

**2017  
MAINE  
HIGH SCHOOL  
MOCK TRIAL  
CASE**

IN THE SUPERIOR COURT  
OF NEW JUSTICE COUNTY  
STATE OF MAINE

**State of Maine**

)

)

**v.**

)

)

**Terry Jackson**

)

**Criminal Action**

**CR-2017-MT**

*NOTE: The names of the characters, places, events, and circumstances in this mock trial case are intended to be fictitious.*

\*This year's case has been modified from the 2013 Carolina Center for Civic Education, North Carolina Advocates for Justice Summer Camp Case. The case was originally created by the Minnesota State Bar Association and was then adapted and used by the Connecticut

Consortium for Law and Citizenship Education, Inc., and the NCAJ High School Mock Trial Program. With permission of the NCAJ Mock Trial program, the case has been adapted by Amanda J. Doherty, Esq.

## STATEMENT OF THE CASE

On October 19, 2016, three students, Terry Jackson, Sam Anderson, and Jane Anderson, left the campus of West High School for lunch in Terry's car, a Ford Explorer. The lunch hour was only 50 minutes. West High did not have a closed campus and allowed students to freely leave campus. Nevertheless, in an effort to discourage students from leaving, the school had a strict parental notification policy regarding absences or 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.

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

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

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

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

The State has charged Terry Jackson with Manslaughter in the death of Jane Anderson. Terry Jackson also received summonses for the traffic infractions of Speeding and Text Messaging While Operating a Motor Vehicle.

## STIPULATIONS

1. All stipulations included in the problem are authentic and accurate in all respects and no objections to the authenticity of the exhibits will be entertained.
2. 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.
3. 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.
4. The statements of Chris Jones, Pat Martin, Officer Demlong, Terry Jackson, and Sam Anderson are assumed to have been taken between October 19, 2016, and November 15, 2016.
5. 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.
6. No *Miranda* issues exist.
7. No motions to dismiss the indictment are allowed.
8. Maine's statute outlining the civil "no texting while driving" traffic violation may be read into the record by any witness as a factual stipulation if parties so choose, but this is not required.
9. The following *facts* are stipulated:
  - a. On February 7, 2017, the New Justice County Grand Jury returned a one-count indictment charging Defendant Terry Jackson with Manslaughter.
  - b. The State of Maine has a statute prohibiting drivers from texting while operating a motor vehicle.

## **WITNESSES**

The following witnesses will be called by the parties:

### ***Prosecution***

- Officer Kelly Demlong
- Chris Jones
- Pat Martin

### ***Defense***

- Terry Jackson (the Defendant)
- Sam Anderson
- Tracy Roller

All witnesses may be female or male.

## **EXHIBITS**

The following exhibits may be used by teams in competition. They are pre-marked and are to be referred to by number, as follows:

1. Government Rollover Ratings
2. Defendant's Driver's License Violation Report
3. Vehicle Rollover Warning from Defendant's Vehicle
4. Consumer Reports, August 2012
5. Map of Intersection of Elm Street and Magnolia

STATE OF MAINE  
NEW JUSTICE, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
DOCKET NO. CR-2017-MT

STATE OF MAINE

v.

**INDICTMENT**

**TERRY JACKSON**

**THE GRAND JURY CHARGES:**

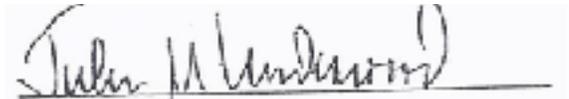
**COUNT 1:**

**17-A M.R.S.A. §203(1)(A)  
Seq No: 4248  
MANSLAUGHTER  
CLASS A**

On or about October 19, 2016, in NEW JUSTICE County, Maine, **TERRY JACKSON**, did recklessly, or with criminal negligence, cause the death of another human being, Jane Anderson.

DATED: February 7, 2017

A TRUE BILL

A handwritten signature in cursive script, appearing to read "Julian M. Anderson", written over a horizontal line.

FOREMAN

## AFFIDAVIT OF CHRIS JONES

My name is Chris Jones. I am sixty-five years old. I reside at 103 Cedar Trail, 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.

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

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

Over the years, the traffic around the high school has grown tremendously. 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.

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 neighborhood is compromised when the students try to hurry off campus to eat lunch and then return. I am so concerned that I try hard to avoid driving by the school at this time. It can be very frustrating to be so limited in my ability to leave or return to my house during the middle of the day, but I just don't feel safe. Obviously, sometimes I cannot avoid driving at this time but I sure try.

On October 19, 2016, I had a doctor's appointment at 1:30 p.m. I tried to get a later one, but I 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 drove down Cypress and turned right on Elm to go to Magnolia.

I drove to the corner of Elm and Magnolia and stopped to turn left onto Magnolia. As I've already mentioned, Elm is a normal residential street with no line down the middle of the road. It has a traffic light on the corner, but the light isn't much help because it's one of those that flashes yellow for caution in all directions. At lunch time with all of the traffic, it can be several minutes before I am able to turn left onto Magnolia.

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.

As I waited to turn, 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 a break in the traffic 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, signs are posted 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.

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."

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 and was astonished that I did not feel anything.

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 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. The occupants all looked like students.

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.

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.

In 2011, my daughter Katherine was seriously injured in an automobile accident in Fairtown. 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.

/s/ Chris Jones

## AFFIDAVIT OF PAT MARTIN

My name is Pat Martin. I was born on April 12, 1999. Terry Jackson, Sam Anderson, and I are all seniors at West High. In fact, we've gone to the same school since third grade. I am a friend of Terry Jackson. We used to be really close in middle school and during our freshman year at West High. However, since freshman year we have not done as much together as we used to. Sam and I have never been close friends. I knew Sam's sister, Jane, a little. Since she was younger than we were, we never paid much attention to her.

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

Classes at West High are fifty minutes 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.

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

Many kids leave campus for lunch. Most go out for food and complain about how little time they have. That is because they go to places that are far away for their "favorite 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.

On October 19, 2016, 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.

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

I looked and saw a car on Elm stopping to turn left. I was going to wait until it had 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.

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!"

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; even my bike wasn't touched.

I saw the car go by me and slam into the pole on the corner that held the traffic 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 sprinted to the car with a group of other students. I was going to give Terry a piece of my mind. S/he almost killed me.

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

The police and fire department arrived and took Terry, Sam, 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 stopped car told them about me, so I had to come clean and tell them how close it really was.

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

/s/ Pat Martin

## **AFFIDAVIT OF OFFICER KELLY DEMLONG**

My name is Kelly Demlong. I am a police officer with the Libertyville Police Department. My badge number is 4672. I have been a police officer for fourteen years.

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 2005. I became a Certified Accident Reconstructionist by the National Safety Council in 2007 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.

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 2010.

I received a call at 1325 on October 19, 2016 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 might not survive and criminal charges might be filed.

Upon my arrival at the scene, I found a 2008 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, including Pat Martin, Chris Jones, and several other high school students.

I also traveled to the hospital and interviewed Sam Anderson. Sam 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 wrinkled her skirt. Sam looked up and saw the pedestrian and bike and yelled, "Watch Out!" Sam said Terry yelled "Oh, no!" and the next thing Sam remembers they were rolling over and hitting the pole. Sam does not remember Jane being thrown from the car.

I also interviewed Terry Jackson at the hospital with his/her parents' permission. Terry stated s/he 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 s/he told Jane not to worry; they would be back in time. Terry stated s/he felt they had plenty of time. Terry does not know exactly how fast s/he was going on Elm but is sure it was not faster than traffic normal goes on the street. Terry insisted s/he was not speeding. Based on my field investigation, I cited Terry at the hospital for speeding, as well as texting while operating a motor vehicle.

With regard to the accident, Terry stated it was simply a freak occurrence. S/he was sending a text message for Jane when Sam yelled "Watch Out!" Terry looked and saw Pat Martin crossing the street. Terry said s/he 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.

Based on my training, from the length of the skid marks, the damage to the vehicle, and the distance the vehicle rolled, I calculated the speed of the Explorer to be between 47 and 50 miles per hour immediately before the accident. This speed is substantially above the 30-mile per hour speed limit for a



## AFFIDAVIT OF TERRY JACKSON

My name is Terry Jackson. I was born on October 3, 1998. I am a senior at West High School. On October 19, 2016, I was involved in a motor vehicle accident while driving my 2008 Ford Explorer. I was eighteen at the time of the accident.

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 required 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 used 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.

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 awesome!

I have gotten one ticket. A few months after I got my license, I received a speeding ticket in Independence City. I was leaving a friend's house and was afraid I would be 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 eating together. 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.

I have driven to school nearly every day since I got the Explorer. It is an easy drive because I only live about a mile away. It is much better driving than riding my bike like I used to do, especially when the weather is bad. 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.

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

I still cannot believe the accident really happened. Sam, Jane and I went to lunch like we had done a hundred times before. It was a normal lunch; we went to Alice's Restaurant for pizza and shakes. 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.

I decided to drive back to school along Jefferson Avenue. That is not the way we went to the 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 pipes. They had the entire intersection closed, so we had to turn around and backtrack. 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.

We made good time the rest of the way. When we 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.

All of a sudden, Sam 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 before, 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. 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.

When we hit the pole, I hit my head on the side window or support; I am not sure which one. I was real lucky because that was my only injury. 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.

After the accident, we had to stand up and climb out the passenger door window. I unhooked my seat belt and helped Sam out. Several other students helped us. Sam 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.

Once I was out of the car, several people made me lie down. The blood was going in my eyes. I asked about Sam and Jane, and the other students said not to worry. The fire department arrived 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 was okay.

In the hospital, my parents and I spoke to Officer Demlong. I told him/her everything I could remember about how the accident happened. I learned that Sam 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 their seatbelt.

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. Nothing was in front of or behind us except for the gray car. I do not know how Pat got in front of us. I never saw Pat until Sam screamed. I did everything I could to avoid an accident.

I know that there is a warning on the sun visor about Explorers 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 my car off-road; 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.

I have known the Anderson family and Sam and Jane since I was a little kid. Sam 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.

\_\_\_\_\_  
/s/ Terry Jackson

## AFFIDAVIT OF SAM ANDERSON

My name is Sam Anderson. I was born on November 15, 1998. I am a senior at West High School. Jane Anderson was my younger sister. She was born on January 12, 2001. We were both involved in a car accident on October 19, 2016 at the corner of Elm and Magnolia. I was seventeen at the time and Jane was fifteen.

On October 19, 2016, 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 busy and it takes 15-20 minutes just to cook the pizza after we order.

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 do 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 a long way from the parking lot.

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 think they mean that we can't go out to lunch. The food at school is gross and everyone leaves for lunch, especially if you are a senior.

As we were going back to school, we were driving on Jefferson Street. At the intersection of Jefferson and Main Street, the entire road was blocked because they were installing a sewer pipe. We had to turn around and detour. Jane said 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.

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.

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!"

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.

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.

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.

Since the accident, I have learned that Jane was thrown from the car when we rolled. She suffered massive head and internal injuries and died a week later on October 26, 2016. I can't believe she is dead; I miss her more than I can say. I just don't know why this happened.

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, especially on such a sunny day when it's easy to see. Blaming Terry won't bring Jane back.

I know a lot of kids 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 accident was a freak thing.

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 risk 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.

/s/ Sam Anderson

## **AFFIDAVIT OF TRACY ROLLER**

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

I graduated from the University of Massachusetts at Amherst in 1989 with a degree in Mechanical Engineering, BSME. I received Biomechanics training in 2003 from the University of New Justice. I graduated from the Northeastern University Accident Reconstruction School in 2004 and received my certification in accident reconstruction.

I have received additional training in Automobile Vehicle Dynamics and training in Low Speed Rear End Collisions from the Society of American Engineers in 2006. I also attended Accidental Injury: Biomechanics and Prevention training in 2008 at the University of Connecticut, School of Medicine.

I was hired by the parents of Terry Jackson to investigate the rollover of their child's Ford Explorer on October 19, 2016. 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.

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.

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 Sam Anderson. I also reviewed the accident report filed by the Libertyville Police Department.

In addition, I researched information concerning the weight of the Explorer, 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.

After gathering all of the necessary data standard for such investigations in my field, 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.

After applying the standard industry procedures and calculations to the data in this case, 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 because it would impede normal traffic flow;
- d. The rolling over of the vehicle was not the responsibility or fault of the driver. Instead, it is the result of an unusually high center of gravity and narrow track width, which causes an unreasonably high likelihood of a rollover when the vehicle is sharply maneuvered on uneven ground.

It is my expert 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 else 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.

The National Highway Traffic Safety Administration (NHTSA) tests cars, trucks and SUVs using two types of tests: the Static Stability Factor, which compares the vehicle's track width with the height of its center of gravity; and the Dynamic (vehicle in motion) test. I am familiar with both of these tests through 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.

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.

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.

The Explorer has warnings on the driver's sun visor and in the owner's manual that the 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 a problem that the manufacturer can eliminate by redesigning the car with a lower center of gravity.

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 no agency or court has made such a determination does not mean it is not true.

          /s/ Tracy Roller



<b><u>Government Rollover Ratings</u></b>
<b>Vehicles that tipped up in NHTSA's dynamic rollover test (failing the test)</b>
Chevrolet Equinox 4x4 (2009)
Chevrolet Equinox 4x2 (2009)
Chevrolet Tahoe 4-DR. w/SAB (2008)
Ford Escape 4x2 (2009)
Ford Escape 4x4 (2009)
Ford Explorer 4-DR. (2008)
Ford Explorer Sport Trac (2008)
GMC Yukon 4-DR. (2008)
Mazda Tribute 4x2 (2009)
Mazda Tribute 4x4 (2009)
Mercury Mariner 4x2 (2009)
Mercury Mariner 4x4 (2009)
Mercury Mountaineer (2008)
Pontiac Torrent 4x2 (2010)
Pontiac Torrent 4x4 (2010)
Saturn VUE 4-DR. (2008)
Toyota Tacoma Double Cab (2008)
Toyota Tacoma Extended Cab (2008)
Toyota Tacoma Regular Cab (2008)

Source: National Highway Traffic Safety Administration



**DRIVER LICENSE REPORT**

NAME: Terry C. Jackson  
DOB: 10/03/1998  
LICENSE NO. 562348771

VIOLATIONS:

**Excessive Speed in violation of 29-A MRSA Section 2074.**  
December 27, 2014  
Completed Traffic School on February 17, 2015



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

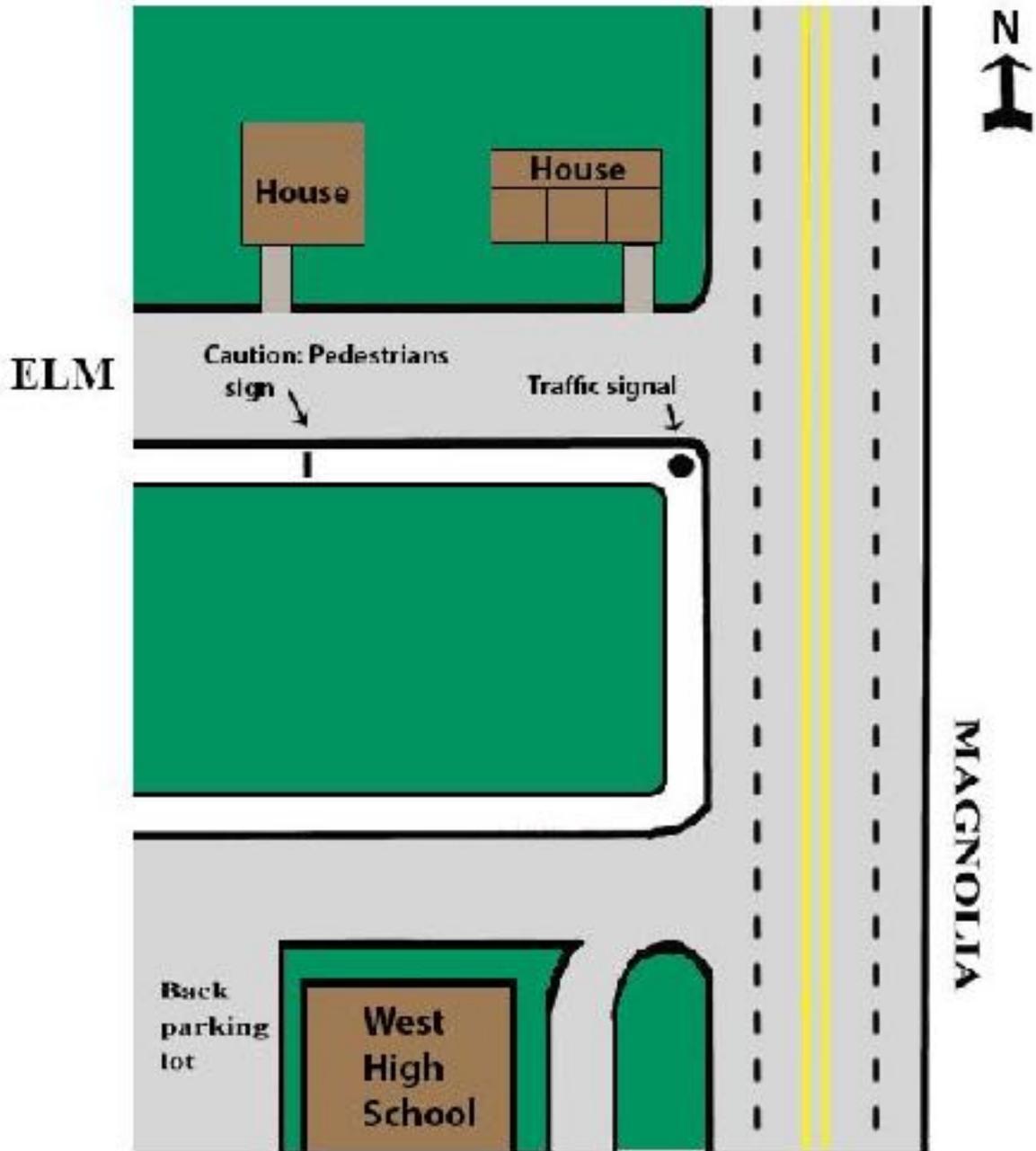


## CONSUMER REPORTS, AUGUST 2012

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

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

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



## LEGAL AUTHORITIES

### *Statutory Law*

#### **17-A M.R.S.A. §203 Manslaughter**

1. A person is guilty of Manslaughter if that person:
  - A. Recklessly, or with criminal negligence, causes the death of another human being.  
Violation of this paragraph is a Class A crime.

#### **29-A M.R.S.A. §2119 Text messaging while operating motor vehicle; prohibition**

1. *Definitions.* As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
  - a. “Cellular telephone” means a device used to access wireless telephone service.
  - b. “Portable electronic device” means any portable electronic device that is not part of the operating equipment of a motor vehicle, including but not limited to an electronic game, device for sending or receiving e-mail, text messaging device, cellular telephone and computer.
  - c. “Text messaging” means reading or manually composing electronic communications, including text messages, instant messages and e-mails, using a portable electronic device. “Text messaging” does not include using a global positioning or navigation system.
2. *Prohibition.* A person may not operate a motor vehicle while engaging in text messaging.
3. *Penalty.* A person who violates this section commits a traffic infraction for which a fine of not less than \$250 and not more than \$500 may be adjudged.

#### **17-A M.R.S.A. §35. Definitions of Culpable States of Mind**

1. “Recklessly.”
  - A. A person acts recklessly with respect to a result of the person's conduct when the person consciously disregards a risk that the person's conduct will cause such a result.
  - B. A person acts recklessly with respect to attendant circumstances when the person consciously disregards a risk that such circumstances exist.
  - C. For purposes of this subsection, the disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.
2. “Criminal negligence.”
  - A. A person acts with criminal negligence with respect to a result of the person's conduct when the person fails to be aware of a risk that the person's conduct will cause such a result.
  - B. A person acts with criminal negligence with respect to attendant circumstances when the person fails to be aware of a risk that such circumstances exist.
  - C. For purposes of this subsection, the failure to be aware of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the

person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

## LEGAL AUTHORITIES

### *Case Law*

***State v. Shanahan***, 404 A.2d 975 (Me. 1979)

A conviction for reckless Manslaughter is supportable by proof that the Defendant consciously disregarded a risk that Defendant's conduct constituted a gross deviation from the conduct of a reasonable man, and that Defendant's conduct caused the death of the deceased.

***State v. Bennett***, 658 A.2d 1058 (Me. 1995)

A conviction for criminally negligent Manslaughter is supportable by proof that the Defendant failed to be aware of a risk that his conduct could cause a death, that this failure to be aware of the risk and subsequent action constituted a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation, and that Defendant's criminally negligent conduct caused a death.

***State v. Perfetto***, 424 A.2d 1095 (ME. 1981)

Every Manslaughter defined by statute is an unintended killing in that the culpable mental state required is either recklessly or with criminal negligence. An intentional or knowing killing is defined by statute as murder.

***State v. Nerison***, 28 N.J. App. 659, 661 n. 1, 625 S.E.2d 735, 737, n.1 (1991). *See also 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).

While it is true that in a criminal prosecution for Manslaughter, the contributory negligence of the deceased is not a defense, the trier of fact may still consider the decedent's conduct when determining whether the defendant's act was criminally negligent.

IN THE SUPERIOR COURT  
OF NEW JUSTICE COUNTY  
STATE OF MAINE

<b>State of Maine</b>	)	
	)	
v.	)	<b>Criminal Action</b>
	)	<b>CR-2017-MT</b>
<b>Terry Jackson</b>	)	

THE CHARGE OF THE COURT

[For information *only* – not to be read in open court]

Members of the Jury:

You are considering the case of the State of Maine versus Terry Jackson. The Defendant in this case has been indicted by the Grand Jury of this county for the offense of Manslaughter.

The indictment reads as follows: *(Cover allegations of indictment)*

This indictment was returned into Court on the 7th day of February, 2017.

To this indictment the Defendant has entered a plea of Not Guilty, and this makes the issue which you have been selected, sworn, and impaneled to try.

I caution you that the fact that this Defendant has been indicted by the grand jury is no evidence of her/his guilt. You should not consider the indictment as evidence or implication of guilt. Neither is the plea of Not Guilty to be considered evidence.

This Defendant is presumed to be innocent until proven guilty. The Defendant enters upon the trial in this case with a presumption of innocence in her/his favor. This presumption remains with the Defendant unless and until it is overcome by the State with evidence which is sufficient to convince you beyond a reasonable doubt that the Defendant is guilty of the offense charged

No person shall be convicted of any crime unless and until each element of the crime is proven beyond a reasonable doubt.

The burden of proof rests upon the state to prove every material allegation of the indictment and every essential element of the crime charged beyond a reasonable doubt.

There is no burden of proof upon the Defendant whatsoever, and the burden never shifts to the Defendant to prove innocence. When a defense, except insanity, is raised by the evidence, the burden is on the state to negate or disprove it beyond a reasonable doubt.

However, the state is not required to prove the guilt of the accused beyond all doubt or to a mathematical certainty. A reasonable doubt means just what it says – it is a doubt of a fair-minded, impartial juror, honestly seeking the truth. It is a doubt based upon common sense and reason. It does not mean a vague or arbitrary doubt, but is a doubt for which a reason can be given arising from a consideration of the evidence, a lack of evidence, a conflict in the evidence, or any combination of these.

If after giving consideration to all the facts and circumstances of this case, your minds are wavering, unsettled or unsatisfied, then that is a doubt of the law, and you should acquit the Defendant; but if that doubt does not exist in your minds as to the guilt of the accused, then you would be authorized to convict the Defendant.

If the state fails to prove the Defendant's guilt beyond a reasonable doubt, it would be your duty to acquit the Defendant.

You must determine the credibility or believability of the witnesses. It is for you to determine what witness or witnesses you will believe and which witness or witnesses you will not believe, if there are some you do not believe.

In passing upon their credibility, you may consider all the facts and circumstances of the case, the witnesses manner of testifying, their intelligence, their interest or lack of interest, their means and opportunity for knowing the facts which they testify about, the nature of the facts which they testify about, the probability or improbability of their testimony, and of the occurrences about which they testify. You may also consider their personal credibility insofar as it may legitimately appear from the trial of this case.

When you consider the evidence in this case, if you find a conflict you should settle this conflict, if you can, without believing that any witness made a false statement. If you cannot do this, then you should believe that witness or those witnesses you think most entitled to be believed.

You must determine what testimony you will believe and what testimony you will not believe.

Members of the jury, it is my duty and responsibility to ascertain the law applicable to this case and to instruct you on that law, by which you are bound. It is your responsibility to ascertain the facts of the case from all the evidence presented. It then becomes your duty and responsibility to apply the law I give you in the charge to the facts as you find them to be.

Evidence is the means by which any fact which is put at issue is established or disproved. Evidence includes all the testimony of the witnesses and the exhibits admitted during the trial. It also includes any facts agreed to by counsel. It does not include the indictment or the opening statements and closing arguments by the attorneys.

Evidence may be either direct or circumstantial or both. Direct evidence is evidence which points immediately to the question at issue. Evidence may also be used to prove a fact by inference. This is referred to as circumstantial evidence. Circumstantial evidence is the proof of facts or circumstances, by direct evidence, from which you may infer other related or connected facts which are reasonable and justified in the light of your experience. To warrant a conviction on circumstantial evidence, the proven facts must not only be consistent with the theory of guilt but must exclude every other reasonable theory other than the guilt of the accused. The comparative weight of circumstantial evidence and direct evidence, on any given issue, is a question of fact for the jury to decide.

Testimony may have been given by certain witnesses who, in law, are termed experts. The law permits with expertise in certain areas to give their opinions derived from their knowledge of that area. The weight which is given to the testimony of expert witnesses is a question to be determined by the jury. The testimony of an expert, like that of any other witness, is to be received by you and given only such weight as you it is properly entitled to receive. You are not required to accept the opinion testimony of any witness, expert or otherwise.

You are not required to accept the opinion testimony of any witness, expert or otherwise.

To impeach a witness is to prove that he witness is unworthy of belief. A witness may be impeached by:

- a. Disproving the facts to which the witness testified;
- b. Proof of general bad character;
- c. Proof that the witness had been convicted of a crime involving moral turpitude;
- d. Proof that contradictory statements have previously been made by the witness regarding matters relevant to the witness' testimony and to the case.

If you find that a witness is impeached by b., c., or d., above proof of the general good character of the witness may be shown. The effect of the evidence is to be determined by the jury.

If any attempt has been made in this case to impeach any witness by proof of contradictory statements previously made, you must determine from the evidence:

- A. First, whether any such statements were made;
- B. Second, whether they were contradictory to any statements the witness made on the witness stand; and
- C. Third, whether it was material to the witness' testimony and to the case.

If you find that a witness has been successfully impeached by proof of previous contradictory statements, you may disregard that testimony, unless it is corroborated by other creditable testimony, and the credit to be given to the balance of the testimony of the witness would be for you to determine.

It is for you to determine whether or not a witness has been impeached and to determine the credibility of such witness and the weight the witness's testimony shall receive in the consideration of the case.

Should you find that any witness, prior to the witness's testimony in this case from the witness stand has made any statement inconsistent with that witness' testimony from the stand in this case, and that such prior inconsistent statement is material to the case and witness' testimony, then you are authorized to consider that prior statement, not only for purposes of impeachment, but also as substantive evidence in the case.

This Defendant is charged with the offense of Manslaughter. *(Cover elements and definitions on the "LEGAL AUTHORITIES: Statutory Law page of the materials)*

If, after considering the testimony and evidence presented to you, together with the charge of the Court, you find and believe, beyond a reasonable doubt, that the defendant did, on or about the date and time alleged, commit the offense alleged, you would be authorized to find the defendant guilty the offense, and, in that event, the form of your verdict would be: "We, the jury, find the defendant Guilty."

If you do not believe that the defendant is guilty of any offenses, or if you have any reasonable doubt as to the defendant's guilt, then it would be your duty to acquit the defendant, in which event the form of your verdict would be: "We, the jury, find the defendant Not Guilty."

You are only to be concerned about the guilt or innocence of the defendant. You are not to concern yourselves with punishment.

Whatever your verdict is, it must be unanimous, meaning agreed to by all jury members. The verdict must be signed by one of your members as foreperson, dated, and returned to be published in open Court.

One of your first duties in the jury room will be to select one of your members to act as foreperson, who will preside over your deliberations and who will sign the verdict to which all twelve of you freely and voluntarily agree.

You should start your deliberations with an open mind. Consult with one another and consider each other's views. Each of you must decide this case for yourself, but you should do so only after a discussion and consideration of the case with your fellow jurors. Do not hesitate to change an opinion if convinced that it is wrong. However, you should never surrender an honest opinion in order to be congenial or to reach a verdict solely because of the opinions of the other jurors.

No ruling nor comment which the Court has made during the progress of the trial is to be viewed as the Court's opinion upon the facts of this case, the credibility of the witnesses, the evidence, nor the guilt or innocence of the Defendant.

You may now retire to the jury room, but do not begin your deliberations until you receive the indictment and any evidence which was admitted during the course of this trial.

Bailiff, please escort the jury to their room for deliberations.