence as being exactly as stated. It's an

1 exception to the hearsay rule. It's a matter of
2 weight. Obviously you can put on evidence it either
3 did or didn't take place. As far as admissibility, I
4 would allow it.

5 MR. REDD: Your Honor, the original
6 letter that said that was inadmissible stated that it
7 was inadmissible on relevancy grounds because the
8 defense was probable cause at the time.

9 THE COURT: I understand. I would allow
10 that in.

11 Now, you've got that in the record.
12 That ruling has been made. If I'm not able to try
13 the case on that day Judge Tidey will try the case.
14 That ruling has been made and will be part of that
15 case.

16 MR. SHEWMAKE: Thank you, Your Honor.

17 For the record, we had referred to
18 several letters and correspondence that I would like
19 to have made part of the hearing.

20 MR. REDD: Your Honor, I object to these
21 being entered for anything more than the limited
22 purpose of this hearing.

23 MR. SHEWMAKE: Yes, for the limited
24 purposes of this hearing to demonstrate the
25 conversations, when the Answers were received and so

1 forth. Only for purposes this hearing.

2 THE COURT: Not if they are coming in at
3 the trial, only for purposes of this hearing?

4 MR. SHEWMAKE: Exactly. I talked to Mr.
5 Redd. His initial Interrogatory answers weren't
6 attached to his motion. We agreed to provide that to
7 the Court.

8 THE COURT: Do we have the order or are
9 you going to doctor the order?

10 MR. REDD: I have three orders but they
11 do not mention the language about the waiver of the
12 statute.

13 THE COURT: What are you going to do as
14 far as your Grounds of Defense?

15 MR. REDD: They have been filed.

16 THE COURT: All that's filed?

17 MR. SHEWMAKE: Yes, sir.

18 THE COURT: I know you object to it but
19 other than that you're willing to accept that as you
20 now have it?

21 MR. SHEWMAKE: Yes, sir, Your Honor.

22 MR. REDD: Your Honor, do you want me to
23 redraft this order?

24 THE COURT: I think that would be best.

25 MR. REDD: I'll send it to him.

1 THE COURT: Yes. Just get it here. We
2 all know where we are. You get me the order and
3 we'll go from that point.

4 Thank you all.

5 MR. REDD: Thank you, sir.

6 MR. SHEWMAKE: Thank you.

7 (Proceedings adjourned at 10:15 a.m.)
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REPORTER'S CERTIFICATE

I, Joseph C. Spontarelli, shorthand
reporter, do hereby certify that the pages contained
herein accurately reflect the notes taken by me, to
the best of my ability, in the above-styled action.

Joseph C. Spontarelli
Shorthand Reporter

RECEIVED

V I R G I N I A:

MAR 23 1994

CLERK'S OFFICE
HENRICO CIRCUIT COURT

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTINE F. MELTON,)	
)	
Plaintiff,)	
)	CASE NO. CL92-263
v.)	
)	
FOOD LION, INC.,)	
)	
Defendant,)	
)	
and)	
)	
CHRISTINE F. MELTON,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. CL92-518
)	
DERRICK SLATER,)	
)	
Defendant.)	

MOTION IN LIMINE AND OBJECTION TO
INTRODUCTION OF EXHIBITS

Defendants Food Lion, Inc. ("Food Lion") and Derrick Slater ("Mr. Slater") respectfully submit the following Motion in Limine:

1. At a hearing on March 11, 1994, the Court granted the motions of Food Lion and Mr. Slater to amend Derrick Slater's Grounds of Defense, Food Lion, Inc.'s Grounds of Defense, and Food Lion, Inc.'s Response to Plaintiff's Request for Admissions, because these documents are not based on the incident subject to

this litigation, but on the recollections of Food Lion employees of another incident.

2. Food Lion and Mr. Slater have submitted: Derrick Slater's First Amended Grounds of Defense, Food Lion, Inc.'s First Amended Grounds of Defense, and Food Lion, Inc.'s Amended Response to Plaintiff's Request for Admissions

3. The Amended documents differ from the original documents only in that they reflect Food Lion and Mr. Slater's knowledge of the proper incident. The Amended documents otherwise contain all of the information to be found in the original documents.

4. The plaintiff has listed the original pleadings and admissions as exhibits to be used at trial: Derrick Slater's Grounds of Defense, Food Lion, Inc.'s Grounds of Defense, and Food Lion, Inc.'s Response to Plaintiff's Request for Admissions.

5. These original pleadings and admissions contain nothing relevant to the subject incident not already contained in the amended versions.

6. Any portions of these original documents that differ from the amended versions could only prejudice or confuse the jury and complicate the trial. Should plaintiff introduce these documents as evidence, these defendants would have to rehash the explanation of why these documents refer to an irrelevant incident in the first place. This explanation was given fully at

the hearing on March 11, 1994, and such a rehash would needlessly multiply the issues and waste the Court's time.

7. Food Lion has also supplemented its interrogatories to correct its answers to Interrogatory Nos. 2, 6, and 10. The corrected answers reflect its knowledge of the incident subject to this litigation.

8. The plaintiff has listed as an exhibit to be used at trial Food Lion's Interrogatory Answers, which also refer to the wrong incident.

9. Food Lion's original Answers to Interrogatory Nos. 2, 6, and 10 contain nothing relevant to the incident or damages at issue in this litigation.

10. Any portions of these answers introduced at trial could only prejudice or confuse the jury and complicate the trial. Should plaintiff introduce these answers as evidence, these defendants would have to rehash the explanation of why they were incorrect in the first place in order to show that they are not relevant. This explanation was given fully at the hearing on March 11, 1994. It refers to actions taken during discovery not to any issues posed by the Motion for Judgment.

11. The plaintiff has also listed as potential trial exhibits Robert Buell's letters of July 13, 1992, April 17, 1992, and April 6, 1992; Carter Redd's letter of October 7, 1993; William Shewmake's letters of May 5, 1992, April 16, 1992, and March 2, 1992; Robert Buell's telefax of March 31, 1992; Chrystal

Cowan's letter of February 12, 1992; and the plaintiff's April 17, 1992 notice of deposition.

12. This correspondence refers to the mistake leading to the erroneous responses which prompted these defendants to supplement their interrogatory answers and to request leave of Court to amend their answers and admissions. This correspondence is in no way relevant to the incident or damages at issue in this litigation. This correspondence is to or from attorneys and is argumentative only, not factual.

13. Any portions of this correspondence introduced as evidence at trial could only prejudice or confuse the jury and complicate the trial. Should plaintiff introduce this correspondence as evidence, these defendants would have to rehash the explanation of why the original pleadings and discovery responses were incorrect in the first place in order to show that the correspondence is not relevant. This explanation was given fully at the hearing on March 11, 1994.

14. Because the plaintiff has listed all of these documents as proposed exhibits and has sought to call one of Food Lion's and Derrick Slater's attorneys as a witness at trial, these defendants anticipate that the plaintiff will seek to villainize Food Lion at trial by referring to Food Lion's original misconception of what incident was at issue here and by characterizing that misconception as discovery abuse.

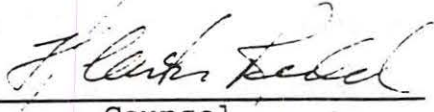
15. Food Lion's original misconception has nothing to do with the alleged incident in a parking lot which is the subject matter of this case. Therefore, that misconception and any reference to it would raise only issues irrelevant, prejudicial, and confusing to a jury. The function of a jury should be to decide the factual dispute raised by the Motion for Judgment, not to consider peripheral, unrelated matters.

Accordingly, defendants Food Lion, Inc. and Derrick Slater respectfully request the Court to exclude Derrick Slater's Grounds of Defense; Food Lion, Inc.'s Grounds of Defense; Food Lion, Inc.'s Response to Plaintiff's Request for Admissions; original Answers 2, 6, and 10 to plaintiff's interrogatories; Robert Buell's letters of July 13, 1992, April 17, 1992, and April 6, 1992; Carter Redd's letter of October 7, 1993; William Shewmake's letters of May 5, 1992, April 16, 1992, and March 2, 1992; Robert Buell's telefax of March 31, 1992, Chrystal Cowan's letter of February 12, 1992; and the plaintiff's April 17, 1992 notice of deposition from evidence at trial. These defendants also respectfully request the Court to exclude from mention at trial by the plaintiff or the defendants in testimony or argument the fact that Food Lion and Derrick Slater originally filed

incorrect pleadings and discovery responses or that Food Lion :
changed its pleadings and discovery responses.

FOOD LION, INC.

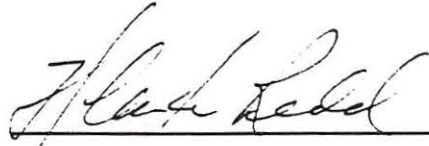
By:


Counsel

H. Carter Redd, Esq.
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
901 East Cary Street
Richmond, VA 23219-4030
(804) 775-1155
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was delivered by hand this 23^d day of March, 1994, to William H. Shewmake, Esq., Shewmake, Baronian & Parkinson, 5413 Patterson Avenue, Suite 101, P.O. Box 17675, Richmond, Virginia 23226, counsel for plaintiff.



Mulkey\U:\P0132

1 VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTINE F. MELTON,

Plaintiff,

Case No. CL92-263

v.

FOOD LION, INC.,

Defendant.

ORDER

This day came the defendant, by counsel, and, upon motion of the defendant after hearing arguments of counsel for all parties, it is hereby ORDERED that the Defendant's Motion to Amend Food Lion, Inc.'s Response to The Plaintiff's Request for Admission is hereby, GRANTED upon the condition that Food Lion, Inc. will assume responsibility for the personal liability of any employee who is found to have acted as alleged by Christine Melton in her Motion for Judgment against Derrick Slater in Case No. CL92-518, which has been consolidated with this case, regardless of the running of any applicable Statute of Limitations to bar suit by Christine Melton against that employee.

ENTERED:

Judge

I ask for this:

H. Carter Redd
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
901 East Cary Street
Richmond, Virginia 23219

A COPY TESTE:
YVONNE G. SMITH, CLERK
Yvonne G. Smith
DEPUTY CLERK

Seen and ~~agreed~~ ^{objected} to:

William H. Shewmake
William H. Shewmake
Coates & Davenport
5206 Markel Road
Richmond, VA 23230

Mulkey\U:P0069

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTINE F. MELTON,

Plaintiff,

v.

FOOD LION, INC.,

Defendant.

Case No. CL92-263

ORDER

This day came the defendant, by counsel, and, upon motion of the defendant after hearing arguments of counsel for all parties, it is hereby ORDERED that the Defendant's Motion to Amend Food Lion, Inc.'s Grounds of Defense is hereby, GRANTED upon the condition that Food Lion, Inc. will assume responsibility for the personal liability of any employee who is found to have acted as alleged by Christine Melton in her Motion for Judgment against Derrick Slater in Case No. CL92-518, which has been consolidated with this case, regardless of the running of any applicable Statute of Limitations to bar suit by Christine Melton against that employee.

ENTERED:

3 124

Judge

A COPY TESTE:
YVONNE G. SMITH, CLERK
DEPUTY CLERK

I ask for this:

H. Carter Redd
H. Carter Redd
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center

901 East Cary Street
Richmond, Virginia 23219

Seen and ~~agreed to~~ *objected to*

will X Shum

William H. Shewmake
Coates & Davenport
5206 Markel Road
Richmond, VA 23230

Mulkey\U:P003 5

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTINE F. MELTON,	:	
	:	
Plaintiff,	:	
	:	
	:	
v.	:	Case Nos. 92-263
	:	92-518
	:	
FOOD LION, INC.,	:	
	:	
and	:	
	:	
DERRICK SLATER,	:	NOTES OF MOTIONS
	:	and TESTIMONY
Defendants.	:	

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Court Reporters
P.O. Box 223
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(804) 741-5200
Reported by: Joseph C. Spontarelli

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2 APPEARANCES:
3

4 SHEWMAKE & BARONIAN, P.C.
5 By: William H. Shewmake, Esquire
6 5413 Patterson Avenue
7 Richmond, Virginia 23226
8 On Behalf of the Plaintiff

9 MCGUIRE, WOODS, BATTLE & BOOTHE
10 By: H. Carter Redd, Esquire
11 One James Center
12 Richmond, Virginia 23219-4030
13 On Behalf of the Defendant
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INDEX TO EXHIBITS

Exhibit No.:

Page

Plaintiff's Exhibit No. 1

20

(Receipt)

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P R O C E E D I N G S

THE CLERK: Christine F. Melton against Food Lion, No. 92-263 and Christine F. Melton against Derrick Slater, No. 92-518. Plaintiff ready to proceed?

MR. SHEWMAKE: We are.

THE CLERK: Are the defendants ready to proceed?

MR. REDD: Yes, we are.

We have a Motion in Limine.

MR. SHEWMAKE: We also have a preliminary matter about an order that resulted from Judge Harris' March 11th ruling.

THE COURT: I'll take the Motion in Limine up after we select the jury.

You haven't signed either of these orders, Mr. Redd.

MR. REDD: Your Honor, I have submitted other orders which Mr. Shewmake also has which I have signed.

THE COURT: The two handed to me do not have your signature on them.

MR. SHEWMAKE: Your Honor, I talked with Mr. Redd. Our orders are the same except my order

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1 reflects that the plaintiff is allowed to introduce
2 the original Grounds of Defense. On March 11th, as I
3 think Your Honor knows, there was a hearing to allow
4 them to amend or supplement their request for
5 Admissions and their Grounds of Defense.

6 Essentially, early on they admitted --

7 THE COURT: I know all that.

8 MR. SHEWMAKE: Your Honor, in order to
9 amend Grounds of Defense and the Request for
10 Admissions there can't be any prejudice to the
11 plaintiff. I was very concerned about an amendment
12 coming three years down the road, especially when
13 Food Lion claims they can't find the person who
14 really approached Mrs. Melton.

15 When the Court allowed them to
16 supplement their Answers I specifically asked Judge
17 Harris on page 17 as part of the ruling if I can
18 still submit as evidence the previous admissions. It
19 goes to the weight of evidence. Judge Harris said,
20 exactly right. Obviously you can put on evidence of
21 this as the reason why it's a matter of evidence,
22 exactly right. That was part of his ruling to allow
23 them to amend that I could put in the original
24 answers. The Court ought to rule consistent with
25 Judge Harris. It would be tremendously prejudicial

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1 to allow them to supplement and further exclude the
2 original judicial admissions.

3 THE COURT: They would only be
4 admissible for impeachment, wouldn't they?

5 MR. SHEWMAKE: No, they are judicial
6 admissions. They admitted he's an employee. They
7 are admissible. They can attack it and that goes to
8 the weight. Judge Harris considered allowing them to
9 amend to allow me to put on the evidence. If they
10 want to attack it they can explain it to the jury.

11 THE COURT: Is your evidence from your
12 client going to be this is the gentleman that stopped
13 her?

14 MR. SHEWMAKE: She is going to say --

15 THE COURT: Is there evidence that this
16 is the man who stopped her?

17 MR. SHEWMAKE: No. She is going to say
18 she cannot positively identify him at this point.
19 That's why the Admissions are very important that
20 were answered more than a year prior to trial.

21 THE COURT: What is so important about
22 the Admissions?

23 MR. SHEWMAKE: Because they are going to
24 now claim three years later she cannot prove that it
25 was an employee.

1 THE COURT: That's where the impeachment
2 comes in, doesn't it?

3 MR. SHEWMAKE: It's not a question of
4 impeachment. I first have to put on the evidence.
5 If this is an Admission from a party it's a hearsay
6 exception. Judge Harris, in allowing them,
7 specifically ruled I could put it into evidence.
8 That was the condition. If that isn't the case I
9 have been tremendously prejudiced and they should not
10 be allowed to supplement their Request for
11 Admissions. The rule requires that they can only
12 supplement if there is not prejudice to me.

13 THE COURT: There would be prejudice to
14 you if they are going to change the answer.

15 MR. SHEWMAKE: Your Honor, I have to
16 first put on prima facie evidence that it was an
17 employee.

18 THE COURT: How can you do that?

19 MR. SHEWMAKE: Your Honor, she is going
20 to say a man came out and showed her a badge and then
21 she called the store. She cannot positively say it's
22 him. She doesn't know the personnel records of Food
23 Lion.

24 I suspect Mr. Redd is going to say he
25 just accosted you. He could be some stranger, isn't

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1 that right, Mrs. Melton?

2 Your Honor, I move to strike because

3 they haven't proved it's an employee. That gets me

4 by that. That was a condition of Judge Harris'

5 ruling when he allowed them to supplement. It is a

6 Request for Admissions. It is in this case.

7 They have a right to rebut it and try to

8 explain it away. I have a right to introduce it. It

9 was a pleading in this case.

10 THE COURT: Call the jury.

11 MR. SHEWMAKE: When do you want to have

12 a motion to exclude witnesses, after the jury?

13 THE COURT: Yes.

14 MR. SHEWMAKE: Your Honor, before the

15 jury comes in I would nonsuit Mr. Slater's case.

16 Your Honor, is Mr. Slater now the

17 corporate representative?

18 THE COURT: I don't know.

19 MR. REDD: Mr. Slater is not the

20 corporate representative.

21 THE COURT: Who is going to be, anybody?

22 MR. REDD: I do not have a specific

23 corporate representative here. I have two managers

24 from Food Lion, both of which will testify.

25 THE COURT: I feel you're allowed to

1 have a person from Food Lion with you at counsel
2 table if you want but you don't have to. It won't be
3 Mr. Slater since he's been non-suited.

4 MR. REDD: I would like Mr. Whitaker to
5 sit up here.

6 THE COURT: What is his name?

7 MR. REDD: His name is James E.
8 Whitaker.

9 THE COURT: Which Food Lion store is it?

10 MR. SHEWMAKE: The one at Route 1 and
11 Parham.

12 (Whereupon, a jury of seven was duly
13 selected and sworn or affirmed:)

14 (Recess.)

15 THE COURT: There was a motion to
16 exclude the witnesses. I'll ask all witnesses to
17 wait in the hall. Please do not discuss your
18 testimony with anybody while you're out there. We'll
19 call you in one at a time.

20 Let's handle the motions now while the
21 jury is out.

22 MR. REDD: Your Honor, as you have
23 already heard today, Mr. Shewmake wants to put on
24 evidence of the discovery matters that went on in
25 this case. Part of that evidence is Admissions and

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1 original Grounds for Defense. Other of that evidence
2 is correspondence between him and Food Lion and
3 between him and lawyers for Food Lion.

4 It's Food Lion's position this is a case
5 of an incident in a parking lot. The burden of proof
6 is on Mrs. Melton to show that whatever she claims
7 happened in the parking lot happened to her because
8 of something that a Food Lion employee did.

9 I think you already understand how it is
10 that Food Lion gave incorrect answers in the first
11 place. Those answers should be irrelevant because
12 they are about another incident. They do not apply
13 to this incident. Should the matter come up, the
14 trial could easily become a trial about how Food Lion
15 answered those questions. This is a peripheral
16 matter that can only be confusing to the jury, if not
17 prejudicial. I would ask that you preclude it from
18 the trial.

19 MR. SHEWMAKE: Your Honor, I did timely
20 discovery in this case to nail down that the person
21 who accosted my client was an employee. As time goes
22 by it is awfully hard to find witnesses, especially
23 in incidents like this. Within a year I propounded
24 them with the original Motion for Judgment and they
25 admitted it. We went almost three years on their

1 Admissions. If they hadn't moved to withdraw or
2 supplement their Grounds of Defense and their Request
3 for Admissions I clearly could have put them in in my
4 case in chief. They could not have rebutted them at
5 all.

6 Judge Harris in balancing the equities
7 specifically ruled that they weren't conclusive. I
8 could still put them in, in my case in chief but they
9 weren't conclusive.

10 This is a jury trial. It's an issue of
11 fact of whether they made a mistake or not. They
12 claim they did but that's for the jury to decide,
13 Your Honor, because this is a jury trial.

14 THE COURT: It may be a jury trial but
15 there are certain aspects of law that I have to rule
16 on whether it's a jury trial or a non-jury trial,
17 isn't that right, Mr. Shewmake?

18 MR. SHEWMAKE: Yes, Your Honor.

19 Admissions of a party is admissible
20 evidence. You can rule whether it's an admission.
21 Clearly it is. There is a whole line of case law.
22 That was one of the specific conditions Judge Harris
23 imposed in allowing them to rebut it. The fact that
24 they can now put on evidence merely means it isn't
25 conclusive. The jury can weigh it -- as Judge Harris

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1 said, whatever weight they want to give it. It
2 doesn't prevent me from putting it in, in the case in
3 chief.

4 If they want to argue to a jury we got
5 it all wrong and we were just confused, that's up to
6 them. They are perfectly allowed to do that. As
7 Judge Harris recognized, it would be de minimus
8 prejudice in this case if they are allowed to lead me
9 to believe that is not an issue in the case. They
10 are Food Lion employees. They responded to it. I'm
11 relying upon it. Then near the trial, two and a half
12 years later, they say oh, just kidding, it was a
13 different incident.

14 THE COURT: I don't think they said just
15 kidding, Mr. Shewmake. Let's phase it straight up
16 like it is.

17 MR. SHEWMAKE: Yes, Your Honor.

18 We were substantially prejudiced by
19 that. Now they are not coming back with any person
20 who is going to go back and say I remember the
21 conversation that he had when she called in. Yes,
22 I'm the person. That, coupled with the fact they are
23 not producing anybody, Judge Harris recognized I
24 should be allowed. I think the law entitles me,
25 independent of Judge Harris' ruling and conditions,

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1 and allows me to put it in as evidence. Then it's a
2 question of weight. Weight of evidence is always for
3 a jury. It is up to the jury to decide.

4 THE COURT: Mr. Redd is talking about
5 correspondence.

6 MR. SHEWMAKE: That's a separation issue
7 I'll address in a minute.

8 What I want to put in are their
9 Admissions that one, during the encounter with the
10 plaintiff on April 19, 1991 the security guard
11 referred to in the Plaintiff's Motion for Judgment
12 was employed by the defendant. They admitted that.
13 I based my whole case for two and a half years on
14 that. I have got that nailed down. They also
15 admitted that at the time of the plaintiff's
16 encounter with the security guard referred to in the
17 Plaintiff's Motion for Judgment the security guard
18 was acting within the scope of his employment with
19 the defendant. They admitted that. I based my whole
20 case for two and a half years on that. I nailed that
21 down.

22 Also, they admitted things in their
23 Grounds of Defense that go to the heart of the issue.
24 It's up to them to tell the jury why they are wrong
25 but it is clearly relevant, probative evidence. They

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1 are allowed to explain it. That doesn't prevent me
2 from introducing the evidence. That was the
3 condition of Judge Harris' ruling. If I'm not
4 allowed to put it in, in the case in chief and they
5 are allowed to move to strike my evidence because
6 three years later I couldn't prove it was an actual
7 employee, then obviously the prejudice was
8 substantial and they shouldn't be allowed to
9 supplement at all. Under the rules if I suffer that
10 type of prejudice they cannot change their Request
11 for Admissions.

12 The other issue on the correspondence,
13 which is really a separate issue, I expect them to
14 testify or call Mr. Slater who is going to say I know
15 it was two and a half years down the road but I
16 didn't realize it until October of 1993 that this was
17 an older lady. I have a redacted letter I sent to
18 Mr. Buell in May of 1992 around the time of these
19 requests where I described Mrs. Melton.

20 THE COURT: The letter is not coming in.

21 MR. SHEWMAKE: Those are two separate
22 issues, Your Honor.

23 MR. REDD: Your Honor, we have a record
24 on the hearing and he's characterized Judge Harris'
25 reasons for the statement that he can submit their

1 previous rulings. There isn't any reasoning given in
2 that portion of the record. Judge Harris did,
3 however, note that they are not prejudiced because
4 it's their burden to show that it's a Food Lion
5 employee and if we didn't know in the beginning and
6 we had said so they would have the same burden then
7 that they have now. This is not a matter that
8 prejudices them.

9 Secondly, Admissions of a party are not
10 admissible unless moved into the record and they are
11 objectionable. We are objecting to these because
12 they relate to a different incident and they can be
13 nothing but confusing and only lengthen the trial.

14 THE COURT: Don't talk about the length
15 of the trial. I'm not going to worry about how long
16 we're here today.

17 MR. REDD: I would reiterate they can be
18 nothing but prejudicial and confusing.

19 MR. SHEWMAKE: Your Honor, I have the
20 transcript.

21 THE COURT: I'm not going to allow the
22 Admissions in your case in chief, Mr. Shewmake.

23 MR. REDD: Excuse me, Your Honor? You
24 said you are?

25 THE COURT: I am not going to allow the

1 Admissions. They have been amended. They may have a
2 place in the trial. At this point they are not going
3 to be in the case in chief.

4 MR. REDD: Thank you, Your Honor.

5 We still have the matter of the
6 correspondence.

7 THE COURT: I already ruled on that.
8 It's not coming in nor the Grounds of Defense.

9 We're going to be in recess for about
10 five minutes.

11 (Recess.)

12 MR. SHEWMAKE: Your Honor, very quickly
13 on these Admissions and Grounds of Defense, do you
14 want us to read them into the record sometime during
15 the trial?

16 THE COURT: That will be fine.

17 (Jury returned to the courtroom.)

18 (Whereupon, opening statements were
19 presented to the jury on behalf of the plaintiff and
20 on behalf of the defendant.)

21 THE COURT: First witness, Mr. Shewmake?

22 MR. SHEWMAKE: Your Honor, I call
23 Christine Melton.

24 Your Honor, as an administrative matter
25 I believe there is a stipulation this occurred on a

1 Friday afternoon and that the store itself was run by
2 the defendant Food Lion.

3 MR. REDD: That's correct.

4 THE COURT: Thank you.

5 CHRISTINE F. MELTON,
6 was sworn or affirmed and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SHEWMAKE:

9 Q Would you state your name, age and
10 address for the jury?

11 A Christine Melton. I live at 1803
12 Hungary Road.

13 Q Is that in the county?

14 A Henrico County.

15 Q Do you live with anyone?

16 A No.

17 Q How long have you lived there?

18 A Since 1984.

19 Q Do you remember the day in April of 1991
20 when you had an encounter at the defendant's Food
21 Lion store?

22 A I sure do.

23 Q Which store was that?

24 A Number 1 and Parham Road.

25 Q In Henrico County?

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1 MELTON-DIRECT-SHEWMAKE

2 A In Henrico County.

3 Q Do you know what day of the week it was?

4 A Friday.

5 Q What time of day was it, Mrs. Melton?

6 A About two or 3:00.

7 Q Was anyone with you?

8 A No.

9 Q What kind of car you were driving,

10 Mrs. Melton?

11 A '85 Oldsmobile.

12 Q Where did you park?

13 A I parked directly in front of the store

14 in the regular parking lot beside the handicapped

15 lane.

16 Q Why did you go to the store that day?

17 A Went there to get a chicken.

18 Q Tell us what you did when you got there.

19 A Well, I went in the store. Went right

20 straight back to the meat counter. I got the chicken

21 and put it in my basket. Then I saw a package of

22 pork chops there and I decided to buy them. I put

23 those in my basket. I went back through the checkout

24 stand and paid for them. I put them on the counter

25 and I paid for them.

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1 MELTON-DIRECT-SHEWMAKE

2 Q Can you recognize that receipt?

3 A Yes.

4 Q What is that?

5 A That's a receipt from Food Lion that I
6 paid for the meat that I brought out.

7 MR. SHEWMAKE: We would like to
8 introduce that as Exhibit Number 1, Your Honor.

9 THE COURT: All right.

10 (Plaintiff's Exhibit No. 1 entered.)

11 BY MR. SHEWMAKE:

12 Q What kind of day was it?

13 A A pretty spring day.

14 Q Tell us what happened after you paid for
15 the meat.

16 A The lady put them in a plastic bag, put
17 the meat in a plastic bag. I put it over my left arm
18 and she gave me the receipt. I came out with it. I
19 got almost to my car, just a few steps from my car
20 and I heard somebody behind me and I turned around.
21 It was this big African-American man behind me.

22 Q What did he say?

23 A He said, don't you have some meat that
24 belongs to us? I said, no, I paid for what I brought
25 out of there and here's my receipt.

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1 MELTON-DIRECT-SHEWMAKE

2 Q What did he say?

3 A He said, I'm not talking about that, I'm
4 talking about the meat that you have in your purse.
5 I said, I don't have any meat in my purse. He kept
6 saying, are you sure, are you sure, are you sure. I
7 kept repeating, no. Then he pulled his badge out and
8 held it beside him. He said, what if I called the
9 police?

10 Q How close was he to you while this was
11 going on?

12 A Just two or three steps.

13 Q Did you notice whether anybody was near
14 you while this was going on?

15 A Yes, there was.

16 Q Describe that.

17 A There was people going in and out of the
18 store and there were people stopping to listen and
19 see what was going on.

20 Q Then you showed him your purse?

21 A Yes. When he said what if I called the
22 police, that scared me to death. I had already been
23 embarrassed and scared to death from the very
24 beginning. Then when he threatened to call the
25 police I opened my pocketbook and he looked in and

HALASZ & HALASZ

1 MELTON-DIRECT-SHEWMAKE

2 said, I'm sorry, I apologize. Then he turned and
3 walked back in the store.

4 Q What kind of tone was he using with you?

5 A A very loud tone.

6 Q What did you do then?

7 A I got in my --

8 Q Let me back up.

9 Did you feel while this was happening
10 whether or not you could simply leave?

11 A No, I could not leave. I felt like I
12 was being held there.

13 Q What did you do after he turned around
14 and left?

15 A I got in my car and went home. I was
16 shaking so bad. I was so nervous and had such a
17 terrible headache.

18 Q Did you have a headache before this
19 started?

20 A No.

21 Q How far is your house from the Food
22 Lion?

23 A About two miles.

24 Q Did you go straight home?

25 A Yes.

HALASZ & HALASZ

1 MELTON-DIRECT-SHEWMAKE

2 Q What did you do when you arrived home,
3 Mrs. Melton?

4 A First thing I did when I got home, I put
5 my packages down and I took a couple Tylenol. In a
6 little while I called Food Lion to report it.

7 Q How did you get the Food Lion number?

8 A I looked it up in the phone book.

9 Q Tell us what happened when you called
10 the Food Lion.

11 A A lady answered the phone.

12 Q Did she identify the store?

13 A Not that I remember.

14 Q Whether or not it was Food Lion?

15 A She said Food Lion.

16 Q What did you do?

17 A I started to tell her what happened.

18 Q What did she say?

19 A She says, I think you should talk with
20 the manager.

21 Q Then what happened?

22 A Then he came to the phone. I told him
23 what had happened.

24 Q What did the manager say?

25 A He said this is the second time he has

HALASZ & HALASZ

1 MELTON-DIRECT-SHEWMAKE

2 done this. He's not under my jurisdiction. He works
3 from one store to the other but I will report him.

4 Q Did he indicate whether the person
5 worked for Food Lion?

6 A He said yes, he worked for Food Lion.

7 Q After that conversation did you talk to
8 anyone else that day?

9 A Yes.

10 Q Who did you talk to?

11 A I talked to my son, my sister.

12 Q Who did you talk to first, your sister
13 or your son?

14 A I talked to my sister first.

15 Q What is her name?

16 A Gertrude Lane.

17 Q How old is Miss Lane?

18 A 76.

19 Q How old are you?

20 A 71.

21 Q Did you indicate to your sister what had
22 happened to you?

23 A Yes. She asked me what was wrong with
24 me.

25 MR. REDD: Objection. Hearsay.

HALASZ & HALASZ

1 MELTON-DIRECT-SHEWMAKE

2 THE COURT: I'll allow it.

3 BY MR. SHEWMAKE:

4 Q What did you tell her?

5 A I told her what had happened to me at
6 Food Lion.

7 Q At some time after did you talk to your
8 son?

9 A Yes. When he came home from work I
10 called him and told him.

11 Q Does your son suffer from any physical
12 impairments?

13 MR. REDD: Objection. Relevance, Your
14 Honor.

15 MR. SHEWMAKE: I'm trying to show how
16 she communicated.

17 THE COURT: I'll allow it.

18 BY MR. SHEWMAKE:

19 Q Does he suffer from any physical
20 impairments?

21 A He has a hearing problem. We have the
22 TTY that we communicate with.

23 Q What is a TTY?

24 A It's something you type messages on to
25 one another. He has spinal muscular atrophy, too.

HALASZ & HALASZ

1 MELTON-DIRECT-SHEWMAKE

2 Q Did you actually see your son that day
3 as well?

4 A Yes. He came to see me.

5 Q Tell us how you felt over that weekend.

6 A Terrible.

7 Q Describe it.

8 A I was nervous. I had such a terrible
9 headache. I just couldn't get any relief from
10 Tylenol or any other medicine over-the-counter. I
11 just could not sleep.

12 Q Sometime after did you seek any medical
13 attention?

14 A Yes.

15 Q When was that?

16 A On Monday I went to see the doctor.

17 Q Did he give you any medication?

18 A Yes, he did.

19 Q Did that help at all?

20 A Yes, it helped.

21 Q How did it help?

22 A It calmed my nerves down and my headache
23 wasn't quite as bad.

24 Q Did it help with the sleep at all?

25 A Yes.

HALASZ & HALASZ

1 MELTON-DIRECT-SHEWMAKE

2 Q Approximately how long were you on this
3 medication?

4 A I guess about two months.

5 Q At some point did you get off the
6 medication?

7 A Yes.

8 Q Why did you get off the medication?

9 A Because he said it was highly addictive.
10 I felt like I had to fight that battle by myself. I
11 couldn't depend on medicine as a crutch.

12 Q How did you feel over the next few
13 months?

14 A At times I was very, very nervous,
15 especially going in grocery stores. I was afraid to
16 even open my pocketbook for fear somebody would say
17 she's putting something in her pocketbook. I had
18 that fear and I still have it to this day but it's
19 better. I have had a hard time overcoming this
20 thing.

21 Q In terms of your anxiety and
22 nervousness, has that gotten better?

23 A Yes, it has gotten better.

24 Q What symptoms, if any, do you still have
25 today?

HALASZ & HALASZ

1 MELTON-DIRECT-SHEWMAKE

2 A I still have anxiety at times. Like I
3 said, when I go in stores if I should happen to open
4 my bag or my purse for whatever reason I feel like
5 I'm being watched; somebody will think she's put
6 something in her pocketbook, that's my feeling.

7 Q How long would you say your general
8 nervousness and anxiety about going into stores --
9 how long did that last?

10 A I still have it now, even now. Even now
11 it reflects back in my mind as to what I went through
12 at Food Lion and I cannot help it.

13 Q Do you shop at Food Lion stores now?

14 A No.

15 Q Are you religious, Mrs. Melton?

16 A Yes, I am.

17 Q Can you think of anything that you did
18 while you were in that store that would lead anybody
19 to believe that you had stolen anything from Food
20 Lion?

21 A Not a thing.

22 Q Did you steal anything while you were in
23 that store?

24 A No, I did not.

25 MR. SHEWMAKE: I have no further

1 MELTON-DIRECT-SHEWMAKE

2 questions. Answer any questions Mr. Redd has.

3 THE COURT: Cross.

4 CROSS-EXAMINATION

5 BY MR. REDD:

6 Q Good morning, Mrs. Melton.

7 A Good morning.

8 Q First of all, you have testified that it
9 was a black man in the parking lot who accosted you?

10 A Yes, sir.

11 Q Did he ever identify himself by name?

12 A By name?

13 Q Yes.

14 A No.

15 Q Did you ever ask him what his name was?

16 A No.

17 Q Did he ever identify himself as a Food
18 Lion employee?

19 A Not specifically but I think when he
20 asked me, don't you have some meat that belongs to us
21 I would certainly think he was working for Food Lion.

22 Q My question to you is: Did he identify
23 himself to you as working for Food Lion?

24 A No, he did not.

25 Q When he first approached you did he show

HALASZ & HALASZ

1 MELTON-CROSS-REDD

2 you a badge?

3 A Not when he first approached me, no.

4 Q It was how long before he showed you a
5 badge?

6 A At the end of the confrontation.

7 Q How long did this confrontation go on?

8 A Well, as I said before, it was -- it
9 seemed like a long time, maybe 30 minutes, but it
10 really wasn't that long but it seemed like it. I
11 guess maybe 10 minutes.

12 Q So it was only at the end of the
13 confrontation when you claim he said what if I call
14 the police that he showed a badge?

15 A That's right.

16 Q Could you see that badge?

17 A Yes.

18 Q What did it look like?

19 A It's hard to describe a badge. It was
20 black and had maybe something across it. I really
21 can't -- I didn't get that close to it. He held it
22 to his side when he pulled it out of his pocket. He
23 held it to his side like that.

24 MR. REDD: Could the witness stand and
25 demonstrate for the jury how --

1 MELTON-CROSS-REDD

2 THE COURT: I think the jury
3 understands, Mr. Redd. If you want to take a chance
4 at it you can do it.

5 BY MR. REDD:

6 Q Something like this?

7 A Yes.

8 Q How far away was the badge from you?

9 A Beg your pardon?

10 Q You testified you were two steps away
11 from him.

12 A Two or three steps or something like
13 that. When he held it, it was kind of to his side.

14 Q Would he have been closer to you than I
15 am?

16 A Oh, yes.

17 Q Closer to you than the reporter?

18 A Yes. I'd say from about here.

19 Q He held the badge at his side?

20 A Yes.

21 Q He was black?

22 A Yeah.

23 Q It was black?

24 A Yes.

25 Q Was there metal?

HALASZ & HALASZ

1 MELTON-CROSS-REDD

2 A I couldn't tell you that.

3 Q Was there an ID card?

4 A I couldn't tell you that either.

5 Q Was it a folder?

6 A No, I don't remember what it was. He
7 held it in his hand just so.

8 Q You testified that he apologized at the
9 end of the incident.

10 A After I opened my purse he looked in and
11 he didn't see any meat and he said, I'm sorry and I
12 apologize. He went back in the store.

13 Q Isn't it true that you could have opened
14 your purse at any time during the confrontation?

15 A Repeat the question.

16 Q Isn't it true you could have opened your
17 purse at any time during the confrontation?

18 A Yes, I could have but I was so upset I
19 never thought about it. I never thought about it. I
20 was really, really upset and I knew I didn't have any
21 meat in my purse. At that time it did not dawn on me
22 to open my purse. When he said what if I called the
23 police then it just came in my mind open your purse
24 and I did.

25 Q It's true you could have opened it

HALASZ & HALASZ

1 MELTON-CROSS-REDD
2 before that?
3 A Yes.
4 Q And settled the matter?
5 A Yes.
6 Q So then you drove home?
7 A Yes.
8 Q You took some Tylenol, is that correct?
9 A Yes.
10 Q Do you know what time you called Food
11 Lion?
12 A I really don't. I don't remember
13 exactly what time I called. Maybe it was an hour
14 after I got home.
15 Q Do you recall what time the incident
16 was?
17 A 1:30 or 2:00. It was after lunchtime.
18 MR. REDD: Your Honor, could I show the
19 witness Defense Exhibit 1?
20 THE COURT: I don't think you put
21 anything in yet, Mr. Redd.
22 MR. REDD: I mean Plaintiff's Exhibit 1.
23 BY MR. REDD:
24 Q Do you see a time stamped on that?
25 A That must be about 3:30. Is that 3:30?

1 MELTON-CROSS-REDD

2 Q What does it say exactly?

3 A 1339.

4 Q Are you familiar with military time?

5 A No, I'm not.

6 MR. REDD: I would ask the Court to take
7 judicial notice that is 1:39 in the afternoon.

8 THE COURT: These are all military
9 people. They know it's 1:39 in the afternoon.

10 BY MR. REDD:

11 Q You do not know exactly when you called
12 Food Lion?

13 MR. SHEWMAKE: Asked and answered.

14 BY MR. REDD:

15 Q Would it refresh your memory to look at
16 your deposition that I took earlier in this?

17 MR. SHEWMAKE: May I ask what page he's
18 referring to you, Your Honor?

19 MR. REDD: I am referring to page 28,
20 bottom of the page. May I show her this?

21 THE COURT: She doesn't recall. Why
22 does she need her memory refreshed?

23 MR. REDD: She stated a time earlier.

24 THE COURT: She doesn't state one today,
25 Mr. Redd.

1 MELTON-CROSS-REDD

2 BY MR. REDD:

3 Q Certainly if it was about an hour then
4 you had time to think about it, about the incident
5 and what to do about the incident, is that right?

6 A Sure.

7 Q Why did you call Food Lion?

8 A I wanted to report it because I felt
9 like I should defend myself.

10 Q Were you mad?

11 A Certainly. I was terribly upset.

12 Q You called Food Lion and you have
13 testified no one identified what store you called
14 when they answered the phone?

15 A I don't remember that they did but I
16 knew it was the store I went to. That's the store I
17 called, the one at Number 1 and Parham.

18 Q When someone who was identified as a
19 manager got on the phone, did he give you his name?

20 A No.

21 Q Did you ask him his name?

22 A No.

23 Q You were mad and you wanted to report
24 this but you did not ask his name, is that correct?

25 A No, I didn't ask him his name.

1 MELTON-CROSS-REDD

2 Q He said that he would report it, is that
3 correct?

4 A Yes.

5 Q Did you follow-up to see whether he did
6 report it?

7 A No, I did not. I took him at his word.
8 He said he would report it and I thought he would do
9 what he promised to do.

10 Q Just to be clear, did you not get the
11 black man in the parking lots name?

12 A No, I did not get his name.

13 Q You did not get the manager's name?

14 A No.

15 Q You have had migraines for 30 years, is
16 that right?

17 A Yes.

18 Q Have you ever been to a doctor for your
19 migraines?

20 A Yes, years ago I did.

21 Q How long ago would that have been?

22 A 30 years ago. A long time ago. But I
23 was never able to do anything for them.

24 Q Had you ever been to the doctor you went
25 to on this occasion for migraines?

HALASZ & HALASZ

1 MELTON-CROSS-REDD

2 A No. The last doctor I went to has
3 passed away.

4 Q So when you went to this doctor did he
5 know you had a history of migraines?

6 A I guess. Yes, I think he does.

7 Q But you had never consulted him about
8 migraines?

9 A No.

10 Q So you don't know specifically that he
11 knew about your migraines?

12 A I don't remember if I have discussed
13 them with him because I never went to him for
14 migraines, it's for other reasons and I never think
15 about migraine headaches.

16 Q Finally, Mrs. Melton, have you had
17 occasion to see a man named Derrick Slater?

18 A Looking back over this three years I am
19 not sure of just what he looks like.

20 Q What I'm asking you is: Do you know
21 what Derrick Slater looks like now?

22 A Yes, I have seen him here.

23 Q Is he the man who accosted you in the
24 parking lot?

25 A I am not sure.

HALASZ & HALASZ

1 MELTON-CROSS-REDD

2 Q Didn't you state earlier that you
3 thought the man was heavier?

4 A I did, yes. I thought he was heavier
5 and a little different complexion.

6 Q A lighter complexion?

7 A Yes.

8 Q This was a clear spring day?

9 A Yes.

10 Q In the middle of the day?

11 A Yes.

12 Q This is an incident that sticks out in
13 your mind, is that fair to say?

14 A Yes. Sure.

15 MR. REDD: I have no further questions.

16 THE COURT: Redirect?

17 MR. SHEWMAKE: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. SHEWMAKE:

20 Q Mrs. Melton, you said you suffered from
21 migraines. Have they gotten more or less frequent
22 with age?

23 A As I have gotten older they have
24 lessened. I don't have them quite as often as I did.

25 Q Approximately how often do you get

HALASZ & HALASZ

1 MELTON-REDIRECT-SHEWMAKE

2 migraines after you were age 50?

3 A Sometimes when I get upset I do. It's
4 just whenever you're going to have them you have
5 them.

6 Q Is it frequent, infrequent at this point
7 in your life?

8 A Yes, they are less. I don't have them
9 as often as I did.

10 Q After you went off the medication did
11 you have any problems sleeping?

12 A Yes.

13 MR. SHEWMAKE: Mr. Redd had mentioned a
14 previous statement in deposition testimony, Your
15 Honor. I would like to read the statement since he
16 referred to it.

17 THE COURT: This is the evidence,
18 Mr. Shewmake.

19 MR. SHEWMAKE: No further questions.
20 Thank you, Your Honor.

21 THE COURT: Thank you. You have a seat
22 back by Mr. Shewmake.

23 MR. SHEWMAKE: We would like to call
24 Gertrude Lane.

25 GERTRUDE F. LANE,

1 MELTON-REDIRECT-SHEWMAKE

2 was sworn or affirmed and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. SHEWMAKE:

5 Q Would you state your full name and
6 residence, please?

7 A My name is Gertrude Frances Lane. I
8 live at 2519 Wyndham Drive, Richmond, Virginia. I am
9 75 years young.

10 Q Are you related to Christine Melton and
11 if so, how?

12 A She is my little sister.

13 Q How would you describe your relationship
14 with your sister?

15 A It could not be better.

16 Q Did there ever come a time in the last
17 few years when you telephoned your sister and through
18 her demeanor of voice you thought anything was wrong?

19 A Yes.

20 Q When was that, approximately?

21 A The same day of this incident in April
22 of '91.

23 Q How could you tell on the telephone that
24 something was wrong?

25 A She was crying. She was upset. She

HALASZ & HALASZ

1 LANE-DIRECT-SHEWMAKE
2 could not talk to me. That's when I said, something
3 is wrong. Tell me what is wrong. Then she told me
4 what had happened.
5 Q Did you have occasion after that
6 conversation to talk with your sister?
7 A Oh, yes, many times.
8 Q How often do you talk with your sister?
9 A Every day, two, three times a day.
10 Maybe as much as -- I don't know.
11 Q Describe Mrs. Melton before this
12 happened.
13 A Very pleasant, very easy going, a
14 wonderful person.
15 Q Would you also see Miss Melton --
16 physically see her after this happened?
17 A Not the same day.
18 Q I'm just saying have you seen her?
19 A Yes, very close, very often.
20 Q Could you describe whether you could see
21 from her how she was affected, if at all?
22 A Yes.
23 Q Describe it for the jury.
24 A Not a sweet, smiling face she had over
25 the years. Looked to me like something is bothering

1 LANE-DIRECT-SHEWMAKE

2 you, something is wrong somewhere. I said something
3 is wrong. What is wrong? She said, I cannot get
4 this off my mind.

5 MR. REDD: Your Honor, I would object to
6 that as hearsay. The witness has testified to her
7 condition already.

8 THE COURT: Overruled. I'll allow it.
9 BY MR. SHEWMAKE:

10 Q Go ahead.

11 A It was just a big change in her
12 condition.

13 Q How long did that last?

14 A It's lasted from then till now.

15 Q Have you ever had any occasion to shop
16 with Miss Melton?

17 A Yes.

18 Q Afterwards?

19 A Yes.

20 Q Do you notice anything about her that
21 had changed when you went shopping?

22 A She was in a pleasant mood the last time
23 I shopped with her.

24 Q How about before that?

25 A No.

1 LANE-DIRECT-SHEWMAKE

2 Q How would she be?

3 A As if somebody was looking over her
4 shoulder at what she was doing. If she touched
5 something she says I'm afraid somebody is going to
6 accuse me of something.

7 Q The last time you went shopping, was
8 that fairly recently?

9 A Yes.

10 Q What store did you go into?

11 A Toys R Us.

12 Q It wasn't a grocery store?

13 A No.

14 Q Why were you going into the store?

15 A She has some lovely grandchildren and I
16 love them as much as she does and we were buying
17 clothes for them.

18 MR. SHEWMAKE: I have no further
19 questions for this witness.

20 THE COURT: Cross?

21 MR. REDD: I have no cross.

22 THE COURT: Thank you, Miss Lane.
23 You're free to leave or remain in the courtroom.
24 Next witness?

25 MR. SHEWMAKE: Wayne Melton.

HALASZ & HALASZ

1 LANE-DIRECT-SHEWMAKE

2 Your Honor, the lady with Mr. Melton is
3 his interpreter for sign language.

4 WAYNE MELTON and PAM MELTON,
5 were sworn or affirmed and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SHEWMAKE:

8 Q Mr. Melton, would you please state to
9 the jury your name, age and occupation?

10 A My name is Wayne Melton. I am 49 years
11 old and he's a computer operator.

12 Q Please tell the jury what hearing
13 impairment you suffer from, if any?

14 A He was born deaf.

15 Q You can use and understand sign
16 language, is that correct?

17 A Yes.

18 Q Who is the young lady who is helping us
19 to interpret the sign language?

20 A My younger daughter Pam.

21 Q How do you know the plaintiff, Christine
22 Melton?

23 A It's his mother.

24 Q Describe your relationship with your
25 mother, please.

HALASZ & HALASZ

1 MELTON-DIRECT-SHEWMAKE

2 A He is really close with her. He visits
3 her very often.

4 Q So you see her often?

5 A Two or three times a week.

6 Q On days that you don't see her how do
7 you communicate with her?

8 A Through a TTD. It's a device for the
9 telephone that helps deaf people communicate over the
10 phone.

11 Q Does it involve typing?

12 A Typing, yes.

13 Q Do you use that phone with your mother?

14 A Yes.

15 Q Did there come a time when you learned
16 that your mother was upset about something that
17 happened in a Food Lion store?

18 A He found out over the phone. When he
19 came home from work one afternoon she had called him.
20 He could tell she was upset by the way she was
21 typing. Usually she types fast. She was real mixed
22 up with her typing. He went to check on her.

23 Q Do you know when this approximately
24 happened?

25 A April of 1991.

HALASZ & HALASZ

1 MELTON-DIRECT-SHEWMAKE

2 Q What did you do when you received your
3 mother's message?

4 A He went to her house to comfort her and
5 she explained to him what had happened.

6 Q Describe how your mother was.

7 A She was real nervous, upset. He could
8 tell by her body language, by the way she acted.

9 Q Prior to the encounter at the Food Lion
10 describe what your mom was like.

11 A She was happy, she was church-going,
12 active, close family, visiting. She would visit a
13 lot.

14 Q How far away do you live from your mom?

15 A About 20 miles.

16 Q Over the following few months how often
17 would you see your mom?

18 A Two or three times a week.

19 Q Over those months describe for us how
20 the encounter at Food Lion affected your mom.

21 MR. REDD: Your Honor, I have to object.
22 I don't know that this witness is qualified to say
23 that the Food Lion incident caused any condition.

24 THE COURT: I sustain the object.

25 BY MR. SHEWMAKE:

1 MELTON-DIRECT-SHEWMAKE

2 Q Describe how your mom was over the next
3 few months.

4 A She was depressed, nervous. She didn't
5 really want to go out as much.

6 Q How long did these symptoms last?

7 A He can't really remember but it was a
8 very long time.

9 Q Have they gradually gotten better or
10 worse over time?

11 A It got better gradually.

12 Q Have you ever had any occasions to go
13 into a store with your mom after what happened at
14 Food Lion?

15 A Yes. He said he had gone into the malls
16 and stores with her and he could tell she was not
17 comfortable.

18 Q Did you ever have an occasion to go into
19 a store with your mom prior to what happened at Food
20 Lion?

21 A Yes. He said he had gone into a store
22 with her and she never had those problems before.

23 MR. SHEWMAKE: Thank you. Please answer
24 any questions Mr. Redd may have.

25 THE COURT: Cross?

1 MELTON-CROSS-REDD

2 CROSS-EXAMINATION

3 BY MR. REDD:

4 Q I just really have one question or two
5 questions.

6 You say you immediately went to your
7 mother's house, is that right?

8 A Yes, as soon as he found out.

9 Q Did any other family members go over
10 there?

11 A He was the only one. He's the only one
12 that saw her.

13 Q What time of day was that?

14 A It was after work. He can't really
15 remember exactly what time but she might have called
16 him around 4:00 because he gets off work at 3:30. It
17 had to be between 3:30 and 4:00.

18 Q Did she indicate to you that she had
19 called Food Lion?

20 A Over the phone or?

21 Q Over the phone or when he got there?

22 A Yes.

23 Q Yes?

24 A Yes.

25 MR. REDD: Thank you. I have no further

1 MELTON-CROSS-REDD

2 questions.

3 THE COURT: Thank you. You may remain
4 in the courtroom or leave.

5 MR. REDD: Your Honor, I want to ask at
6 this time to limit the witnesses in this vain. I
7 would think the jury would have enough of a sense of
8 this matter at this point. Any more witnesses would
9 be duplicative.

10 MR. SHEWMAKE: Your Honor --

11 THE COURT: I think I can rule on the
12 objection. That's all right. Call your next
13 witness.

14 MR. SHEWMAKE: I just didn't hear your
15 ruling.

16 THE COURT: I couldn't get to it.

17 MR. SHEWMAKE: I apologize.

18 THE COURT: Next witness.

19 MR. SHEWMAKE: I would read in the
20 deposition testimony of the corporate representative
21 of Troy Sutorka.

22 THE COURT: This is your last witness?

23 MR. SHEWMAKE: No, I have one other
24 witness. Do you want me to call the live witness
25 first?

HALASZ & HALASZ

1 THE COURT: Yes.

2 MR. SHEWMAKE: We would call Frances
3 Saunders.

4 FRANCES SAUNDERS,
5 was sworn or affirmed and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SHEWMAKE:

8 Q Would you please state your name, age
9 and address for the jury?

10 A My name is Frances Saunders. I am 25
11 years old. I live at 33484 Edge Hill Drive in
12 Franklin, Virginia.

13 Q How are you related to Christine Melton?

14 A She's my grandmother.

15 Q Could you describe your grandmother
16 prior to -- strike that.

17 MR. REDD: Your Honor, I would renew my
18 objection for the record.

19 THE COURT: All right. I renew my
20 ruling.

21 BY MR. SHEWMAKE:

22 Q Did there come a time when you learned
23 that something had happened to Mrs. Melton?

24 A Yes, sir, I did. I talked to my
25 grandmother frequently. I usually talk to her three,

1 SAUNDERS-DIRECT-SHEWMAKE

2 four times a week. We are very close.

3 I called one day just to see how she
4 was, see how things were going. I always call her
5 about the great grand kids. She loves her great
6 grand kids. I talked to her about things that went
7 on that week. She seemed like she was very far away.
8 She wasn't interested in talking about anything. She
9 was very upset. You could tell by the way she acted
10 over the phone. I had to really drill her, so to
11 speak, to get her to talk to me about what had
12 happened or if anything had happened. I would ask
13 her what was wrong and she would say nothing,
14 nothing. I said grandma, I can tell when you're
15 upset. It takes a lot to get my grandmother upset.
16 Once you get her upset there is no question she is
17 upset. She finally told me about the incident that
18 happened at Food Lion.

19 Q Did you have occasion to see your
20 grandmother since that happened?

21 A Yes. When I usually come to Richmond I
22 stay with my grandmother or I stay with my parents
23 two to three times a month. I came down from
24 Franklin to stay the weekend. My grandmother either
25 always comes over to my parents' house Saturday and

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2 Sunday or I go over there.

3 We sat and talked about it. She was
4 very reluctant to bring it up. She was humiliated.
5 She felt like she was, I guess, compromised in some
6 way in even talking about it. She finally sat down
7 and talked to me about it. She was very emotional
8 about it.

9 Q Have you noticed how long this affected
10 your grandmother.

11 A It still affects her. Over time it has
12 gotten a little bit better. We went shopping over
13 the Christmas holidays. You could tell she was very
14 uncomfortable.

15 MR. SHEWMAKE: I have no further
16 questions of this witness.

17 THE COURT: Cross?

18 MR. REDD: No questions, Your Honor.

19 THE COURT: Thank you, Miss Saunders.
20 You're free to leave or remain in the courtroom.

21 Next witness, Mr. Shewmake?

22 MR. SHEWMAKE: That would be the reading
23 in of the testimony.

24 THE COURT: Who is the witness?

25 MR. REDD: Sutorka. We have him in the

1 hall.

2 THE COURT: Are you going to have him
3 answer?

4 MR. SHEWMAKE: He was a B-6 designee.
5 I'm reading the deposition testimony of the
6 defendant.

7 THE COURT: Are you going to read it?

8 MR. SHEWMAKE: Yes, sir. I was going to
9 have someone answer the questions.

10 THE COURT: I believe he indicated
11 Mr. Sutorka could read his own answers.

12 MR. REDD: I have no objection to
13 Mr. Sutorka reading. I don't know that that makes
14 any sense.

15 MR. SHEWMAKE: That's fine.
16 Mr. Baronian will read. This will be the testimony
17 of Mr. Sutorka beginning on page four.

18 (Deposition of Mr. Sutorka read as
19 follows:)

20 BY MR. SHEWMAKE:

21 Q Would you state your full name for the
22 record, sir?

23 A Yes, sir. Troy Sutorka.

24 Q How do you spell that?

25 A S-U-T-O-R-K-A.

1 Q What is your date of birth?

2 A May 24, 1964.

3 Q Where are you employed Mr. Sue -- how do
4 you say it?

5 A Sutorka.

6 Q Sutorka.

7 A Food Lion, Incorporated.

8 Q How long have you been employed by Food
9 Lion?

10 A A little over five years.

11 Q And so in April of 1991 were you
12 employed by Food Lion?

13 A Yes, sir.

14 Q What is your current position at Food
15 Lion?

16 A I'm store manager at Mechanicsville
17 store.

18 Q In terms of duties, what's different
19 from being an assistant as opposed to a -- as the
20 store manager?

21 A Assistant manager in all reality is
22 responsible only for the grocery department totally
23 and then the rest of the store when the manager -- in
24 the absence of the manager.

25 Q Where were you working in April of 1991?

1 A The corner of Route 1 and Parham, store
2 number 514.

3 Q 514?

4 A Yes, sir.

5 Q What was your position at that store?

6 A I was the assistant manager.

7 Q What kind of documentation does Food
8 Lion keep about who works in the store on any given
9 day?

10 A As far as store managers and assistant
11 managers, it's -- we're on a salary base so we don't
12 have time cards that we clock in now. We have a
13 monthly schedule that's written and posted wherever
14 the manager posts. And at the end of the month -- we
15 keep them usually for about three months, something
16 like that, then throw them away.

17 Q How about for regular employees?

18 A Regular employees have time cards that
19 they clock in and out and we keep those for a period
20 of, I believe, it's five years.

21 Q How long has that policy be in effect?

22 A Forever and a day.

23 Q As I understand it, Food Lion employs
24 persons who are known as -- is it loss prevention
25 agents?

1 A That's correct.

2 Q Is that their official title?

3 A Yes, sir.

4 Q Are they salaried or hourly employees?

5 A I don't really know to tell you the
6 truth. They're not hired by the individual stores.
7 If I'm not mistaken, I believe they are salaried but
8 I'm not positive on that.

9 Q So do the loss prevention agents report
10 to the manager/assistant manager of any given store?

11 A No, sir.

12 Q Does the manager or assistant manager
13 have any control or jurisdiction over the loss
14 prevention agents in any given store?

15 A No, sir.

16 Q All right.

17 Who does have control and jurisdiction
18 over loss prevention agents?

19 A They have their own little somebody
20 higher than the field person.

21 Q If an incident occurs with a customer
22 who is accused or suspected of theft in a store, does
23 Food Lion have any policies relating to whether that
24 incident should be written up?

25 A Yes, sir.

1 Q All right.

2 As I understand your testimony, when an
3 incident occurs involving a customer or someone who
4 comes in the store who's accused or suspected of
5 theft in a Food Lion store, Food Lion has a policy of
6 writing that incident up, is that correct?

7 A Yes, sir.

8 Q All right.

9 First of all, who's supposed to write it
10 up.

11 A Whoever stops the person.

12 Q The loss prevention agent?

13 A If it's the loss prevention agent that
14 stops the person, yes, sir, they're the ones that
15 writes it up.

16 Q Would anyone other than a loss
17 prevention agent stop a customer?

18 A Yes, sir.

19 Q As I understand it, loss prevention
20 agents aren't always in a store at any given time?

21 A That's correct.

22 Q So usually if it's -- if a loss
23 prevention agent doesn't stop them, that usually
24 means there isn't a loss prevention agent on the
25 premises, is that correct?

1 A That's correct.

2 Q All right.

3 Is there a particular form that's
4 supposed to be used in writing up an incident?

5 A Yes, sir.

6 Q What does that form look like?

7 A I believe the -- our title for it is
8 Shoplifting Incident Report.

9 Q Now, what type of information is
10 supposed to be in that?

11 A Name, address, witnesses, if any,
12 merchandise, whether it was concealed, whether it was
13 taken, height, weight, Social Security Number and
14 then a brief explanation of what occurred. Then it's
15 signed by a management employee and signed by
16 whoever the shoplifter is, if they want it signed --
17 they have the option not to sign it -- and a
18 signature of a witness.

19 Q All right.

20 Have you ever been in the store, Food
21 Lion store, when somebody has been confronted or told
22 they were suspected of shoplifting and they have been
23 able to prove to the employee's satisfaction that
24 they in fact had not shoplifted?

25 A There have been times -- there's been

1 twice when a person has been stopped and I don't
2 believe they actually proved, but it wasn't worth
3 pursuing. Might have been for something like a pack
4 of cigarettes or -- or something small in nature.

5 Q Were you in the store when that
6 occurred?

7 A On those two occasions?

8 Q Yes, sir.

9 A Yes, sir.

10 Q Were you the employee involved or was it
11 someone else?

12 A No, sir, it was someone else other than
13 me.

14 Q Were those incidents written up?

15 A No, sir. Neither one.

16 Q So Food Lion doesn't have a policy if --
17 if the employee determines or makes the call not to
18 press charges --

19 A No, sir.

20 Q So, no, sir, there wouldn't be
21 documentation?

22 A That's correct. Now, there might be
23 different rules for loss prevention agents, I don't
24 know.

25 Q As the manager or assistant manager, do

1 you know when a loss prevention agent is supposed to
2 be in your store?

3 A No, sir.

4 Q Although you don't know when they're
5 going to appear, are you as a manager and assistant
6 manager, would you know who those loss prevention
7 agents are?

8 A Most of the time, yes, sir.

9 Q What would the circumstances be when you
10 wouldn't know who they are?

11 A Sometimes they have new people that come
12 in or they might have one of the bosses that I have
13 -- I don't recognize come in.

14 Q When a loss prevention agent comes in,
15 are they supposed to make any type of --

16 A Generally, but they don't have to.

17 Q So at any given time either the manager
18 or the assistant manager is supposed to be on duty,
19 is that correct?

20 A Not necessarily, no, sir.

21 Q When would there be circumstances when
22 the manager or assistant manager wouldn't be there?

23 A We also have a grocery manager who's
24 authorized to be there as the manager on duty and a
25 customer service manager is authorized to be the

1 manager on duty.

2 Q Grocery manager and?

3 A Customer service manager.

4 Q Customer?

5 A Any one of those four people could be in
6 charge at any given time.

7 Q Would there be any time when more than
8 one of these persons would be in the store?

9 A Yes, sir.

10 Q At any given time approximately how many
11 of them would be in the store?

12 A Depends on the day.

13 Q So it could be anywhere from one to all
14 four, just depending on the day?

15 A Generally as a manager you try not to
16 schedule all four there in one given day but
17 theoretically, yes, it could happen.

18 Q Generally as manager, do you try to have
19 two of them in the store at any given time?

20 A At least, yes, sir.

21 Q How about while you were working at 514,
22 who was the grocery manager?

23 A We had -- I can't think right now.

24 Q Do you know?

25 A We had three different ones there. All

1 three of them are no longer employed by Food Lion.

2 Q Uh-huh.

3 Were you -- have you received any
4 training about what you should do if you suspect
5 shoplifting?

6 A Not -- no actual formal training.

7 Q Informal training?

8 A To a degree, yes, sir.

9 Q Who provided that to you?

10 A That's why I say it's not actually
11 formal training. It's pretty much, I guess, through
12 way of supervisor, through way of other store
13 managers, through way of probably loss prevention
14 agents, also.

15 Q As in management you pick up things by
16 talking to other management?

17 A That's correct.

18 Q And trying to learn things to better do
19 your job?

20 A That's correct.

21 Q And I think -- so you wouldn't know
22 what, if any, records were kept about the hours of
23 the days that a loss prevention agent would work in
24 store 514?

25 A No, sir, I sure don't.

1 Q You don't know?

2 A About the only thing I know about, they
3 make their own weekly schedules and call it in to
4 their supervisors.

5 Q During your stay at store 514, did a
6 customer ever call you in to voice a complaint?

7 A Oh, yeah.

8 Q All right.

9 While you were at store 514, how were
10 those calls supposed to be handled and by whom?

11 A I don't know that there's -- there is no
12 actual policies as to who handles them. Oftentimes a
13 customer will call in and just complain to the first
14 person that picks up the phone. Oftentimes we have
15 baggers that come up and tell us, you know, about
16 somebody that's upset. Could go to any of the
17 management team. If they ask for a manager, you
18 know, I'm sure they would probably get put through to
19 the store manager or whoever the manager on duty is.

20 Q Were employees, non-management
21 employees, ever advised or -- or say any type of
22 policy about if it appeared to be a serious complaint
23 that a member of the present management team should
24 be called in?

25 A Yes, sir.

1 Q I take it that was the policy?

2 A Yeah. Yeah.

3 Q If someone came complaining about how
4 badly they were treated by a loss prevention agent,
5 is that something that would -- that an employee
6 should refer to management?

7 A Sure.

8 Q As I understand your testimony, after,
9 say, six months there wouldn't be any documentation
10 about what managers were in a Food Lion store on any
11 given day, is that correct?

12 A That's correct.

13 Q While you were working at store number
14 514, did you have any set hours that you would
15 generally work?

16 A No, sir.

17 Q So it would be any?

18 A Yeah.

19 Q So if this happened on the afternoon of
20 April 19, 1991 you would have no way of knowing, by
21 virtue of the fact it happened on a Friday afternoon,
22 what management personnel were present in store 514
23 on that day?

24 A Not positively. There's kind of an
25 unwritten rule that the manager and assistant manager

1 work Fridays and Saturdays but other than that, no.

2 Q All right.

3 So it is customary -- when you say it's
4 unwritten, is that for store 514 or just generally
5 Food Lion?

6 A Generally it's your busier days so you
7 try to have your top team members in on busiest days.

8 Q What reasons would you not have your top
9 two numbers in on a Friday or Saturday?

10 A Sometimes the schedule don't work out
11 that you can have them or sometimes you want that day
12 off.

13 Q Do you know whether the loss prevention
14 agents carry things that look like badges?

15 A Yes, sir.

16 Q They do?

17 A Yes, sir.

18 (Reading of deposition concluded.)

19 MR. SHEWMAKE: I have no further
20 questions.

21 THE COURT: Next witness, Mr. Shewmake?

22 MR. SHEWMAKE: The plaintiff rests, Your
23 Honor.

24 THE COURT: We'll take a brief recess,
25 ladies and gentlemen.

1 (Jury taken to the jury room.)

2 MR. SHEWMAKE: Your Honor, I have a very
3 brief motion to conform the evidence to the
4 pleadings.

5 THE COURT: Conform the pleadings to the
6 evidence?

7 MR. SHEWMAKE: Excuse me, pleadings to
8 the evidence.

9 THE COURT: All right.

10 MR. REDD: Your Honor, I would have a
11 motion to strike at this time.

12 THE COURT: All right.

13 MR. REDD: Mrs. Melton has alleged
14 against Food Lion the following counts: Defamation,
15 insulting words, intentional infliction of emotional
16 distress, false imprisonment and general negligence.

17 With regard to defamation, she must
18 prove that it was a Food Lion employee. She has not
19 proved who made the statement. She's not connected
20 Food Lion to her injuries. In fact, she has said
21 that the loss prevention agent was not the person who
22 accosted her or at least she thought he was heavier
23 and lighter than Derrick Slater. She must also
24 demonstrate that the statement was heard by someone
25 other than herself and she has not identified anybody

1 that heard that statement. She has mentioned
2 nebulous people coming in and out but she can point
3 to nobody.

4 She must also show that the defendant
5 knew the statement to be false or lacked reasonable
6 grounds for believing that the statement was true and
7 acted negligently in failing to find out whether it
8 was true. She has not identified who made the
9 statement. There is no evidence as to what that
10 person knew or did not know.

11 As to insulting words, Your Honor, I
12 would reiterate she cannot identify Food Lion.

13 THE COURT: Let me handle that part of
14 it for you. For purposes of this motion she has
15 identified Food Lion.

16 MR. REDD: She has also not shown that
17 there was any incitement to breach the peace or do
18 violence in the words.

19 For false imprisonment I would
20 reiterate -- I understand your ruling but I would
21 reiterate our position. She has not shown that Food
22 Lion falsely imprisoned her nor has she proved that
23 the defendant had no legal right because she has not
24 identified any person to say whether that person had
25 a legal right or not. There is no evidence that her

1 freedom of movement was restricted. She stated at
2 any time she could open her purse and show it and
3 leave.

4 As to intentional infliction of
5 emotional distress, she has got to show -- I would
6 reiterate again -- I understand Your Honor's
7 ruling -- she has not identified the person who said
8 the words or caused whatever distress but she has
9 also not shown outrageous behavior on the part of
10 whoever it was, in what he said to her or what he
11 did. That is an essential element of emotional
12 distress.

13 Finally, Your Honor, as a general matter
14 I would say this is the sort of case where there has
15 to be some proof that it happened. She has a burden
16 to identify somebody and she hasn't done that. I
17 would ask that you strike her evidence.

18 THE COURT: I think I already ruled on
19 that, haven't I, five times over?

20 Are you going forward on five counts?
21 You don't have evidence on five counts.

22 MR. SHEWMAKE: On defamation, what he is
23 saying is it wasn't published. She clearly testified
24 there were a number of people going by her who were
25 hearing it and also standing and looking. I don't

1 have to give him a name, all I have to do is prove
2 publication; therefore, I met the test for defamation
3 on the point that he has raised. She also testified
4 how loud it was and attracting attention. That is
5 one of her damages.

6 As for insulting words, the law presumes
7 if you accuse someone of stealing -- you don't look
8 at this specific plaintiff to see if it breaches the
9 peace. The law presumes with damages that that would
10 incite a breach of the peace. The only difference
11 under the case law and the statute is that defamation
12 requires publication and insulting words does not.
13 That's the difference between the two counts.
14 Therefore, we have met the test for insulting words.

15 Under the false imprisonment, she said
16 she was detained. What counts is her reasonable
17 belief. She testified that a very large man got very
18 close in a very threatened tone and even pulled a
19 badge on her. That evidence is indicative that he
20 was trying to incite fear into her to leave the
21 impression that she wasn't free to go. Therefore, on
22 prima facie evidence we have met the burden of false
23 imprisonment. He says we haven't shown probable
24 cause on any of these. That goes to defamation and
25 false imprisonment. The affirmative defense is

1 probable cause. He has the burden to prove probable
2 cause. He has put on no evidence -- there is
3 certainly no evidence they had probable cause.

4 She testified what she did in the store
5 and she also testified she did absolutely nothing
6 that would have ever indicated to anybody that she
7 put anything in her purse or stolen. With that
8 positive testimony we have satisfied that there
9 wasn't any circumstance that would have given any
10 reasonable person a belief that she had stolen and
11 that meets that test.

12 On the infliction of emotional distress
13 as it relates to outrageous behavior, when you have
14 absolutely no basis whatsoever to think that this
15 woman did anything to steal, absolutely none -- this
16 record right now is totally void of any evidence that
17 they had any basis to do it -- going out in front of
18 everybody on a busy day --

19 THE COURT: Everybody, Mr. Shewmake?

20 MR. SHEWMAKE: Everybody who was coming
21 in and out of the store, Your Honor, numbers of
22 people -- coming back and accusing her and then
23 frightening her and showing the badge -- that is
24 prima facie evidence of outrageous behavior. Perhaps
25 they can put on evidence in their case to indicate

1 that they had some notion and therefore it isn't
2 outrageous. At this point the record is void of
3 that.

4 Finally on negligent detention, we have
5 testimony that Food Lion was on notice that this
6 person was a problem agent; he had done it before yet
7 they didn't do anything to change it. As a matter of
8 fact, the manager who controls the store still
9 doesn't have jurisdiction over them. That would be
10 the basis for the negligent detention. Thank you,
11 Your Honor.

12 THE COURT: At this point the motion to
13 strike with regard to defamation and outrageous
14 behavior is sustained. The others are overruled.

15 How many witnesses do you have, Mr.
16 Redd?

17 MR. REDD: I have three witnesses, Your
18 Honor?

19 MR. SHEWMAKE: What remain?

20 THE COURT: Insulting words, false
21 imprisonment and negligence.

22 Bring the jury in.

23 (Jury returned to the courtroom.)

24 THE COURT: Who will be your first
25 witness, Mr. Redd?

1 MR. REDD: I call Derrick Slater.
2 DERRICK SLATER,
3 was sworn or affirmed and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. REDD:
6 Q Good afternoon, Mr. Slater.
7 A Good afternoon.
8 Q Could you state your name for the
9 record?
10 A Derrick Slater.
11 Q Where do you live?
12 A Ettrick, Virginia.
13 Q Where is Ettrick?
14 A Between Petersburg and Colonial Heights
15 in Chesterfield County.
16 Q Are you employed?
17 A Yes, I am.
18 Q How are you employed?
19 A I'm employed as a loss prevention agent
20 with Food Lion.
21 Q Were you employed for Food Lion in April
22 of 1991?
23 A Yes, I was.
24 Q And how were you employed then?
25 A As a loss prevention agent.

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2 Q Was that part or full time?

3 A Part time.

4 Q During April of 1991 did you work at one
5 store or at a set of stores? How was your job set
6 up?

7 A I worked at several stores.

8 Q What stores did you work at?

9 A I worked at south Richmond stores and
10 north Richmond stores.

11 Q Was the Hungarybrook Shopping Center
12 Food Lion one of those stores?

13 A Yes.

14 Q So you were the loss prevention agent
15 for that store?

16 A That's correct.

17 Q There was no other loss prevention agent
18 for that store?

19 A No.

20 Q Could you tell the jury, please, what a
21 loss prevention agent does?

22 A As a loss prevention agent it's my job
23 to prevent shrinkage of loss at Food Lion which
24 consists of shoplifting, interviewing employees for
25 theft or controlling damaging products, things of

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2 that nature, that might cause the company a loss.

3 Q So apprehending shoplifters was part of
4 your job as a loss prevention agent?

5 A That's correct.

6 Q And is part of your job as a loss
7 prevention?

8 A Yes.

9 Q You have done that now for how long?

10 A It will be four years in April. I would
11 say three years and eleven months.

12 Q Were you working at the Hungarybrook
13 Shopping Center Food Lion on April 19th, that was a
14 Friday, 1991?

15 A No.

16 Q When you are involved in the shoplifting
17 area of your job, how do you go about apprehending
18 somebody?

19 A During the time we apprehend a
20 shoplifter you identify yourself, you take out your
21 badge, which at that time we had a plastic card. You
22 would identify yourself. For instance, I would
23 explain my name is Derrick Slater. I'm employed by
24 Food Lion loss prevention. Show my badge at the same
25 time. I would speak to the person and ask them to

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2 come back in the store with me in reference to we
3 need to talk about the problem or if they placed
4 something inside their purse I would carry them back
5 to the break room and we fill out an incident report.

6 Q The first thing you do is identify
7 yourself by name, is that right?

8 A That's correct.

9 Q You state that you're a Food Lion
10 employee?

11 A Yes.

12 Q You show them your badge?

13 A That's correct.

14 Q Have you ever seen Mrs. Melton before
15 this litigation?

16 A No.

17 Q Did you stop her at the Hungarybrook
18 Shopping Center Food Lion on April 19, 1991?

19 A No.

20 MR. REDD: That's all I have, Your
21 Honor.

22 THE COURT: Cross?

23 CROSS-EXAMINATION

24 BY MR. SHEWMAKE:

25 Q Mr. Slater, is it your sworn testimony

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2 that you were the only loss prevention agent that
3 would work that store?

4 A Yes. During that time, yes.

5 Q But there are other loss prevention
6 agents that work this area, isn't that true?

7 A Yes.

8 Q You testified in your deposition that
9 there will be other occasions in which another loss
10 prevention agent in this region could work that store
11 even though you would work the store, isn't that
12 correct?

13 A That's correct.

14 Q As a matter of fact, this was a problem
15 store, wasn't it?

16 A Yes.

17 Q There are several loss prevention agents
18 that work this general area, various stores, is that
19 correct?

20 A Yes.

21 Q You don't work just one store, do you?

22 A No.

23 Q You will work several stores in the
24 area, is that correct?

25 A That's correct.

1 SLATER-CROSS-SHEWMAKE

2 Q You don't check in and check out at any
3 given store when you go in, do you?

4 A Let me explain that a little to you. If
5 I'm working out of my area, yes, I'll let that store
6 manager know I'm in the store. It's the same with
7 other agents.

8 Q I want to know what you did.
9 Are you testifying you weren't in the
10 store on April 19, 1991?

11 A That's correct.

12 Q As a matter of fact, there is another
13 African-American loss prevention agent that works
14 this general area, isn't that correct?

15 A No, he works -- he was working the
16 Charlottesville area.

17 Q Are you saying he did not work in this
18 store at any time during 1991?

19 A That's correct. I have no knowledge of
20 him working in that store.

21 Q Do you recall your testimony back in
22 October of 1993 when I asked you the question --
23 would there ever be more than one loss prevention
24 agent working a particular store at any given time?
25 Your answer was: Yes.

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2 Is that correct?

3 A Yes.

4 Q Now, you indicated that this was a
5 problem store, the store in question, is that
6 correct?

7 A That's correct.

8 Q Part of the problem was shrinkage, is
9 that correct?

10 A Yes.

11 Q One of the things you check is to
12 prevent shoplifting, is that correct?

13 A Yes.

14 Q And keep employees from stealing things
15 from the store, is that correct?

16 A That's correct.

17 Q Also, you were involved to see if
18 anybody was working off the clock, they're working
19 but they don't actually punch in, is that correct?

20 A That's correct.

21 Q And at Food Lion you shouldn't accuse a
22 customer in front of other people that they have been
23 shoplifting, should you, that's proper procedure?

24 A It depends on the circumstances. I
25 think each agent is different or they have different

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2 approaches, different tasks.

3 Q Do you come up and accost a customer in
4 front of other customers and ask them if they have
5 been shoplifting?

6 A No.

7 Q But there could be? You know of other
8 loss prevention agents that use that procedure?

9 A No.

10 Q It just depends on the circumstances?

11 A That's correct.

12 Q You work a region, is that correct?

13 A Richmond, Henrico, Chesterfield.

14 MR. REDD: Asked and answered, Your
15 Honor.

16 MR. SHEWMAKE: I'm defining the region.

17 THE COURT: Mr. Shewmake, if I need some
18 help I'll call on you. Overruled.

19 BY MR. SHEWMAKE:

20 Q Do you recall in your deposition in
21 October that I asked you: Do you know how many loss
22 prevention agents Food Lion had that would serve the
23 Richmond area, Richmond, Henrico, Chesterfield?

24 THE COURT: Why don't you ask him a
25 question?

1 SLATER-CROSS-SHEWMAKE

2 BY MR. SHEWMAKE:

3 Q I asked you who were those people in
4 1991 that would serve the Richmond, Henrico
5 Chesterfield stores as loss prevention agents.

6 A In 1991?

7 Q Yes, sir.

8 A It would be Ed Lyon, Mark Bridgeman and
9 myself.

10 Q Do you recall when I asked yes, but what
11 I'm saying is I want the ones in the region?

12 A That's correct.

13 Q You said because we all work together,
14 is that correct?

15 A That's correct.

16 Q Who is the other African-American loss
17 prevention agent you said was working in the
18 Charlottesville area?

19 A Duane Knight.

20 Q Is he a big man?

21 A He's about the same size I am.

22 Q About six feet?

23 A Yes, about 6'2".

24 Q How heavy is he?

25 A About the same size, if I can recall.

HALASZ & HALASZ

1 SLATER-CROSS-SHEWMAKE

2 Q You also said we have Rick Tom and Duane
3 Knight, is that correct?

4 A Yes. Rick Tom is a white Caucasian.

5 Q But you also identified Duane Knight on
6 October 9th as working this region?

7 A Region 7.

8 Q Which is?

9 A Winchester, Pittsylvania,
10 Fredericksburg, Charlottesville, north Richmond,
11 south Richmond all the way down to Lawrenceville and
12 Maryland. That's why I said Region 7. That's a
13 region.

14 Q Did you say Region 7 in your testimony?

15 A I do not recall.

16 Q As a matter of fact, I asked you about
17 the Richmond area, Richmond, Henrico and
18 Chesterfield.

19 A You said occasionally would there be
20 other agents that would work this area. Yes, if we
21 were doing surveillance set up in an RV with cameras
22 we would work -- swap in and out doing surveillance.
23 There is a variety of things that we'll work together
24 on.

25 Q You also admit in 1991 there could be

HALASZ & HALASZ

1 SLATER-CROSS-SHEWMAKE

2 other loss prevention agents from a different region
3 that would work in this particular region in 1991,
4 just depending on the needs?

5 A Yes.

6 Q So in 1991 there could be other Food
7 Lion agents, loss prevention agents, that would work
8 on any given day at store 514, is that correct?

9 MR. REDD: Objection, Your Honor. As
10 phrased that question calls for speculation.

11 THE COURT: I'll allow him to answer it
12 if he can.

13 THE WITNESS: Yes.

14 BY MR. SHEWMAKE:

15 Q As a matter of fact, in 1991 you were
16 part time, isn't that correct?

17 A That's correct.

18 Q Do you recall that a manager may give a
19 name of a loss prevention agent but there could be
20 several but that didn't mean even though one person
21 might be identified with a particular store several
22 other loss prevention agents, depending on the
23 schedules, would actually work in the store, is that
24 correct?

25 A Repeat that.

1 SLATER-CROSS-SHEWMAKE

2 Q Even though an employee of Food Lion in
3 that particular store might identify a particular
4 loss prevention agent as most often being in the
5 store and thinking of it as his store, there could be
6 several other loss prevention agents that would work
7 that store, is that correct?

8 A Once they identified themselves to the
9 manager, yes.

10 Q Does everybody had have a duty to
11 notify?

12 A As professional courtesy if you're not
13 in your area they will identify themselves to the
14 store manager.

15 Q That's your professional courtesy, is
16 that correct?

17 A No, that's Food Lion professional
18 courtesy, if you're working out of your area to
19 identify yourself to the store manager.

20 Q If you work in the area you don't have
21 to identify yourself, is that correct?

22 A No, you don't.

23 Q There came a time when I propounded
24 discovery requests, isn't that correct?

25 A That's correct.

HALASZ & HALASZ

1 SLATER-CROSS-SHEWMAKE

2 Q Do you recall back in 1992 in which you
3 were asked questions about an incident involving Food
4 Lion, is that correct?

5 A Yes.

6 Q In sworn Interrogatory Answers you were
7 identified as the loss prevention agent involved in
8 this incident, is that correct?

9 A For that area.

10 Q For this incident?

11 A Okay, yes.

12 Q It was also admitted at the time you
13 were working within the scope of your employment when
14 that occurred, isn't that correct?

15 A That's correct.

16 Q As a matter of fact, you said if someone
17 was trying to investigate an incident that happened
18 and they called over to the loss prevention
19 department it's a separate department from the store
20 itself?

21 A Yes.

22 Q You don't report directly to the
23 manager, do you?

24 A No.

25 Q He doesn't have jurisdiction over you;

HALASZ & HALASZ

1 SLATER-CROSS-SHEWMAKE

2 you have a separate supervisor, is that correct?

3 A That's correct.

4 Q You have no information that would lead
5 anybody to believe that Mrs. Melton stole anything
6 from Food Lion, do you?

7 A No.

8 Q As a matter of fact, you thought it was
9 possible that Duane Knight might have been the loss
10 prevention agent and you would talk to him?

11 A We discussed it. We didn't think he was
12 the one. We had a conversation.

13 Q But initially it occurred to you it was
14 possible he could be working that area since he works
15 the region, is that correct?

16 A No, I didn't think that.

17 Q You didn't ask him anything about this
18 incident or whether he was involved in it?

19 A No.

20 Q If you confront a customer and it turns
21 out you can't prove they are shoplifting, it appears
22 they didn't shoplift, you don't automatically write
23 up an incident report about that, do you?

24 A Excuse me?

25 Q As I understand it, if you actually have

HALASZ & HALASZ

1 SLATER-CROSS-SHEWMAKE

2 a customer charged you're supposed to write up an
3 incident report, is that correct?

4 A That's correct.

5 Q But if it turns out you confront
6 somebody and you either can't prove they stole or
7 apparently hadn't stole anything from the store you
8 don't necessarily, as a loss prevention agent, write
9 that incident up, do you?

10 A That depends on the circumstances.

11 Q Sometimes you do, sometimes you don't,
12 is that correct?

13 A No. In our circumstances stating that
14 someone looked in the purse wouldn't necessarily be
15 written up.

16 Q Are you talking about you personally?

17 A I can only speak for myself, yes.

18 Q You're talking about what you would do
19 personally?

20 A That's correct.

21 Q There are circumstances where you would
22 have approached a customer, you couldn't prove they
23 stole or it became apparent that they didn't that you
24 haven't written that incident up, is that correct?

25 A That's correct.

1 SLATER-CROSS-SHEWMAKE

2 Q When you confront a customer,
3 Mr. Slater, you want them to stay there until you
4 have determined whether or not they have shoplifted,
5 isn't that correct?

6 A No.

7 Q That's not correct?

8 A No.

9 Q Your purpose isn't to detain them until
10 you have ascertained whether or not they have stolen?

11 A No. It's not like I want them to stay
12 there. Once I identify myself and show them the
13 badge generally they are cooperative. At that time I
14 would ask them to come back in the store with me.

15 Q So if you asked them and they don't want
16 to come back with you you just let them leave?

17 A No. If they are shoplifting and I know
18 they are shoplifting then I detain them.

19 Q If you think they are shoplifting you
20 detain them, is that correct?

21 A That's correct.

22 MR. SHEWMAKE: I have no further
23 questions.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION

1 SLATER-REDD-REDIRECT

2 BY MR. REDD:

3 Q I believe you have testified there are
4 areas and there are regions?

5 A That's correct.

6 Q And there are a lot of loss prevention
7 agents in a region?

8 A Yes.

9 Q How many are there for an area?

10 A One.

11 Q Mr. Knight was not in that area in the
12 Hungarybrook Shopping Plaza Food Lion area, is that
13 your testimony?

14 A That's correct.

15 Q I believe you also testified the only
16 conceivable way he could be there would be to be
17 watching from cameras in a van?

18 MR. SHEWMAKE: Objection. Leading.

19 THE COURT: I'll allow it.

20 THE WITNESS: That's correct.

21 BY MR. REDD:

22 Q Finally, if you look in somebody's purse
23 do you write it up?

24 A Yes.

25 MR. REDD: Thank you.

HALASZ & HALASZ

1 SLATER-REDD-REDIRECT

2 THE COURT: Recross?

3 MR. SHEWMAKE: Yes, Your Honor.

4 RECROSS EXAMINATION

5 BY MR. SHEWMAKE:

6 Q What you're saying is in any given area
7 you would be the one that would tend to work several
8 stores in an area, is that correct?

9 A Excuse me?

10 Q In any given area like Richmond, Henrico
11 or Chesterfield you would be the one that tends to
12 work the several stores in that area, is that
13 correct?

14 A I had the option because I was part
15 time. Therefore, since I was part time north
16 Richmond was my area. I lived in Chesterfield
17 County. I had an option to work Chesterfield stores
18 and if time permitted, which was basically on the
19 weekend, I worked the Henrico stores.

20 Q You would work the Henrico stores on the
21 weekend. Who would work the Henrico stores during
22 the week?

23 A Generally in the evening I would work
24 the Henrico stores sometimes.

25 Q Would anybody else work the Henrico

HALASZ & HALASZ

1 SLATER-RECROSS-SHEWMAKE

2 stores?

3 A No.

4 Q So Henrico just wouldn't be covered
5 during the day during the week?

6 A That's correct.

7 Q That's true of a lot of other areas?

8 A I can't speak for other areas; its just
9 that I was part time and I had that option given to
10 me from my boss and that was because I was in the
11 military.

12 Q I asked if there was one loss prevention
13 agent and you said I'm the loss prevention agent but
14 that does not mean I was the one working that
15 particular store that day, I'm just --

16 THE COURT: Is this recross,
17 Mr. Shewmake?

18 BY MR. SHEWMAKE:

19 Q I'm just saying, is that a correct
20 statement?

21 A Yes.

22 MR. SHEWMAKE: Thank you. I have no
23 further questions.

24 THE COURT: Thank you, Mr. Slater. If
25 you would wait in the hall. Please don't discuss

HALASZ & HALASZ

1 SLATER-RECROSS-SHEWMAKE

2 your testimony with anybody while you're out there.

3 MR. REDD: I call Troy Sutorka.

4 TROY SUTORKA,

5 was sworn or affirmed and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. REDD:

8 Q Good afternoon.

9 A Good afternoon, sir.

10 Q Could you state your name for the
11 record, please?

12 A Troy Sutorka.

13 Q Where do you live?

14 A 1514 Lake Terrell Road in
15 Mechanicsville, Virginia.

16 Q Are you employed?

17 A Yes.

18 Q Where are you employed?

19 A Food Lion.

20 Q What's your current position?

21 A Store manager.

22 Q Were you employed in April of 1991?

23 A Yes, sir.

24 Q How were you employed then?

25 A I was an assistant manager.

HALASZ & HALASZ

1 SUTORKA-DIRECT-REDD

2 Q Where were you an assistant manager?

3 A Concord Avenue, Route 1 and Parham.

4 Q I would ask you to speak up. Could you
5 repeat that?

6 A Concord Avenue, Route 1 and Parham Road
7 intersection.

8 Q That's the Hungarybrook Shopping Plaza
9 Food Lion?

10 A Yes, sir, it is.

11 Q What was your job?

12 A Assistant manager.

13 Q Did you speak to Mrs. Melton by
14 telephone on that day, April 19, 1991, about an
15 incident in the parking lot where she was accosted
16 and asked if she had meat in her purse?

17 A No, sir.

18 MR. REDD: No further questions.

19 THE COURT: Cross?

20 MR. SHEWMAKE: Yes.

21 CROSS-EXAMINATION

22 BY MR. SHEWMAKE:

23 Q Where is the Food Lion store's phone
24 located?

25 A Phone?

HALASZ & HALASZ

1 SUTORKA-CROSS-SHEWMAKE

2 Q Yes.

3 A It has several, actually. There is one
4 in the office, one in the front of the office, one in
5 the produce room and I believe the store had one in
6 the back room, also.

7 Q Generally positioned where employees
8 have access to the phone, is that correct?

9 A That is correct.

10 Q So if not every day the manager --
11 MR. REDD: This is beyond the scope of
12 direct.

13 MR. SHEWMAKE: He said he didn't talk to
14 her. I'm trying to establish if there could be other
15 managers besides him.

16 THE COURT: Why don't you ask him that?
17 You already read into evidence his testimony about
18 Fridays.

19 MR. SHEWMAKE: Certainly.

20 BY MR. SHEWMAKE:

21 Q There could be other managers in the
22 store besides yourself on any given day, is that
23 correct?

24 A That's correct.

25 Q Do you remember every conversation you

1 SUTORKA-CROSS-SHEWMAKE

2 have with customers that call in?

3 A No, sir.

4 Q Managers at a Food Lion store don't have
5 jurisdiction over the individual loss prevention
6 agents, is that correct?

7 MR. REDD: Your Honor, same objection.
8 This is beyond the scope.

9 THE COURT: I'll allow it. I agree but
10 I'll allow it.

11 THE WITNESS: I would have to have
12 clarification.

13 BY MR. SHEWMAKE:

14 Q They don't report to the management at
15 the store?

16 A That's correct.

17 Q If you have a problem you can't
18 individually discipline the loss prevention agent,
19 can you?

20 A No, sir.

21 Q You would have to report it to their
22 department, is that correct?

23 A Yes, sir.

24 Q Are Fridays a busy day at the Food
25 Lions?

1 SUTORKA-CROSS-SHEWMAKE

2 A Generally, yes, sir.

3 MR. SHEWMAKE: Thank you. I have no
4 further questions, Your Honor.

5 THE COURT: Redirect?

6 MR. REDD: One question, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. REDD:

9 Q Given the telephone call in question was
10 from a woman that there was a man in the parking lot
11 accosting people for no reason and causing them great
12 emotional stress, would you have remembered a
13 conversation like that?

14 MR. SHEWMAKE: Objection. Speculation.

15 THE COURT: I'll allow it.

16 THE WITNESS: Something of that
17 magnitude I think I would have remembered.

18 MR. REDD: No further questions.

19 THE COURT: Mr. Shewmake?

20 MR. SHEWMAKE: I have no further
21 questions of this witness.

22 THE COURT: Thank you, Mr. Sutorka.
23 Please wait in the hallway.

24 Who is your next witness, Mr. Redd?

25 MR. REDD: I call James E. Whitaker.

HALASZ & HALASZ

1 SLATER-REDIRECT-REDD

2 MR. SHEWMAKE: Your Honor, I have an
3 objection I would like to take up.

4 Mr. Whitaker was not identified as a
5 fact witness in the Interrogatory Answers that they
6 gave at any time and he did not appear when there was
7 a B-6 deposition. I would move to strike him.

8 THE COURT: Overruled.

9 Come on up Mr. Whitaker.

10 JAMES E. WHITAKER,
11 was sworn or affirmed and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. REDD:

14 Q Good afternoon.

15 Could you state your name for the
16 record?

17 A James E. Whitaker.

18 Q Where do you live?

19 A 5917 Arrow Glen Drive, Mechanicsville,
20 Virginia.

21 Q Are you employed?

22 A Yes, I am.

23 Q Where are you employed?

24 A Food Lion store number 514.

25 Q Were you employed in April of 1991?

HALASZ & HALASZ

1 WHITAKER-DIRECT-REDD

2 A Yes, I was.

3 Q How were you employed then?

4 A I was store manager at store number 514.

5 Q Where?

6 A Hungarybrook Shopping Center.

7 Q You were the manager in 1991 and are you

8 the manager now at the Hungarybrook Shopping Plaza

9 Food Lion?

10 A Yes.

11 Q How long had you worked at that

12 particular Food Lion?

13 A Approximately three months.

14 Q Were you working on Friday, April 19,

15 1991 in that Food Lion?

16 A I cannot positively say I was. Probably

17 99 percent sure I was. I normally work on Fridays.

18 Q Why would that be?

19 A It's a busy day of the week. It's

20 standard practice that the store manager work on

21 Fridays along with the assistant either seven to six

22 or twelve to close.

23 Q Could you repeat those hours again?

24 A Seven to six or twelve to close. That's

25 our standard schedule for store manager and

1 WHITAKER-DIRECT-REDD

2 assistant.

3 Q Seven to six or twelve to close so
4 regardless of which shift you're on you're there from
5 one to two to three in the afternoon?

6 A Yes.

7 Q Was there an incident in the parking
8 lot involving a woman being wrongly stopped for
9 shoplifting while you were at that Food Lion on April
10 19th?

11 A No.

12 Q Let me rephrase that question.

13 Was there an incident where a woman was
14 wrongly stopped by a Food Lion employee?

15 A No.

16 MR. SHEWMAKE: What incident is he
17 referring to?

18 THE COURT: April 19th.

19 MR. SHEWMAKE: I object. He testified
20 he can't swear that he was at the store so therefore
21 that's speculation.

22 THE COURT: You can cross examine him.

23 BY MR. REDD:

24 Q Do you recall an incident of any kind in
25 that timeframe?

1 WHITAKER-DIRECT-REDD

2 A No.

3 Q Did a woman call you complaining of
4 being stopped and talk to you on the telephone?

5 A No.

6 Q Let's talk about who the managers were
7 at Food Lion and what the phone policy was.

8 First of all, when a customer or anybody
9 else calls and complains, what happens?

10 A They would call the manager on duty to
11 the front of the store, the senior manager, which in
12 most cases would be me. If I was not there it would
13 be Mr. Sutorka, Mr. Chaney. Ms. Brown was fourth in
14 command.

15 Q Ms. Brown is a woman?

16 A Yes.

17 Q Was Mr. Chaney working there between one
18 and three on the afternoon of the 19th?

19 A No. He was off that day.

20 Q So it would be you or Mr. Sutorka who
21 would take a call of that nature, is that right?

22 A Yes.

23 Q With regard to security guards, are
24 there security guards at Food Lion?

25 A We have no security guards.

HALASZ & HALASZ

1 WHITAKER-DIRECT-REDD

2 Q Have you ever had a security guard at a
3 Food Lion you worked at?

4 A No, sir.

5 Q What do you have?

6 A We have loss prevention agents that from
7 time to time work the stores.

8 Q During that April timeframe which loss
9 prevention agent would have been at the Hungarybrook
10 Shopping Plaza Food Lion?

11 A Derrick Slater.

12 MR. SHEWMAKE: Objection. If he can
13 testify from his personal knowledge.

14 THE COURT: I'll allow it.

15 BY MR. REDD:

16 Q Was he the only one?

17 A Yes.

18 Q Would any other loss prevention agent
19 have identified himself to you?

20 A Yes.

21 MR. REDD: No further questions.

22 THE COURT: Cross?

23 CROSS-EXAMINATION

24 BY MR. SHEWMAKE:

25 Q Loss prevention agents don't report to

HALASZ & HALASZ

1 WHITAKER-CROSS-SHEWMAKE

2 the managers in the stores, do they?

3 A How do you mean report?

4 Q You don't have jurisdiction over them,
5 do you?

6 A I don't have direct jurisdiction. I do
7 have indirect authority over them.

8 Q Are they required to report to you every
9 time they enter a store?

10 A Any corporate officials are required to
11 report to the management of the store, identify
12 themselves as Food Lion employees.

13 Q All those loss prevention agents, they
14 would have to come to the store and identify
15 themselves to the management on duty?

16 A Yes.

17 Q Even though one of the things that they
18 are looking for is employee theft, is that correct?

19 A Yes.

20 Q Does Food Lion periodically evaluate
21 its management team and employees?

22 A Yes, it does.

23 Q They look very dimly --

24 A The corporate office would look dimly on
25 customers being unjustly accosted, is that correct?

HALASZ & HALASZ

1 WHITAKER-CROSS-SHEWMAKE

2 A Yes.

3 Q Do you have any knowledge or information
4 that would lead you to believe that Mrs. Melton stole
5 anything from Food Lion?

6 A No.

7 MR. SHEWMAKE: Thank you. I have no
8 further questions.

9 THE COURT: Redirect?

10 MR. REDD: No, Your Honor.

11 THE COURT: Thank you, Mr. Whitaker.
12 Next witness?

13 MR. REDD: Your Honor, defense rests.

14 THE COURT: Ladies and gentlemen, this
15 would be an appropriate time to break for lunch. For
16 those of you who have not served on jury duty before,
17 we have a cafeteria here that you can go and use. I
18 would like you to be back around 10 minutes of. If
19 you do go out of the building, please don't go to any
20 Food Lion stores at lunch.

21 (Luncheon recess.)

22 THE COURT: Where are you-all on
23 instructions at this point?

24 MR. REDD: Your Honor, we had expected
25 to do instructions during the break. We're about

HALASZ & HALASZ

1 halfway through them.

2 THE COURT: Let me know when you're
3 ready.

4 (Recess.)

5 MR. SHEWMAKE: Your Honor, we have the
6 ones we agree upon and the few that we don't.

7 There are a few written changes on the
8 ones we have agreed upon, Your Honor.

9 THE COURT: Willful concealment,
10 shoplifting.

11 MR. SHEWMAKE: That's his.

12 THE COURT: I understand. I'm looking
13 at him.

14 MR. REDD: Your Honor, I feel there is
15 not much evidence but there is enough evidence for
16 that instruction to be included.

17 THE COURT: It's refused.

18 This one is the greater weight of the
19 evidence.

20 The person who approached Mrs. Melton
21 was an employee.

22 MR. SHEWMAKE: I believe it's a standard
23 instruction, Your Honor.

24 THE COURT: All right. What's the
25 problem?

1 MR. REDD: Which one is that?

2 THE COURT: If you find by the greater
3 weight of the evidence the person who approached
4 Mrs. Melton was the employee of Food Lion you may
5 find he was acting within the scope of his
6 employment.

7 MR. REDD: It's my position the burden
8 is on the plaintiff to show he was acting within the
9 scope of his employment as well as he was an
10 employee.

11 MR. SHEWMAKE: I would simply say the
12 law presumes. That is a standard Mische's
13 instruction.

14 THE COURT: I'll give that one.

15 You shall find your verdict for the
16 plaintiff if he proved by the greater weight of the
17 evidence -- I guess he should be a she -- that the
18 defendant intentionally restricted plaintiff's
19 freedom of movement without legal right. You shall
20 return your verdict for the defendant if the
21 plaintiff has failed to prove a false arrest or if
22 the defendant proved by the greater weight of the
23 evidence that he had a legal right to restrain the
24 plaintiff's right of movement.

25 MR. SHEWMAKE: They have no evidence

1 they had any legal right; therefore, the second part
2 should be stricken. It's covered by another
3 instruction, I believe. There is no evidence they
4 had a legal right. It's a probable cause statute.
5 They have no evidence they had probable cause.

6 THE COURT: Mr. Redd?

7 MR. REDD: Your Honor, there is evidence
8 it was a problem store from which a jury could
9 conclude there could be probable cause.

10 THE COURT: I'll have to look and see if
11 it is covered by another instruction. I would think
12 it probably is but I'm not sure.

13 I guess that's what this other
14 instruction is.

15 MR. SHEWMAKE: Yes, sir. That was the
16 difference.

17 THE COURT: I'll give that one.

18 I need to go back and try and organize
19 these.

20 MR. SHEWMAKE: We tried to organize
21 them. Obviously a couple are missing.

22 Is the general verdict form in the back,
23 Your Honor? I have a copy here.

24 THE COURT: I don't see it.

25 Some of these instructions have

1 citations on them. Are there any clean copies?

2 MR. SHEWMAKE: I have a complete set of
3 clean copies that we could match up.

4 MR. REDD: I have a clean set of mine
5 somewhere.

6 MR. SHEWMAKE: That's a complete set
7 except for the negligent retention.

8 MR. REDD: Your Honor, I don't believe
9 any of the ones I inserted had citations on them.

10 THE COURT: All right. I'll be back in
11 a few minutes.

12 (Following statement dictated for the
13 record outside the Judge and jury's presence:)

14 MR. SHEWMAKE: Pursuant to the Court's
15 direction I'm reading in what was denied by the Judge
16 in terms of being brought in except for impeachment
17 purposes:

18 The following are Admissions by Food
19 Lion: Admit: That during his encounter with the
20 plaintiff on April 19, 1991 the security guard
21 referred to in the Plaintiff's Motion for Judgment
22 was employed by the defendant. Response: Food Lion
23 admits that the loss prevention agent referred to in
24 the Motion for Judgment was employed by Food Lion.

25 Admit: That at the time of the

1 plaintiff's encounter with the security guard
2 referred to in the Plaintiff's Motion for Judgment
3 the security guard was acting within the scope of his
4 employment with the defendant. Response: Food Lion
5 admits during all times relevant to this action the
6 loss prevention agent was acting within the scope of
7 his employment with Food Lion.

8 We would have also read into evidence
9 Food Lion, Inc.'s original Grounds of Defense which
10 have already been filed with this Court. The
11 response to allegation number one in the Plaintiff's
12 Motion for Judgment, their response to paragraph 4,
13 their response to paragraph 6, their response to
14 paragraph 8 and their response to paragraph 12.

15 (Court resumed session.)

16 MR. REDD: Your Honor, at the close of
17 the evidence you called a break and we did not have
18 time to renew our Motion to Strike.

19 THE COURT: Okay.

20 MR. REDD: We would renew that motion
21 for the reasons stated before and add that there has
22 been no evidence of a standard of care giving rise to
23 a duty. For that reason we would ask that you strike
24 that. We would also note that there has been no
25 evidence as to any quantifiable damages and for that

1 reason we would ask you to strike all damages.

2 THE COURT: What about quantifiable
3 damages, Mr. Shewmake?

4 MR. SHEWMAKE: Your Honor, that goes to
5 what a jury sees in terms of pain and suffering,
6 embarrassment and humiliation. That is standard in
7 cases such as this. That is why we have a jury.

8 THE COURT: You haven't quantified
9 anything, have you?

10 MR. SHEWMAKE: In a personal injury case
11 if somebody has a lot of neck pain and so forth and
12 are emotionally troubled and has emotional pain I
13 can't put a specific dollar amount but the law does
14 not require me to do that. That's for the jury to
15 determine. Embarrassment -- I can't quantify that.
16 She has testified she had a headache for days. She
17 had headaches for days, couldn't sleep, anxious,
18 depressed.

19 THE COURT: I know what she said. Let's
20 not get into all that.

21 MR. SHEWMAKE: There is no way you can
22 put a specific dollar amount on that but that's for a
23 jury to determine.

24 THE COURT: The motion is overruled.

25 I'll note for the record there's a

1 capital murder case going on in the next courtroom
2 and they did it in 13 instructions and we've got 29.

3 Bring in the jury.

4 (Jury returned to the courtroom.)

5 (Jury instructions read to the jury.)

6 (Closing statements presented to the
7 jury on behalf of the plaintiff and on behalf of the
8 defendant.)

9 (Jury retired to the jury room to
10 commence their deliberations.)

11 THE COURT: The jury sent out a couple
12 of questions. The first one is: We would like to
13 know if the issues of insulting words and false
14 imprisonment and negligence are the only three
15 verdicts which we need to reach a decision on? If
16 not, what else is in question specifically?

17 MR. SHEWMAKE: Those are the three.

18 THE COURT: I'm going to answer yes to
19 that.

20 If not, what else is in question
21 specifically -- I'm going to say nothing.

22 What is considered reasonable
23 compensation? Specifically what dollar amount? I'm
24 going to tell them I can't tell. Is there a minimum
25 or maximum amount of compensation if Food Lion is

1 guilty on any one of the three issues listed above?
2 My reaction to that is no.

3 MR. REDD: That's correct.

4 MR. SHEWMAKE: That's correct, Your
5 Honor.

6 (Jury returned to the courtroom at 4:45
7 p.m. and the proceedings transpired as follows:)

8 THE COURT: Ladies and gentlemen of the
9 jury, have you reached a verdict?

10 THE FOREMAN: Yes, we have, Your Honor.

11 THE COURT: On the insulting words, we
12 the jury on the issues joined find for the defendant,
13 signed Jerry Rowe. On the false imprisonment, we the
14 jury on the issues joined find for the defendant,
15 signed Jerry Rowe. On the negligence, we the jury
16 find for the plaintiff and fix damages at,
17 compensatory damages, zero and punitive damages
18 \$5,000, signed Jerry Rowe, foreperson.

19 Ladies and gentlemen of the jury, is
20 this your verdict?

21 THE JURY IN UNISON: Yes, it is.

22 THE COURT: Motion before the jury is
23 excused?

24 (No audible response.)

25 (Jury dismissed at 4:48 p.m.)

1 THE COURT: Any other motions?

2 MR. SHEWMAKE: I would move to set aside
3 on the insulting words and the false imprisonment on
4 the grounds by virtue of their finding on the
5 negligence they found it was an employee and
6 therefore under the instructions they were bound to
7 find for us on the insulting words and the
8 imprisonment. I would also move on all three that
9 there was no evidence that she didn't suffer from
10 embarrassment and so forth. Some damages were in
11 order; therefore, I would move to set the jury
12 verdict aside as inadequate. Thank you, Your Honor.

13 THE COURT: You're welcome.

14 Those motions are overruled.

15 MR. REDD: I would move to set aside the
16 punitive damages as in no way relating to the
17 compensatory damages under the Supreme Court findings
18 that punitive damages have to be in some way related
19 to the compensatory damages.

20 MR. SHEWMAKE: If I may, Your Honor,
21 they were very small punitives so I think they are in
22 relation.

23 THE COURT: That motion also is
24 overruled. I'll enter judgment for the plaintiff on
25 the punitive damages and for the defendant on the


1 other two counts. I would ask Mr. Shewmake that you
2 prepare the order.

3 MR. SHEWMAKE: Certainly, Your Honor.

4 (Trial adjourned at 4:50 p.m.)
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5 REPORTER'S CERTIFICATE
6
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8
9

10 I, Joseph C. Spontarelli, shorthand
11 reporter, do hereby certify that the pages contained
12 herein accurately reflect the notes taken by me, to
13 the best of my ability, in the above-styled action.
14

15
16 
17 _____
18 Joseph C. Spontarelli
19 Shorthand Reporter
20
21
22
23
24
25

STORE #514, RICHMOND, VA
EXTRA LOW PRICES

HEAT		1.92 H
HEAT		2.40 H
*** TAX	.19 BAL	4.51
CASH		5.01
CHANGE		.50

TOTAL ITEMS PURCHASED 2
4/19/91 13:39 0514 02 0042 18
THANK YOU FOR SHOPPING FOOD LION
STORE # 514 HUNGRY BROOK PLAZA

INSTRUCTION NO. 1

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

GF

Verdict Not to be Based on Sympathy, Bias,
Guesswork, or Speculation

2

You must not base your verdict in any way upon sympathy, bias, guesswork or speculation. Your verdict must be based solely upon the evidence and instructions of the court.

C, F

INSTRUCTION NO. 3

When a party has the burden of proof on an issue, then they must prove that issue by the greater weight of all the evidence. This is sometimes called the preponderance of the evidence. It is that evidence which you find more convincing. The testimony of one witness whom you believe can be the greater weight of the evidence.

GF

INSTRUCTION NO. 4

Any fact that may be proved by direct evidence may be proved by circumstantial evidence; that is, you may draw all reasonable and legitimate inferences and deductions from the evidence.

GF

INSTRUCTION NO. 5

An employer is a person who has the right to control the way another does his work.

An employee is the person whom another has a right to control in the way he does his work.

GF

INSTRUCTION NO. 6

If you find that the person who approached Mrs. Melton was an employee of Food Lion, Inc., then you should find that Mrs. Melton was insulted by Food Lion, Inc.

CB

INSTRUCTION NO. 7

An employer is liable for all damages proximately caused by his employee while acting within the scope of his employment.

6/5

INSTRUCTION NO. 8

An employee's act may be within the scope of employment even though the act is willful or malicious.

GB

INSTRUCTION NO. 9

In order to recover against Food Lion, Inc., Mrs. Melton has the burden of proving by the greater weight of the evidence that the person who approached Mrs. Melton was the employee of Food Lion, that the person who approached Mrs. Melton was acting within the scope of his employment, and that his actions proximately caused damage to Mrs. Melton.

G.F.

INSTRUCTION NO. 10

The employer is responsible for his employee's actions if the employee was trying to some extent to serve the employer's business even though the primary motive of the employee was to benefit himself or a third person.

GF

INSTRUCTION NO. 11

Your verdict must be based on the facts as you find them and on the law contained in all of these instructions.

On Mrs. Melton's claim that she was insulted; the issues in this case are:

1. Did Food Lion, Inc. through its employee make any insulting statements to Mrs. Melton?
2. Is the statement about Mrs. Melton?
3. Is the statement false?
4. Did Food Lion, Inc.'s employee know the statement to be false or, believing the statement to be true, did Food Lion, Inc. lack reasonable grounds for such belief or act negligently in failing to ascertain the facts on which the statement was based?
5. If Mrs. Melton is entitled to recover, what is the amount of her damages.

On these issues Mrs. Melton has the burden of proof.

AF

INSTRUCTION NO. 12

A statement is insulting if people in the community usually mean and commonly accept them as insults and if they tend to cause violence and a breach of the peace.

GFI

INSTRUCTION NO. 13

If Mrs. Melton was ~~insulted~~ ^{insulted}, than you should presume that she was damaged without Mrs. Melton's having to prove the quantum of damages.

GF

INSTRUCTION NO. 14

On Mrs. Melton's claim of false imprisonment, you shall return your verdict for Mrs. Melton if she proved by the greater weight of the evidence that Food Lion, Inc. intentionally restricted Mrs. Melton's freedom of movement without legal right.

You shall return your verdict for Food Lion, Inc.:

(1) if Mrs. Melton failed to prove a false arrest;

CF

INSTRUCTION NO. 15

False imprisonment is an intentional restriction of a person's freedom of movement without legal right.

A false imprisonment results from the use of force, words, or acts which the person restrained is afraid to ignore or to which she reasonably believes she must submit.

Intentional restriction means saying or doing something to restrict another's freedom of movement.

GF

INSTRUCTION NO. 16

The burden is on Mrs. Melton to prove false imprisonment.

When a party has the burden of proof on an issue, then she must prove that issue by the greater weight of all the evidence. This is sometimes called the preponderance of the evidence. It is that evidence which you find more convincing. The testimony of one witness who you believe can be the greater weight of the evidence.

GF

INSTRUCTION NO. 12

It is not a legal defense to a claim of false imprisonment that Food Lion, Inc. or its employee had an honest or a reasonable belief that he was acting lawfully in restricting another's freedom. Any intentional restriction of a person's freedom that is without legal right is a false imprisonment.

GF

INSTRUCTION NO. 18

Negligence is the failure to use ordinary care. Ordinary care is the care a reasonable person would have used under the circumstances of this case.

GH

INSTRUCTION NO. 9

A proximate cause of an accident, injury, or damage is a cause which in natural and continuous sequence produces the accident, injury, or damage. It is a cause without which the accident, injury, or damage would not have occurred.

GB

INSTRUCTION NO. 20

If in having its store open to the public, Food Lion, Inc. knew or, in the exercise of reasonable care, should have known that its employee or employees posed an unreasonable risk of engaging in conduct that would cause damage or injury to its customers such as the plaintiff, then Food Lion, Inc. is negligent in retaining in its employ such employee or employees.

GA

INSTRUCTION NO. 21

If you find that Mrs. Melton is entitled to be compensated for her damages, and if you further believe by the greater weight of the evidence that Food Lion, Inc. acted with actual malice toward Mrs. Melton or acted under circumstances amounting to a willful and wanton disregard of her rights, then you may also award punitive damages to Mrs. Melton to punish Food Lion, Inc. for its actions and to serve as an example to prevent others from acting in a similar way.

If you award punitive damages, you must state separately in your verdict the amount you allow as compensatory damages and the amount you allow as punitive damages.

GF

INSTRUCTION NO. 72

"Actual malice" is a sinister or corrupt motive such as hatred, personal spite, ill will, or a desire to injure Mrs. Melton.

GF

INSTRUCTION NO. 23

You shall find your verdict for the plaintiff and against Food Lion, Inc. if she has proved by the greater weight of the evidence that:

(1) Food Lion, Inc. was negligent in retaining in its employ an employee; and that

(2) Food Lion, Inc.'s negligence was a proximate cause of the plaintiff's injury and damages.

GA

INSTRUCTION NO. 21

If you find your verdict for Mrs. Melton on any of her claims, then in determining the damages to which she is entitled, you may consider any of the following which you believe by the greater weight of the evidence was caused by the action Food Lion, Inc.'s employee:

- (1) any injuries she sustained and their effect on his health according to their degree and probable duration;
- (2) any physical pain she suffered in the past;
- (3) any emotional pain;
- (4) any inconvenience caused in the past;

~~(5) any damage to her property;~~

~~(6) any damage to her reputation;~~

~~(7) any damage to her health;~~

- (5) any insult to her including any pain, embarrassment, humiliation and mental suffering;

- (6) any injury to her reputation; and

~~(7) any damage to her health;~~

~~(8) any damage to her property;~~

Your verdict should be for such sum as will fully and fairly compensate Mrs. Melton for the damages sustained as a result of Food Lion, Inc.'s actions.

CF

Mitigation of Damages - Apology

25

You have heard evidence that the man who accosted Mrs. Melton apologized or offered to apologize to the plaintiff for the statement he made. Should you find that he was acting as an agent of Food Lion, you may consider this evidence in mitigation of damages.

only

GF

INSTRUCTION NO. 26

The burden is on Mrs. Melton to prove by the greater weight of the evidence each item of damage she claims and to prove that each item was caused by the actions of Food Lion, Inc.'s employee. She is not required to prove the exact amount of her damages, but she must show sufficient facts and circumstances to permit you to make a reasonable estimate of each item. If Mrs. Melton fails to do so, then she cannot recover for that item.

CNS

INSTRUCTION NO. 27

If you find that Mrs. Melton is entitled to damages, you should award her for all damages proximately caused actions of Food Lion's employee. This is true even if Mrs. Melton was susceptible to such injuries and other persons might not have suffered damages to the same extent as Mrs. Melton.

GR

INSTRUCTION NO. 28

If you find a verdict for Mrs. Melton, you may award her interest on the verdict on the amount awarded on any part thereof and beginning from a date you deem appropriate.

GB

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTINE F. MELTON,

Plaintiff,

v.

Case No. CL92-263

FOOD LION, INC.,

Defendant.

ALTERNATIVE FORMS OF VERDICT

INSULTING WORDS

We, the jury on the issue joined find for the plaintiff and fix her damages at:

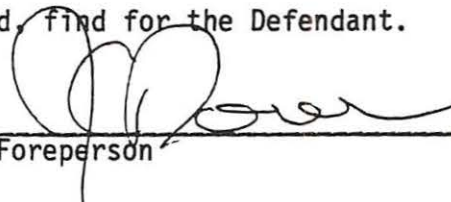
Compensatory: \$ _____.

Punitive: \$ _____.

Foreperson

O R

We, the jury, on the issue joined, find for the Defendant.



Foreperson

Jerry Rowe

O R

FALSE IMPRISONMENT

We, the jury on the issue joined find for the plaintiff and fix her damages at:

Compensatory: \$ _____.

Punitive: \$ _____.



Foreperson

O R

We, the jury, on the issue joined, find for the Defendant.



Foreperson

Returned March 24, 1994
216

94

NEGLIGENCE

We, the jury on the issue joined find for the plaintiff and fix her damages at:

Compensatory: \$ 5_____.

Punitive: \$ 5000.00_____.

Jeffrey C. Rowe
Foreperson

O R

We, the jury, on the issue joined, find for the Defendant.

Foreperson

V I R G I N I A:

RECEIVED

MAR 27 1994

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CLERK'S OFFICE
HENRICO CIRCUIT COURT

CHRISTINE F. MELTON,

Plaintiff,

v.

FOOD LION, INC.,

Defendant.

CASE NO. CL92-263

MOTION FOR RE-CONSIDERATION AND TO SET ASIDE THE VERDICT

FOOD LION, INC. ("Food Lion") moves the Court to reconsider and to set aside the verdict in the above-captioned matter pursuant to Rule 1:1 as follows:

1. On March 25, 1994, this case was tried to a jury. The jury returned a verdict for the defendant on Counts of Insulting Words and False Imprisonment. The jury returned a verdict for the plaintiff on Negligence, but awarded no compensatory damages. The jury awarded punitive damages in the amount of \$5,000.

2. Food Lion, by counsel, moved to set aside the punitive damages.

3. Under Virginia law, an award of compensatory damages is an indispensable predicate for an award of punitive damages.

Valley Acceptance Corporation v. Glasby, 230 Va. 422, 337 S.E.2d 291 (1985); Gasque v. Mooers Motor Car Company, 227 Va. 154, 313 S.E.2d 384 (1984); accord. Newspaper Publishing Corp. v. Burke, 216 Va. 800, 224 S.E.2d 132 (1976) (making an exception for liable and slander when actionable per se).

4. Since no compensatory damages were awarded, under Virginia law, punitive damages cannot be awarded.

5. Moreover, punitive damages premised on the negligence count are contrary to the law and the evidence because no allegations of gross negligence were made or proved, and no punitive damages were requested under the negligence count.

WHEREFORE, Food Lion, Inc. moves the Court to reconsider the verdict and to set aside the punitive damages award as contrary to the law and the evidence and because the verdict contains no prerequisite award of actual or compensatory damages.

FOOD LION, INC.

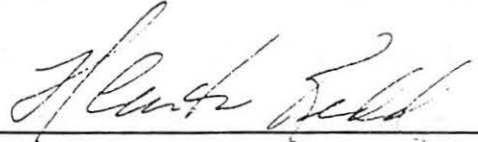
By Counsel



H. Carter Redd, Esq.
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
901 East Cary Street
Richmond, VA 23219-4030
(804) 775-1155
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed this 29th day of March, 1994, to William H. Shewmake, Esq., Shewmake, Baronian & Parkinson, 5413 Patterson Avenue, Suite 101, P.O. Box 17675, Richmond, Virginia 23226, counsel for plaintiff.



Mulkey\U:\P0138

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTINE F. MELTON

Plaintiff,

v.

Case No. CL92-263

FOOD LION, INC.,

Defendant.

MOTION FOR RECONSIDERATION

Now comes the plaintiff, by counsel, and moves the Court to reconsider its denial of the plaintiff's Motion for a Retrial as follows:

1. The defendant Food Lion, Inc. has filed a Motion to Reconsider the Court's ruling denying the defendant's motion to strike the jury verdict of \$5,000.00 in punitive damages.

2. In light of the defendant's motion, the plaintiff asks that the Court grant a new trial on the issue of compensatory damages on the plaintiff's claims of insulting words, false imprisonment and negligence. The only real liability issue in the case was whether the person who approached and accosted the plaintiff was an employee of Food Lion, Inc. By awarding punitive damages, the jury obviously resolved that issue in favor of the plaintiff. It was uncontradicted (through several witnesses) that the plaintiff suffered embarrassment, humiliation, and pain. While the jury was entitled to assess these damages low, it was not entitled to totally disregard them. (Since the jury did not know

how to evaluate compensation for these elements, it decided to award nothing for them. That logic is evident by the jury's question concerning minimum and maximum awards it could give.) By awarding nothing for these elements, the jury abused its discretion and the plaintiff is entitled to a new trial on the issue of compensatory damages with the Court finding that the issue of liability has been decided in the plaintiff's favor. (The jury has resolved the issue of punitive damages which should remain at \$5,000.00.) See Hall v. Hall, 240 Va.360 (1990); Rawle v. McIlhenny, 163 Va. 735 (1934).

3. The plaintiff also renews her motion to reinstate her claim of defamation. All the plaintiff had to show was that the defamatory words were overheard, which she did. She did not have to show the actual names of those that overheard the defamatory statements.

WHEREFORE, the plaintiff moves for a new trial on the issue of compensatory damages or in the alternative, a retrial on some and /or all issues, plus any other relief the Court deem fit and proper.


CHRISTINE F. MELTON

By: 

William H. Shewmake
SHEWMAKE, BARONIAN & PARKINSON
5413 Patterson Avenue, Suite 101
Post Office Box 17675
Richmond, Virginia 23226
804-288-9030

CERTIFICATE

I hereby certify that a true copy of the foregoing was telefaxed and mailed, postage prepaid, this 18th day of April 1994, to H. Carter Redd, Esquire, McGUIRE WOODS, BATTLE & BOOTHE, One James Center, 901 East Cary Street, Richmond, Virginia 23219.



William H. Shewmake

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTINE F. MELTON

Plaintiff,

APR 11 1994

v.

FOOD LION, INC.,

Defendant.

CLERK'S OFFICE
HENRICO CIRCUIT COURT
Case No. CL92-263

Book 63
Page 2219
Doc Date 4-26-94
Time 10:30 A.M.
Cost \$79.00
FiFa N/A
Ret N/A

JUDGMENT ORDER

Come the parties, by counsel, and tried the above referenced matter to a jury on March 24, 1994. At the close of the plaintiff's case in chief, the defendant moved to strike the plaintiff's claims of defamation, insulting words, intentional infliction of emotional distress, false imprisonment, and negligence, and the plaintiff moved to conform the pleadings to the evidence. The plaintiff's motion was granted and the defendant's motion was granted in part and denied in part. The Court granted the defendant's motion to strike the plaintiff's claims of defamation and intentional infliction of emotional distress, but denied the motion as to the remaining counts.

At the close of the defendant's case, the defendant renewed its motion and the motion was denied.

After deliberating, the jury returned a verdict for the defendant on the plaintiff's claims of insulting words and false imprisonment, but returned a verdict of \$5,000.00 in punitive damages for the plaintiff on the claim of negligence.

The defendant moved to set aside the verdict of \$5,000.00 as

being unreasonable as a matter of law and the plaintiff moved to set aside the verdict and award a new trial on all counts on the ground that the jury had found the facts supporting liability on all counts but had failed to award compensatory damages, which was contrary to the law and the evidence. The Court denied both motions and entered judgment on the verdict.

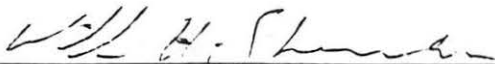
Accordingly, the Court ORDERS judgment in favor of the plaintiff Christine Melton against the defendant Food Lion, Inc. in the amount of \$5,000.00 plus court costs and interest at the judgment rate of 9% per annum from March 24, 1994.

ENTERED: 4 \ 22 \ 94



Judge

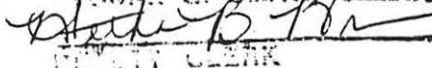
Seen and Objected to to the extent the plaintiff's motions were overruled and the defendant's motion were granted:



William H. Shewmake
SHEWMAKE, BARONIAN & PARKINSON
5413 Patterson Avenue, Suite 101
Post Office Box 17675
Richmond, Virginia 23226
804-288-9030
Counsel for the Plaintiff

A COPY TESTE:

WILLIAM G. SMITH, CLERK


CLERK

Seen and objected to to the extent the defendant's motions were denied:



H. Carter Redd
McGUIRE WOODS, BATTLE & BOOTHE
One James Center
901 East Cary Street
Richmond, Virginia 23219
Counsel for the Defendant

V I R G I N I A :

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTIAN F. MELTON,

Plaintiff,

v.

FOOD LION, INC.

Defendant.

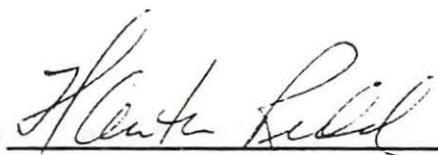
Law No.: CL92-263

NOTICE OF APPEAL

Pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia, the defendant, Food Lion, Inc., by counsel, hereby gives notice of appeal from the final Order of the Circuit Court of the County of Henrico entered on April 22, 1994. Transcripts covering the trial testimony and other incidents of the case have been ordered by the defendants and will be filed with the Court.

FOOD LION, INC.

By Counsel


H. Carter Redd
McGUIRE, WOODS, BATTLE & BOOTHE
One James Center
Richmond, Virginia 23219
(804) 775-1000

RECEIVED

MAY 20 1994

CLERK'S OFFICE
HENRICO CIRCUIT COURT

CERTIFICATE OF SERVICE

On May 22, 1994, the original of this Notice of Appeal was hand delivered to the Clerk of the Circuit Court of the County of Henrico and a copy was mailed to William H. Shewmake, Esq., Shewmake, Baronian & Parkinson, 5413 Patterson Avenue, Suite 101, P.O. Box 17675, Richmond, Virginia 23226, counsel for plaintiff.

A handwritten signature in cursive script, appearing to read "Mark A. Mulkey", is written over a horizontal line.

Mulkey\U:\P0177

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

CHRISTINE F. MELTON

Plaintiff,

v.

Case No. CL92-263

FOOD LION, INC.,

Defendant.

NOTICE OF APPEAL

Now comes the plaintiff, Christine Melton, by counsel, and pursuant to Rule 5:9 of the Supreme Court of Virginia, notes her appeal from certain findings, rulings, and the final judgment in the above reference action. Transcripts of testimony, argument and other incidents of trial will be filed, and the transcripts have been ordered from the court reporters who reported the case.

CHRISTINE F. MELTON

By




Of Counsel

William H. Shewmake
Samuel Baronian, Jr.
SHEWMAKE, BARONIAN & PARKINSON
5413 Patterson Avenue, Suite 101
Post Office Box 17675
Richmond, Virginia 23226
804-288-9030

CERTIFICATE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, this 23rd day of May 1994, to H. Carter Redd, Esquire, McGUIRE WOODS, BATTLE & BOOTHE, One James Center, 901 East Cary Street, Richmond, Virginia 23219.



William H. Shewmake

APPELLANT FOOD LION, INC. ASSIGNMENTS OF ERROR

1. A compensatory award is an indispensable predicate to a punitive award, and because the jury did not award compensatory damages, its punitive damage award should have been set aside.
2. The jury should not have been allowed to consider the question of negligence because no pecuniary loss was alleged, and the plaintiff's alleged emotional damages could not alone support an action for negligence; therefore, the Court should have granted Food Lion, Inc.'s, Motion to Strike the evidence with regard to negligence.
3. The punitive damage verdict should have been set aside because punitive damages were never demanded on the negligence count.

APPELLANT CHRISTINE F. MELTON ASSIGNMENTS OF ERROR

1. The trial court erred when it struck Mrs. Melton's claim of defamation.
2. The trial court erred when it held that for defamation to be published, a plaintiff must introduce or identify the names of the third parties who overheard the defamatory statements.
3. The trial court erred when it did not grant Mrs. Melton a new trial on the issue of damages or in the alternative a new trial generally.
4. The trial court erred when it allowed the defendant to withdraw its admission and amend its Grounds of Defense and did not allow Mrs. Melton to introduce the prior admissions and Grounds of Defense in her case-in-chief.

