

NORTH CAROLINA
FOUNDATION
BAR ASSOCIATION

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*Justice Iredell Middle School Mock Trial
North Carolina Bar Association Foundation*

STATE OF NEW JUSTICE

V.

JACKSON

Special thanks to the Carolina Center for Civic Education and the Advocates for Justice. Our 2015-16 MS Mock Trial case has been modified from the 2009-10 NCAJ High School Mock Trial Program competition case.



**A PROGRAM OF THE
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Lucy Austin, Esquire
Doug McClanahan, Esquire

MOCK TRIAL SUB-COMMITTEE CHAIR

Joseph B. Adams, Esquire

Law Related Education Department lre@ncbar.org

Diane Wright, LRE Director, 919-657-1588, dwright@ncbar.org
JoAnn Petilli, LRE Coordinator, 919-657-1574, jpetilli@ncbar.org

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STATE OF NEW JUSTICE V. JACKSON

CASE SUMMARY

On October 19, 2012, three students, Terry Jackson, Shaun Anderson, and Jane Anderson, left the campus of West High School for lunch in Terry's car, a Ford Explorer. The lunch hour was only 50 minutes. West High did not have a closed campus and allowed students to freely leave campus. Nevertheless, in an effort to discourage students from leaving, the school had a strict parental notification policy regarding absences or tardiness after a lunch period. A student's parents were contacted when a student received two absences or tardiness following a lunch period in any semester.

After eating lunch at Nicktunes Cafe, a local favorite, the students began the drive back to campus. They were going to be cutting it close in terms of time. Jane Anderson said that they had to hurry as she had already received one tardy and did not want her parents notified that they had left campus. Terry said not to worry.

The students turned eastbound onto Elm Street which ran along the north side of the campus. The student parking lot was on Magnolia, on the east side of the campus. The speed limit on Elm was 30 mph for residential traffic. The corner of Elm and Magnolia did not have a marked crosswalk, but 100 yards from the corner was a sign that said "Caution: Pedestrians."

As the car approached Magnolia, Terry saw another car in the middle of the street with its left turn signal flashing. Terry moved to the far right to pass and make a right turn onto Magnolia. At Jane's request, Terry was also texting a message on his/her cell phone to another student to tell the student to make up an excuse for Jane if she was late to class.

Shaun yelled, "Watch out!" Terry looked up and saw that a student walking his/her bike was emerging from in front of the car with the turn signal, heading toward campus. Terry slammed on the brakes and swerved right to avoid the student. The Ford Explorer hit and ran up the curb, and the vehicle rolled over. The Explorer missed the student but slid and crashed into the pole for the traffic signal. Terry and Shaun were hurt but survived, as both were restrained by their seat belts in the front bucket seats. However, Jane was sitting in the back and was not wearing her lap belt. Jane was ejected from the car and killed.

The State has charged Terry Jackson with negligent homicide in the death of Jane Anderson.

STIPULATIONS

1. The fact summary provides background information only. Witnesses may testify to information contained in the fact summary only if it is also found in their witness statement.
2. All exhibits included in the case materials are authentic and accurate in all respects, and no objections to the authenticity of the exhibits will be honored. The chain of custody of the evidence may not be contested.
3. With sufficient foundation, all exhibits, if offered, shall be admitted.
4. The signatures on the Witness Statements and other documents are authentic. If asked, a witness must acknowledge signing the document(s) and must attest to the contents of the document(s) and the date(s) indicated thereon. The statements are deemed to be given under oath or affirmation.
5. The stipulations cannot be contradicted or challenged.

Witnesses

State

Chris Jones
Pat Martin
Officer Kelly Miller

Defense

Terry Jackson
Shaun Anderson
Tracy Roller

Exhibits

1. Government Rollover Ratings
2. Driver's License Report
3. Pedestrian Warning
4. Consumer Reports, August 2009
5. Map of Intersection

NEW JUSTICE PENAL CODE

(Selected Provisions)

NJS 13 – 1102 Negligent Homicide; classification

A person commits negligent homicide if with criminal negligence such person causes the death of another person. Negligent homicide is a class 4 felony.

NJS 13 – 110 Rules of Criminal Procedure

In a criminal prosecution for negligent homicide, evidence of the deceased's conduct may be admitted for the purpose of determining criminal negligence. The burden of proving such contributory factors shall rest upon the defendant or defendants.

NJS 13 – 105 Definitions

In this title, unless the context otherwise requires:

6. "Culpable mental state" means intentionally, knowingly, recklessly or with criminal negligence as those terms are thusly defined:
 - a. "Intentionally" or "with the intent of" means, with respect to a result or to conduct described by statute defining an offense, that a person's objective is to cause that result or to engage in that conduct.
 - b. "Knowingly" means that, with respect to conduct or to a circumstance described by a statute defining an offense, a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.
 - c. "Recklessly" means that, with respect to a result or to a circumstance described by statute defining an offense, a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in that situation.
 - d. "Criminal negligence" means, with respect to a result or to a circumstance described by statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in that situation.

Case Law and Commentary

Negligent homicide

“The general rule is that negligent homicide is a lesser included offense of manslaughter. In *State v. Parker*, 128 N.J. App. 107, 624 S.E.2d 304 (1990), *vacated in part on other grounds*, 128 N.J. 97, 624 S.E.2d 294 (1991), the Court of Appeals determined that the only difference between manslaughter and negligent homicide is an accused’s mental state at the time of the incident. *See also State v. Montoya*, 125 N.J. App. 155, 608 S.E.2d 92 (1990). Manslaughter is established where a person, aware of a substantial and unjustifiable risk that his or her conduct will cause the death of another, consciously disregards that risk. Negligent homicide is established where a person fails to perceive the substantial and unjustifiable risk that his or her conduct will cause the death of another. The element of the greater not found in the lesser is awareness of the risk.” *State v. Fisher*, 141 N.J. 227, 247, 686 S.E.2d 750, 770 (1994).

“While it is true that in a criminal prosecution for negligent homicide the contributory negligence of the deceased is not a defense, *State v. Nerison*, 28 N.J. App. 659, 661 n. 1, 625 S.E.2d 735, 737, n.1 (1991), the trier of fact may still consider the decedent’s conduct when determining whether the defendant’s act was criminally negligent. *See Wren v. State*, 212 N.J. 355, 577 S.E.2d 235, 238 (1988); *Williams v. State*, 554 S.W.2d 842, 845 (Okl. Cr.App. 1976); *State v. Nerison, supra*. In the instant case, the decedent’s conduct may be relevant because her failure to yield the right of way could relieve the defendant of criminal responsibility. For example, the defendant might prove he expected the victim to yield and, therefore, did not slow down as he approached the intersection. The jury might therefore conclude that the defendant’s failure to slow down was not criminal negligence, i.e., ‘a gross deviation from the standard of care that a responsible person would observe in the situation.’” NJ 13 – 105(6)(d). *State v. Shumway*, 137 N.J. 585, 588, 672 S.E.2d 929, 932 (1993).

Burden of Proof

“The state has the burden of proving the defendant guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not or that its truth is highly probable. In criminal cases such as this, the state’s proof must be more powerful than that. It must be proof beyond a reasonable doubt.” *State v. Montoya*, 125 N.J. 155, 608 S.E.2d 92 (App. 1980).

“Proof beyond a reasonable doubt is proof that fully satisfies and entirely convinces you of the defendant’s guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are fully satisfied and entirely convinced that the defendant is guilty of the crime charged; you must find him/her guilty. If, on the other hand, you think there is a real possibility that s/he is not guilty, you must give him/her the benefit of the doubt and find him/her not guilty.” *State v. Portillo*, 182 N.J. 592, 596, 898 S.E.2d 970, 974 (2005) *quoting* Federal Judicial Center, PATTERN CRIMINAL JURY INSTRUCTIONS 17-18 (Instruction 21) (1987). This instruction was mandated to be given in all criminal cases in New Justice after January 1, 2006.

1 **AFFIDAVIT OF CHRIS JONES**

2
3 My name is Chris Jones. I am sixty-five years old. I reside at 103 Cedar Trail, which is
4 approximately three blocks from West High School. I have lived in my current location for thirty
5 years. My two grown children both attended West High School.

6 The neighborhood around West High School is residential. Houses surround the school on
7 three sides, along Elm, Oak, and Maple streets. Those streets do not have a yellow median line
8 because they are part of the Forest Hills development rather than main thoroughfares. Sometimes
9 cars park along them during school events, which make it a tight squeeze for traffic going both
10 directions. Magnolia runs along the front of the campus; it is a normal cross street with two lanes
11 in each direction.

12 The speed limit on Elm, Oak and Maple streets is 30 miles per hour. The speed limit
13 on Magnolia is 40 miles per hour.

14 Over the years, the traffic around the high school has grown tremendously. It seems like
15 every student gets a car these days when they turn sixteen years old. Students always seem to be
16 coming and going from the school between about 7:30 in the morning and about 4:00 in the
17 afternoon. At my house, I often hear the squeal of tires and the roar of “souped-up” engines
18 from the students while I work in my yard.

19 Around lunchtime, from approximately 11 a.m. to 1:30 p.m., the number of students
20 racing to and from the high school is enormous. Other neighbors and I have complained to the
21 principal and the school board about our belief that the safety of the surrounding neighborhood is
22 compromised when the students try to hurry off campus to eat lunch and then return. I am so
23 concerned that I try hard to avoid driving by the school at this time. It can be very frustrating to
24 be so limited in my ability to leave or return to my house during the middle of the day,
25 but I just don't feel safe. Obviously, sometimes I cannot avoid driving at this time but I sure try.

26 On October 19, 2012, I had a doctor's appointment at 1:30 p.m. I tried to get a later one,
27 but I would have had to hold off seeing the doctor for three days. As a result, I was leaving my
28 house around 12:50 to 12:55 to go to the doctor. I drove down Cypress and turned right on Elm
29 to go to Magnolia.

30 I drove to the corner of Elm and Magnolia and stopped to turn left onto Magnolia. As
31 I've already mentioned, Elm is a normal residential street with no yellow or white lines down the

32 middle of the road. It has a traffic light on the corner, but the light isn't much help because it's one
33 of those that flashes yellow for caution in all directions. At lunch time with all of the traffic, it can
34 be several minutes before I am able to turn left onto Magnolia.

35 I stopped in the middle of the street to wait for the traffic on Magnolia to allow me to
36 turn left. It was around 1:00 p.m. in the afternoon, probably a few minutes before the hour.
37 The sun was shining and it was a pretty October day in New Justice. I remember I was thinking
38 we were actually enjoying almost fall-like conditions.

39 As I waited to turn, a student began to cross Elm walking a bicycle. The child had been
40 standing on the corner when I stopped and looked to see what I was going to do. Since I had to
41 wait for a break in the traffic before I could turn left, I signaled that he/she could cross. There is
42 not a marked crosswalk at this corner. In fact, there are no marked crosswalks at any of the
43 corners around the West High campus. Nevertheless, signs are posted on all the surrounding
44 streets that say to watch out for pedestrians. There is one on Elm about half a block before the
45 intersection with Magnolia.

46 At about this time, I don't know if I heard or sensed a car coming behind me. I looked
47 up in my rear view mirror and saw a white Ford Explorer coming very fast behind me. My first
48 thought was they are going too fast – I bet it is kids going to the high school. The entrance to
49 the parking lot is on Magnolia and so students often go fast down Elm so they can turn on
50 Magnolia and go to the parking lot. As I watched the car, and it all happened so fast, maybe a
51 few seconds, I thought to myself, "I hope they stop and don't rear-end my car."

52 I quickly looked forward to see if I could turn, and saw that the student and the bike
53 were just now passing in front of my car and were almost to the corner. At that moment, I
54 heard an awful squeal of brakes and tires. I was sure I was going to be hit! I closed my eyes.
55 The next thing I knew, I heard a terrible crash and was astonished that I did not feel anything.

56 I opened my eyes and saw the student with the bike still in the street just a foot or so from
57 my car. I also saw the Explorer where it apparently crashed into the traffic signal pole. The
58 Explorer was lying on its side and was almost completely on the sidewalk. I sat in my car and was
59 literally shaking. I do not know how long I just sat in my car and stared. Several students came
60 to the Explorer and helped the occupants from the car. The occupants all looked like students.

61 The police and fire departments arrived in what seemed like just minutes. I felt in a
62 daze. I believe some of the students in the car were taken to the hospital. I do not know what
63 happened to them.

64 I spoke to a police officer who told me I could move my car from Elm. I told the police
65 everything I could remember about the accident. It all happened so fast. The police took my
66 name and said they would contact me if they needed anything else.

67 In 2008, my daughter Katherine was seriously injured in an automobile accident in
68 Fairtown. She was hit by a nineteen-year old UNJ student who was intoxicated. Luckily,
69 Katherine is fine now except for some lingering back pain. However, for a while, we thought she
70 was going to be paralyzed. Young people never seem to realize the fact that an automobile can be
71 a dangerous weapon.

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73 FURTHER AFFIANT SAYETH NOT.

74 Chris Jones

75 Chris Jones

AFFIDAVIT OF PAT MARTIN

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My name is Pat Martin. I was born on April 12, 1995. Terry Jackson, Shaun Anderson, and I are all seniors at West High. In fact, we've gone to the same school since third grade. I am a friend of Terry Jackson. We used to be really close in middle school and during our freshman year at West High. However, since freshman year we have not done as much together as we used to. Shaun and I have never been close friends. I knew Shaun's sister Jane a little. Since she was younger than we were, we never paid much attention to her.

I live about half a mile from school and usually ride my bike. I also generally go home for lunch because I can "chill out" and watch TV. My parents are not home, and I have the house to myself. It only takes about 5-10 minutes to go each way depending on how long I have to wait to cross Elm because of the traffic.

Classes at West High are fifty minutes long. They begin at five minutes past the hour and end at five minutes before the hour. This allows us ten minutes to go from one class to another. My lunch period is from 12:05 to 12:55. However, my next class does not start until 1:05. Thus, I usually stay at home until about 12:50 before hopping on my bike and going back. I have never been tardy returning from lunch this year.

When we were freshmen, both Terry Jackson and I rode our bikes to school. Terry lives about a quarter mile or so farther from the school than I do. S/he used to come over and we would ride to school together. S/he would often come over for lunch. However, as I said, we do not hang out together as much since freshman year. I do not think Terry has ridden his/her bike at all since s/he got a Ford Explorer from his/her parents for his/her sixteenth birthday.

Many kids leave campus for lunch. Most go out for food and complain about how little time they have. That is because they go to places that are far away for their favorite fast food restaurants. Also they sit around, talk until the last minute, and then are late if they hit a red light. I don't think getting back in time is so hard, but everyone thinks I am a "geek" for going home for lunch.

On October 19, 2012, I went home for lunch. I watched two reruns of The Simpsons and ate a cheese sandwich. I left as they began the commercials at the end of the show. I cannot believe how many commercials there are at the end of a show. They could add an easy three to five minutes if they did not have so many commercials.

32 I rode to the corner of Elm and Magnolia across from school. When I reached the corner,
33 I got off my bike to cross the street. You have to be careful at the streets around the school
34 because a lot of students are driving quickly, especially around lunchtime.

35 I looked and saw a car on Elm stopping to turn left. I was going to wait until it had
36 gone, when the old man driving signaled me to cross. I thought, "Alright, you don't have to ask
37 me twice." I started to walk my bike across the street. I was looking no place in particular and
38 just thinking about how I really did not want to go to my next class, which was physics.

39 I was about two-thirds of the way across the street and just passing the car when I
40 looked up Elm. I froze because I saw Terry's Ford Explorer speeding towards me. I did not see
41 Terry. I think he/she was bending down. I thought "Terry, don't hit me!"

42 The next thing I remember is seeing Terry looking up at me and the car swerving up on
43 the curb by the school. The car seemed to bounce and start to swerve again. It was almost to
44 me, and I still thought I was going to be hit. Then it flipped on its side and slid past me. It made a
45 horrible screeching sound. I could not believe I was not hit; even my bike wasn't touched.

46 I saw the car go by me and slam into the pole on the corner that held the traffic light.
47 Everything happened so fast and yet it seemed like slow motion. I ran across the rest of the
48 street and threw down my bike. I sprinted to the car with a group of other students. I was going
49 to give Terry a piece of my mind. S/he almost killed me.

50 When we got to the Explorer, Terry was helping Shaun from the car. S/he was crying about
51 his/her arm. Terry looked like s/he had a cut on his/her head. Shaun was yelling for Jane. I
52 thought s/he was crazy because I did not see Jane. However, some kids called to us that Jane
53 was in the grass back where the car flipped. I never saw her leave the car.

54 The police and fire department arrived and took Terry, Shaun, and Jane away. I told
55 them I saw the whole thing. I was not going to tell them that Terry almost hit me. I did not want
56 to get him/her in trouble. But the person in the stopped car told them about me, so I had to
57 come clean and tell them how close it really was.

58 I don't know why the Explorer flipped. I honestly thought Terry was going to swerve back
59 onto the street and hit me.

60 FURTHER AFFIANT SAYETH NOT.

61 Pat Martin

62 Pat Martin

33 Terry stated s/he felt they had plenty of time. Terry does not know exactly how fast s/he
34 was going on Elm but is sure it was not faster than traffic normal goes on the street. Terry
35 insisted s/he was not speeding. Based on my field investigation, I cited Terry at the hospital
36 for speeding.

37 With regard to the accident, Terry stated it was simply a freak occurrence. S/he was
38 sending a text message for Jane when Shaun yelled “Watch Out!” Terry looked and saw
39 Pat Martin crossing the street. Terry said s/he put on the brakes and the car pulled to the
40 side and hit the curb. Terry was turning back into the road when the car rolled over and slid
41 into the pole.

42 Based on my training, from the length of the skid marks, the damage to the
43 vehicle, and the distance the vehicle rolled, I calculated the speed of the Explorer to be
44 between 47 and 50 miles per hour immediately before the accident. This speed is substantially
45 above the 30-mile per hour speed limit for a residential street and definitely a hazardous
46 speed so close to a high school known to have a high amount of pedestrian traffic.

47 Several signs are posted around the West High campus warning motorists to watch
48 out for pedestrians. The signs are large and a reflective yellow color. They read “Caution:
49 Pedestrians.”

50 I have investigated several accidents in the last few years around West High School.
51 In the last four years, 88% of the accidents in a five-mile radius around West High School
52 have involved students who were speeding. The police force generally places officers a few
53 blocks from the school every few months to ticket speeders. It is hoped this will slow
54 everyone down. I must admit, however, that many of the speeding tickets that are written are
55 not to students. Many people use Elm as a regular thoroughfare and often travel at a speed
56 near forty (40) miles an hour.

57 Based on all the information I gathered, including the physical evidence and my
58 conversations with all the witnesses, I believe the accident occurred because Terry Jackson
59 was driving at a greatly excessive speed and was inattentive to his/her situation and
60 surroundings. These actions caused a situation to develop where there was a substantial and
61 unjustified risk of harm to the people in the Explorer and anyone around it. When Shaun
62 screamed “Watch Out,” Terry Jackson panicked and jerked the wheel. The vehicle skidded
63 at a high rate of speed and hit the curb, causing the right side wheels to lose contact with the
64 ground. Terry then attempted to quickly turn back to the left, causing the unbalanced vehicle

65 to tip even more. Given the rate of speed and the jerky movements, Terry Jackson lost control
66 of the vehicle. The vehicle rolled over and slid into the pole.

67 Studies have shown that the Explorer has a high center of gravity and greater risk
68 of rolling over. However, the vehicle does not roll over by itself. It was the rate of speed and
69 inattentiveness that caused Terry Jackson to lose control of the vehicle. In losing control,
70 Terry made quick changes of direction that may have contributed to the vehicle rolling over.

71 As part of my investigation, I also checked Terry Jackson's driving record. In 2010 at
72 the age of 16 s/he received a speeding ticket for going 48 miles per hour in a 35 mile per hour
73 zone. Terry went to traffic safety school and the violation was erased. The ticket was given
74 at a location about 30 miles from West High School in Independence City.

75 After completing our investigation, the Libertyville Police Department arrested
76 Terry Jackson on November 15, 2012 for manslaughter and negligent homicide.

77

78 FURTHER AFFIANT SAYETH NOT.

79 *Kelly Miller*

80 Officer Kelly Miller

81 Libertyville Police Department

1 **AFFIDAVIT OF TERRY JACKSON**

2
3 My name is Terry Jackson. I was born on October 3, 1994. I am a senior at West High
4 School. On October 19, 2012, I was involved in a motor vehicle accident while driving my 2004
5 Ford Explorer. I was eighteen at the time of the accident.

6 I received my driver’s license following my sixteenth birthday. My parents said they
7 would buy me a car if I took the full drivers education course at West High School. This class
8 required both class work and actual driving. I thought the class was only for “geeks.”
9 However, I willingly took the class in exchange for my parents buying me a used Ford Explorer.
10 It was a cool car. I could pack in lots of my friends to go to dances and games. Since I got an A,
11 my parents even threw in a new cell phone for my birthday.

12 I am really a safe driver. Mr. Maxwell taught the driver education course at West High
13 School. He was a very strict teacher, especially in the actual driving segment. We were drilled in
14 defensive driving skills and techniques. We even took a field trip to New Justice International
15 Raceway where a race driver friend of Mr. Maxwell’s lectured us. We were also allowed to drive a
16 Monte Carlo around the track. It was awesome!

17 I have gotten one ticket. A few months after I got my license, I received a speeding
18 ticket in Independence City. I was leaving a friend’s house and was afraid I would be late getting
19 home for dinner. I did not want to get in trouble with my parents since they have this thing about
20 the whole family eating together. I did not think I was speeding but the police officer said I
21 was. It was terrible. My parents grounded me and took away the car for two months. I learned
22 that nothing is worth getting a ticket.

23 I have driven to school nearly every day since I got the Explorer. It is an easy drive because
24 I only live about a mile away. It is much better driving than riding my bike like I used to do,
25 especially when the weather is bad. Also, now I can leave campus and go with my friends to
26 lunch. Over the last few years, I must have driven to and from school about a thousand times.
27 I could drive there with my eyes shut.

28 I really like West High School. I served on the Student Council the last two years, and I
29 am the Student Body President this year. I’m also captain of the soccer team. I am planning to
30 go to the University of New Justice next year to study engineering. I’ve already been accepted
31 because I am in the top 5% of my senior class. Until the accident, life was pretty wonderful.

32 I still cannot believe the accident really happened. Shaun, Jane and I went to lunch like
33 we had done a hundred times before. It was a normal lunch; we went to Nicktunes Cafe for pizza
34 and shakes. We left to return to school in plenty of time. We are all careful about that because of
35 the school's parental notification policy for absences or tardiness after a lunch period.

36 I decided to drive back to school along Jefferson Avenue. That is not the way we
37 went to the restaurant, but I thought it might be faster going back. Boy, was I wrong. About
38 halfway to school, at the intersection of Jefferson and Main, the city was installing sewer
39 pipes. They had the entire intersection closed, so we had to turn around and backtrack. Jane was
40 concerned because she already had one tardy and thought we would be late. I told her not to
41 worry. I was sure we could make it.

42 We made good time the rest of the way. When we turned onto Elm next to the school, I told
43 everyone to gather their stuff so we could all go to class as soon as I turned onto Magnolia and
44 went into the parking lot. Jane leaned up between the seats and asked me to text our friend
45 Cheryl to make up an excuse for Ms. Henry in World History if Jane was late. Jane's parents
46 won't let her text under her cell phone plan. I told Jane that sending the text might make us later,
47 but I started to text Cheryl anyway.

48 All of a sudden, Shaun yelled, "Watch Out!" I looked up and saw Pat Martin crossing
49 Elm in front of us. I had been looking that way just a second before, and I swear there was
50 nothing but a gray car with its left turn signal flashing, waiting to turn left. I had moved to the far
51 right so I could go around the car and turn right onto Magnolia. I immediately hit the brakes pretty
52 hard. The car seemed to swerve to the right and bumped up onto the curb. I knew from class that it
53 would be harder to stop on uneven ground, so I was going to turn back onto the road and maybe
54 try to do a U-turn and avoid everything. However, before I could do anything, the car went
55 airborne and we rolled. I don't know what happened. Once we rolled, there was nothing I could
56 do, and we went into the traffic pole.

57 When we hit the pole, I hit my head on the side window or support; I am not sure which
58 one. I was real lucky because that was my only injury. My head was bleeding badly, but it
59 turned out not to be too serious. It looked worse than it was, and I only needed eight stitches.

60 After the accident, we had to stand up and climb out the passenger door window.
61 I unhooked my seat belt and helped Shaun out. Several other students helped us. Shaun was
62 screaming about his/her shoulder hurting. I looked for Jane but did not see her. I figured she must
63 have climbed out the back of the car.

64 Once I was out of the car, several people made me lie down. The blood was going in my
65 eyes. I asked about Shaun and Jane, and the other students said not to worry. The fire
66 department arrived very quickly and sent me to the hospital. They were concerned about a
67 possible neck injury and concussion, so they put me on a backboard. Luckily, I was okay.

68 In the hospital, my parents and I spoke to Officer Miller. I told him/her everything I
69 could remember about how the accident happened. I learned that Shaun was going to be fine,
70 but that Jane was seriously injured. I was shocked. Apparently, she had not been wearing her
71 seatbelt and was thrown out when the car rolled. I thought she was wearing her seatbelt.
72 I always tell everyone to put on their seatbelt.

73 At the hospital, Officer Miller cited me for speeding. I do not believe I was speeding.
74 I know the speed limit is 30 miles per hour, and I feel that is how fast I was going. I was not in
75 any hurry and I was going just what everyone goes on Elm. I was paying attention. Nothing was
76 in front of or behind us except for the gray car. I do not know how Pat got in front of us. I never
77 saw Pat until Shaun screamed. I did everything I could to avoid an accident.

78 I know that there is a warning on the sun visor about Explorers sometimes rolling over. I
79 saw the warning because it is impossible to miss; it is right in front of you. However, I never paid
80 much attention because I never took my car off-road; I only drove around town. I admit I never
81 read the entire owner's manual. I only looked in it if I had a question about something. That is
82 what the salesman said it was for.

83 I have known the Anderson family and Shaun and Jane since I was a little kid. Shaun is
84 probably my best friend. I am so sorry about Jane's death. I cannot believe she is dead. I know
85 the Andersons think it is my fault, but I swear I was not speeding and I did everything I could to
86 avoid the accident. When the car rolled over there was nothing more I could do. I do not think I
87 will ever be able to put this accident out of my mind.

88

89 FURTHER AFFIANT SAYETH NOT

90 Terry Jackson

91 Terry Jackson

AFFIDAVIT OF SHAUN ANDERSON

1
2
3 My name is Shaun Anderson. I was born on November 15, 1994. I am a senior at West
4 High School. Jane Anderson was my younger sister. She was born on January 12, 1997. We
5 were both involved in a car accident on October 19, 2012 at the corner of Elm and Magnolia. I
6 was seventeen at the time and Jane was fifteen.

7 On October 19, 2009, Jane and I went to lunch with Terry Jackson. We all have lunch
8 from 12:05 to 12:55. We left campus in Terry's car, a Ford Explorer. We went to Nicktunes Cafe
9 a few miles from campus and shared a pizza. We like to go there for lunch, but sometimes we are
10 almost late getting back to school because they are busy and it takes 15-20 minutes just to cook
11 the pizza after we order.

12 After lunch, we all got back in the car to return to school. I am not sure what time we left
13 Nicktunes, but I do not think we were really late. We try to keep a watch on the time because of
14 our school's parental notification policy. To try to keep students from leaving campus for lunch
15 and to ensure they return, our school has a strict policy that if you are tardy or absent to the class
16 following your lunch period twice during a semester, your parents are contacted. Jane had
17 already been tardy once because her first class after lunch was a long way from the parking lot.

18 Our parents have told Jane and me not to leave the school campus except to go home. I am
19 sure they have good intentions, but I do not think they mean that we can't go out to lunch. The
20 food at school is gross and everyone leaves for lunch, especially if you are a senior.

21 As we were going back to school, we were driving on Jefferson Street. At the intersection
22 of Jefferson and Main Street, the entire road was blocked because they were installing a sewer
23 pipe. We had to turn around and detour. Jane said we needed to hurry because she could not
24 afford to be late as a result of the road work. She did not want the school to call Mom and Dad.
25 Terry told her not to worry. Terry said that we would be back in time no matter what.

26 It was almost one o'clock when we turned on Elm. That meant we just had to drive by
27 the school and turn right on Magnolia so we could go in the parking lot. Jane had moved forward
28 in the back seat and asked Terry to text her friend Cheryl and ask her to make up an excuse if
29 Jane was late to class. Jane and I aren't allowed to text on our cell phones. We were all talking
30 how we should grab our stuff and be ready to run for class when we parked.

31 As Terry was texting the message, I looked forward and saw Pat Martin crossing the street
32 in front of us. I have known both Pat and Terry since third grade. I yelled, "Watch Out!" because

33 I was not sure if Terry had seen Pat, and I was afraid. Terry yelled, “Oh, no!”

34 The next thing I remember is the car swerving quickly to the right and going on the curb.
35 Then it seemed to jerk back the other way and roll over. It all happened very fast. We were
36 skidding and there was a lot of noise. I was screaming, and I closed my eyes. We hit the pole
37 that supports the traffic light but missed Pat Martin.

38 When we hit the pole, I jerked violently forward. I was wearing my seatbelt with a
39 shoulder strap. The strap cut into my arm and really hurt. After the accident, I could hardly stand
40 the pain in my shoulder and chest. I was eventually taken to the hospital. I had a bruised chest, a
41 broken collarbone, and some ligament tears in my shoulder. The doctor said it was because I was
42 twisted in my seat when we hit, but the seat belt kept me from getting hurt worse.

43 After the accident, I yelled for Jane but she did not answer. Terry and some other kids
44 helped me out of the car and had me lie down. I started to get up because I wanted to see how
45 Jane and Terry were, but the next thing I recall the fire department was there and they made me
46 stay still. Then they sent me to the hospital in an ambulance.

47 Since the accident, I have learned that Jane was thrown from the car when we rolled.
48 She suffered massive head and internal injuries and died a week later on October 26, 2012. I
49 can’t believe she is dead; I miss her more than I can say. I just don’t know why this happened.

50 I know that my parents blame Terry for the accident. However, it was just an accident.
51 We had all driven that street a thousand times. I don’t know why the car rolled. I do not think
52 we were going too fast. We might have been going over 30 miles per hour, but everyone does,
53 especially on such a sunny day when it’s easy to see. Blaming Terry won’t bring Jane back.

54 I know a lot of kids cross Elm to get to school. I often cross Elm on my way home.
55 Most kids do not even go to the corner. But we never get hit. This accident was a freak thing.

56 I know Terry feels terrible about this. Terry would never have risked anyone getting hurt.
57 Also the car was totaled. Terry loved that car. No way would Terry risk an accident. Terry is the
58 only kid I know that actually took a driver education class at school. Terry said it helped with
59 insurance and made him/her a better driver. I think Terry’s parents required the class in exchange
60 for the Explorer. Nevertheless, Terry took the class very seriously and got an A.

61 FURTHER AFFIANT SAYETH NOT.

62 Shaun Anderson

63 Shaun Anderson

1 **AFFIDAVIT OF TRACY ROLLER**

2
3 My name is Tracy Roller. I am the owner of Roller Accident Reconstruction and a
4 certified Accident Reconstruction Specialist. I also have extensive experience in biomechanics.

5 I graduated from the University of Massachusetts at Amherst in 1985 with a degree in
6 Mechanical Engineering, BSME. I received Biomechanics training in 1999 from the University of
7 New Justice. I graduated from the Northeastern University Accident Reconstruction School in
8 2000 and received my certification in accident reconstruction.

9 I have received additional training in Automobile Vehicle Dynamics and training in Low
10 Speed Rear End Collisions from the Society of American Engineers in 2002. I also attended
11 Accidental Injury: Biomechanics and Prevention training in 2004 at the University of
12 Connecticut, School of Medicine.

13 I was hired by the parents of Terry Jackson to investigate the rollover of their child's Ford
14 Explorer on October 19, 2012. I am charging the Jacksons an hourly rate of \$200 per hour for
15 my time and have charged them a total fee to date of \$7,500.

16 The primary issues to be investigated were: the speed of the vehicle, the sequence of
17 events before the rollover, whether the rollover was foreseeable or preventable, and whether the
18 injuries and death of Jane Anderson were the result of Terry Jackson ignoring or failing to
19 perceive a substantial and unjustified risk.

20 As part of my investigation, I visited the scene of the accident and reviewed the physical
21 evidence and skid marks. I talked to Terry Jackson and Shaun Anderson. I also reviewed the
22 accident report filed by the Libertyville Police Department.

23 In addition, I researched information concerning the weight of the Explorer, statistical
24 information concerning the center of gravity of the vehicle and comparable automobiles, and the
25 opinions of the coroner concerning the injuries suffered by Jane Anderson.

26 After gathering all of the necessary data standard for such investigations in my field, I
27 performed calculations to determine, among other things:

- 28 - The velocity of the vehicle;
- 29 - Sequence of events leading to the accident;
- 30 - The forces exerted upon Jane Anderson during the incident;
- 31 - The propensity of the vehicle to roll over on an uneven surface.

32 After applying the standard industry procedures and calculations to the data in this case, I
33 have reached the following conclusions:

- 34 a. The speed of the vehicle prior to the accident was approximately 42-43 miles per hour;
- 35 b. The normal speed of traffic on Elm during daylight hours is 40 miles per hour;
- 36 c. A vehicle traveling at 30 miles per hour on Elm would be unsafe because it would
37 impede normal traffic flow;
- 38 d. The rolling over of the vehicle was not the responsibility or fault of the driver. Instead,
39 it is the result of an unusually high center of gravity and narrow track width, which
40 causes an unreasonably high likelihood of a rollover when the vehicle is sharply
41 maneuvered on uneven ground.

42 It is my expert opinion that there was not a substantial or unjustified risk that Terry
43 Jackson's driving might cause injury or death to Jane Anderson or anyone else immediately prior
44 to the accident. In fact, I believe that Terry would have successfully avoided any mishap if not for
45 the manufacturer of the vehicle constructing it to have a dangerously high center of gravity.

46 The National Highway Traffic Safety Administration (NHTSA) tests cars, trucks and
47 SUVs using two types of tests: the Static Stability Factor, which compares the vehicle's track
48 width with the height of its center of gravity; and the Dynamic (vehicle in motion) test. I am
49 familiar with both of these tests through my work and training. The tests are designed to measure
50 a vehicle's rollover propensity. The Ford Explorer failed the first test and received only 3 out of
51 a possible 5 stars on the second test.

52 Unfortunately, because the vehicle rolled over, the skid marks are not sufficient to
53 determine whether, on the unequal ground of the curb and street, the vehicle would have been
54 able to stop prior to entering the intersection of Magnolia and Elm.

55 Officer Miller is simply incorrect in concluding that the cause of the accident was
56 unreasonable speed. Further, without the rollover, it is my opinion that Jane Anderson would not
57 have been thrown from the vehicle even though she was not wearing her seatbelt.

58 The Explorer has warnings on the driver's sun visor and in the owner's manual that the
59 vehicle is at a higher risk for rollover. However, I believe most people do not read or pay
60 attention to these warnings. The manufacturer should not expect people to be careful about a
61 problem that the manufacturer can eliminate by redesigning the car with a lower center of
62 gravity.

63 I acknowledge that neither the U.S. government nor any court to my knowledge has found
64 the Ford Explorer to be unreasonably dangerous. Nevertheless, just because no agency or court has
65 made such a determination does not mean it is not true.

66

67 FURTHER AFFIANT SAYETH NOT.

68 Tracy Roller

69 Tracy Roller

EXHIBITS

1. Government Rollover Ratings
2. Driver's License Report
3. Warning
4. Consumer Reports, August 2009
5. Map of Intersection by West High School

EXHIBIT 1

Government Rollover Ratings
Vehicles that tipped up in NHTSA's dynamic rollover test (failing the test)
Chevrolet Equinox 4x4 (2005)
Chevrolet Equinox 4x2 (2005)
Chevrolet Tahoe 4-DR. w/SAB (2004)
Ford Escape 4x2 (2005)
Ford Escape 4x4 (2005)
Ford Explorer 4-DR. (2004)
Ford Explorer Sport Trac (2004)
GMC Yukon 4-DR. (2004)
Mazda Tribute 4x2 (2005)
Mazda Tribute 4x4 (2005)
Mercury Mariner 4x2 (2005)
Mercury Mariner 4x4 (2005)
Mercury Mountaineer (2004)
Pontiac Torrent 4x2 (2006)
Pontiac Torrent 4x4 (2006)
Saturn VUE 4-DR. (2004)
Toyota Tacoma Double Cab (2004)
Toyota Tacoma Extended Cab (2004)
Toyota Tacoma Regular Cab (2004)

Source: National Highway Traffic Safety Administration

EXHIBIT 2

DRIVER LICENSE REPORT

NAME: Terry C. Jackson

LIC. NO. 562348771

MOVING VIOLATIONS:

Excessive Speed in violation of NJS 28-701.

December 27, 2010

Completed Traffic School on February 17, 2011

EXHIBIT 3

**WARNING; HIGHER ROLLOVER RISK. AVOID ABRUPT
MANEUVERS AND EXCESSIVE SPEEDS. ALWAYS BUCKLE
UP. SEE OWNER'S MANUAL FOR FURTHER
INFORMATION.**

EXHIBIT 4

CONSUMER REPORTS, AUGUST 2009

Perhaps the SUV safety issue that has garnered the most attention is rollover. The National Highway Traffic Safety Administration (NHTSA) says SUVs have a rollover rate that is three times that of passenger cars. The agency provides ratings for SUVs and other vehicles. It looks at two factors to determine how likely it is that an SUV will roll over in an accident.

The first thing it considers is called the static stability factor (SSF), which compares a vehicle's track width with its center of gravity. The other is the Road Edge Recovery, or Dynamic (Vehicle in motion) test, a quick left-right turn that simulates a driver over-correcting the steering in an emergency. A vehicle that tips onto two wheels in the test has a greater chance of rolling over. Consumer Reports does not recommend any vehicle that tips up in this test.

Rollover resistance is mainly a matter of physics. For a given track width, a taller vehicle has a higher center of gravity, which makes it more top-heavy than one that sits lower. Vehicle design, including suspension and tires, affects stability. In a situation where a vehicle is subjected to strong sideway forces, as in a sudden cornering maneuver, it's easier for a taller vehicle to rollover. During normal circumstances drivers rarely encounter such strong forces, but an emergency can happen without warning. A rollover can occur in several types of situations, such as during an accident-avoidance maneuver, taking a corner too fast for road conditions, or when a tire blows out.

EXHIBIT 5

