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publication in the New York Reports.

No. 166 SSM 20
Joseph E. Kaufman, &c.,
et al.,
 Appellants,
 v.
Quickway, Inc., et al.,
 Respondents.

Submitted by Alexander J. Wulwick, for appellants.
Submitted by Frank W. Miller, for respondents.

MEMORANDUM:

The order of the Appellate Division should be affirmed,
with costs.

In this Dram Shop Act action involving a convenience
store's allegedly illegal sale of alcohol to a visibly

intoxicated customer who later caused a fatal traffic accident, the Appellate Division reversed Supreme Court's order denying defendants' motion for summary judgment, granted the motion, and dismissed the complaint. The Appellate Division held that the store clerk's out-of-court statements to a State Trooper investigating the accident were not admissible under the hearsay exception for prior inconsistent statements to rebut her later deposition testimony (see Letendre v Hartford Acc. & Indem. Co., 21 NY2d 518, 524 [1968]; cf. Nucci v Proper, 95 NY2d 597, 603 [2001]). We disagree. The supporting deposition prepared by the Trooper and signed by the witness under penalty of perjury contained numerous indicia of reliability justifying its admissibility under Letendre. And, as in Letendre, the store clerk was available for cross-examination. In addition, the statement was sufficient to create a triable issue regarding whether the driver was visibly intoxicated at the time of the alcohol sale (see Alcoholic Beverage Control Law § 65 [2]; General Obligations Law § 11-101).

Nevertheless, summary judgment was properly granted to defendants. Plaintiffs failed to create a triable issue to rebut defendants' prima facie evidence demonstrating that no reasonable or practical connection existed between the allegedly illegal sale of alcohol and the accident (see Oursler v Brennan, 67 AD3d 36, 43 [4th Dept 2009], lv granted 68 AD3d 1824 [4th Dept 2009]; Schmidt v Policella, 43 AD3d 1141, 1143 [2d Dept 2007], lv denied

9 NY3d 817 [2008]).

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided June 8, 2010