

# *The Florida High School Mock Trial Official Competition Packet*

## **Young v. Gardner**

**Version 1.0, September 30, 2010**

*The original case was written by the Young Lawyer's Division of the Tennessee Bar Association. Adaptations to the original case by Michigan and Utah have also been included within this version of the case.*

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## TABLE OF CONTENTS

<b>I.</b>	<b>Trial Overview</b> .....	4
<b>II.</b>	<b>Code of Ethical Conduct</b> .....	5
<b>III.</b>	<b>2011 Mock Trial Case</b>	
	A. Complaint.....	6
	B. Answer .....	10
	C. Joint Pre-Trial Statement .....	14
	D. Crist County Chronicle: Case Overview.....	17
	E. Witness Affidavits	
	<u>For the Plaintiff</u>	
	1. Sidney Young .....	18
	2. C.J. Simpson .....	22
	3. Peyton Lancaster.....	26
	<u>For the Defendant</u>	
	1. Riley Gardner.....	30
	2. Alex Williams .....	33
	3. Adrian Knight .....	36
	F. Exhibit List	
	1. A: Incident Report.....	41
	2. B: Diagram of Accident.....	45
	3. C: Judgment form of C.J. Simpson.....	46
	4. D: Cell Phone Records of Riley Gardner.....	47
	5. E: Plaintiff’s Medical Record.....	49
	G. Relevant Statutes .....	51
	H. Jury Instructions .....	54
<b>IV.</b>	<b>Rules of the State Competition</b>	
	Rule I: Team Composition/Presentation.....	56
	Rule II: The Case.....	56
	Rule III: Trial Presentation .....	57
	Rule IV: Student Attorneys.....	58
	Rule V: Swearing of Witnesses .....	59
	Rule VI: Case Materials.....	59
	Rule VII: Trial Communication .....	59
	Rule VIII: Trial Start Time.....	59
	Rule IX: Conduct/Attire.....	59
	Rule X: Videotaping/Photography .....	60
	Rule XI: Witnesses .....	60

Rule XII:	Jury Trial .....	60
Rule XIII:	Viewing a Trial .....	60
Rule XIV:	Decisions .....	60
Rule XV:	Time Limits.....	60
Rule XVI:	Judging.....	61
Rule XVII:	Dispute Settlement .....	62
Rule XVIII:	Reporting a Rules Violation Outside the Bar .....	63
Rule XIX:	Score Sheets/Ballot .....	64
Rule XX:	State Competition Power Matching/Seeding Model.....	64
Rule XXI:	Completion of Score Sheet .....	65
Rule XXII:	State Competition Team Advancement .....	65
Rule XXIII:	Effect of a Bye/Default .....	65
Rule XXIV:	Eligibility.....	66
Rule XXV:	State Competition Awards .....	66
Rule XXVI:	Interpretation of State Competition Rules .....	66
Rule XXVII:	Circuit Competitions.....	66
<b>V.</b>	<b>Simplified Rules of Evidence and Procedure</b>	
A.	Witness Examination/Questioning.....	68
B.	Objections .....	73
C.	Trial Motions .....	81
D.	Attorney Demeanor.....	81
<b>VI.</b>	<b>Guidelines for Teacher and Attorney Coaches .....</b>	<b>82</b>
<b>VII.</b>	<b>Guidelines for Judges</b>	
A.	Score Sheet/Ballot.....	84
B.	Explanation of Ratings Used on Score Sheet .....	85
<b>VIII.</b>	<b>Ballots and Forms</b>	
A.	Presiding Judge Ballot .....	86
B.	Most Effective Attorney Award Ballot.....	87
C.	Most Effective Witness Award Ballot .....	88
D.	Legal Professionalism Award Ballot .....	89
E.	Complaint Form.....	90
F.	Team Dispute Form .....	91
G.	Team Roster Form .....	92
<b>IX.</b>	<b>Professionalism.....</b>	<b>93</b>
<b>X.</b>	<b>Oath of Admission to The Florida Bar .....</b>	<b>94</b>

## TRIAL OVERVIEW

- I. The presiding judge will ask each side if they are ready for trial. Team rosters/roles should be presented to the judges.
- II. Presiding judge announces that all witnesses are assumed to be sworn.
- III. Opening Statements - no objections allowed; however, after each opening has concluded, the opposing counsel may raise his/her hand to be recognized and state that if they could have objected they would have objected to. The presiding judge does **not** need to rule on this. No rebuttals allowed.
- IV. Cases presented. See Rule XV for the trial sequence and time limitations.
- V. Closing Statements - no objections allowed; however, after each closing statement has concluded, the opposing counsel may raise his/her hand to be recognized and state that if they could have objected - they would have objected to...The presiding judge does **not** need to rule on this. An optional rebuttal (up to 1 minute) reserved in advance will be permitted for the Prosecution.
- VI. No jury instructions need to be read at the conclusion of the trial.  
  
Judges should complete score sheets **before** debriefing. This is crucial and ensures completed score sheets.
- VII. If a material rules violation is entered, scoring judges should exit the courtroom but stay in the vicinity. The presiding judge will follow the rules for this type of dispute. Scoring judges will return to the courtroom to determine if the presiding judge feels the dispute may be considered in scoring. Specific forms are needed. See Rule XVII - DISPUTE SETTLEMENT.
- VIII. Critique (One team exits the courtroom during the critiques). **JUDGES DO NOT ANNOUNCE SCORES OR PERFORMANCE DECISIONS!**
- IX. **ALL DECISIONS OF THE JUDGES ARE FINAL.** Debrief/Critique ONLY.

## **CODE OF ETHICAL CONDUCT**

The purpose of the Florida High School Mock Trial Competition is to stimulate and encourage a deeper understanding and appreciation of the American legal system by providing students the opportunity to participate actively in the legal process. The education of young people is the primary goal of the mock trial program. Healthy competition helps to achieve this goal. Other important objectives include improving proficiency in speaking; listening, reading, and reasoning skills; promoting effective communication and cooperation between the educational and legal communities; providing an opportunity to compete in an academic setting; and promoting tolerance, professionalism, and cooperation among young people of diverse interests and abilities.

As a means of diligent application of the Florida High School Mock Trial Competition's Rules of the Competition, the Mock Trial Advisory/Policy Committee has adopted the following Code of Ethical Conduct for all participants.

1. Team members promise to compete with the highest standards of ethics, showing respect for their fellow team members, opponents, judges, evaluators, attorney coaches, teacher coaches, and mock trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Members will avoid all tactics they know are wrong or in violation of the rules, including the use of unfair extrapolations. Members will not willfully violate the rules of the competition in spirit or in practice.
2. Teacher coaches agree to focus attention on the educational value of the Mock Trial Competition. They shall discourage willful violations of the rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition's rules and this Code of Ethical Conduct.
3. Attorney coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition's rules and this Code of Ethical Conduct. Attorney coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.
4. All participants (including observers) are bound by all sections of this code and agree to abide by the provisions. Teams are responsible for insuring that all observers are aware of the code. Students, teacher coaches, and attorney coaches will be required to sign a copy of this code. This signature will serve as evidence of knowledge and agreement to the provisions of the code. Teams will receive scores on ethical conduct during each round.
5. Staff and Mock Trial Advisory Committee members agree to uphold the rules and procedures of the Florida High School Mock Trial Competition while promoting ethical conduct and the educational values of the program.

IN THE CIRCUIT COURT FOR THE TWENTY FIRST JUDICIAL CIRCUIT  
IN AND FOR CRIST COUNTY, FLORIDA  
CIVIL DIVISION

SIDNEY YOUNG,

Plaintiff,

v.

Case No. 09-0099-H

RILEY GARDNER,

Defendant.

\_\_\_\_\_ /

**COMPLAINT**

Plaintiff Sidney Young, by and through counsel, sues Defendant Riley Gardner as follows:

**PARTIES**

1. Plaintiff Sidney Young is a citizen and resident of Crist County, Florida residing at 971 Moores Lane, Springfield, FL 80808.

2. Defendant Riley Gardner is a citizen and resident of Crist County, Florida residing at 742 Forest Range Drive, Springfield, FL 80808.

**JURISDICTION AND VENUE**

3. This is an action predicated upon negligence.

4. The accident described below occurred in Crist County, Florida.

5. This Court has both subject matter and personal jurisdiction over this action.

6. Venue of this action in this Court is proper.

**FACTS**

7. Early in the morning of Saturday, May 12, 2008, Plaintiff Sidney Young was a

front seat passenger in a 2006 Honda Accord driven by Defendant Riley Gardner.

8. The Honda Accord traveled southbound on Legend Parkway between approximately 1:00 a.m. and 1:30 a.m. on Saturday, May 12, 2008.

9. Defendant Riley Gardner negligently drove the car into a telephone pole, injuring Plaintiff Sidney Young.

10. Defendant Riley Gardner was text messaging while driving at the time the car drove off the road.

11. Before the accident, the teenagers had been at a party where Defendant Riley Gardner had been drinking alcohol.

12. At the time of the accident, Defendant Riley Gardner exceeded the posted speed limit of 45 miles per hour on Legend Parkway.

13. Plaintiff Sidney Young was taken to Crist County Medical Center for evaluation and treatment of serious injuries to Plaintiff's right arm and hand, as well as to Plaintiff's right leg and foot.

14. Plaintiff Sidney Young suffered serious impairment of important body functions and serious disfigurement as a result of the accident.

15. Plaintiff's damages include, but are not limited to, physical injuries, pain and suffering, future earnings, economic injuries, medical expenses, future impairment, future pain and suffering, and mental and emotional distress.

16. Plaintiff Sidney Young is entitled to recover the full extent of Plaintiff's damages from Defendant as a result of Defendant Riley Gardner's negligence.

### **COUNT I – NEGLIGENCE PER SE**

17. Defendant violated section 316.90, Florida Statutes, by operating a motor vehicle while sending a text message as described in this complaint.

18. Defendant's act in violating this statute constitutes negligence per se, and such negligence was the actual and proximate cause of Plaintiff's damages.

### **COUNT II – NEGLIGENCE**

19. Defendant owed Plaintiff a duty of care to operate Defendant's motor vehicle in a reasonably prudent manner.

20. Defendant breached Defendant's duty to Plaintiff by failing to exercise reasonable care under the circumstances and by failing to operate Defendant's motor vehicle in a reasonably prudent manner.

21. Defendant breached Defendant's duty to Plaintiff by speeding, failing to pay proper attention by text messaging while driving, and by driving carelessly.

22. Defendant failed to operate the vehicle with due care by driving in excess of the posted speed limit.

23. Defendant breached Defendant's duty by being under the age of 21 and driving with bodily alcohol content, in violation of section 322.2616, Florida Statutes.

24. Defendant breached Defendant's duty by failing to avoid a collision with the telephone pole when in the exercise of reasonable care Defendant could have done so.

25. Defendant breached Defendant's duty by operating Defendant's motor vehicle with disregard for the safety of the Plaintiff, other passengers in the vehicle, and other users of the roadway.

26. Each of the breaches of duty alleged above, and all of these breaches collectively,



were the actual and proximate cause of Plaintiff's damages.

ACCORDINGLY, the Plaintiff Sidney Young respectfully requests:

1. That this Court enter a judgment for Plaintiff and against Defendant for compensatory damages including but not limited to:

- a. Past and future pain and suffering;
- b. Permanent impairment;
- c. Emotional distress;
- d. Loss of enjoyment of life; and
- e. Other general and special damages.

2. That this Court award Plaintiff such further relief to which Plaintiff is entitled.

Respectfully submitted,

By: *Attorney*  
*Attorneys for Plaintiff*

IN THE CIRCUIT COURT FOR THE TWENTY FIRST JUDICIAL CIRCUIT  
IN AND FOR CRIST COUNTY, FLORIDA  
CIVIL DIVISION

SIDNEY YOUNG,

Plaintiff,

v.

Case No. 09-0099-H

RILEY GARDNER,

Defendant.

\_\_\_\_\_ /

**ANSWER**

Defendant Riley Gardner, by and through undersigned counsel, hereby responds to the Complaint filed by Plaintiff Sidney Young as follows:

1. Admitted.
2. Admitted.
3. Defendant neither admits nor denies whether Plaintiff's cause of action is described accurately in paragraph 3.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Denied.
10. Denied.
11. Admitted that Defendant had been at a party. Denied that Defendant had been

drinking alcohol at the party.

12. Denied.

13. Defendant is without information to admit or deny the allegations contained in paragraph 13 and demands strict proof thereof.

14. Defendant is without information to admit or deny the allegations contained in paragraph 14 and demands strict proof thereof.

15. Defendant is without information to admit or deny the allegations contained in paragraph 15 and demands strict proof thereof.

16. Denied.

17. Denied.

18. Denied.

19. Admitted.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Defendant denies that it owes Plaintiff any sum of money whatsoever. Specifically, Defendant denies that the Plaintiff is entitled to any of the relief requested in the prayer for relief portion of the Complaint.

28. All allegations in the Complaint not admitted, denied, or otherwise addressed

above are here and now denied.

**AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted against Defendant and should therefore be dismissed.

2. Defendant denies he/she was at fault in this case.

3. Defendant denies he/she is liable to the Plaintiff in this case.

4. At all times relevant hereto, Defendant exercised reasonable care under all of the circumstances for the Plaintiff and other passengers.

5. The alleged accident and any resulting injuries and damages sustained by Plaintiff resulted from independent, intervening, and/or superseding causes or acts, over which Defendant had neither control nor the right to control and for which it is not liable.

6. In the alternative, Defendant asserts that the Plaintiff was guilty of comparative fault in failing to exercise reasonable caution for Plaintiff's own safety and by assuming the risk of the potential for the alleged incident to occur. Plaintiff's fault was the proximate cause of the alleged accident and any resulting injuries and damages sustained by Plaintiff. If Plaintiff is found to have been under the influence of alcohol at the time of the accident, and that intoxication results in Plaintiff being determined to be fifty percent (50%) or more at fault for his/her injuries, then Plaintiff is barred from any recovery. Otherwise, Plaintiff's award must be reduced according to his/her percentage of fault.

7. Now having answered, Defendant generally denies all allegations of the Complaint not heretofore specifically admitted or denied, moves for a dismissal of the Complaint, and in the alternative, demands a jury to try this action.

ACCORDINGLY, Defendant respectfully requests:

1. That the Complaint filed against Defendant be dismissed with prejudice.
2. Such other relief as this Court may deem just, proper, and equitable.

Respectfully submitted,

By: *Attorney*  
*Attorneys for Defendant*

IN THE CIRCUIT COURT FOR THE TWENTY FIRST JUDICIAL CIRCUIT  
IN AND FOR CRIST COUNTY, FLORIDA  
CIVIL DIVISION

SIDNEY YOUNG,

Plaintiff,

v.

Case No. 09-0099-H

RILEY GARDNER,

Defendant.

\_\_\_\_\_ /

**JOINT PRETRIAL STATEMENT**

1) ISSUES TO BE LITIGATED AT TRIAL

- a. Whether Defendant was negligent in one or more of the ways claimed by Plaintiff;
- b. Whether any negligence of Defendant was a proximate cause of Plaintiff's injury;
- c. Whether Plaintiff was negligent in one or more of the ways claimed by Defendant;
- d. Whether any negligence of Plaintiff was a proximate cause of Plaintiff's injury; and
- e. If both parties are found to be negligent, what percentage of fault is attributable to each party.

2) WITNESSES EXPECTED TO BE CALLED AT TRIAL

a) For the Plaintiff:

- (1) Sidney Young, Plaintiff
- (2) C.J. Simpson, witness to incident
- (3) Peyton Lancaster, accident reconstructionist

b) For the Defendant:

- (1) Riley Gardner, Defendant
- (2) Alex Williams, witness to incident
- (3) Adrian Knight, police officer

\*All names and characters are fictitious and are not based on actual cases.

\*\*Witnesses may be male or female. When an alternative name is not provided, assume the name is gender neutral.

\*\*\*Each team must call all three witnesses for their respective party.

3) EVIDENCE EXPECTED TO BE INTRODUCED AT TRIAL

- a) The Springfield Police Department report from the incident
- b) Diagram drafted by Officer Knight
- c) Judgment Form of C.J. Simpson
- d) Cell Phone Records of Riley Gardner
- e) Plaintiff's Medical Record

4) STIPULATIONS FOR TRIAL

The parties agree and stipulate as follows:

1. Florida High School Mock Trial Rules of Evidence and Procedure apply.
2. All of the exhibits referred to above are authentic and accurate copies of the documents. No objections as to the authenticity of the exhibits may be made. Exhibits may still be objectionable under the Florida High School Mock Trial Rules of Evidence and will require a proper foundation for admission.
3. The judgment form regarding C.J. Simpson is a certified copy of the conviction.
4. Neither side may argue the chain of custody pertaining to the cell phone records of Riley Gardner.
5. Only a portion of the Plaintiff's medical record is provided as Exhibit E for trial, and teams may not argue concerning the absence of other pages of the medical record. Exhibit E is a two-page collective exhibit. The handwriting on the first page (the affidavit of the custodian of records for Crist County Medical Center) under the notary acknowledgment is presumed to be that of the notary public, and all remaining handwriting the first page is presumed to be that of Scott Simpson, the custodian of records for Crist County Medical Center. The handwriting on the second page is presumed to be that of Dr. Courtney Batson.
6. All witness statements have been sworn to by the declarant and were given during the month of June, 2008. The signatures on the witness statements and pleadings are the true and accurate signatures of the witnesses and attorneys.
7. In the interests of time, only one defendant has been included. Neither side may argue

that there is a missing witness or party to the litigation. Any comparative fault arguments must be limited to the relative fault of the parties.

8. The parties will try the case on liability only. Plaintiff may introduce evidence of the injuries for purposes of telling the story to the jury and providing context, but Plaintiff will not argue the extent of the injuries, or the amount of money Plaintiff believes he/she deserves for those injuries.
9. At trial, Plaintiff, Sidney Young, may wear a glove or mitten covering the right hand as representation of the impairment and disfigurement. No other casts, slings, splints or bandages will be worn, no make-up used to represent injury, nor crutches or wheelchairs used.
10. Plaintiff, Sidney Young, did not suffer any impairment to thought or speech, and is able to walk without assistance. Any portrayal of mental disorder, speech impairment, or other physical symptoms will be considered unfair extrapolation.
11. Peyton Lancaster is accepted by both parties as an expert in accident reconstruction.
12. Whenever a rule of evidence requires that reasonable notice be given, it should be considered to have been.
13. All pleadings were signed by the proper parties.
14. Jurisdiction, venue, and chain of custody of the evidence are proper.
15. Stipulations cannot be contradicted or challenged.

*Attorney*

---

Attorney for Plaintiff

*Attorney*

---

Attorney for Defendant



# ***CRIST County Chronicle***

## **Accident Injures Teens TXTNG 2 BLAME?**

Nancy Dew, [ndew@CRISTchronicle.com](mailto:ndew@CRISTchronicle.com)

Four teens were traveling southbound on Legend Parkway early Saturday morning when the 2006 model Honda Accord driven by Riley Gardner crashed into a telephone pole. Three other local teens were in the car as well. No other vehicles were involved.

The passengers and driver were taken to Crist County Medical Center to be evaluated and treated for injuries. The front seat passenger was the most seriously injured.

Authorities question whether texting was involved. One passenger reported that the driver was texting at the time the vehicle skidded off the road and into the pole.

Officer Knight stated, "This texting thing is getting out of control. The law says they can't do it while driving. Period. But, we are seeing more and more of it, especially from teen drivers. These kids think that no one will get hurt, but they fail to see the seriousness of their actions until an accident like this happens."

Drinking may also be a cause in the crash according to paramedics at the scene.

Officer Adrian Knight told reporters, "I am doing everything in my power to get to the bottom of this. If it was the tires, we want to know. If it was the speed, we want to know. If it was texting or drinking, we want to know it because someone should pay. We have to teach these kids a lesson."

The driver and passengers were not consulted for comment. All the teens involved in the wreck attend Springfield High School in Crist County.

IN THE CIRCUIT COURT FOR THE TWENTY FIRST JUDICIAL CIRCUIT  
IN AND FOR CRIST COUNTY, FLORIDA  
CIVIL DIVISION

SIDNEY YOUNG,

Plaintiff,

v.

Case No. 09-0099-H

RILEY GARDNER,

Defendant.

\_\_\_\_\_ /

**SWORN STATEMENT OF SIDNEY YOUNG**

1           My name is Sidney Young. I'm 18 years old, and I live with my parents in Springfield,  
2 Florida in Crist County. I'll probably be living with my parents for the rest of my life because of  
3 what Riley Gardner did to me in May of 2008. I remember everything about that night. It  
4 changed my life forever. I re-live every detail every single day.

5           I had been at a party at Austin Cramer's house. I think it was in celebration of something  
6 ... maybe our school team won the soccer game or something. I never really paid much attention  
7 to sports at school. I pretty much kept to myself. I liked to draw a lot, so I spent most of my class  
8 time doodling. I had even won a couple of local art contests. I wanted to be a professional  
9 cartoonist, but that will never happen to me now because of the injuries I received in the car  
10 crash.

11           I didn't really know anyone in the car that well, but I was becoming closer to Riley  
12 because we had been hanging out some. Riley didn't really have much of a reputation for  
13 partying, but, for whatever reason, Riley was hanging out at Austin's party. I knew Alex  
14 Williams because we'd run into each other at parties in the past. Alex could always be counted

15 on to bring beer, and Alex could drink just about anyone under the table, which was fun to  
16 watch.

17         It was an average sized party, not overwhelming by any means. Everyone was doing what  
18 high school kids do at parties. Anyway, at about midnight, I heard someone say that people were  
19 going to get something to eat. I had a bit of a headache and was feeling kind of woozy. I thought  
20 food might help, so I decided to go. Also, I thought Riley was sober, but since the accident, I've  
21 heard some people say that Riley was drinking that night, so I guess it was because Riley was  
22 drunk and texting that the accident happened. We were going pretty fast, too. Riley was  
23 definitely going over the speed limit, probably 10 or 20 MPH faster.

24         I got in the front seat of Riley's car. Alex sat in the back, behind Riley. Before we got out  
25 of the driveway, Riley told me to buckle up; I guess Riley knew that s/he was a bad driver. As  
26 we turned onto Fisk Avenue, Riley's phone rang. Riley looked at it and must have noticed a text  
27 message. Riley said something like "Taylor is driving me crazy." Riley seemed frustrated. Riley  
28 and Taylor Bowling had been dating. I'm not sure if they were having problems or what. Riley  
29 kept messaging Taylor; it made me nervous. I don't know specifically what the conversation was  
30 about, but Riley always does this. It's pretty scary.

31         I don't know what street we were on because I am not good with directions. Riley was  
32 also driving too fast, so fast that I got a little sick to my stomach. I tried waving to get Riley's  
33 attention, but Riley was focused on the phone. Just then, Riley kind of tossed the phone at me; I  
34 think that Riley dropped it because that was when Riley had lost control of the car. I can't  
35 remember the exact timing; I am a little fuzzy about the details there. I know we swerved to the  
36 left first, then to the right. As we went off to the right, we hit a curb and then I don't remember  
37 much.

38           The actual wreck is kind of a blur. I remember feeling like we were up in the air and then  
39 hitting something really hard. I must have been knocked out then, because I don't remember  
40 anything else until the paramedics got me out of the car. The first thing I remember was hearing  
41 one of them saying, "This one smells like the bottom of a keg." Another one asked me, "How  
42 much did you have to drink?"

43           Yes, I had been drinking. I don't remember how much I'd had, probably five beers in the  
44 two hours that I was at the party. Still, I didn't see the harm in it; I certainly didn't plan on driving  
45 that night. Besides, I didn't do anything wrong. Riley's the one who caused the accident. Some  
46 people are saying I wasn't wearing a seat belt. I honestly can't remember if I was wearing a seat  
47 belt or not.

48           My injuries from the wreck were mostly concentrated on my right arm and hand, which  
49 were crushed in the accident. When I arrived in the hospital, I was in so much pain that I could  
50 hardly talk to the doctor. The doctor asked me lots of questions like how much it hurt, where it  
51 hurt, if I had been drinking, and things like that. I couldn't move my fingers on my right hand.  
52 Eventually, I had to have surgery to insert a metal rod and pins in my leg, which the doctors say  
53 will eventually require replacement. The entire thing was very painful. Three of my ribs were  
54 broken on the right side, and I had a lot of pain when I took a breath.

55           My right hand ended up being mangled pretty badly. Besides being twisted and  
56 misshapen, it has no feeling and I can't really move it or work my fingers. Forget about holding a  
57 pencil or a brush. Also, I am right handed, or at least I was. I never used to have headaches, but  
58 now I have them about four times a week and medicine doesn't help. The doctors think that  
59 eventually, after several surgeries and lots of rehab, years from now I might be able to do things  
60 like hold a cup, or pick up keys. Even if I were able to draw again, to be a successful cartoonist, I

61 need to be able to sit for long periods of time at the drawing board. However, because of the  
62 injuries I sustained, I cannot sit for long periods due to the pain in my legs and lower back. My  
63 left knee was also injured in the wreck and gives me trouble to this day even though I was not  
64 treated for an injury to my left knee.

65 After the accident, I saw Dr. Batson's report from the emergency room visit. I don't  
66 remember saying those things, but my memory of the emergency room is pretty fuzzy.

67 I feel like my entire life has been ruined because of what Riley did. I don't understand  
68 why Riley wasn't paying attention and being careful while driving. All my friends use MySpace  
69 to stay in touch. I have seen Riley's MySpace page since this happened. For a while, Riley's  
70 screen name was "L3RND MY L3SSN." Riley actually sent a comment to my page expressing  
71 regret for my injuries. Riley said that s/he would "nvr twd agn." I was so disgusted that I deleted  
72 the whole thing.

73 I would not have gotten into that car if I had known Riley was going to do this. It almost  
74 cost me my life, and it certainly cost me the quality of my life.

75 This statement was given under oath. The undersigned has had an opportunity to read,  
76 review, and update this statement, and attests that this is a true and accurate statement.

77

78

*Sidney Young*

IN THE CIRCUIT COURT FOR THE TWENTY FIRST JUDICIAL CIRCUIT  
IN AND FOR CRIST COUNTY, FLORIDA  
CIVIL DIVISION

SIDNEY YOUNG,

Plaintiff,

v.

Case No. 09-0099-H

RILEY GARDNER,

Defendant.

\_\_\_\_\_/

**SWORN STATEMENT OF C.J. SIMPSON**

1 My name is C.J. Simpson. I was riding in my friend's old black Ford minivan when I saw  
2 the one-car accident that occurred early in the morning on May 12, 2008 on Legend Parkway.

3 My friend Joe lives off of Legend. His street is West Pitts Avenue. We left his home on  
4 Pitts Avenue and proceeded to the stop sign at the end of the road at the intersection with Legend  
5 Parkway. We had been watching old re-runs of American Idol—when Justin and Kelly were  
6 battling it out—at Joe's house, but decided it was time for a little fun.

7 There is a service station on East Pitts Avenue where I like to purchase lottery tickets.  
8 This girl from work won \$10,000 a couple of months ago with a ticket from there, and that's the  
9 most of anyone I personally know. The most I ever won was \$40.00. Joe and I had made a bet  
10 that I would win at least five dollars that night if we played pick three. I know, I know, that stuff  
11 will break you, but what's a little fun between friends? So, Joe was driving me to get a lottery  
12 ticket. My car was in the shop or I could have taken it. Joe is crazy-funny about his dinky van,  
13 and he never lets anyone else drive it. Calls her Licorice. I always make fun of him for that. He  
14 says if she breaks on him, he won't be able to deliver pizzas anymore.

15 When we were stopped at the stop-sign at the end of Pitts Avenue, I looked to see if any

16 traffic was coming from my left, which would be southbound, before Joe proceeded to the  
17 median and continued across the northbound lanes of Legend. I was just hanging out in the  
18 passenger seat. You know, I am the world's worst "backseat driver." Even though I was sitting  
19 up front, I was still doing things you do when you drive. You know—like when we approached  
20 the intersection, looking for oncoming traffic and stuff.

21 I saw a car coming southbound, but it was pretty far away. There was plenty of time, it  
22 looked like, to cross Legend before that car would approach. The speed limit on Legend is just  
23 45 miles per hour in that section. Joe pulled the van into Legend from the stop sign where we  
24 were stopped. He wasn't going very fast—you know, his ride is older and he treats her like a  
25 jewel. Even though we weren't going very fast, I was so surprised when I saw that the car was  
26 coming so fast. It was a lightly colored car, like a Camry or something, coming southbound on  
27 Legend. It looked like they were going faster than 45 mph to me.

28 I could see into the vehicle even though it was nighttime. There were lights from the  
29 street lamp that is in the center of the road, and they really help light things up. Also, I think  
30 there may have been that faint green glow from within the car, like a cell phone has at night  
31 when you're using it. I remember seeing that the driver was looking down.

32 I never saw the driver look up, but I heard the loud noise of the car sliding with the  
33 brakes behind us right after we passed in front of it. In the mirror, I could see that the car wound  
34 up in the grass and smashed into the utility pole. It crossed the curb and left Legend Parkway a  
35 few feet south of where we crossed from Pitts Avenue.

36 I called 911 right away and told the operator that there was a one-car accident on Legend  
37 southbound from Fisk. Fisk is the nearest major intersection. I didn't mention Pitts to the  
38 operator because a lot of people don't recognize Pitts Avenue. It's one of those smaller residential

39 streets. We didn't wait to see what happened because I could see people exiting the vehicle and it  
40 didn't look like anyone was really badly hurt. Also, I figured the police would be there in a  
41 minute or two, and we'd just get in the way. When we came back by the wreck after buying  
42 lottery tickets, the police were there. The ambulance was there as well. We were able to travel  
43 down Pitts without any problem.

44 I do not know any of the kids involved or their families. I do not wear glasses or contacts  
45 because I had laser vision correction surgery about a year ago. My vision is better than 20/20  
46 since the surgery. It's amazing what they can do now.

47 Crist County hadn't had rain for about six weeks before the crash, which is totally  
48 abnormal for the middle of May. "April showers..." you know. But not so that year. Anyway, I  
49 remember noticing that water was on the asphalt in the southbound lanes where the irrigation  
50 system in the median had been watering the trees. When watering is necessary, they always  
51 water between midnight and two a.m. I appreciate Crist County's conscientiousness of  
52 conserving water. I remember an article in the paper where the Council voted to set the timers for  
53 then because it avoids so much burn off.

54 I work in the laundry at Crist County Medical Center. I had just worked a double on that  
55 Friday, so I wasn't at work when Sidney Young and the other kids were brought in after the  
56 wreck because I was off on Saturday. Sometimes I wait tables at my Grandma's restaurant, the  
57 Silver Spoon, on Fisk on the weekends as well, but I had the weekend off.

58 I really didn't want to testify in this case because I was afraid of being cross examined.  
59 (I have been to court once before, when I was charged with felony embezzlement about seven  
60 years ago.) But, without thinking, I opened my big mouth to a reporter who was covering the  
61 accident when I returned to work on Sunday at the hospital. She must have been checking on the



62 one who was most seriously injured or something. I guess she never forgets a face or name,  
63 because she must have told the Plaintiff about me.

64 This statement was given under oath. The undersigned has had an opportunity to read,  
65 review, and update this statement, and attests that this is a true and accurate statement.

66

*C.J. Simpson*

IN THE CIRCUIT COURT FOR THE TWENTY FIRST JUDICIAL CIRCUIT  
IN AND FOR CRIST COUNTY, FLORIDA  
CIVIL DIVISION

SIDNEY YOUNG,

Plaintiff,

v.

Case No. 09-0099-H

RILEY GARDNER,

Defendant.

\_\_\_\_\_ /

**SWORN STATEMENT OF PEYTON LANCASTER**

1 My name is Peyton Lancaster, and I am an accident reconstructionist specializing in  
2 rollover accidents. I reside in Hendersonville, Florida, which is over two hours from Crist  
3 County.

4 My job focuses on inspection and evaluation of motor vehicle traffic collision scenes,  
5 including collecting, photographing, measuring, recording and evaluating physical evidence from  
6 the road, environment, and vehicles to determine how collisions occurred. Where physical injury  
7 to occupants or pedestrians occurs, I evaluate those injuries in relation to determining subject  
8 motion during the collision process. I use data to analyze motions of vehicles, occupants, and  
9 pedestrians, and utilize equations to determine time, distance, velocity and/or speed of collision.

10 I became an accident reconstructionist after working as a mechanical engineer for twelve  
11 years. I attended the University of Florida for my bachelor's degree, and I received a Master of  
12 Science degree from Florida State University in 1992. I am a member of the Society of  
13 Mechanical Engineers.

14 I am certified by the Accredited Coalition for Reconstruction of Traffic Accidents

15 (ACRTA) as an accident reconstructionist. ACRTA requires me to take continuing education  
16 courses, and accreditation must be renewed every five years. There are only about 650 ACRTA  
17 accredited reconstructionists practicing in the US and Japan, but there are only three certified  
18 ACRTA accident reconstructionists in Florida. I work for five counties in Florida, including the  
19 major metropolitan area of Hendersonville. I also consult on other matters on a case by case  
20 basis.

21 I was not accepted to ACRTA for the first two times I took the examination. My  
22 application was approved, but I did not pass the practical portion of the exam the first two times I  
23 took the test. The practical portion is a staged collision, and you must answer typical questions  
24 under a time constraint. ACRTA only lets applicants take the test three times, so I was so  
25 concerned that I would not pass that final time. But I finally passed! I am coming up for  
26 membership renewal next year with ACRTA, and experience testifying in cases like this does  
27 help with that process, but that is not why I am testifying here today.

28 About three years ago, I was a guest author in an article in *Wrecked*, a professional  
29 journal concerning accident reconstruction. I have never testified at trial, but I have given a  
30 deposition three times. I almost always testify for the plaintiff in civil cases because I have made  
31 friends with some of the big plaintiff firms in Florida. Of course, I am paid for my services, and  
32 my rate is \$250 per hour.

33 The Plaintiff contacted me to consider this case within two days of the collision. I did not  
34 go to the scene of the crash because it rained after the accident. Therefore, I felt that my time was  
35 better spent on the accident reports, witness statements, and measurements taken by law  
36 enforcement working the scene.

37 So you can understand the site, I want to explain the big factors. Legend Parkway is an

38 asphalt road in the City of Springfield. It is a four-lane divided highway with trees and lights in  
39 the median. There are two northbound lanes and two southbound lanes. There are periodic  
40 openings for traffic to enter and exit to the east and west as it is a divided highway. The wreck  
41 occurred approximately one mile south of the intersection of Fisk Avenue, which runs east and  
42 west. In addition to Fisk Avenue, there is an opportunity for east or westbound traffic to cross  
43 Legend Parkway about 60 feet south of the location of the onset of the skid marks by way of  
44 Pitts Avenue.

45 Although the speed of a vehicle can be determined by the length of its skid marks, the  
46 grade of the road and the condition of the tires must also be considered. Also, if the vehicle was  
47 still moving at the time of the impact, skid/speed formulas will only yield the minimum  
48 "original" speed. It is more likely than not that the vehicle was still moving at the time of the  
49 accident based on the muddy treads that were photographed in the grass, the skid marks, and the  
50 scuffs on the curb. According to the traffic report, there is a slight downhill grade as you  
51 approach the site of the wreck. I say slight because, based on Officer Knight's measurements, it  
52 is only about one degree of slope, which results in a multiplier of 1.74%.

53 I sent another engineer with whom I work closely to the scene so he could measure the  
54 skids that were visible in the photographs provided to me. He discovered that the rear tires left a  
55 skid of 73 feet. The rear skids were more prevalent at the start of the marks. Based on this  
56 information, the vehicle was traveling at least 53 miles per hour at the onset of the skid marks.  
57 The speed limit is 45 mph on Legend Parkway. Therefore, it is more likely than not that the  
58 driver was speeding at the time the brakes were first applied.

59 I believe that the tire which was flat, on the right front wheel, was fully functional at the  
60 time of the crash. It is my professional opinion that this tire went flat after the strong force

61 impact against the curb. It is also possible it was punctured by something on the roadway or in  
62 the grass. It would have been helpful if law enforcement had seen fit to preserve the tire for  
63 testing or test it themselves. I have done more than attend a seminar; I am an expert in  
64 reconstruction of motor vehicle collisions.

65 I am also aware that there has been discussion of texting as a cause or contributing cause  
66 of the accident. I cannot determine, using scientific evidence or to a reasonable degree of  
67 certainty, whether Riley Gardner was in fact texting. I have reviewed the cell phone records  
68 obtained by law enforcement from Riley's phone. I am in agreement that the text messaging  
69 appears to be dated and timed to coincide with the wreck. However, I simply cannot say whether  
70 Riley was texting or someone else was texting using Riley's phone. I will not risk my  
71 professional reputation saying otherwise.

72 However, in accidents where only one person occupied the vehicle, cell phone records  
73 have proved informative. I have been working on a study concerning this topic. The study has  
74 not been reported yet, but I plan to send it to *Wrecked*. According to the preliminary findings of  
75 my research, teens spend 400 percent more time with their eyes off the road while texting than  
76 when not text messaging. The study involved 20 participants who drove a simulated roadway  
77 which contained a number of events, including pedestrians emerging from behind parked cars,  
78 traffic lights, cars turning right in front of the driver's vehicle, a car following episode, and a lane  
79 change task. Retrieving and, in particular, sending a text message detrimentally affected the  
80 ability to respond to critical driving measures. Ability to maintain a driver's lateral position on  
81 the road and to detect and respond appropriately to traffic signs was significantly reduced.

82 This statement was given under oath. The undersigned has had an opportunity to read,  
83 review, and update this statement, and attests that this is a true and accurate statement.

84 *Peyton Lancaster*

IN THE CIRCUIT COURT FOR THE TWENTY FIRST JUDICIAL CIRCUIT  
IN AND FOR CRIST COUNTY, FLORIDA  
CIVIL DIVISION

SIDNEY YOUNG,

Plaintiff,

v.

Case No. 09-0099-H

RILEY GARDNER,

Defendant.

\_\_\_\_\_ /

**SWORN STATEMENT OF RILEY GARDNER**

1           My name is Riley Gardner. I'm 17 years old, and I live with my parents in Springfield,  
2 Florida. I'm a senior at Springfield High, and I also deliver an early morning paper route. It  
3 means getting up at 4:00 and having to drive pretty fast on my rural route. (Yes, I've gotten two  
4 speeding tickets, but I was only going 10 miles an hour over the limit each time). Most of the  
5 time, I'm just barely making it through work in time for school, but I have to do it so I can stay  
6 home in the afternoons and watch my sisters until my mom gets home from work. I'm used to  
7 having to act like an adult. My dad was an alcoholic, and he died in a car crash after he'd been  
8 drinking. That's why I will never drink; I've seen what alcohol can do to a person and a family.

9           In May of 2008, our high school's baseball team won the district championship, and I  
10 went with my friend Guadalupe to Austin's after-party. You know, most people think that all  
11 high school kids drink too much, do drugs, and act irresponsibly, but that's just not true. I'd say  
12 less than half of the people at the party were drinking. In fact, if I'd known that partiers like  
13 Sidney and Alex were going to be there, I might not have even gone.

14           Anyway, I was getting uncomfortable around the few drunk people, so I was looking for

15 a reason to leave. Also, I had promised to meet Taylor later that night. Taylor Bowling and I had  
16 been dating for a few months. Taylor's sweet, but Taylor's the type who likes to keep in near  
17 constant communication, so even though I knew it was going to be late after the party, I said that  
18 I'd meet Taylor at the coffee shop. The coffee shop is open until 2:30 am on the weekends  
19 because so many people stay there late and use the wireless internet, sit by the fireplace and chat,  
20 and drink coffee. We hadn't set a time yet, so I was waiting to hear from Taylor about that.

21 I suggested to a couple of people that I might be interested in going to get something to  
22 eat. Actually, I suggested to Sidney that s/he needed something to eat. Sidney had clearly been  
23 drinking a lot, and I thought if Sidney had some food, the alcohol might metabolize faster. My  
24 mom always tried to get my dad to eat while he was drinking. So, Sidney, Guadalupe, and Alex  
25 decided to ride in my car to go get some burgers. At the time, I was driving a 2006 Honda  
26 Accord. I had just gotten it, and I was still getting used to driving a five speed. Also, the Accord  
27 was a lot bigger than the Toyota Corolla I'd been driving; I still hadn't figured out how to park it.

28 We got in the car. I told Sidney to buckle up, but I didn't check to make sure. We had  
29 just gotten out of the driveway when my phone rang with a message from Taylor. I looked down  
30 and read the message. Taylor had written "adn.. .CB NOW." That means "Any day now. Call  
31 back now." All caps meant the message was serious; it's like yelling over the phone. I said,  
32 "Taylor's driving me crazy" because Taylor knew that we weren't supposed to meet until after the  
33 party, and Taylor hadn't even told me what time yet.

34 While I will admit that I have been known to text and drive, because I was still getting  
35 used to the Accord and because it was at night, I didn't think it would be good to respond. So, I  
36 hit reply, and then I tossed the phone to Sidney. I asked Sidney to type "ntwd," which means "no  
37 texting while driving." I wanted Taylor to understand that I'd be in touch as soon as I could.

38           Right after I gave the phone to Sidney, I lost control of the car, so I don't know if Sidney  
39 was able to type the message or not. I'm not sure what happened. I know that Alex thinks  
40 something might have run in front of the car and that I swerved to miss it, but I think that my  
41 right front tire might have blown out. It all just happened so fast, I can't really get straight in my  
42 head exactly what happened. One minute we're driving down the street and the next we're  
43 wrapped around a pole.

44           I'm very sorry about what happened to Sidney, and I know that Sidney will always blame  
45 me for the accident, but the accident wasn't caused by texting, drinking, or driving irresponsibly.  
46 It was just an accident. It happened, and I'm sorry, but I honestly don't believe I was doing  
47 anything wrong while I was behind the wheel.

48           I answered all the questions that the officers asked me. I heard the passengers talking to  
49 the paramedics but I couldn't hear what they were saying. I also turned my cell phone over to the  
50 police because they wanted it during the investigation.

51           This statement was given under oath. The undersigned has had an opportunity to read,  
52 review, and update this statement, and attests that this is a true and accurate statement.

53

54

*Riley Gardner*



IN THE CIRCUIT COURT FOR THE TWENTY FIRST JUDICIAL CIRCUIT  
IN AND FOR CRIST COUNTY, FLORIDA  
CIVIL DIVISION

SIDNEY YOUNG,

Plaintiff,

v.

Case No. 09-0099-H

RILEY GARDNER,

Defendant.

\_\_\_\_\_ /

**SWORN STATEMENT OF ALEX WILLIAMS**

1 My name is Alex Williams, and I live and attend high school in Springfield. I just turned  
2 18 years old. I am a sophomore at Crist County Community College. I have been a B+ student  
3 in school, and I am majoring in public relations.

4 In May of 2008, our baseball team beat Carden for the District Championship. After the  
5 game, I left the stadium, and went to my parents' house to pick up beer. My parents have an  
6 extra refrigerator outside where they normally keep it. I think I grabbed about eight beers.  
7 Anyway, I made my way over to Austin's house about 11:00 pm. His parents were out of town  
8 on a business trip of some kind. We met our other friends there. In total, there were about 50  
9 people at his house. Austin's house has a swimming pool and some of the people were  
10 swimming.

11 When we arrived at Austin's, the party seemed to be in full swing. I immediately noticed  
12 Jessie was there, which is great because we've kind of had a thing going lately. About 12:30,  
13 some of us started to get hungry. There's a White Castle nearby, so four of us got into Riley  
14 Gardner's car to head over there. I wasn't going to drive because I had already had three or four

15 beers. Riley drove because Riley hadn't had anything to drink. I remember Riley stumbling out  
16 of Austin's house when we were leaving, but he/she probably tripped on something. I don't  
17 know for sure why Riley stumbled. I do know I never saw Riley drink any alcohol that night. I  
18 sat in the back seat, behind Riley. In the front passenger seat was Sidney Young. I can't  
19 specifically remember if Sidney was drinking, but, if I had to guess, I would say so.

20 We left Austin's house in Riley's 2006 silver Honda Accord. I buckled up, but I am not  
21 positive if the others did as well. It's not like I was the designated seat-belt police or anything.  
22 We turned left out of Austin's driveway onto Fisk Avenue. After a couple of miles, we turned  
23 right onto Legend Parkway.

24 Riley had been texting something to Taylor Bowling—they also had something going. I  
25 saw Riley typing at least one text while driving that night, but I know that Riley handed the  
26 phone to Sidney before the crash. I think Sidney continued to text Taylor. About ten seconds  
27 after Riley had given the phone to Sidney, Riley lost control of the car. We ran up on the curb  
28 and hit a telephone pole.

29 I don't know why Riley lost control. It didn't feel like we were speeding. I'm not sure if  
30 something ran across the road or what. I kind of remember like a big black shadow or something  
31 moving in front of us and then Riley swerving. I saw that one of the tires was flat after the crash,  
32 but I don't know when it went flat. It was a pretty forceful impact. I was pretty shaken, but I  
33 managed to get out of the car. Riley also was able to get out. However, Sidney appeared to be  
34 pretty badly injured. Because of the way the car hit the pole, the front passenger door couldn't  
35 open.

36 I know that Sidney was hurt pretty badly and was taken by ambulance to the Crist County  
37 Medical Center. I think it was because Sidney wasn't wearing a seatbelt. I remember that

38 because at one point Sidney had it on, but in trying to turn around and talk to me, Sidney took it  
39 off. None of the rest of us had that kind of injury. I was wearing my seatbelt, but I don't know if  
40 Riley or Guadalupe were. A couple of minutes later, the police, and then an ambulance, arrived.  
41 Officer Knight with the Springfield Police Department took statements from us. I told Officer  
42 Knight exactly what happened.

43 Sidney was going to be an artist? A starving artist would be my guess. I saw Sidney's  
44 "work" all the time. Drawings were all over Sidney's notebooks and books and stuff. My little  
45 brother's crayon stick figures are better than anything Sidney ever did. Who knows, maybe  
46 Sidney can do better work left-handed now. Is that wrong to say about somebody who just lost  
47 their right hand? Sorry.

48 This statement was given under oath. The undersigned has had an opportunity to read,  
49 review, and update this statement, and attests that this is a true and accurate statement.

50

*Alex Williams*

IN THE CIRCUIT COURT FOR THE TWENTY FIRST JUDICIAL CIRCUIT  
IN AND FOR CRIST COUNTY, FLORIDA  
CIVIL DIVISION

SIDNEY YOUNG,

Plaintiff,

v.

Case No. 09-0099-H

RILEY GARDNER,

Defendant.

\_\_\_\_\_ /

**SWORN STATEMENT OF ADRIAN KNIGHT**

1 My name is Adrian Knight, and I am a supervising officer with the City of Springfield's  
2 Police Department. I work all the major accidents in our jurisdiction. Recently, we started  
3 cracking down on the common problems caused by drivers in an effort to make Crist County  
4 highways the safest in Florida. It helps that Crist County has a district attorney focusing on  
5 prosecuting traffic-related offenses, including DUI and reckless driving.

6 I grew up in Crist County. I played football at Carden High School the year they won the  
7 state championship in 1984. I did not go to college. After police academy and a few years with  
8 the Crist County Sheriffs Department, as well as doing part-time security, I was accepted to the  
9 Florida Highway Patrol. In my four years as a trooper with the highway patrol, I worked  
10 accidents on major highways within our state. I saw first-handed the effects of driver inattention.  
11 The last year I was there, I was usually the most experienced on a scene. I have completed a  
12 five-day training session on accident reconstruction. Those classes are in high demand for law  
13 enforcement officers, and that experience was one of the factors in landing my position with the  
14 Springfield Police Department. I would like to get further training so that I can apply to be

15 certified as an accident reconstructionist with the Accredited Coalition for Reconstruction of  
16 Traffic Accidents. I could pick up a lot of extra work as a professional witness if I was certified.

17 In my years of law enforcement, I have learned that addressing driver behavior is a  
18 critical factor in reducing fatal and serious injury crashes. The statistics show that a large  
19 number of crashes are due to the impaired condition of the driver or driver errors. Drivers under  
20 the age of 21 (ages 15-20) continue to be over-represented in fatal and injury crashes. On a local  
21 level, I have organized a campaign for the high schools to learn that “Attention = Alive.” My  
22 campaign is similar to “Click-It or Ticket,” “Just Say No,” and other similar awareness  
23 campaigns. Driver inattention is most often caused by fatigue, pre-occupation with other  
24 thoughts, or distractions such as grooming, eating, reading, cell phones, kids, or something  
25 outside of the vehicle. A review of crash data reveals that 37% of drivers made no pre-crash  
26 response. The likelihood that a driver will be aware of and take action to avoid an imminent  
27 crash decreases with age. Recently, we have seen a tremendous number of problems associated  
28 with young drivers texting or talking on cell phones while driving. The legislature has tried to  
29 help with that problem in recent years. “Attention = Alive” covers all these topics to increase  
30 awareness among Crist County teen drivers.

31 I prepared the Uniform Traffic Accident Report in this case. I was called to examine the  
32 scene and evidence from a wreck that occurred at approximately 1:10 am on May 12, 2008 on  
33 Legend Parkway in Crist County, Florida. I arrived within ten minutes of the accident because I  
34 happen to live nearby. When I arrived, I saw a Honda Accord—a newer model and silver in  
35 color—smashed into a telephone service pole at the right front quadrant. The telephone pole was  
36 located 4 feet from the side of the Parkway, and there is a concrete curb between the pole and the  
37 road surface. From first glance, it appeared that the car’s front tire could have been a cause,

38 because it looked like it was almost flat. However, later I opined that this was not the cause and  
39 probably happened when the car hit the curb just before hitting the telephone pole. The tire was  
40 not sent to a lab because I did not feel it was necessary.

41 The first thing I did was spend a few minutes talking with the two EMTs who were at the  
42 scene about what they did upon arrival. I was concerned that maybe Mark Alexander, the driver  
43 for Crist County's ambulance service, did something silly to compromise this scene like he did  
44 back on Campbell Boulevard about four months prior. I don't think he did, though, because  
45 Leslie Duke said that he followed protocol completely and I have always found Leslie to be  
46 trustworthy. Leslie is the other EMT working that night. Leslie and Mark both confirmed that  
47 they had to rely on Sidney's friends to tell them who Sidney was because Sidney was unable to  
48 answer their questions upon arrival to the scene.

49 Then, I started to collect and evaluate the physical evidence. I took measurements of  
50 some skid marks that were there. As the lead accident investigator for Springfield PD, I  
51 interviewed witnesses at the scene. I interviewed Alex Williams and Riley Gardner. Alex helped  
52 me to understand the route that the youngsters took when they left Austin's home on Fisk  
53 Avenue and where everyone was sitting in the car. Also, Alex was the first person to admit that  
54 there was a texting event within minutes of the crash. Alex said that Taylor was dating Riley,  
55 but with Sidney in the mix, things had gotten interesting because Riley's priorities had definitely  
56 changed. I interviewed Riley after talking with Alex, and Riley explained the texting in detail.  
57 Apparently, Taylor wanted more of Riley's attention and was upset that Riley was partying  
58 without Taylor. Taylor was texting to Riley about this displeasure. Riley told me that a few  
59 seconds before the accident Riley said, "Sid, mind helping me out with this?" and tossed Sidney  
60 the phone. Riley didn't look at where the phone was heading as Riley tossed it, so it hit the

61 floorboard of the passenger's side. Sidney retrieved it and started texting, asking Riley what to  
62 type. However, Riley wasn't sure what Sidney wrote and if any message was actually sent.  
63 Riley explained that before the accident, Riley tried to stop the vehicle and hit the curb, which  
64 did slow the vehicle but not enough to keep it from hitting the pole. I never heard of this C.J.  
65 Simpson witness, so I never took a statement.

66 After the accident, Sidney Young was transported to Crist County Medical by ambulance.  
67 I transported Riley Gardner to the hospital and requested a test for blood alcohol level. The test  
68 results revealed no measurable alcohol in Riley's bloodstream. The test was administered at  
69 about 3:45 a.m. on May 12. The doctor in the ER ordered a blood alcohol test on Sidney Young  
70 in order to determine Sidney's perception of pain. Sidney's test was administered around 3:30  
71 a.m. on May 12 and came back with .09, which is legally intoxicated.

72 I interviewed Sidney at the hospital. I did not think Sidney's memory of the accident was  
73 that good because of pain medication at the time of the interview and intoxication at the time of  
74 the crash. Sidney told me about drinking a "couple" of beers at the party, but that's what  
75 everyone always says. Sidney claimed to have been wearing a seatbelt at the time of the crash.  
76 At the time I interviewed Sidney, Sidney couldn't remember anything after pulling out of  
77 Austin's driveway onto Fisk. I did not find Sidney to be that helpful. Sidney did say that  
78 nothing seemed wrong with the car before the accident.

79 I have investigated one other accident where a driver was possibly texting while driving.  
80 After looking at all the data in this case, I called a friend of mine who still works with the FHP to  
81 consult on the signs that a driver has been texting while driving just to make sure I had not  
82 overlooked something. The records I obtained indicate that the final text message was sent from  
83 Riley's phone at approximately 1:10 am on May 12, 2008. From the language of the text itself, I

84 believe that Sidney actually typed the message because it has a different feel than the other texts,  
85 like it's from a different author. Also, Riley's statement denying texting while driving is  
86 supported by the statement of at least one other passenger and Riley. Based on my professional  
87 experience and the evidence I was able to consider, I believe that Riley Gardner was probably  
88 not distracted by texting at the time of the accident. I based my opinions on the testimony given  
89 by occupants of the vehicle, the cell phone records provided by the Defendant, and the evidence  
90 at the scene.

91 From the length and location of the skid marks, the damage to the vehicle, and based on  
92 my training, I calculated the speed of the vehicle to be about five miles per hour below the speed  
93 limit at the time of the crash. The weather was not a factor for necessitating a slower speed. In  
94 my professional opinion, the vehicle's speed was not a contributing factor in the crash. It was a  
95 single car accident so speed of impact really wasn't the issue.

96 Based on all the information I gathered, I believe the cause of the accident cannot be  
97 conclusively determined by scientific evidence. The skid marks indicate that the driver was  
98 aware that the car was going to collide with the pole in advance of the collision and was trying to  
99 stop, but the cause of the crash is unclear.

100 This statement was given under oath. The undersigned has had an opportunity to read,  
101 review, and update this statement, and attests that this is a true and accurate statement.

102  
103

*Adrian Knight*



# EXHIBIT A

Please Do Not Write In This Microfilm Space

## Florida Uniform Traffic Crash Report

**Crist Co. Springfield Police Dept.**

Document Type  
 Original Document (select 1) 11  
 Supplement Document  
 Ascended Document  
 Reference Number/Unit/Plate 16  
 Local Agency Number 17  
 Page 1 of 4  
 Research Number 8637396  
 Type of Crash (select 1) 11:  
 Fatal  
 Injury  
 Property Damage (Over)  
 Property Damage (Under)

Reporting Agency Type  
 Highway Patrol (1)  
 Metropolitan Police Dept. (CPD)  
 Sheriff's Office  
 Capitol Police  
 Commercial Vehicle Enforcement (CVS)  
 College/University Campus  
 National Park Service  
 Other  
 Investigation Complete?  Yes  No  
 Photos Taken?  Yes  No  
 If Yes, by Whom?  
 Police  Other  
 Totals: Vehicles 01, Killed 00, Injured 01  
 Date of Crash: MONTH 12, DAY 08, YEAR 2008  
 Day of Crash:  SUN  
 Time of Crash: 01:10  
 County: A25, City: A25, Area: 1 Urban  
 Trafficway/Land Way/Private Way (select 1) 11:  
 Trafficway - OPEN  
 Trafficway - CLOSED  
 Parking Lot  
 Private Property or Private Road  
 Hit and Run?  
 Yes - Hit Motor Vehicle in Transport  
 Yes - Hit Pedestrian or Non-Motorist  
 Yes - Hit Parked Vehicle or Object  
 No Hit and Run Subject  
 Yes  No  
 Police Pursuit Involved?  Yes  No  
 School Bus Related?  Yes  No

Route Number: A29  
 SPC CASE, CO. SBL, LOG MILE, LOC  
 GPS Coordinate: A29  
 Latitude, Longitude  
 Time Notified: 01:13, Time Arrived: 01:25  
 Rail/Crossing ID: A08

Legend Parkway, East Pitts Ave.  
 Vehicle Number: V1, V2  
 Driver Presence:  Driver Operated Vehicle,  Driver Operated Non-Contact Vehicle,  Driver Operated Government Vehicle,  Driverless Vehicle  
 Driver: Riley J. Gardner, 742 Forest Range Drive, Springfield, FL 32088, 555-6770, 83490000, FL, 2011, M-15-11990, Age 17, Sex M, Race White, Height 5'0", Weight 115, Eyes Blue, Hair Brown, Under 21, No Restrictions, No Medical Conditions  
 Injury Code: P1, P2, P3, P4, P5, P6, P7, P8, P9, P10, P11, P12  
 Safety Equipment:  Seat Belt,  Air Bag,  Child Seat,  Other  
 TRAPPED/EXTRICATED:  Not Applicable,  Trapped/Extricated,  Unknown  
 Driver DUI:  Less 25 ul,  Out of State,  Unknown/Not Reported  
 Residence:  Over 25 ul,  P15  
 Vehicle 1: 2006 Honda Accord, Silver, VIN 671000000, 32 TEEN, 2008, Owner Nancy R. Gardner, Same as driver  
 Vehicle 2: ~~Vehicle Information~~  
 Violations:  None,  Other Moving,  Alcohol/Drugs,  Other Non-Moving,  Reckless/Careless,  Pending  
 Investigating Officer: Marian Knight, Supervisor, 123, 123, Report Date: 05/12/2008

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### Harmful Event

Most Harmful Event per Vehicle A32  
(select 1 per vehicle)

Collision with Object Not Fixed

- |   |  |
|---|--|
| VI VZ   |  |
| 01 02 Pedestrian                                  |  |
| 03 04 Pedicyle                                    |  |
| 05 06 Railway Train                               |  |
| 07 08 Deer (Animal)                               |  |
| 09 10 Other Animal                                |  |
| 11 12 Motor Vehicle in Transport                  |  |
| 13 14 Motor Vehicle in Transport in Other Roadway |  |
| 15 16 Parked Motor Vehicle                        |  |
| 17 18 Other Type Non-Motorist                     |  |
| 19 20 Other Object (Not Fixed)                    |  |

Collision with Fixed Object

- |                                |                               |
|--------------------------------|-------------------------------|
| VI VZ                          | VI VZ                         |
| 01 02 Boulder                  | 01 02 Utility Pole            |
| 03 04 Building                 | 03 04 Other Post, Pole, Supp. |
| 05 06 Impact Attenuator        | 05 06 Culvert                 |
| 07 08 Bridge Pier/Abutment     | 07 08 Curb                    |
| 09 10 Bridge Pier/End          | 09 10 Ditch                   |
| 11 12 Bridge Rail              | 11 12 Embankment              |
| 13 14 Guardrail Face           | 13 14 Fence                   |
| 15 16 Guardrail End            | 15 16 Wall                    |
| 17 18 Median Barrier           | 17 18 Mail Box                |
| 19 20 H-way Traffic Sign Post  | 19 20 Structure               |
| 21 22 Overhead Sign Support    | 21 22 Tree                    |
| 23 24 Illumination Light Supp. | 23 24 Fire Hydrant            |
| 25 26 Traffic Signal Support   | 25 26 Other Fixed Object      |

Non-Collision

- |                                  |                                |
|----------------------------------|--------------------------------|
| VI VZ                            | VI VZ                          |
| 01 02 Overturn                   | 01 02 Fell/Jumped from Vehicle |
| 03 04 Fire/Explosion             | 03 04 Other Non-Collision      |
| 05 06 Inactivation               | 05 06 Thrown or Baling Object  |
| 07 08 Jackknife                  |                                |
| VI VZ                            |                                |
| 09 10 Unknown Most Harmful Event |                                |

First Harmful Event for the Crash

99

Manner of Collision at First Harmful Event (select 1)

- |  |                                  |
|--|----------------------------------|
| 01 Not Collision with Motor Vehicle in Transport | 04 Angle                         |
| 02 Rear-End                                      | 05 Sideswipe, Same Direction     |
| 03 Head-On                                       | 06 Sideswipe, Opposite Direction |
| 04 Rear-to-Rear                                  | 07 Unknown                       |
- R quadrant**

Relation to Junction at First Harmful Event (select 1)

- |                                 |                                  |                  |  |
|---------------------------------|----------------------------------|------------------|--|
| Non-Interchange                 |                                  | Interchange Area |  |
| 01 Non-Junction                 | 03 Intersection                  |                  |  |
| 02 Intersection                 | 04 Intersection-Related          |                  |  |
| 03 Intersection-Related         | 05 Driveway                      |                  |  |
| 04 Driveway, Alley Access, etc. | 06 Entrance/Exit Ramp Related    |                  |  |
| 05 Entrance/Exit Ramp Related   | 07 Crossover-Related             |                  |  |
| 06 Red Grade Crossing           | 08 Other Location in Interchange |                  |  |
| 07 Crossover-Related            | 09 Unknown, Interchange Area     |                  |  |
| 08 Unknown-Non-Interchange      |                                  |                  |  |
- Unknown Relation to Junction

Relation to Roadway at First Harmful Event

- |                       |                                    |                              |  |
|-----------------------|------------------------------------|------------------------------|--|
| On Roadway (select 1) |                                    | Off Roadway-Location Unknown |  |
| 01 Shoulder           | 03 In Parking Lane                 |                              |  |
| 02 Median             | 04 Gore                            |                              |  |
| 03 Roadside-Left      | 05 Parking Lot or Private Property |                              |  |
| 04 Roadside-Right     | 06 Unknown                         |                              |  |
| 05 Outside Thruway    |                                    |                              |  |

### Driver factors

Driver Condition (may select 3) D14

- |   |  |
|---|--|
| VI VZ   |  |
| 01 02 Appeared Normal                         |  |
| 03 04 Had Been Drinking                       |  |
| 05 06 Illegal Drug Use                        |  |
| 07 08 Ill (Sick)                              |  |
| 09 10 Apparently Fatigued                     |  |
| 11 12 Apparently Asleep                       |  |
| 13 14 Reaction to Drugs/Medication            |  |
| 15 16 Failure to Take Drugs/Medication        |  |
| 17 18 Physical Impairment (Nervous)           |  |
| 19 20 Emotional (Depressed, Angry, Disturbed) |  |
| 21 22 Unknown Condition                       |  |

Driver Actions (may select 5)

- |  |  |
|--|--|
| VI VZ  |  |
| 01 02 No Contributing Actions                            |  |
| 03 04 Inattentive (Eating, Reading, Talking, etc.)       |  |
| 05 06 Interfered With by Passenger                       |  |
| 07 08 Driving Left of Center                             |  |
| 09 10 Driving Wrong Way on One-Way Roadway               |  |
| 11 12 Failure to Comply with License Restrictions        |  |
| 13 14 Failure to Keep in Proper Lane or Running Off Road |  |
| 15 16 Failure to Yield Right of Way                      |  |
| 17 18 Failure to Obey Traffic Controls                   |  |
| 19 20 Failure to Observe Warnings or Instructions        |  |
| 21 22 Failure to Signal Intentions                       |  |
| 23 24 Failure to Use Lights                              |  |
| 25 26 Following Improperly                               |  |
| 27 28 Improper Backing                                   |  |
| 29 30 Improper Lane Changing                             |  |
| 31 32 Improper Passing                                   |  |
| 33 34 Improper Turn                                      |  |
| 35 36 Improperly Braking or Pushing Vehicle              |  |
| 37 38 Improperly Carrying Hazardous Cargo                |  |
| 39 40 Improper Loading of Vehicle Cargo or Passengers    |  |
| 41 42 Operator Inexperience                              |  |
| 43 44 Operating without Required Equipment               |  |
| 45 46 Over Correcting                                    |  |
| 47 48 Careless or Erratic Driving                        |  |
| 49 50 Reckless or Negligent Driving                      |  |
| 51 52 Speed Too Fast                                     |  |
| 53 54 Speed Too Slow                                     |  |
| 55 56 Vision Obstructed, By What? (Narrative)            |  |
| 57 58 Using Telephone, Two-Way Radio                     |  |
| 59 60 Other (Narrative)                                  |  |
| 61 62 Unknown Action                                     |  |

Highway Construction/Maintenance Zone

- |                                      |   |
|--------------------------------------|---|
| 01 None                              | (select 1) <span style="float:right">A38</span> |
| 02 Construction Zone                 |   |
| 03 Maintenance Zone (Short Duration) |   |
| 04 Utility Zone (Short Duration)     |   |
| 05 Work Zone, Type Unknown           |   |
| 06 Unknown                           |   |

Light Conditions (select 1)

- |                     |            |                                      |
|---------------------|------------|--------------------------------------|
| 01 Daylight         | 04 Dawn    | <span style="float:right">A36</span> |
| 02 Dark-Not Lighted | 05 Dusk    |                                      |
| 03 Dark-Lighted     | 06 Unknown |                                      |

Weather Conditions (select 1)

- |                          |                                      |                                      |
|--------------------------|--------------------------------------|--------------------------------------|
| 01 No Adverse Conditions | 04 Smog, Smoke                       | <span style="float:right">A37</span> |
| 02 Rain                  | 05 Blowing Sand, Soil, Dirt, or Snow |                                      |
| 03 Sleet, Hail           | 06 Severe Crosswind                  |                                      |
| 04 Snow                  | 07 Fog                               |                                      |
| 05 Fog                   | 08 Other (narrative)                 |                                      |
| 06 Rain and Fog          | 09 Unknown                           |                                      |

### Driver Alcohol/Drugs

Presence

- |  |   |
|--|---|
| VI VZ                                  | (select 1) <span style="float:right">D16</span> |
| 01 02 Neither Alcohol or Drugs Present |   |
| 03 04 Yes (Alcohol Present)            |   |
| 05 06 Yes (Drugs Present)              |   |
| 07 08 Yes (Alcohol and Drugs Present)  |   |
| 09 10 Unknown                          |   |

Determination Method

- |                              |  |
|------------------------------|--|
| VI VZ                        | (select 1 if applies) <span style="float:right">D17</span> |
| 01 02 Evidential Test        |  |
| 03 04 Behavioral             |  |
| 05 06 Passive Alcohol Sensor |  |
| 07 08 Observed               |  |
| 09 10 Other                  |  |

Alcohol

- |                                       |  |                                 |     |
|---------------------------------------|--|---------------------------------|-----|
| (select 1)                            |  | Test Type (select 1 if applies) |     |
| VI VZ                                 |  | VI VZ                           | P16 |
| 01 02 Not Refused                     |  | 01 02 Blood                     |     |
| 03 04 None Given                      |  | 03 04 Breath                    |     |
| 05 06 Test Given, Results Unknown     |  | 05 06 Urine                     |     |
| 07 08 Test Given, Insufficient Sample |  | 07 08 Other                     |     |
| 09 10 Unknown, if tested              |  |                                 |     |
| Alcohol Results                       |  | VI                              | Y2  |
| 01 02 Negative BAC                    |  | Positive Results                |     |

Drugs

- |                                       |  |                                 |     |
|---------------------------------------|--|---------------------------------|-----|
| (select 1)                            |  | Test Type (select 1 if applies) |     |
| VI VZ                                 |  | VI VZ                           | P17 |
| 01 02 Not Refused                     |  | 01 02 Blood                     |     |
| 03 04 None Given                      |  | 03 04 Breath                    |     |
| 05 06 Test Given, Results Unknown     |  | 05 06 Urine                     |     |
| 07 08 Test Given, Insufficient Sample |  | 07 08 Other                     |     |
| 09 10 Unknown, if tested              |  |                                 |     |
| Drug Results                          |  |                                 |     |
| 01 02 No Drugs Detected               |  |                                 |     |
| 03 04 Marijuana                       |  |                                 |     |
| 05 06 Cocaine                         |  |                                 |     |
| 07 08 Opiates                         |  |                                 |     |
| 09 10 Amphetamines                    |  |                                 |     |
| 11 12 PCP                             |  |                                 |     |
| 13 14 Other Drug/Medication           |  |                                 |     |
| 15 16 Drug Type Unknown               |  |                                 |     |
- (may select 3)

Driver/Vehicle Manuever (select 1)

- |  |                                      |
|--|--------------------------------------|
| VI VZ  | <span style="float:right">D15</span> |
| 01 02 Going Straight   |                                      |
| 03 04 Negotiating Curve  |                                      |
| 05 06 Passing or Overtaking Another Vehicle                                  |                                      |
| 07 08 Right Turn to Private Drive  |                                      |
| 09 09 Right Turn to Street   |                                      |
| 10 10 Right Turn on Red Permitted  |                                      |
| 11 11 Right Turn on Red Not Permitted  |                                      |
| 12 12 Left Turn to Private Drive   |                                      |
| 13 13 Left Turn to Street  |                                      |
| 14 14 Turning from Wrong Lane  |                                      |
| 15 15 Making a U-Turn  |                                      |
| 16 16 Slowing or Stopped for Signal or Sign                                  |                                      |
| 17 17 Slowing or Stopped for Turning Traffic                                 |                                      |
| 18 18 Slowing or Stopped for Entering Traffic                                |                                      |
| 19 19 Slowing or Stopped Other   |                                      |
| 20 20 Stopped in Traffic Lane  |                                      |
| 21 21 Staring in Traffic   |                                      |
| 22 22 Backing from Drive   |                                      |
| 23 23 Backing from On Street Parking Space                                   |                                      |
| 24 24 Backing Up   |                                      |
| 25 25 Entering from Private Drive  |                                      |
| 26 26 Leaving a Parked Position  |                                      |
| 27 27 Parked Legally-Yes   |                                      |
| 28 28 Parked Legally-No  |                                      |
| 29 29 Changing Lanes or Merging  |                                      |
| 30 30 Manuevering to Avoid Another Vehicle, Animal, Pedestrian, Object, etc. |                                      |
| 31 32 Other (Narrative)  |                                      |
| 33 34 Unknown  |                                      |

Document Type

Supplement Document  
 Amended Document  
 Reference Number: 8037396  
 Agency Number: A7

Please Do Not Write In This Microfilm Space

Motorists (Passengers) and/or Non-Motorists

Vehicle Number P1	NAME First Sidney	LAST Young	Date of Birth 04-04-1970	Age 18	Injury Code P5	SEAT Position FR	SAFETY Equipment N	AIRBAG P11
ADDRESS Same as Driver 971 Moores Lane	City & State Springfield, FL	Zip 80808	Sex Male	Medical Transport P14	Ambulance/Hospital CRIST	Alcohol P16	Drugs N	
Motorists P2	Other Cyclist P3	Other Pedestrian P4	Other Non-Motorist P5	EJECTED P11 Not Ejected	Totally Ejected P12	Partially Ejected P13	Unknown P14	
TRAPPED/EXTRICATED P15	Trapped/Emancipated P16	Trapped/Not Emancipated P17	Unknown P18	Not Trapped P19	Unknown P20			

Vehicle Number P1	NAME First Guadalupe	LAST Hernandez	Date of Birth 01-13-1991	Age 13	Injury Code P5	SEAT Position B	SAFETY Equipment N	AIRBAG P11
ADDRESS Same as Driver 1701 West Pitts Ave.	City & State Springfield, FL	Zip 80808	Sex Female	Medical Transport P14	Ambulance/Hospital NA	Alcohol P16	Drugs N	
Motorists P2	Other Cyclist P3	Other Pedestrian P4	Other Non-Motorist P5	EJECTED P11 Not Ejected	Totally Ejected P12	Partially Ejected P13	Unknown P14	
TRAPPED/EXTRICATED P15	Trapped/Emancipated P16	Trapped/Not Emancipated P17	Unknown P18	Not Trapped P19	Unknown P20			

Vehicle Number P1	NAME First Alex	LAST Williams	Date of Birth 06-23-1970	Age 18	Injury Code P5	SEAT Position B	SAFETY Equipment N	AIRBAG P11
ADDRESS Same as Driver 2327 Sleepy Hollow Dr.	City & State Springfield, FL	Zip 80808	Sex Male	Medical Transport P14	Ambulance/Hospital NA	Alcohol P16	Drugs N	
Motorists P2	Other Cyclist P3	Other Pedestrian P4	Other Non-Motorist P5	EJECTED P11 Not Ejected	Totally Ejected P12	Partially Ejected P13	Unknown P14	
TRAPPED/EXTRICATED P15	Trapped/Emancipated P16	Trapped/Not Emancipated P17	Unknown P18	Not Trapped P19	Unknown P20			

Non-Motorist Number A	Non-Motorist Number B	Non-Motorist Number C	Non-Motorist Number D	Non-Motorist Number E	Non-Motorist Number F
Location At Intersection			Location Not At Intersection		
N1 N2	N1 N2	N1 N2	N1 N2	N1 N2	N1 N2
01 02 In Crosswalk	03 04 On Roadway, Not in Crosswalk	05 06 On Roadway, Crosswalk Availability Unknown	07 08 In Parking Lane	09 10 On Road Shoulder	11 12 Other, Not on Roadway
13 14 On Roadway, Crosswalk Not Available	15 16 Unknown		17 18 On Roadway, Crosswalk Not Available	19 20 Bike Path	21 22 Unknown
23 24 On Roadway, Crosswalk Availability Unknown			25 26 Outside Trafficway		
Vehicle Striking Non-Motorist N1 Vehicle #			Vehicle Striking Non-Motorist N2 Vehicle #		
Conditions (may select 3)			Actions (may select 4)		
01 02 Appeared Normal	03 04 Had Been Drunk	05 06 Illegal Drug Use	07 08 (Sick)	09 10 Reaction to Drugs/Medications	11 12 Failure to Take Drugs/Medications
13 14 Blind	15 16 Restricted to Wheelchair	17 18 Other Physical Impairment (Narrative)	19 20 Emotional (Depressed, Angry, Disturbed)	21 22 Unknown Condition	
23 24 No Contributing Actions	25 26 Not Visible	27 28 Daring, Running or Stumbling into Road	29 30 Crossing with Signal	31 32 Crossing against Signal	33 34 Crossing, No Signal
35 36 Coming from Behind Parked Car	37 38 Standing in Safety Zone	39 40 Getting on or off Other Vehicle	41 42 Pushing or Working on Vehicle	43 44 Other Working in Roadway	
45 46 Construction/Maintenance/Utility Worker	47 48 Playing in Roadway	49 50 Lying in Roadway	51 52 Walking in Roadway	53 54 Walking beside Roadway	
55 56 Failure to Keep in Proper Lane or Running off Road	57 58 Failure to Yield Right of Way	59 60 Failure to Obey Traffic Controls	61 62 Failure to Observe Warnings or Instructions	63 64 Failure to Signal Intentions	
65 66 Failure to Use Lights	67 68 Improper Loading of Vehicle Cargo or Passengers	69 70 Operator Inexperience	71 72 Operating without Required Equipment	73 74 Moving in Roadway Against Traffic	
75 76 Vision Obstructed, By What? (Narrative)	77 78 Unknown Action				

**V1 Vehicles**

First Impact V16  
 1  2  3  4  5  6  7  8  9  10  11  12  13

Truck/Bus Supplement V16  
 1 Yes  2 No

Emergency Use V18  
 1 Yes  2 No

Rollover V14  
 1 Yes  2 No

Fire V17  
 1 Yes  2 No

Estimated Damage V24  
 1 Under \$400  
 2 Over \$400

(may select 2) V21  
 Darken Numbered Area(s) of Vehicle Damage

Undercarriage V20  
 10  11  12  13  14  15  16  17  18  19  20

Extent of Damage V22  
 1 None  2 Very Minor  3 Minor  4 Moderate  5 Severe  6 Very Severe  7 Unknown

Vehicle Defects (may select 2) V25  
 1 None  2  3  4  5  6  7  8  9  10

Vehicle Special Use V26  
 1 None  2  3  4  5  6  7  8  9  10

Vehicle Trailer V23  
 1 None  2  3  4  5  6  7  8  9  10

Vehicle Towed V23  
 1 Driven Away  2 Towed Away

Vehicle Going On V25  
 On: **Legend Parkway**

**V2 Vehicles**

First Impact V16  
 1  2  3  4  5  6  7  8  9  10  11  12  13

Truck/Bus Supplement V16  
 1 Yes  2 No

Emergency Use V18  
 1 Yes  2 No

Rollover V14  
 1 Yes  2 No

Fire V17  
 1 Yes  2 No

Estimated Damage V24  
 1 Under \$400  
 2 Over \$400

(may select 2) V21  
 Darken Numbered Area(s) of Vehicle Damage

Undercarriage V20  
 10  11  12  13  14  15  16  17  18  19  20

Extent of Damage V22  
 1 None  2 Very Minor  3 Minor  4 Moderate  5 Severe  6 Very Severe  7 Unknown

Vehicle Defects (may select 2) V25  
 1 None  2  3  4  5  6  7  8  9  10

Vehicle Special Use V26  
 1 None  2  3  4  5  6  7  8  9  10

Vehicle Trailer V23  
 1 None  2  3  4  5  6  7  8  9  10

Vehicle Towed V23  
 1 Driven Away  2 Towed Away

Vehicle Going On V25  
 On:  1  2  3  4  5  6  7  8  9  10

**Trafficway Flow** (select 1) V31

1 Not Physically Divided (Two Way Trafficway)  
 2 Divided Highway, Median Strip (Without Traffic Barrier)  
 3 Divided Highway, Median Strip (With Traffic Barrier)  
 4 One Way Trafficway  
 5 Unknown

**Roadway Surface Type** (select 1) V34

1 Asphalt  
 2 Concrete  
 3 Brick or Block  
 4 Gravel, Slag, or Stone  
 5 Dirt  
 6 Other (Narrative)  
 7 Unknown

**Trafficway Hazards** (may select 3) V32

1 No Apparent Hazards  
 2 Inadequate Warning of Exits, Lanes Narrowing, Traffic Control, etc.  
 3 Defective Shoulders  
 4 No or Obscured Pavement Markings  
 5 Holes, Deep Ruts, Bumps  
 6 Loose Material on Surface  
 7 Slippery Surface  
 8 Surface Under Water  
 9 Surface Washed Out  
 10 Under Construction/Maintenance  
 11 Recent Previous Accident Scene Nearby  
 12 Street Lights Not Working  
 13 Traffic Control Device Not Visible  
 14 Other Hazards (Narrative)  
 15 Unknown

**Traffic Control Devices** (select 1) V33

1 No Controls  
 2 Traffic Light  
 3 Flashing Yellow (Caution)  
 4 Flashing Red (Stop)  
 5 Lane Use Control Signal  
 6 Stop Sign  
 7 Yield Sign  
 8 School Zone Sign  
 9 Warning Sign  
 10 Construction Zone Controls  
 11 RR Crossbucks  
 12 RR Flasher  
 13 RR Gates  
 14 Traffic Control Person  
 15 Other (Narrative)

**Roadway Route Signing** (select 1) V29

1 Interstate  
 2 U.S. Route  
 3 State Route  
 4 County Route  
 5 Municipal Route  
 6 Other (Narrative)  
 7 Unknown

**Number of Travel Lanes** (select 1) V30

1 One Lane  
 2 Two Lanes  
 3 Three Lanes  
 4 Four Lanes  
 5 Five Lanes  
 6 Six Lanes  
 7 Seven or More Lanes  
 8 Other (See Narrative)  
 9 Unknown

**Roadway Surface Conditions** (select 1) V35

1 Dry  
 2 Wet  
 3 Snow or Slush  
 4 Ice  
 5 Sand, Mud, Dirt or Oil  
 6 Other (Narrative)  
 7 Unknown

**Other Property Damage?** (select all that apply) V39

1 State Property  2 City Property  
 3 County Property  4 Private Property

Amount of Damage (Estimate)  
 1 Under \$400  2 Over \$400

**Traffic Control Device Functioning?** (select 1 if applies) V40

1 Device Not Functioning  
 2 Device Functioning Improperly  
 3 Device Functioning Properly

**Speed Limit**

V1	V2
35	
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9

**Access Control** (select 1) V32

1 No Control (Unlimited Access)  
 2 Full Control (ONLY Ramp Entry and Exit)  
 3 Other (Narrative)

**Roadway Character**

**Alignment** (select 1) V36  
 1 Curve  2 Straight  3 Unknown

**Profile** (select 1) V37  
 1 Level  2 Grade  3 Hillcrest  4 Other (Narrative)  
 5 Unknown

**Owner Information for Other Property Damage**

Name: **City of Springfield** Phone: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Address: \_\_\_\_\_

**Witness**

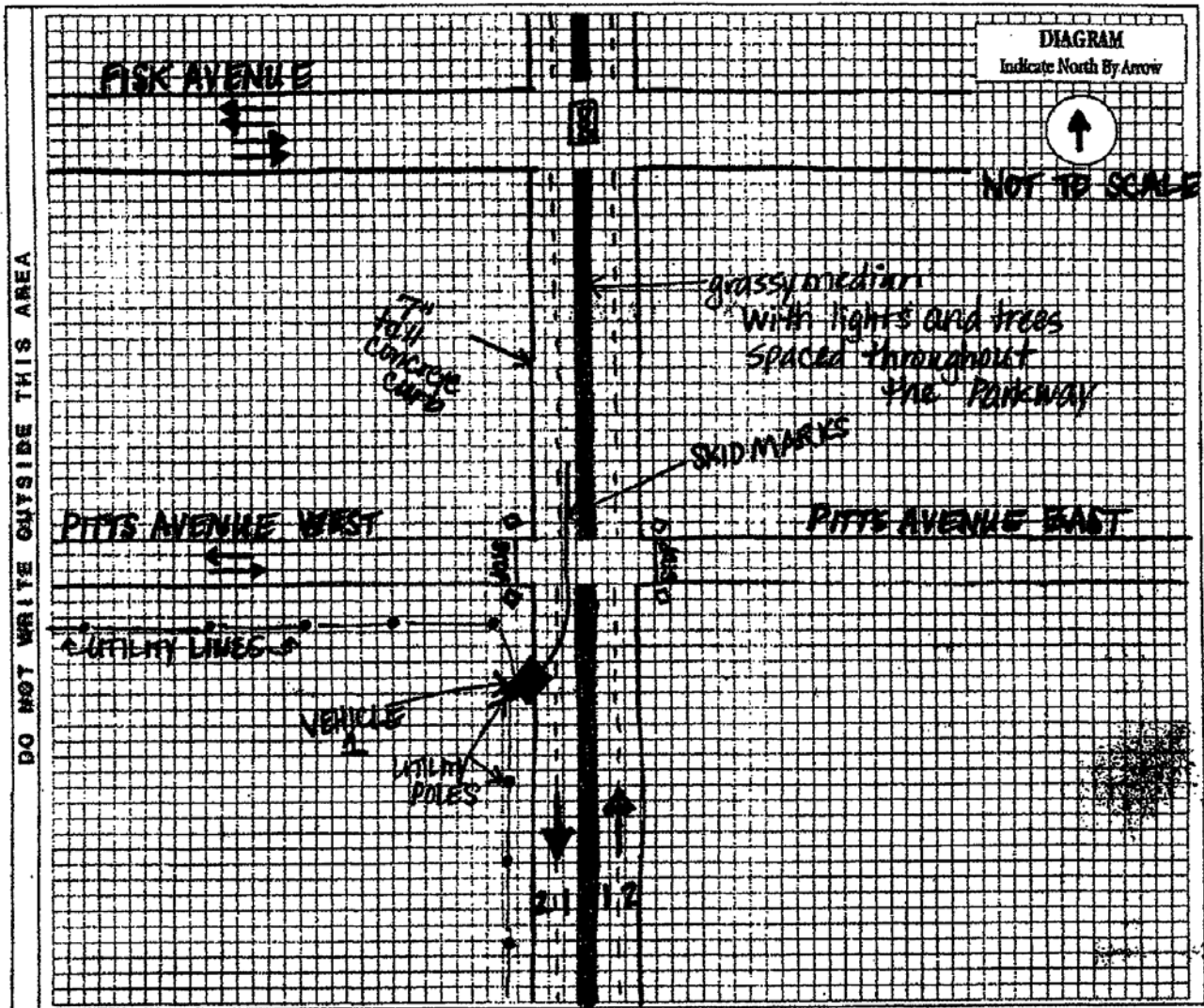
Name: **None** Last: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City & State: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_ Home Phone # \_\_\_\_\_

**Witness**

Name: \_\_\_\_\_ Last: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City & State: \_\_\_\_\_ ZIP: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_ Home Phone # \_\_\_\_\_



# EXHIBIT B



Narrative: Vehicle apparently skidded several feet changing lanes, creating skid marks with all four tires, and slid into concrete curb at right side of highway. Exited roadway and collided into utility pole 4 ft. from roadway. Driver tested for DUI – result negative. Reports of driver texting are unconfirmed. Investigation ongoing. No arrests have been made.

*Adrian Knight 05/12/2008 Captain Hook 5/13/08*

# EXHIBIT C

## IN THE CRIMINAL COURT OF CRIST COUNTY, FLORIDA

Case Number: 02-0079 Attorney for the State: Angela Gavel

Judicial District: 12<sup>th</sup> Judicial Division: Springfield

State: Florida  
vs.

Counsel for Defendant: Luke Skywater

Retained  Appointed  Public Defender

Defendant: CJ Simpson Alias: Skippy Simpson

Date of Birth: February 14, 1972 SSN: 555-12-4411

Indictment Filing Date: 2002 TDOC # 001234

### JUDGMENT

On the 19th day of September, 2002, the defendant:

<input checked="" type="checkbox"/> Pled Guilty <input type="checkbox"/> Dismissed/Nolle Prosequi <input type="checkbox"/> Nolo Contendere <input type="checkbox"/> Retired/Unapprehended Defendant <input type="checkbox"/> Guilty Plea – Pursuant to 40-35-313  Is found: <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Jury Verdict <input type="checkbox"/> Not Guilty by Reason of Insanity <input type="checkbox"/> Bench Trial	Indictment: Class (circle one) 1 <sup>st</sup> A B C <b>D</b> E <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Offense: <u>Theft over \$1,000</u> Amended Charge: <u>N/A</u> Offense Date: <u>May 2001 to December 2001</u> County: <u>Cottonwood</u> Conviction Offense: <u>Theft over \$500</u> Is this conviction offense methamphetamine related? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No TCA #: <u>39-14-103 (includes embezzlement)</u> Sentence Imposed Date: <u>September 19, 2002</u> Conviction: Class (circle one) 1 <sup>st</sup> A B C D <b>E</b> <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor
---	--

After considering the evidence, the entire record, & all factors in T.C.A. Title 40 Chapter 35, all of which are incorporated by reference herein, the Court's findings & rulings are:

<b>Sentences Reform Act of 1989</b> Offender Status (Check One)    Release Eligibility (Check One)		Concurrent with: N/A	Pretrial Jail Credit Period(s): From <u>12/19/01</u> to <u>12/24/01</u>  From _____ to _____  From _____ to _____  From _____ to _____
<input type="checkbox"/> Mitigated <input checked="" type="checkbox"/> Standard <input type="checkbox"/> Multiple <input type="checkbox"/> Persistent <input type="checkbox"/> Career <input type="checkbox"/> Repeat Violent	<input type="checkbox"/> Mitigated 20% <input type="checkbox"/> Mitigated 30% <input checked="" type="checkbox"/> Standard 30% <input type="checkbox"/> Multiple 35% <input type="checkbox"/> Persistent 45% <input type="checkbox"/> Career 60% <input type="checkbox"/> Violent 100%	<input type="checkbox"/> Multiple Rapist 100% <input type="checkbox"/> Child Rapist 100% <input type="checkbox"/> Repeat Violent 100%  <input type="checkbox"/> 1 <sup>st</sup> Degree Murder <input type="checkbox"/> School Zone <input type="checkbox"/> Gang Related	Consecutive to: N/A
Sentenced To: <input checked="" type="checkbox"/> TDOC <input type="checkbox"/> County Jail <input type="checkbox"/> Workhouse Sentence Length: <u>1</u> Years <u>6</u> Months _____ Days _____ Hours _____ Weekends <input type="checkbox"/> Life <input type="checkbox"/> Life w/out Parole <input type="checkbox"/> Death Mandatory Minimum Sentence Length: _____ 39-17-417, 39-13-513, 39-13-514 in School Zone or _____ 55-10-401 DUI 4 <sup>th</sup> Offense Period of incarceration to be served prior to release on probation: <u>0</u> Months _____ Days _____ Hours _____ Weekends Minimum service prior to eligibility for work release, furlough, trusty status and rehabilitative programs: _____ % (Misdemeanor Only) Alternative Sentence: <input checked="" type="checkbox"/> Probation <input type="checkbox"/> Diversion <input type="checkbox"/> Community Based Alternative - Specify _____ <u>1</u> Years <u>6</u> Months _____ Days    Effective: <u>Upon entry of plea</u>			
<b>Court Ordered Fees and Fines:</b> \$ _____ Criminal Injuries Compensation Fund \$ _____ Sex Offender Tax \$ <u>376.00</u> Court Costs    Cost to be Paid by \$ <u>250.00</u> Fine Assessed <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> State \$ _____ Other:		Restitution: Victim Name <u>Silver Spoon Diner</u> Address <u>169 Fisk Avenue</u> <u>Springfield, FL 80808</u> Total Amount <u>\$1,935.00</u> Per Month <u>\$150</u>  <input type="checkbox"/> Unpaid Community Service: _____ Hours _____ Days _____ Weeks _____ Months	

Special Conditions     The Defendant having been found guilty is rendered infamous and ordered to provide a biological specimen for the purpose of DNA analysis.  
 Pursuant to 39-13-524 the defendant is sentenced to community supervision for life following sentence expiration.

Defendant may work off the restitution as agreed by the victim. Defendant receives credit for time served. The probation period will not be extended for nonpayment of restitution.

Cardozo  
Judge's Name

Justice A. Cardozo  
Judge's Signature

9-19-02  
Date of Entry of Judgment

## EXHIBIT D

City of Springfield Police Department  
Retrieved by: Officer Knight  
Source: R. Gardner cell  
05/14/08

From: Taylor  
cmn 2 ur hse  
CB: 615-555-0101  
Fri, May 11, 06:09:07 pm

To: Taylor  
n... im going 2 pty w Sid  
won gm w crden  
clbr8  
CB: 615-555-9901  
Fri, May 11, 06:10:23 pm

From: Taylor  
sty thr. . . im cmn we nd 2 tlk  
CB: 615-555-0101  
Fri, May 11, 06:11:01 pm

To: Taylor  
Bye... tlk ltr... not n mood  
aftr ystrdys tlk  
CB: 615-555-9901  
Fri, May 11, 06:12:13 pm

From Taylor  
Cnt blfev ur actin like this  
ILuvU... hope ur happy  
CB: 615-555-0101  
Fri, May 11, 06:15:38 pm

From: Taylor  
Hvn fun wout me???  
CB: 615-555-0101  
Fri, May 11, 08:58:19 pm

From: Taylor  
wht... not tlkn 2 me nymor??  
CB: 615-555-0101  
Fri, May 11, 09:49:07 pm

From: Taylor  
im tryn 2 fnd austns  
CB: 615-555-0101  
Fri, May 11, 11:57:45 pm

From Taylor  
wht...now ur avoidn me?  
thro it all away...  
CB: 615-555-0101  
Sat, May 12, 12:27:09 am

From: Taylor  
U alwys hv ur phn... pls...  
tlk 2 me...  
CB: 615-555-0101  
Sat, May 12, 12:55:15 am

From: Taylor  
Wtn 4 u at cofee shak  
CB: 615-555-0101  
Sat, May 12, 01:05:58 am

From: Taylor  
Adn... CB NOW!  
CB: 615-555-0101  
Sat, May 12, 01:07:48 am

To: Taylor  
ntwd!!  
CB: 615-555-9901  
Sat, May 12, 01:08:21 am

From: Taylor  
Cmn 2 shak?  
CB: 615-555-0101  
Sat, May 12, 01:08:48 am

To: Taylor  
No... I am happier with Sidney  
Leave me alone please  
Goodnight... Bye!  
CB: 615-555-9901  
Sat, May 12, 01:09:31 am



**EXHIBIT E**

**Crist County Medical Center**

1008 Fisk Avenue, Springfield, FL 80808  
1-800-445-0001


*Proudly Serving Crist County for 15 years*

State of Florida

County of Crist

I have made a diligent search upon request, and I hereby certify that the medical records produced herein are true and exact copies of the entire medical record for Sidney Young, DOB 4/2/90 in the Crist County Medical Center records for this patient. These records have not been altered in any manner, and I have not omitted any portion of the medical record. The medical record consists of 47 pages.

  
\_\_\_\_\_  
J. Scott Simpson  
Custodian of Records

Sworn and subscribed before me.  


This 30 day of May, 2008

My commission expires: 1/18/11



**Crist County Medical Center**  
*Proudly Serving Crist County for 15 Years*

Patient: Young, Sidney C.  
 SSN: 999-000-0000  
 DOB: 4-2-1990

Admission: 5-12-08  
 Attending: Batson

***History of the Present Illness:***

Sidney comes into the emergency department today by ambulance with a chief complaint of pain in the right leg and foot. Sidney has suffered a serious injury with unknown consequences due to a single-car collision with a telephone pole. During admission, Sidney explained that the car collided with the pole on Sidney's side of the car. Sidney was not the driver. Sidney reported not to know what happened because of concentration on texting at the time. Patient states short-term memory loss from scene of accident to arrival in ER. Differential diagnosis of hysterical post-traumatic amnesia. Sidney reports no prior illness or problems except numbness of the fingers at times when extremely active with the hands. Sidney's leg and ankle appear swollen and broken. Numerous contusions about the head, chest, and right arm and hand. Injuries concentrated to the right side of the body. Patient is alert and cognizant but appears to be somewhat impaired. Patient is asking normal questions like, "Where is Riley?" and "Do my parents know where I am?"

***Plan of Care:***

Immediately work up the patient, begin to monitor vital signs, take for CT and MRL Also have X-ray of the right leg and foot, as well as the right arm and hand, to see the location and severity of the break.

<b>Emergent Care?</b>	N	<b>Intelligence:</b>	Normal
<b>Pain Level:</b>	9 (1-10)	<b>Mood:</b>	Pain
<b>BP:</b>	140/90	<b>Speech:</b>	labored
<b>Pulse:</b>	90	<b>Orient:</b>	alert
<b>Temp:</b>	98 F	<b>Memory:</b>	Normal
<b>Eyes:</b>	Bloodshot	<b>Appearance:</b>	Normal
<b>Skin:</b>	Normal	<b>Allergies:</b>	None
<b>Abdomen:</b>	Normal	<b>Medication:</b>	None
<b>Neck:</b>	Normal	<b>Other:</b>	_____
<b>Chest/Lungs</b>	Normal		<u>Order BAC test for patient per Baston</u>
<b>Back:</b>	Normal		_____
<b>Extremities:</b>	R leg/foot		_____

Print date: 05/30/08 By: MGT Discharge Date: 05/13/08

*Test back  
 BAC .09  
 C Batson 5/12/08*

## RELEVANT STATUTES

### **Florida Statute § 316.90: Use of text messaging device while driving prohibited**

#### Definitions

(a) In this section the following words have the meanings indicated . . .

\*\*\*\*\*

(2) "Text messaging device" means a hand held device used to send a text message or an electronic message via a short message service, wireless telephone service, or electronic communication network.

#### Use of text messaging device while driving prohibited

(b) Subject to subsection (c) of this section, a person may not use a text messaging device to write or send a text message while operating a motor vehicle in motion or in the travel portion of the roadway. Violation of this statute is negligence per se.

#### Global positioning systems or contact of 9-1-1 systems

(c) This section does not apply to the use of:

- (1) A global positioning system; or
- (2) A text messaging device to contact a 9-1-1 system.

### **Florida Statute § 316.193: Driving under the influence; penalties**

(1) A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and:

- (a) The person is under the influence of alcoholic beverages . . . when affected to the extent that the person's normal faculties are impaired;
- (b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- (c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

\*\*\*\*\*

**Florida Statute § 322.2616: Suspension of license; persons under 21 years of age; right to review**

(1)(a) Notwithstanding s. 316.193, it is unlawful for a person under the age of 21 who has a blood-alcohol or breath-alcohol level of 0.02 or higher to drive or be in actual physical control of a motor vehicle.

\*\*\*\*\*

**Florida Statute § 316.614: Safety belt usage**

(1) This section may be cited as the “Florida Safety Belt Law.”

\*\*\*\*\*

(4) It is unlawful for any person:

(a) To operate a motor vehicle in this state unless each passenger and the operator of the vehicle under the age of 18 years are restrained by a safety belt . . . .; or

(b) To operate a motor vehicle in this state unless the person is restrained by a safety belt.

(5) It is unlawful for any person 18 years of age or older to be a passenger in the front seat of a motor vehicle unless such person is restrained by a safety belt when the vehicle is in motion.

\*\*\*\*\*

(8) Any person who violates the provisions of this section commits a nonmoving violation, punishable as provided in chapter 318.

\*\*\*\*\*

(10) A violation of the provisions of this section shall not constitute negligence per se, nor shall such violation be used as prima facie evidence of negligence or be considered in mitigation of damages, but such violation may be considered as evidence of comparative negligence, in any civil action.

**Florida Statute § 768.36: Alcohol or drug defense**

\*\*\*\*\*

(2) In any civil action, a plaintiff may not recover any damages for loss or injury to his or her person or property if the trier of fact finds that, at the time the plaintiff was injured:

(a) The plaintiff was under the influence of any alcoholic beverage or drug to the extent that the plaintiff's normal faculties were impaired or the plaintiff had a blood or breath alcohol level of 0.08 percent or higher; and

(b) As a result of the influence of such alcoholic beverage or drug the plaintiff was more than 50 percent at fault for his or her own harm.

**Florida Statute § 768.81: Comparative fault**

\*\*\*\*\*

(2) **Effect of contributory fault** – In an action to which this section applies, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

(3) **Apportionment of damages** – In cases to which this section applies, the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability.

\*\*\*\*\*

**(4) Applicability--**

(a) This section applies to negligence cases. For purposes of this section, “negligence cases” includes, but is not limited to, civil actions for damages based upon theories of negligence, strict liability, products liability, professional malpractice whether couched in terms of contract or tort, or breach of warranty and like theories. In determining whether a case falls within the term “negligence cases,” the court shall look to the substance of the action and not the conclusory terms used by the parties.

## **JURY INSTRUCTIONS**

### **Negligence**

Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances.

### **Violation of Statute as Negligence Per Se**

A violation of section 316.90, Florida Statutes, is negligence. If you find that Riley Gardner violated this statute, then Riley Gardner was negligent. You should then decide whether such negligence was a legal cause of Sidney Young's injuries.

### **Violation of Statute, Ordinance, or Regulation as Evidence of Negligence**

A violation of sections 316.193, 316.614, and/or 322.2616, Florida Statutes, is evidence of negligence. It is not, however, conclusive evidence of negligence. If you find that Riley Gardner or Sidney Young violated one or more of these statutes, you may consider that fact, together with the other facts and circumstances, in deciding whether such person was negligent.

### **Legal Cause**

Negligence is a legal cause of injury if it directly and in natural and continuous sequence produces or contributes substantially to producing such injury, so that it can reasonably be said that, but for the negligence, the injury would not have occurred.

In order to be regarded as a legal cause of injury, negligence need not be the only cause. Negligence may be a legal cause of injury even though it operates in combination with the act of another, some natural cause, or some other cause if the negligence contributes substantially to producing such injury.

Negligence may also be a legal cause of injury even though it operates in combination with the act of another, some natural cause, or some other cause occurring after the negligence occurs, if such other cause was itself reasonably foreseeable, and the negligence contributes substantially to producing such injury, or the resulting injury was a reasonably foreseeable consequence of the negligence and the negligence contributes substantially to producing it.

### **Burden of Proof on Main Claim**

If the greater weight of the evidence does not support one or more of Sidney Young's claims, your verdict should be for Riley Gardner on those claims.

If, however, the greater weight of the evidence supports one or more of Sidney Young's claims, then you shall consider the defenses raised by Riley Gardner.

### **Comparative Negligence**

On the defense of comparative negligence, the issue for you to decide is whether Sidney Young was himself/herself negligent and, if so, whether that negligence was a contributing legal cause of injury or damage to Sidney Young.

### **Burden of Proof on Defense Issues; Apportionment of Fault**

If the greater weight of the evidence does not support Riley Gardner's defenses and the greater weight of the evidence does support Sidney Young's claim, then your verdict should be for Sidney Young in the total amount of his/her damages.

If, however, the greater weight of the evidence shows that both Sidney Young and Riley Gardner were negligent and that the negligence of each contributed as a legal cause of injury sustained by Sidney Young, you should decide and write on the verdict form what percentage of the total negligence of both parties to this action was caused by each of them.

### **Greater Weight of the Evidence**

"Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in the case.

**Please Note:**

**The State rules for the Mock Trial Competition have been removed and the Miami-Dade County Public Schools Division of Social Sciences Mock Trial Rules have been inserted. The M-DCPS District Mock Trial Rules are to be followed for the Miami-Dade County Public Schools Division of Social Sciences Mock Trial Competition.**



# MIAMI-DADE COUNTY MOCK TRIAL COMPETITION

## RULES AND GUIDELINES

1. Each school should be prepared to be both plaintiff and defense. The same students could comprise both teams, or different students could be on each team. Schools may alternate teams or team members from one round to the next.
2. All team members **must be** students in an elective law education class during the current school year. Each school has the option of fielding a team which may include two members who are not currently enrolled in an elective law education class; however, these two students must have been enrolled in a law education class during a previous year.
3. Names of all potential participants must be submitted on an eligibility list. Only students whose names appear on the eligibility list will be permitted to participate in the finals. Schools must adhere to county interscholastic competition guidelines. (See *Student Standards for Participation in Interscholastic Extracurricular Student Activities* from Florida State Statute 1006.15)
4. Students of either gender may portray the role of any witness. The competition will strive to make roles gender neutral. However, some cases will warrant a specific gender role. In such cases, students of either gender may portray the role but the gender of the witness may not change from the case as presented.
5. Witness statements may be used by attorneys to “refresh” a witness’ memory and/or impeach the witness’ testimony in court.
6.
  - A. The trial proceedings will be governed by the Florida Mock Trial Simplified Rules of Evidence. Other more complex rules may not be raised at the trial. Questions or interpretations of these rules are within the discretion of the District Committee, whose decision is final.
  - B. Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness’ statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection outside the scope of the problem.

If, on cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness’

statement or affidavit and does not materially affect the witness' testimony.

Adding facts which are inconsistent with the witness statement or with the Stipulated Facts and which would be relevant with respect to any issue in the case is not permitted. Examples include, but are not limited to (a) creating a physical or mental disability, (b) giving a witness a criminal or bad record when none is suggested by the statements, (c) creating facts which give a witness standing as an expert and (d) materially changing the witness' profession, character, memory, mental or physical ability from the witness' statement by testifying to "recent changes."

- C. If certain witnesses are stipulated to as experts, their expert qualifications may not be challenged or impeached by the opposing side. However, their testimony concerning the facts of the case may be challenged.
- D. On direct examination, the witness is limited to the facts given. If a witness testifies in contradiction to the facts given in the witness statement, that testimony may be impeached on cross-examination by the opposition through the correct use of the affidavit. The procedure is outlined in the Simplified Rules of Evidence and Procedure.
- E. On cross-examination, no restrictions will be made on the witness or the cross-examination, except that the answer must be responsive and the witness can be impeached.

If the attorney who is cross-examining the witness asks a question, the answer to which is not contained in the stipulations or affidavit then the witness may respond to that question with any answer as long as the answer **does not contradict or materially change** the affidavit.

If the answer by the witness is contrary to the stipulations or the affidavit, the cross-examination attorney may impeach the witness.

- F. Use of **voir dire** examination of a witness is not permitted.
2. If a witness invents an answer which is likely to affect the outcome of the trial, the opposition may object and request a bench conference. Objections may be made only by the attorney who will conduct cross-examination or direct examination of that witness. The judge will decide whether or not to allow the testimony. The scoring panel may consider such inventions of facts in making the decision concerning the best team presentation.
  3. All participants agree that the witness statements are signed and sworn affidavits and

are admissible for reasons of impeachment only. Proper procedure for impeachment must be followed as referred to in the **Simplified Rules of Evidence and Procedure**.

4. Each school must have a bailiff available for every round. The bailiff must have a stopwatch and know how to use it. Failure to meet these requirements will result in the loss of 1 (one) point per round.
5. The bailiff will stop the clock for the following:
  - objections
  - motions
  - presentation of documents
  - bench conferences

Timing will halt during objections and responses to objections. **Timing will halt during the admission of documentary evidence.** In the interest of fairness, time extensions may be granted at the discretion of the presiding judge. **All objections should be argued in open court, not at the bench.** Timing will resume after the judge has ruled on the objection. Students should avoid the use of tactics to “run out the clock” during the admission of evidence. Judges will be instructed to consider this in scoring.

6. “Bailiff” will be provided and will keep the official time of the trial. The bailiff’s role will be expanded to time the **10 minute debrief session, at 5 minutes per side**. This will help ensure that the schedule is maintained. The bailiff will announce to the court when time has expired in each of the separate segments of the trial.
7. The rules of evidence governing trial practice have been modified and simplified for the purpose of this mock trial competition. The *2008 Florida High School Mock Trial Competition Simplified Rules of Evidence and Procedure* rules are to govern the proceedings. Other more complex rules are not to be raised during the trial enactment. Debate rather than legal standards is deemed to be more appropriate for judging this competition.
8. Attorneys will keep their presentations within the following time guidelines. If time runs out once a question has been asked, it can be answered.

OPENING STATEMENTS (ARGUMENTS)	5 minutes for each side
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DIRECT EXAMINATION (PROSECUTION)	7 minutes per witness
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CROSS EXAMINATION (DEFENSE)	6 minutes per witness
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RE-DIRECT EXAMINATION (PROSECUTION)	2 minutes per witness
DIRECT EXAMINATION (DEFENSE)	7 minutes per witness
CROSS EXAMINATION (PROSECUTION)	6 minutes per witness
RE-DIRECT EXAMINATION (DEFENSE)	2 minutes per witness
PREPARATION FOR CLOSING ARGUMENTS	3 minutes total
CLOSING STATEMENTS (ARGUMENTS)	8 minutes for each side

\* Petitioner may save maximum of **one minute** for rebuttal on closing statement.

9. Three minutes will be provided immediately before closing arguments solely for the purpose of preparing closing arguments. Student attorneys will be allowed to confer with each other, **but no other communication will be allowed in the courtroom during the recess**. The bailiff shall time the recess and all participants and observers shall remain seated during the recess.

10. The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; **the Prosecution/Plaintiff may reserve one minute or less of the closing time for a rebuttal**. The Prosecution/Plaintiff must notify the judge before beginning closing argument if the rebuttal time is requested. The Prosecution's/Plaintiff's rebuttal is limited to the scope of the defense's closing argument.

Attorneys are not required to use the entire time allotted for each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

11. No student attorney will have **less than 2 nor more than three of the following 8 attorney roles**. The same student **can not** do both opening and closing arguments. The attorney roles for each team will be divided as follows:

- I. Opening Statements
- II. Direct/Re-direct Examination of Witness #1
- III. Direct/Re-direct Examination of Witness #2
- IV. Direct/Re-direct Examination of Witness #3
- V. Cross Examination of Witness #1
- VI. Cross Examination of Witness #2

- VII. Cross Examination of Witness #3
- VIII. Closing Arguments and Prosecution/Plaintiff optional rebuttal.

Opening statements must be given by both sides at the beginning of the trial.

**The attorney who will examine a particular witness on direct examination is the only person who may make the objections to the opposing attorney's questions of that witness on cross examination, and the attorney who will be cross-examining a witness will be the only one permitted to make objections during the direct examination of that witness.**

Each team must call the three witnesses listed in the case materials. Witnesses must be called only by their own team and examined by both sides. Witnesses may not be recalled.

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial.

To permit judge(s) to hear and see better, attorneys will stand during opening and closing statements, direct and cross-examinations, all objections, and **whenever addressing the presiding judge(s)**. Students may move from the podium only with the permission of the presiding judge(s).

12. In each competition, whether petitioner or respondent, the school will field a team of:

- 3 Attorneys
- 1 Alternate Attorney (optional)
- 3 Witnesses
- 1 Bailiff (minimum)

The alternate attorney may sit at the table and assist the other three attorneys, but **may not** address the court and **must** be identified as an alternate at the start of the trial.

13. Instructors, coaches, and observers shall not talk to, signal, communicate with, or coach their teams during the trial. This rule remains in force during any recess time that may occur. Team members within the bar area may, among themselves, communicate during the trial; however, no disruptive communication is allowed.

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. **Only the student attorneys participating in this round may communicate with each other.**

14. Witnesses are to remain in the courtroom during the entire trial, and **may not**

**communicate with attorneys (except when being examined).**

15. For purposes of the competition, students will assume this is a jury trial. The scoring judges will act as the jury. Students should address the judges as a jury.
16. Team members, alternates, attorney coaches, teacher coaches, and any other persons directly associated with a mock trial team, except those authorized by the Executive Committee, are **not allowed to view other teams in competition as long as their team remains in the competition.** Judges should maintain order in the courtroom. If observers are disorderly, they will be asked to leave the premises.
17. If a team fails to adhere to the established guidelines/rules set forth for the competition, a judge may (depending upon the circumstances of the violation) reduce his/her rating of that team.
18. The student attorneys are to point out violations of the rules and guidelines during the trial through objections and side bars. However, if a coach feels a violation has not been remedied, he/she can appeal to the Executive Committee.

Both teams involved will designate one team member to present its case to the judging panel and one member of the Executive Committee. Each team will have three minutes for the presentation.

If the judges and member of the Executive Committee determine that a possible rules violation exists or that there exists a legitimate dispute over facts which would constitute a possible rules violation, the scoring judges will be allowed to consider the dispute before finalizing their scoring. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the judges and the Executive Committee. **Their decision will be FINAL.**

19. Students may read other cases, materials, and articles in preparation for the mock trial. **However, students may cite only the case materials given, and they may introduce into evidence only those documents given in the official packet.** In addition, students may not use, even for demonstrative purposes, any materials which are not provided in the official packet. The following are **not** permitted: props, costumes, and/or enlargements.
20. All participants are expected to display proper courtroom decorum and sportsmanlike conduct.

Videotaping is allowed in each trial only with the consent of the teacher/coaches from **both** teams **and** the presiding judge(s).

## SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

In American courts, elaborate rules are used to regulate the kind of proof (i.e., spoken testimony by witnesses or physical evidence) that can be used in trials. These rules are designed to ensure that both parties receive a fair hearing. Under the rules, any testimony or physical objects deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial may be kept out of the trial.

If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. Usually, the attorney stands and says, "I object, your honor," and then gives the reason for the objection. Sometimes the attorney whose questions or actions are being objected to will then explain why he or she thinks the rule was not violated. The judge then decides whether the rule has been violated and whether the testimony or physical items must be excluded from the trial.

Official rules of evidence are quite complicated. They also differ depending on the kind of court where the trial occurs. For purposes of this mock trial competition, the rules of evidence you will use have been made less complicated than those used in actual courts. The ideas behind these simplified rules are similar to actual rules of evidence.

### **A. Witness Examination/Questioning**

#### **1. Direct Examination**

Attorneys call and question their own witnesses using direct as opposed to leading questions. Example:

Elyse Roberts is called by her attorney to explain the events leading up to her filing suit against Potomac County.

*"Ms. Roberts, where do you work? How long have you worked there? Please describe your working relationship with Mr. Kevin Murphy during the first month of employment. Why did you meet with your supervisor, Fran Troy? Did you seek advice from a therapist during this time?"*

Questions such as the above do not suggest the answer. Instead, they introduce a witness to a particular area of importance, leaving the witness free to relate the facts. Obviously, the witness will have been prepared to answer such questions in a particular way. But the question by its terms does not "lead" to the answer.

#### **a. Leading Questions**

A **leading question** is one that suggests the answer. It does not simply call the witness' attention to a subject. Rather, it indicates or tells the witness what the answer should be about that subject. **Leading questions** are **not** permitted on direct examination, but questions on cross-examination should be leading.

Examples:

*“Mrs. Roberts, despite repeated invitations, you chose not to participate in office social functions, correct?”*

*“Isn't it true, that due to all the stress from work you decided to go to a therapist?”*

These questions are obviously in contrast to the direct examination questions in the preceding section. **Leading questions** suggest the answer to the witness. This is **not** proper for direct examination when a party is questioning its own witness.

## **b. Narration**

While the purpose of direct examination is to get the witness to tell a story, the questions must ask for **specific information**. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. At times, the witness' answer to a direct question may go beyond the facts asked for by the question asked. Narrative questions are objectionable.

Example Narrative Question:

*“Ms. Roberts, please tell the court about the events that contributed to your decision to sue the county.”*

Narrative Answer:

*“It all began the night I found out that it was the county that was dumping on my land. At first I thought it was my neighbors, but they denied having any part in the dumping. I decided to watch my vacant lot and see if I could catch the person responsible. I drove down to my lot the night of the 13<sup>th</sup> and parked in a place where I could see the lot but no one could see me...”*

## **c. Scope of Witness Examination**

Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge.

## **d. Character**

For the purpose of this mock trial, evidence about the character of a party may not be introduced unless the person's character is an issue in the case.

### **i. Methods of Proving Character (Section 90.405)**



1. Reputation: When evidence of the character of a person or of a trait of his/her character is admissible, proof may be made by testimony about his/her reputation.
2. Specific Instances of Conduct: When character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of his/her conduct.

**e. Refreshing Recollection**

When a witness uses a writing or other item to refresh his/her memory while testifying, an adverse party is entitled to have such writing or other item produced at the hearing to inspect it, to cross-examine the witness thereon, and to introduce it, or in the case of writing, to introduce those portions which relate to the testimony of the witness, in evidence.

**2. Cross Examination** (questioning the opposing side's witnesses)

Cross-examination **should** involve leading questions. In fact, it is customary to present a witness with a proposition and ask the witness to either agree or disagree. Thus, good cross-examination calls only for a yes or no answer.

Examples:

*“Mr. Roberts, in direct examination you testified that litigation was very stressful for you, correct? In fact you were so stressed that you did work at home or called in sick. Isn't this true?”*

*“As an assistant district attorney, you knew that trying only three cases while settling 75 cases was not a job performance your supervisor would rate highly, didn't you?”*

*“Thus given the stress you felt, your poor attendance at work and poor job performance, it was not unusual for your supervisor to transfer you to another Bureau, was it?”*

Leading questions are permissible on cross-examination. Questions tending to evoke a narrative answer should be avoided.

**a. Scope of Witness Examination**

Cross-examination is not limited. Attorneys may ask questions of a particular witness that relate to matters brought out by the opposing side on direct examination of that witness, matters relating to the credibility of the witness, and additional matters otherwise admissible, that were not covered on direct examination.

## **b. Impeachment**

On cross-examination, the attorney may want to show the court that the witness should not be believed. A witness' credibility may be impeached by showing evidence of the witness' character and conduct, prior convictions, and prior inconsistent statements. If the witness testifies differently from the information in their sworn affidavit, it may then be necessary to "impeach" the witness. That is, the attorney will want to show that the witness previously said something that contradicts the testimony on the stand.

### **i. Impeachment Procedure**

Impeachment may be done by comparing what a witness says on the witness stand at trial to what is contained in the witness' affidavit. By pointing out the differences between what a witness now says and what the witness' affidavit says, the attorney shows that the witness has contradicted himself or herself.

### **ii. Who May Impeach?**

Any party, including the party calling the witness, may attack the credibility of a witness by:

1. Introducing statements of the witness which are inconsistent with his/her present testimony;
2. Showing that the witness is biased;
3. Attaching the character of the witness in accordance with the state mock trial competition rules of evidence and procedure;
4. Showing a defect of capacity, ability, or opportunity in the witness to observe, remember, or recount the matters about which he/she testified; and
5. Proof by other witnesses that material facts are not as testified to by the witness being impeached.

### **iii. Section 90.610 Conviction of Certain Crimes as Impeachment**

A party may attack the credibility of any witness, including an accused, by evidence that the witness has been convicted of a crime if the crime was punishable by death or imprisonment in excess of 1 year under the law under which he was convicted, or if the crime involved dishonesty or a false statement regardless of the punishment, with the following exceptions:

1. Evidence of any such conviction is inadmissible in a civil trial if it is so remote in time as to have no bearing on the present character of the witness.
2. Evidence of juvenile adjudications is inadmissible under this subsection.

**iv. Section 90.614 Prior Statements of Witness**

1. When witness is examined concerning his prior written statement or concerning an oral statement that has been reduced to writing, the court, on motion of the adverse party, shall order the statement to be shown to the witness or its contents disclosed to him.
2. Extrinsic evidence of a prior inconsistent statement by a witness is inadmissible unless the witness is first afforded an opportunity to explain or deny the prior statement and the opposing party is afforded an opportunity to interrogate him on it, or the interests of justice otherwise require. If a witness denies making or does not distinctly admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. This subsection is not applicable to admissions of a party-opponent.
3. Re-direct and re-cross examination/questioning. If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness' truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Re-cross examinations follows re-direct examination but is limited to the issues raised on re-direct only and should avoid repetition. The presiding judge may exercise reasonable control over questioning so as to make questioning effective to ascertain truth, avoid needless waste of time, and protect witnesses from harassment.

## B. Objections

An attorney can object any time the opposing attorneys have violated the rules of evidence. The attorney wishing to object should **stand up and do so at the time of the violation**. When an objection is made, the judge may ask the reason for it. Then the judge may turn to the attorney whose question or action is being objected to, and that attorney usually will have a chance to explain why the judge should not accept the objection. The judge will then decide whether a question or answer must be discarded because it has violated a rule of evidence or whether to allow the question or answer to be considered as evidence. The legal term “objection sustained” means that the judge agrees with the objection and excludes the testimony or item objected to. The legal term “objection overruled” means that the judge disagrees with the objection and allows the testimony or item to be considered as evidence.

### 1. Standard Objections on Direct and Cross Examination

1. **Irrelevant Evidence:** *“I object, your honor. This testimony is irrelevant to the facts of this case.”*
2. **Leading Questions:** *“Objection. Counsel is leading the witness.”* Remember, this is **only** objectionable when done on direct examination (Ref. Section A1.a).
3. **Narrative Questions and Answers:** may be objectionable (Ref. Section A1.b).
4. **Improper Character Testimony:** *“Objection. The witness’ character or reputation has not been put in issue or “Objection. Only the witness’ reputation/character for truthfulness is at issue here.”*
5. **Hearsay:** *“Objection. Counsel’s question/the witness’ answer is based on hearsay.”* If the witness makes a hearsay statement, the attorney should also say, *“and I ask that the statement be stricken from the record.”*
6. **Opinion:** *“Objection. Counsel is asking the witness to give an opinion.”*
7. **Lack of Personal Knowledge:** *“Objection. The witness has no personal knowledge that would enable him/her to answer this question.”*
8. **Lack of Proper Predicate:** Exhibits will not be admitted into evidence until they have been identified and shown to be authentic (unless identification and/or authenticity have been stipulated). Even after proper predicate has been laid, the exhibits may still be objectionable due to relevance, hearsay, etc.
9. **Ambiguous Questions:** An attorney shall not ask questions that are capable of being understood in two or more possible ways.
10. **Non-responsive Answer:** A witness’ answer is objectionable if it fails to respond to the question asked.

**11. Argumentative Question:** An attorney shall not ask a question which asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. However, the Court may, in its discretion, allow limited use of argumentative questions on cross-examination.

**12. Unfair Extrapolation/Beyond the Scope of the Statement of Facts**

Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation. Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral.

Note: Fair extrapolations may be allowed, provided reasonable inference may be made from the witness's statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection Outside the Scope of the Problem. If in CROSS examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony.

**13. Asked and Answered:** *“Objection. Your honor, the question has already been asked and answered.”*

**14. Objections Not Recognized in This Jurisdiction:** An objection which is not contained in these materials shall not be considered by the Court. However, if counsel responding to the objection does not point out to the judge the application of this rule, the Court may exercise its discretion in considering such objection.

**Note:** Attorneys should stand during objections, examinations, and statements. No objections should be made during opening/closing statements but afterwards the attorneys may indicate what the objection would have been. The opposing counsel should raise his/her hand to be recognized by the judge and may say, “If I had been permitted to object during closing arguments, I would have objected to the opposing team’s statement that \_\_\_\_\_.” The presiding judge will not rule on this objection individually and no rebuttal from the opposing team will be heard.

**15. Opinions of Witnesses**

**1. Expert Opinion**

**1. Section 90.702 Testimony by Experts**

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education

may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.

2. **Section 90.703 Opinions on Ultimate Issue**

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it included an ultimate issue to be decided by the trier of fact.

3. **Section 90.704 Basis of Opinion Testimony by Experts**

The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, him at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence.

4. **Expert Opinion (additional information)**

An expert shall not express an opinion as to the guilt or innocence of the accused.

2. **Lay Opinion**

1. **Section 90.701 Opinion Testimony of Lay Witnesses**

If a witness is not testifying as an expert, his testimony about what he perceived may be in the form of inference and opinion when:

1. The witness cannot readily, and with equal accuracy and adequacy, communicate what he has perceived to the trier of fact without testifying in terms of inferences or opinions and his use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and
2. The opinions and inferences do not require a special knowledge, skill, experience, or training.

2. **Lay Opinion (additional information)**

All witnesses may offer opinions based on the common experience of laypersons in the community and of which the witnesses **have first-hand knowledge**. A lay opinion may also be obtained. For example, Sandy Yu, as the personnel director, would know of other complaints of sexual harassment in the office and any formal reprimands, even though he is not an expert in sexual harassment. They may be asked questions within that range of experience. No witness, not even an expert, may give an opinion about how

the case should be decided.

The cross-examination of opinions proceeds much like the cross-examination of any witness. Questions, as indicated above, may be based upon the prior statement of the witness. Inconsistencies may be shown. In addition, the witness may be asked whether he or she has been employed by any party, to show bias or interest. Or a witness giving an opinion may be asked the limits of certainty in that opinion, as follows:

*“Dr. Isaacs, please read this portion of your sworn statement to the court.”*

*“I have studied the records of this case, and have conducted two one-hour interviews with Elyse Roberts on March 29 and 31st. In those interviews, she described to me her family history, her work environment, the actions of her co-workers and supervisor and her resulting feelings.”*

*“This is your statement, is it not, Dr. Isaacs? Ms. Roberts selected you because of your expertise in sexual harassment in the workplace, correct? During your two-hour interview you were only concerned with evaluating Ms. Roberts’ working environment and not other psychological factors that may have caused her problems. Thus you really can’t say that Ms. Roberts’ difficulty on the job was only caused by the actions of Mr. Murphy, can you?”*

The point of these questions is not to discredit the witness. Rather, the objective is simply to treat the witness as a responsible professional who will acknowledge the limits of her or his expertise and testimony. If the witness refuses to acknowledge those limits, the witness then is discredited.

It is always important in cross-examination to avoid arguing with the witness. It is particularly important with an expert. Thus, the cross-examination should be carefully constructed to call only for facts or to draw upon statements the witness has already made.

### 3. **Lack of Personal Knowledge**

A witness may not testify to any matter of which the witness has no personal knowledge. The legal term for testimony of which the witness has no personal knowledge is "incompetent."

## 16. **Relevance of Testimony and Physical Objects**

Generally, only relevant testimony may be presented. Relevant evidence is physical evidence and testimony that makes a fact that is important to the case more or less probable than the fact would be without the evidence. However, if the relevant

evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the court. Such relevant but excludable evidence may be testimony, physical evidence, or demonstrations that have no direct bearing on the issues of the case or do not make the issues clearer.

## 1. **Introduction of Documents, Exhibits, Items, and Other Physical Objects Into Evidence**

There is a special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case, and the attorney must be prepared to its use on that basis. Below are the basic steps to use when introducing a physical object or document for **identification and/or use as evidence**.

1. Show exhibit and have it marked by the judge. Say “Your Honor, I ask that this \_\_\_ be marked for identification as Prosecution’s/Defendant’s Exhibit No. \_\_\_”
2. Show the exhibit to opposing counsel for possible objection. Ask the witness to identify the exhibit. “I now hand you what is marked as Exhibit No. 1. Do you recognize this document?”
3. At this point the attorney may proceed to ask the witness a series of questions about the exhibit.
4. If the attorney wishes to place the document into evidence, say, “Your Honor, I offer this \_\_\_ marked as Prosecution’s/Defendant’s Exhibit No. 1 into evidence and ask the Court to so admit it.”

Court: *“Is there any objection?”*

Opposing Counsel: *“No, your Honor.” or “Yes, your Honor.”* (then state objection).

Court: *“Prosecution’s/Defendant’s Exhibit No. 1 is (is not) admitted.”*

**NOTE: A witness may be asked questions about his/her statement without its introduction into evidence; but to read from it or submit it to the judge, it must first be admitted into evidence. Exhibits can be pre-marked.**

## 17. Hearsay and Exceptions to this Ruling

### 1. **What is Hearsay?**

Hearsay evidence is normally excluded from a trial because it is deemed untrustworthy. “Hearsay” is a statement other than one made by the witness testifying at the trial, offered in evidence to prove that the matter asserted in the



statement is true. An example of hearsay is a witness testifying that he heard another person saying something about the facts in the case. The reason that hearsay is untrustworthy is because the opposing side has no way of testing the credibility of the out-of-court statement or the person who supposedly made the statement. Thus, for example, the following questions would be objectionable as “hearsay” if you are trying to prove that the color of the door was red:

*“Mr. Edwards what color did Bob say the door was?”*

This is **hearsay**. Mr. Edwards is using Bob's statement for him to prove the color of the door. Instead, Bob or someone who saw the door needs to be called to testify as to the color of the door.

## 2. **Reasons for Prohibiting Hearsay**

Our legal system is designed to promote the discovery of truth in a fair way. One way it seeks to accomplish this goal is by ensuring that the evidence presented in court is “reliable”; that is, we can be fairly certain the evidence is true. Hearsay evidence is said to be “unreliable” for four reasons:

1. The hearsay statement might be distorted or misinterpreted by the witness relating it in court.
2. The hearsay statement is not made in court and is not made under oath
3. The hearsay statement is not made in court, and the person who made it cannot be observed by the judge or jury (this is important because the judge or jury should be allowed to observe a witness' behavior and evaluate his/her credibility).
4. The hearsay statement is not made in court and the person who made it cannot be challenged by cross-examination.

## 3. **When Can Hearsay Evidence Be Admitted?**

Although hearsay is generally not admissible, there are certain out-of-court statements that are treated as not being hearsay, and there are out-of-court statements that are allowed into evidence as exceptions to the rule prohibiting hearsay.

Statements that are not hearsay are prior statements made by the **witness himself** and admissions made by a **party opponent**.

### 1. **Exceptions**

Hearsay is not admissible, except as provided by these rules. For purposes of this mock trial, the following exceptions to the hearsay rule will be allowed;

even though the declarant is available as a witness.

1. **Spontaneous Statement**

A statement describing or explaining an event or condition made while the declarant perceived the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.

2. **Excited Utterance**

A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

3. **Medical Statements**

Statements made for the purpose of medical diagnosis or treatment by a person seeking the diagnosis, or made by an individual who has knowledge of the facts and is legally responsible for the person who is unable to communicate the facts, which statements describe medical history, past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to diagnosis or treatment.

4. **Recorded Recollection**

A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. A party may read into evidence a memorandum or record when it is admitted, but no such memorandum or record is admissible as an exhibit unless offered by an adverse party.

5. **Records of a Regularly Conducted Activity**

1. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by testimony of the custodian or other qualified witness, unless the sources of information or other circumstances show lack of trustworthiness. The term “business” as used in this paragraph includes

a business, institution, association, profession, occupation, and calling for every kind, whether or not conducted for profit.

2. No evidence in the form of an opinion or diagnosis is admissible under paragraph (a) unless such opinion or diagnosis would otherwise be admissible if the person whose opinion is recorded were to testify to the opinion directly.

6. **Learned Treatises**

To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in public treatises, periodicals or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness, or by other expert testimony, or by judicial notice.

7. **Then Existing Mental, Emotional, or Physical Condition**

1. A statement of the declarant's then existing state of mind, emotion, or physical sensation, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health, when such evidence is offered to:
  1. Prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when such state is an issue in the action.
  2. Prove or explain acts of subsequent conduct of the declarant.
2. However, this subsection does not make admissible:
  1. An after-the-fact statement of memory or belief to prove the fact remembered or believed, unless such a statement relates to the execution, revocation, identification, or terms of the declarant's will.
  2. A statement made under circumstances that indicate its lack of trustworthiness.

**C. Trial Motions**

**No trial motions are allowed except for special jury instructions as permitted in these case materials.**

**Examples:**

Directed verdict, dismissal, acquittal, motion in limine, motion to sequester witnesses.

**Exception:**

Motion for Recess may only be used in emergency situations.

**D. Attorney Demeanor**

**\*\*See Code of Ethical Conduct**

**Note: Please refer to Official Case Materials for any specific additions relative to this trial.**

## GUIDELINES FOR TEACHER COACHES

### A. **Role of the Teacher Coach**

The teacher coach is expected to help the team members decide which students will play which parts in the mock trial and to assist the students in playing those roles. As part of the sizeable responsibility of acting as team coaches, teachers are responsible for the following areas:

1. **Rules of the Program:** All teachers and teams are expected to adhere to the rules, facts and all other materials provided in the 2011 Mock Trial Competition Case Materials. Therefore, please make sure you are familiar with the Competition rules.
2. **Role Assignments:** Team members should be strongly encouraged to select roles based on their interests and abilities and not on the basis of any gender or cultural stereotypes which might be drawn from the characterizations in the fact pattern.
3. **Team Preparation:** Attorneys will also help coach each team. Teams should prepare both sides of the case and are strongly urged to arrange and conduct preliminary mock trials with other teams prior to competing in the district and circuit competition. Preliminary trials require only one attorney or judge to act as the presiding judge, as it is not necessary to award points to the teams during these practice rounds.
4. **Education:** Education of the students is the primary goal of the Mock Trial Competition. Healthy competition helps to achieve this goal, but teachers are reminded of their responsibility to keep the competitive spirit at a reasonable level. The reality of the adversarial system is that one party wins and the other loses, and teachers should be sure to prepare their teams to be ready to accept either outcome in a mature manner. Teachers can help prepare students for either outcome by placing the highest value on excellent preparation and presentation, rather than on winning or losing the trial.
5. **Observers:** Other classes, parents, and friends of the participants are welcome to attend the trials. **However, please note that space in the courtroom is limited.** The presiding judge may ask overflow observers to leave the courtroom. All observers must be seated during the trial.
6. **Arrival Times:** Teachers are responsible for getting their teams to the assigned courtroom 15 minutes prior to the starting time of each trial.

## GUIDELINES FOR ATTORNEY COACHES

1. Much as you will want to help the students, point them in the right direction, and give them the benefit of your experience, remember that the students will develop a better understanding of the case and learn more from the experience if the attorney coaches do not dominate the preparation phase of the tournament. The preparation phase of the contest is intended to be a cooperative effort of students, teacher and attorney coaches.

2. Avoid (even the appearance of) “talking down” to students and/or stifling discussion through the use of complicated “legalese.”
3. The first session with a student team should be devoted to the following tasks:
  1. Answering questions that students may have concerning general trial practices;
  2. Explaining the reasons for the sequence of events/procedures found in a trial;
  3. Listening to the students’ approach to the assigned case; and
  4. Emphasizing the key points, such as the elements to be proved, and the relevance and importance of available legal authority.
4. Subsequent sessions with students should center on the development of proper questioning techniques by the student attorneys and sound testimony by the witnesses. Here an attorney can best serve as a constructive observer and teacher...listening, suggesting and demonstrating to the team.
5. Attorney coaches **should not** prepare opening statements, closing statements, or questions for the students. Students should be encouraged to do as much of their own preparation as possible.

## **PROFESSIONALISM**

The Florida Bar's Standing Committee on Professionalism's working definition of professionalism:

**Professionalism is the pursuit of practice of the highest ideals and tenets of the legal profession. It embraces far more than simply complying with the minimal standards of professional conduct. The essential ingredients of professionalism are character, competence, and commitment.**

Other thoughts on professionalism:

*"...To me, the essence of professionalism is a commitment to develop one's skills and to apply that responsibility to the problems at hand. Professionalism requires adherence to the highest ethical standards of conduct and willingness to subordinate narrow self-interest in pursuit of the more fundamental goal of public service. Because of the tremendous power they wield in our system, lawyers must never forget that their duty to serve their clients fairly and skillfully takes priority over the personal accumulation of wealth. At the same time, lawyers must temper bold advocacy for their clients with a sense of responsibility to the larger legal system which strives, however imperfectly, to provide justice for all."*

Justice Sandra Day O'Connor

*"Professionalism is no more, and no less, than conducting one's self at all times in such a manner as to demonstrate complete candor, honesty, and courtesy in all relationships with clients, associates, courts, and the general public. It is the personification of the accepted standard of conduct so long recognized and observed by able lawyers throughout history, that a lawyer's word is his bond. It encompasses the fundamental belief that a lawyer's primary obligation is to serve his or her client's interests faithfully and completely, with compensation only a secondary concern, and with ultimate justice as the final goal."*

Don Jackson, former chair of the Senior Lawyer Division of the American Bar Association

## **OATH OF ADMISSION TO THE FLORIDA BAR**

The general principles which should ever control the lawyer in the practice of the legal profession are clearly set forth in the following oath of admission to the Bar, which the lawyer is sworn on admission to obey and for the willful violation to which disbarment may be had.

“I do solemnly swear:

“I will support the Constitution of the United States and the Constitution of the State of Florida;

“I will maintain the respect due to courts of justice and judicial officers;

“I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

“I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

“I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

“I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

“I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone’s cause for lucre or malice. So help me God.”