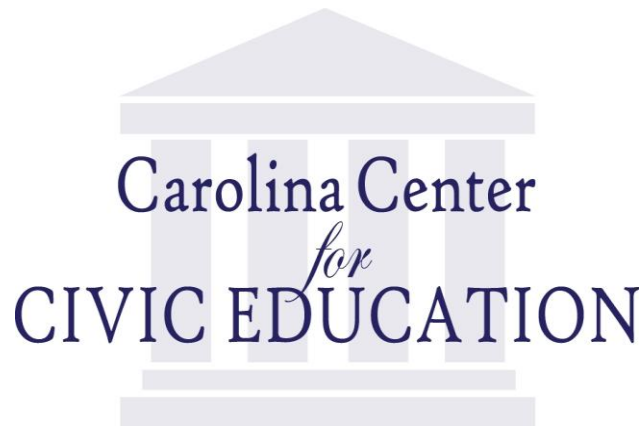


# *2009-2010 Competition Case*



*PRESENTS*

## *The North Carolina Advocates for Justice High School Mock Trial Competition*



**2009 – 2010**

***North Carolina Advocates for Justice  
High School Mock Trial Program***



***STATE OF NEW JUSTICE***

***V.***

***JACKSON***



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## **STATE OF NEW JUSTICE V. JACKSON**

### **CASE SUMMARY**

On October 19, 2009, three students, Terry Jackson, Shaun Anderson and Jane Anderson, left the campus of West High School for lunch in Terry's car. The lunch hour was only 50 minutes. West High did not have a closed campus and allowed students to freely leave campus. Nevertheless, in an effort to discourage students from leaving, the school had a strict parental notification policy regarding absences or tardies after a lunch period. A student's parents were contacted when a student received two absences or tardies following a lunch period in any semester.

Following lunch at Alice's Restaurant, a local favorite, the students began the drive back to campus. They were going to be running it close in terms of time. Jane Anderson said that they had to hurry as she already had one tardy and did not want her parents notified they left campus. Terry said not to worry.

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

As the car approached Magnolia, Terry saw another car in the middle of the street with its left turn signal flashing. Terry moved to the far right to pass and make a right turn onto

Magnolia. At Jane's request, Terry was also texting a message on his/her cell phone to another student to tell the student to make up an excuse for Jane if she was late to class.

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

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

**Stipulations**

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

**Witnesses**

**State**

Chris Jones

Pat Martin

Officer Kelly Demlong

**Defendant**

Terry Jackson

Shaun Anderson

Tracy Roller

**Exhibits**

1. Government Rollover Ratings
2. Drivers License Report
3. Warning
4. Consumer Reports, August 2009

## THE APPLICABLE LAW

### **NJS 13 – 1102 Negligent Homicide; classification**

- A. A person commits negligent homicide if with criminal negligence such person causes the death of another person. Negligent homicide is a class 4 felony.
- B. A person commits negligent homicide in the second degree if with criminal negligence such person causes the death of another person but there exists an intervening cause of a significant nature established that contributes to the death of such other person. Negligent homicide in the second degree is a class 1 misdemeanor.

### **NJS 13 – 110 Rules of Criminal Procedure**

- A. In a criminal prosecution for negligent homicide evidence of the deceased's conduct may be admitted for the purpose of determining criminal negligence. The burden of proving such contributory factors shall rest upon the defendant or defendants.
- B. In criminal prosecution of a youth under the age of eighteen (18) for negligent homicide, evidence of the negligence of adults in a supervisory role where failure to supervise is present may be offered for the purpose of establishing an intervening cause of third party criminal liability. The burden of proving such third party criminal liability as an intervening cause shall rest upon the defendant or defendants.

### **NJS 13 – 105 Definitions**

In this title, unless the context otherwise requires:

- 6. "Culpable mental state" means intentionally, knowingly, recklessly or with criminal negligence as those terms are thusly defined:
  - a. "Intentionally" or "with the intent of" means, with respect to a result or to conduct described by statute defining an offense, that a person's objective is to cause that result or to engage in that conduct.
  - b. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

- c. “Recklessly” means, with respect to a result or to a circumstance described by statute defining an offense that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in that situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.
- d. “Criminal negligence” means, with respect to a result or to a circumstance described by statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in that situation.

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

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



standard of care that a responsible person would observe in the situation.’ NJ 13 – 105(6)(d).” *State v. Shumway*, 137 N.J. 585, 588, 672 S.E.2d 929, 932 (1993)

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

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

## AFFIDAVIT OF CHRIS JONES

1. My name is Chris Jones. I am sixty-five (65) years old. I reside at 3103 N. Saguaro, which is approximately three blocks from West High School. I have lived in my current location for thirty years. My two grown children both attended West High School.
  
2. The neighborhood around West High School is residential. There are longstanding neighborhoods on three sides of the school, across from Elm, Cholla, and Cutler streets. Magnolia, which runs along the front of the campus, is a normal cross street.
  
3. The speed limit on Elm, Cholla and Cutler streets is 30 miles per hour. The speed limit on Magnolia is 40 miles per hour.
  
4. Over the years, the traffic around the high school has grown enormously. It seems like every student gets a car these days when they turn sixteen years old. Students always seem to be coming and going from the school between about 7:30 in the morning and about 4:00 in the afternoon. At my house, I often hear the squeal of tires and the roar of “souped up” engines from the students while I tend to my yard.
  
5. Around lunchtime, from approximately 11 a.m. to 1:30 p.m., the number of students racing to and from the high school is enormous. Other neighbors and I have complained to the principal and the school board about our belief that the safety of the surrounding neighborhoods is compromised when the students try to hurry off campus to eat lunch and then return. I am so concerned that I generally try to never drive by the school at this time. This means I am limited in not leaving or returning to my house during this period of the day, which is very frustrating. Obviously, sometimes I cannot avoid driving at this time but I sure try.
  
6. On October 19, 2009, I had a doctor’s appointment at 1:30 p.m. I tried to get a later one but would not have been able to see the doctor for three days unless I took this

appointment. As a result, I was leaving my house around 12:50 to 12:55 to go to the doctor. I went down to Elm and made a right turn to go down to Magnolia.

7. I drove to the corner of Elm and Magnolia and stopped to turn left onto Magnolia. Elm is a normal residential street with no line down the middle of the road. I stopped in the middle of the street to wait for the traffic on Magnolia to allow me to turn left. It was around 1:00 p.m. in the afternoon, probably a few minutes before the hour. The sun was shining and it was a pretty October day in New Justice. I remember I was thinking we were actually enjoying almost fall-like conditions.
8. As I waited to turn left, a student began to cross Elm walking a bicycle. The child had been standing on the corner when I stopped and looked to see what I was going to do. Since I had to wait for the traffic to stop before I could turn left, I signaled that he/she could cross. There is not a marked crosswalk at this corner. In fact, there are no marked crosswalks at any of the corners around the West High campus. Nevertheless, there are signs on all the surrounding streets that say to watch out for pedestrians. There is one on Elm about half a block before the intersection with Magnolia.
9. At about this time, I don't know if I heard or sensed a car coming behind me. I looked up in my rear view mirror and saw a white Ford Explorer coming very fast behind me. My first thought was they are going too fast – I bet it is kids going to the high school. The entrance to the parking lot is on Magnolia and so students often go fast down Elm so they can turn on Magnolia and go to the parking lot. As I watched the car, and it all happened so fast, maybe a few seconds, I thought to myself, "I hope they stop and don't rear-end my car."
10. I quickly looked forward to see if I could turn, and saw that the student and the bike were just now passing in front of my car and were almost to the corner. At that moment, I heard an awful squeal of brakes and tires. I was sure I was going to be hit! I closed my eyes. The next thing I knew, I heard a terrible crash but I did not feel anything.

11. I opened my eyes and saw the student with the bike still in the street just a foot or so from my car. I also saw the Explorer where it apparently crashed into the traffic signal pole. The Explorer was lying on its left side and was almost completely on the sidewalk. I sat in my car and was literally shaking. I do not know how long I just sat in my car and stared. Several students came to the Explorer and helped the occupants from the car. They all looked like students.
  
12. The police and fire departments arrived in what seemed like just minutes. I felt in a daze. I believe some of the students in the car were taken to the hospital. I do not know what happened to them.
  
13. I spoke to a police officer who told me I could move my car from Elm. I told the police everything I could remember about the accident. It all happened so fast. The police took my name and said they would contact me if they needed anything else.
  
14. In 2008, my daughter Katherine was seriously injured in an automobile accident in Lawyerville. She was hit by a nineteen-year old (UNJ) student who was intoxicated. Luckily, Katherine is fine now except for some lingering back pain. However, for a while, we thought she was going to be paralyzed. Young people never seem to realize the fact that an automobile can be a dangerous weapon.

FURTHER AFFIANT SAYETH NOT.

Chris Jones

Chris Jones

## AFFIDAVIT OF PAT MARTIN

1. My name is Pat Martin. I was born on April 12, 1992. I am a senior at West High School.
  
2. I am a classmate of Terry Jackson and Shaun Anderson. We are all in the same grade and have gone to the same school since third grade. I am a friend of Terry Jackson. We used to be really close in elementary school and our freshman year at West High. However, over the course of high school we have not done as much together as we used to. I know Shaun also but we have never been close friends. I also knew Shaun's sister Jane a little. I mean she was younger than we were so we never paid much attention to her.
  
3. I live about half a mile from school and generally ride my bike. I also generally go home for lunch because I can "chill out" and watch TV. My parents are not home and I have the house to myself. It only takes about 5-10 minutes to go each way depending on how long I have to wait to cross Elm because of the traffic.
  
4. Classes at West High are fifty minutes in length. They begin at five minutes past the hour and end at five minutes before the hour. This allows us ten minutes to go from one class to another. My lunch period is from 12:05 to 12:55. However, my next class does not start until 1:05. Thus, I usually stay at home until about 12:50 before hopping on my bike and going back. I have never been tardy returning from lunch this year.
  
5. When we were freshmen, both Terry Jackson and I rode our bikes to school. Terry lives about a quarter mile or so farther from the school than I do. He/she used to come over and we would ride together. He/she would then often come over for lunch. However, as I said, we do not hang out together as much since freshman year. Also, I do not think Terry has ridden his/her bike at all since he/she got his/her Explorer from his/her parents for his/her sixteenth birthday.

6. Many kids leave campus for lunch. Most go out for food and complain about how little time they have. That is because they go to places that are far away for their “favorite grub.” Also they sit around, talk until the last minute, and then are late if they hit a red light. I don’t think getting back in time is so hard, but everyone thinks I am a “geek” for going home for lunch.
7. On October 19, 2009, I went home for lunch. I watched two reruns of South Park on Comedy Central and ate a cheese sandwich. I left as they began the commercials at the end of the show. I cannot believe how many commercials there are at the end of a show. They could add an easy three to five minutes if they did not have so many commercials. My parents won’t let us have a TiVo, so this is even more frustrating.
8. I rode to the corner of Elm and Magnolia across from school. I reached the corner and got off my bike to cross the street. You have to be careful at the streets around the school because there are a lot of students driving around, especially around lunchtime.
9. I looked and saw a car stopping to turn left. I was going to wait until they were gone, when the “old fogey” driving signaled me to cross. I thought, “Alright, you don’t have to ask me twice.” I started to walk my bike across the street. I was looking no place in particular and just thinking about how I really did not want to go to my next class, which was Physics.
10. I was about two-thirds of the way across the street and just passing the car when I looked up Elm. I froze because I saw Terry’s Ford Explorer speeding towards me. I did not see Terry. I think he/she was bending down. I thought “Terry, don’t hit me!”
11. The next thing I remember is seeing Terry looking up at me and the car swerving up on the curb by the school. The car seemed to bounce and start to swerve again. It was almost to me and I still thought I was going to be hit. Then it flipped on its side and slid past me. It made a horrible screeching sound. I could not believe I was not hit, not even my bike.

12. I saw the car go by me and it just slammed into the pole on the corner that held the street light. Everything happened so fast and yet it seemed like slow motion. I ran across the rest of the street and threw down my bike. I ran to the car with a group of other students. I was going to give Terry a piece of my mind. He/she almost killed me.
  
13. When we got to the car, Terry was helping Shaun from the car. He/she was crying about his/her arm. Terry looked like he/she had a cut on his/her head. Shaun was yelling for Jane. I thought he/she was crazy. I did not see Jane. However, some kids later called to us that Jane was in the grass back where the car flipped. I never saw her leave the car.
  
14. The police and fire department arrived and took Terry, Shaun, and Jane away. I told them I saw the whole thing. I was not going to tell them that Terry almost hit me. I did not want to get him/her in trouble. But the person in the car told them about me and so I had to come clean and tell them how close it really was.
  
15. I don't know why the car flipped. I honestly thought Terry was going to swerve back into the street and hit me.

FURTHER AFFIANT SAYETH NOT.

*Pat Martin*

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Pat Martin

## **AFFIDAVIT OF OFFICER KELLY DEMLONG**

1. My name is Kelly Demlong. I am a police officer with the City of Libertyville Police Department. My badge number is 4672. I have been a police officer for fourteen (14) years.
  
2. I was trained in accident investigation techniques at the time of my initial training at the Libertyville Police Academy. I have also received advanced training in accident investigation at the New Justice Department of Public Safety Accident Investigation Institute in 1998. I became a certified accident reconstructionist by the National Safety Council in 2001 following completion of the appropriate class and field work. I teach a course in accident investigation skills to new recruits at the New Justice Regional Police Academy.
  
3. I have investigated hundreds of traffic accidents during my career as a Libertyville Police officer and now am part of a special group that is called to investigate rollover accidents. I became a part of this special "rollover group" in 2005.
  
4. I received a call at 1325 on October 19, 2009 to report to the corner of Magnolia and Elm near West High School. Officers on the scene had reported a single car rollover with serious injuries, and I was dispatched to conduct the accident investigation. Apparently, the officers at the scene believed that one or more of the injured parties may not survive and criminal charges might be filed.
  
5. Upon my arrival at the scene, I found a 2004 white Ford Explorer on its side against a telephone pole. I took measurements of the skid marks and evaluated the other physical evidence such as the vehicle itself. I also interviewed witnesses to the accident that including Pat Martin, Chris Jones, and several high school students.
  
6. I also traveled to the hospital and interviewed Shaun Anderson. Shaun Anderson told me that Jane was sitting forward in the back seat asking Terry to send a text message to



a friend right before the accident. Jane was not wearing a seat belt because it always wrinkled her skirt. Shaun looked up and saw the pedestrian and bike and yelled, "Watch Out." Shaun said Terry yelled "Oh No" and the next thing Shaun remembers they were rolling over and hitting the pole. Shaun does not remember Jane being thrown from the car.

7. I also interviewed Terry Jackson at the hospital with his/her parents' permission. Terry stated he/she was driving down Elm returning to school from lunch. Jane was worried about being late to her next class and having her parents notified that she had left campus under the school policy. Terry said he/she told her not to worry; they would be back in time. Terry stated he/she felt they had plenty of time. He/she does not know exactly how fast he was going on Elm but is sure it was not faster than traffic normal goes on the street. Terry insisted he/she was not speeding. Based on my field investigation, I cited Terry at the hospital for speeding.
8. With regard to the accident, Terry stated it was simply a freak occurrence. He/she was sending the text message for Jane when Shaun yelled "Watch Out." Terry looked and saw Pat Martin crossing the street. Terry said he/she put on the brakes and the car pulled to the side and hit the curb. Terry was turning back into the road when the car rolled over and slid into the pole.
9. From the length of the skid marks, the damage to the vehicle, and the distance the vehicle rolled, based on my training, I calculated the speed of the Explorer to be between 47 and 50 miles per hour immediately before the accident. This is substantially above the 30-mile per hour speed limit for a residential street and a definitely hazardous speed so close to a high school with a known high amount of pedestrian traffic.
10. There are several signs around the West High campus warning motorists to watch and use caution because of pedestrians. The signs are large and a reflective yellow color. They read "Caution Pedestrians."

11. I have investigated several accidents in the last few years around West High School. In the last four years, 88% of the accidents in a five-mile radius around West High School have involved students who were speeding. The police force generally places officers a few blocks from the school every few months to ticket speeders. It is hoped this will slow everyone down. I must admit, however, that many of the speeding tickets that are written are not to students. Many people use Elm as a regular thoroughfare and often travel at a speed near forty (40) miles an hour.
12. Based on all the information I gathered, the physical evidence and my conversations with all the witnesses, I believe the accident occurred because Terry Jackson was driving at a greatly excessive speed and was inattentive to his/her situation and surroundings which caused a situation to develop where there was a substantial and unjustified risk of harm to the people in the Explorer and anyone around it. When Shaun screamed "Watch Out," Terry Jackson panicked and jerked the wheel. The vehicle skidded at a high rate of speed and hit the curb causing the right side wheels to lose contact with the ground. Terry then attempted to quickly turn back to the right that caused the unbalanced vehicle to tip even more. Given the rate of speed and the jerky movements, Terry Jackson lost control of the vehicle. The vehicle rolled over and slid into the pole.
13. Studies have shown that the Explorer has a high center of gravity and greater risk of rolling over. However, the vehicle does not roll over by itself. It was the rate of speed and inattentiveness that caused Terry Jackson to lose control of the vehicle. In losing control, there were quick changes of direction that may have contributed to the vehicle rolling over.
14. As part of my investigation, I also checked Terry Jackson's driving record. In 2007 at the age of 16 he received a speeding ticket for going 48 miles per hour in a 35 mile per hour zone. Terry went to traffic safety school and the violation was erased. The ticket was given at a location about 30 miles from West High School in Attorney Junction.
15. After completing our investigation, the Libertyville Police Department arrested Terry Jackson on November 15, 2009 for manslaughter and negligent homicide.

FURTHER AFFIANT SAYETH NOT.

*Kelly Demlong*

Officer Kelly Demlong

Libertyville Police Department

## AFFIDAVIT OF TERRY JACKSON

1. My name is Terry Jackson. I was born on October 3, 1991. I am a senior at West High School. On October 18, 2009, I was involved in a motor vehicle accident while driving my 2004 Ford Explorer. I was eighteen at the time of the accident.
2. I received my driver's license following my sixteenth birthday. My parents said they would buy me a car if I took the full drivers education course at West High School. This class was both class work and actual driving. I thought the class was only for "geeks". However, I willingly took the class in exchange for my parents buying me a Ford Explorer. It was a cool car. I could pack in lots of my friends to go to dances and games. Since I got an A, my parents even threw in a new cell phone for my birthday.
3. I am really a safe driver. Mr. Maxwell taught the driver education course at West High School. He was a very strict teacher, especially in the actual driving segment. We were drilled in defensive driving skills and techniques. We even took a field trip to New Justice International Raceway where a race driver friend of Mr. Maxwell's lectured us. We were also allowed to drive a Monte Carlo around the track. It was very cool.
4. I have received one ticket. A few months after I got my license, I received a speeding ticket in Attorney Junction. I was leaving a friend's house and was late getting home for dinner. I did not want to get in trouble with my parents since they have this thing about the whole family being home for dinner. I did not think I was speeding but the police officer said I was. It was terrible. My parents grounded me and took away the car for two months. I learned that nothing is worth getting a ticket.
5. I have driven to school since I reached sixteen and got the Explorer. It is an easy drive to school because I only live about a mile away. I know this is really close but it is much better driving than riding my bike like I used to do. Also now I can leave campus and go with my friends to lunch. Over the last few years, I must have driven to and from school about a thousand times. I could drive there with my eyes shut.

6. I really like West High School. It is a great school and a pretty campus. I am the Student Body President this year. I am planning to go to the University of New Justice next year and study astronomy. They have a great astronomy department. I am in the top 5% of my senior class. Until the accident, life was pretty wonderful.
7. I still cannot believe the accident really happened. Shaun, Jane and I went to lunch like we had done a hundred times before. It was a normal lunch and we had a good time. We left to return to school in plenty of time. We are all careful about that because of the school's parental notification policy for absences or tardies after a lunch period.
8. I was driving back to school on Jefferson Avenue. That is not the way we went to the Alice's Restaurant but I thought it might be faster going back. Boy was I wrong. About halfway to school, at the intersection of Jefferson and Main, the city was installing sewer pipe. They had the entire intersection closed. We had to turn around and backtrack. This made us a little late going back. Jane was concerned because she already had one tardy and thought we would be late. I told her not to worry. I was sure we could make it.
9. We made good time on the way and turned onto Elm next to the school. I told everyone to gather their stuff so we could all go to class as soon as I turned onto Magnolia and went into the parking lot. Jane leaned up between the seats and asked me to text our friend Cheryl to make up an excuse for Ms. Henry in World History if Jane was late. Jane's parents won't let her text under her cell phone plan. I told Jane that sending the text might make us later, but I started to text Cheryl anyway.
10. All of a sudden, Shaun yelled, "Watch Out!" I looked up and saw Pat Martin crossing Elm in front of us. I had been looking that way just a second ago and I swear there was nothing but a gray car with its left turn signal flashing waiting to turn left. I had moved to the far right so I could go around the car and turn right onto Magnolia. I immediately hit the brakes pretty hard.

11. I do not think I turned the wheel. I only remember putting on the brakes. Anyway, the car seemed to swerve to the right and bumped up onto the curb. I knew from class that it would be harder to stop on uneven ground, so I was going to turn back onto the road and maybe try to do a U-turn and avoid everything. However, before I could do anything, the car went airborne and we rolled. I don't know what happened. Once we rolled, there was nothing I could do, and we went into the traffic pole.
12. When we hit the pole, I hit my head on the side window or support; I am not sure which one. It hurt some and started to bleed, but that was the only injury I had. I was real lucky. My head was bleeding badly but it turned out not to be too serious. It looked worse than it was and I only needed eight stitches.
13. After the accident, we had to stand up and climb out the passenger door window. I unhooked my seat belt and helped Shaun out. There were several other students who helped. Shaun was screaming about his/her shoulder hurting. I looked for Jane but did not see her. I figured she must have climbed out the back of the car.
14. Once I was out of the car, several people made me lie down. The blood was going in my eyes. I asked about Shaun and Jane and they said not to worry. The fire department was there very quickly and sent me to the hospital. They were concerned about a possible neck injury and concussion, so they put me on a backboard. Luckily, I did not suffer any such injuries.
15. In the hospital, my parents and I spoke to Officer Demlong. I stated everything I could remember about how the accident happened. I learned that Shaun was going to be fine, but that Jane was seriously injured. I was shocked. Apparently, she had not been wearing her seatbelt and was thrown out when the car rolled. I thought she was wearing her seatbelt. I always tell everyone to put on his or her seatbelt.
16. At the hospital, Officer Demlong cited me for speeding. I do not believe I was speeding. I know the speed limit is 30 miles per hour, and I feel that is how fast I was going. I was not in any hurry and I was going just what everyone goes on Elm. I was paying attention

to where we were going. There was nothing in front or behind us except for the gray car. I do not know how Pat got in front of us. I never saw Pat until Shaun screamed. I did everything I could to avoid an accident.

17. I know that there is a warning on the sun visor about the Explorer sometimes rolling over. I saw the warning because it is impossible to miss; it is right in front of you. However, I never paid much attention because I never took it off-road or anything. I only drove around town. I admit I never read the entire owner's manual. I only looked in it if I had a question about something. That is what the salesman said it was for.
  
18. I have known the Anderson family and Shaun and Jane since I was a little kid. Shaun is probably my best friend. I am so sorry about Jane's death. I cannot believe she is dead. I know the Andersons think it is my fault, but I swear I was not speeding and I did everything I could to avoid the accident. When the car rolled over there was nothing more I could do. I do not think I will ever be able to put this accident out of my mind.

FURTHER AFFIANT SAYETH NOT

*Terry Jackson*

Terry Jackson

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## AFFIDAVIT OF SHAUN ANDERSON

1. My name is Shaun Anderson. I was born on November 15, 1991. I am a senior at West High School. Jane Anderson was my younger sister. She was born on January 12, 1994. We were both involved in a car accident on October 19, 2009 at the corner of Elm and Magnolia. I was seventeen at the time and Jane was fifteen.
  2. On October 19, 2009, Jane and I went to lunch with Terry Jackson. We all have lunch from 12:05 to 12:55. We left campus in Terry's car, a Ford Explorer. We went to Alice's Restaurant a few miles from campus and shared a pizza. We like to go there for lunch, but sometimes we are almost late getting back to school because they are sometimes busy and it takes 15-20 minutes just to cook the pizza after we order.
  3. After lunch, we all got back in the car to return to school. I am not sure what time we left Alice's, but I did not think we were really late. We try to keep a watch on the time because of our school's parental notification policy. To try to keep students from leaving campus for lunch and to ensure they return, our school has a strict policy that if you are tardy or absent to the class following your lunch period twice during a semester, your parents are contacted. Jane had already been tardy once because her first class after lunch was on the far south side of the campus and a long way from the parking lot.
  4. Our parents have told Jane and me not to leave the school campus except to go home. I am sure they have good intentions, but I do not believe they mean we cannot leave for lunch. The food at school is gross and everyone leaves for lunch, especially if you are a senior.
  5. As we were going back to school, we were driving back on Jefferson Street. At the intersection of Jefferson and Main Street, the entire street was blocked because they were installing a sewer pipe. We had to turn around and detour. Jane commented that we needed to hurry because she could not afford to be late as a result of the road work. She did not want the school to call Mom and Dad. Terry told her not to worry. Terry said that we would be back in time no matter what.
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6. It was almost one o'clock when we turned on Elm. That meant we just had to drive by the school and turn right on Magnolia so we could go in the parking lot. Jane had moved forward in the back seat and asked Terry to text her friend Cheryl and ask her to make up an excuse if Jane was late to class. Jane and I aren't allowed to text on our cell phones. We were all talking how we should grab our stuff and be ready to run for class when we parked.
  7. As Terry was texting the message, I looked forward and saw Pat Martin crossing the street in front of us. I have known both Pat and Terry since third grade. I yelled, "Watch Out" because I was not sure if Terry had seen Pat, and I was afraid. Terry yelled, "Oh No."
  8. The next thing I remember is the car swerving quickly to the right and going on the curb. Then it seemed to jerk back the other way and roll over. It all happened very fast. We were skidding and there was a lot of noise. I was screaming, and I closed my eyes. We hit the pole that supports the traffic light but missed Pat Martin.
  9. When we hit the pole, I jerked violently forward. I was wearing my seatbelt with a shoulder strap. The strap cut into my arm and really hurt. After the accident, I could hardly stand the pain in my shoulder and chest. I was eventually taken to the hospital. I had a bruised chest, a broken collarbone, and some ligament tears in my shoulder. The doctor said it was because I was twisted in my seat when we hit but the seat belt kept me from getting hurt worse.
  10. After the accident, I yelled for Jane but she did not answer. Terry and some other kids helped me out of the car and had me lie down. I started to get up because I wanted to see how Jane and Terry were, but the next thing I recall the fire department was there and they made me stay still. Then they sent me to the hospital in an ambulance.
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11. Since the accident, I have learned that Jane was thrown from the vehicle when we rolled. She suffered massive head and internal injuries and died a week later on October 26, 2009. I cannot believe she is dead. I just don't know why this happened.
12. I know that my parents blame Terry for the accident. However, it was just an accident. We had all driven that street a thousand times. I don't know why the car rolled. I do not think we were going too fast. We might have been going over 30 miles per hour, but everyone does. It was a bright sunny day. There was no reason to go that slow.
13. I know there are a lot of kids who cross Elm to get to school. I often cross Elm on my way home. Most kids do not even go to the corner. But we never get hit. This was a freak thing.
14. I know Terry feels terrible about this. Terry would never have risked anyone getting hurt. Also the car was totaled. Terry loved that car. No way would Terry take the risk of an accident. Terry is the only kid I know that actually took a driver education class at school. Terry said it helped with insurance and made him/her a better driver. I think Terry's parents required the class in exchange for the Explorer. Nevertheless, Terry took the class very seriously and got an A.

FURTHER AFFIANT SAYETH NOT.

*Shaun Anderson*

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Shaun Anderson

## AFFIDAVIT OF TRACY ROLLER

1. My name is Tracy Roller. I am the owner of Roller Accident Reconstruction. I am a certified accident reconstruction specialist. I also have extensive training and experience in biomechanics.
2. I graduated from the University of Massachusetts at Amherst in 1985 with a degree in Mechanical Engineering, BSME. I received Biomechanics training in 1999 from the University of New Justice. I graduated from the Northeastern University Accident Reconstruction School in 2000 and received my certification in accident reconstruction.
3. I have received additional training in Automobile Vehicle Dynamics and training in Low Speed Rear Collisions from the Society of American Engineers in 2002. I also attended Accidental Injury: Biomechanics and Prevention training in 2004 from the University of Connecticut, School of Medicine.
4. I was hired by the parents of Terry Jackson to investigate the rollover of their son's/daughter's Ford Explorer on October 19, 2009. I am charging the Jacksons an hourly rate of \$200 per hour for my time and have charged them a total fee to date of \$7,500.
5. As part of my investigation, I visited the scene of the accident and reviewed the physical evidence and skid marks. I talked to Terry Jackson and Shaun Anderson. I also reviewed the accident report filed by the Libertyville Police Department.
6. The primary issues to be investigated were: the speed of the vehicle, the sequence of events before the rollover, whether the rollover was foreseeable or preventable, and whether the injuries and death of Jane Anderson were the result of Terry Jackson ignoring or failing to perceive a substantial and unjustified risk.

7. I accumulated the data for my conclusions that included not only the items derived from my investigation, but also information concerning the weight of the vehicle, statistical information concerning the center of gravity of the vehicle and comparable automobiles, and the opinions of the coroner concerning the injuries suffered by Jane Anderson.
  
8. I performed calculations to determine, among other things:
  - The velocity of the vehicle
  - Sequence of events leading to the accident
  - The forces exerted upon Jane Anderson during the incident
  - The propensity of the vehicle to roll over on an uneven surface
  
9. As a result of my investigation and calculations, I have reached the following conclusions:
  - a. The speed of the vehicle prior to the accident was approximately 42-43 miles per hour;
  - b. The normal speed of traffic on Elm during daylight hours is 40 miles per hour;
  - c. A vehicle traveling at 30 miles per hour on Elm would be unsafe as it would impede normal traffic flow;
  - d. The rolling over of the vehicle was not the responsibility or fault of the driver but is the result of an unusually high center of gravity and track width which causes an unreasonably high likelihood of a rollover when the vehicle is sharply maneuvered on unequal ground.
  
10. It is my opinion that there was not a substantial or unjustified risk that Terry Jackson's driving might cause injury or death to Jane Anderson or anyone immediately prior to the accident. In fact, I believe that Terry would have successfully avoided any mishap if not for the manufacturer of the vehicle constructing it to have a dangerously high center of gravity.

11. The National Highway Traffic Safety Administration (NHTSA) tests cars, trucks and SUVs using two types of tests: the Static Stability Factor, which compares the vehicles track width with its center of gravity height; and the dynamic (vehicle in motion) test. I am familiar with both of these tests through both my work and training. The tests are designed to measure a vehicle's rollover propensity. The Ford Explorer failed the first test and received only 3 out of a possible 5 stars on the second test.
12. Unfortunately, because the vehicle rolled over, the skid marks are not sufficient to determine whether, on the unequal ground of the curb and street, the vehicle would have been able to stop prior to entering the intersection of Magnolia and Elm.
13. Officer Demlong is simply incorrect in concluding that the cause of the accident was unreasonable speed. Further, without the rollover, it is my opinion that Jane Anderson would not have been thrown from the vehicle even though she was not wearing her seatbelt.
14. There are warnings on the driver's sun visor and in the owner's manual that this vehicle is at a higher risk for rollover. However, I believe most people do not read or pay attention to these warnings. The manufacturer should not expect people to be careful about something that the manufacturer can eliminate by redesigning the car to have a lower center of gravity.
15. I acknowledge that neither the U.S. government nor any court to my knowledge has found the Ford Explorer to be unreasonably dangerous. Nevertheless, just because it has not happened yet does not mean it is not true.

FURTHER AFFIANT SAYETH NOT.

Tracy Roller

Tracy Roller

## **EXHIBITS**

1. Government Rollover Ratings
2. Drivers License Report
3. Warning
4. Consumer Reports, August 2009

## **Exhibit 1**

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

Source: National Highway Traffic Safety Administration

**Exhibit 2**

**DRIVER LICENSE REPORT**

**NAME:** Terry C. Jackson

**LIC. NO.** 562348771

**MOVING VIOLATIONS:**

Excessive Speed in violation of NJS 28-701.

December 27, 2007

Completed Traffic School on February 17, 2008



Exhibit 3

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

## **Exhibit 4**

### **CONSUMER REPORTS, AUGUST 2009**

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

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

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