

# The Alabama Jury Verdict Reporter

The Most Current and Complete Summary of Alabama Jury Verdicts

October, 2019

Statewide Jury Verdict Coverage - Published Monthly

19 A.J.V.R. 10

*Alabama's Jury Verdict Reporter Since 2001*

## In This Issue

<b>Jefferson County</b>	
Premises Liab. - Defense verdict	p. 1
Jeweler Neg. - Defense verdict	p. 3
Underinsured Motorist - \$22,500	p. 4
<b>Mobile County</b>	
Auto Negligence - \$3,000	p. 2
Underinsured Motorist - \$67,500	p. 7
<b>Federal Court - Birmingham</b>	
Wrongful Death - \$5,500,000	p. 2
<b>Baldwin County</b>	
Auto Negligence - \$50,000	p. 4
<b>Randolph County</b>	
Auto Negligence - \$8,500	p. 5
<b>Federal Court - Montgomery</b>	
Sexual Harassment - \$46,000	p. 5
<b>Etowah County</b>	
Premises Liab. - Defense verdict	p. 6
<b>Lee County</b>	
Auto Negligence - Defense verdict	p. 6
<b>Jackson County</b>	
Auto Negligence - Defense verdict	p. 7

## Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts in Alabama including circuit, presiding judge, parties, case number, attorneys and results.

### **Premises Liability - An elderly woman suffering from balance issues due to multiple sclerosis fell and broke her hip while being helped out of a grocery store; plaintiff blamed her fall on the grocery bagger's failure to heed her request to walk slowly and hold onto the shopping cart**

*Brown v. Publix Super Market, Inc.,*  
18-902980

Plaintiff: Charles A. McCallum, III,  
*McCallum Hoagland Cook & Irby, LLP.,*  
Vestavia Hills

Defense: Travis I. Keith, *Gaines Gault Hendrix, P.C.,* Birmingham

Verdict: Defense verdict

Circuit: **Jefferson**, 5-17-19

Judge: Donald E. Blankenship

In December of 2017, and despite being a 71 year-old widow who had suffered from multiple sclerosis for some 20 years, Linda Brown lived independently and tried to stay relatively active. Although Brown had difficulty walking and often made use of a cane or a walker, she would occasionally forego those aids.

On 12-6-17, Brown spent the night with her grandchildren. The next day, on 12-7-17, she drove herself to the Publix Super Market located at 3141 Overton Road in Mountain Brook to do a bit of shopping. Brown left her cane and her walker in the trunk of her car and entered the store without assistance.

It was Brown's custom while shopping at Publix to walk slowly and to use her shopping cart as a kind of makeshift walker. When she would enter the checkout lane, she would always explain this to the cashier and the bagger.

On this day Brown completed her

shopping and entered the checkout lane as usual. The bagger on duty that day was Earl Smith, Jr. Brown followed her usual practice of telling Smith that she needed to walk slowly and hold onto the shopping cart.

Although Smith did not verbally acknowledge Brown's request, it was Brown's belief that he indicated acknowledgment with either a nod or a "thumb's up" gesture. Smith would later dispute this and explain that he has a physical "tic" that occasionally makes it appear that he is gesturing.

In any event, as soon as Brown let go of the cart to reach into her purse in preparation to pay for her purchases, Smith took possession of the cart. He pulled it to the end of the counter and positioned it behind him and proceeded to bag and load Brown's groceries.

When Smith had finished bagging Brown's groceries, he turned and began pushing the cart toward the exit before stopping a few feet away to wait for Brown. Having completed the payment process, Brown then began walking toward Smith and the cart. She stopped briefly to put items in her purse and then resumed walking.

Just as Brown approached Smith and reached for the cart, Smith resumed walking toward the exit. In that moment Brown lost her balance and fell to the floor. Brown sustained a broken hip due to the incident and can no longer live independently. She underwent surgery on her hip, but the record does not reveal the amount of her medical expenses.

Brown filed suit against Publix