

## General Information about the Mock Trial

This is a criminal action for involuntary manslaughter, vehicular homicide, arising from a car crash that may have been caused by defendant's drinking while driving.

One car accident, resulting in two injuries and one fatality.

A 1997 Honda Prelude was East bound on Old K-18 turns into Fifth Street as it enters the \_\_\_\_\_ City Limits. The vehicle continued East at a high rate of speed on Fifth Street. As it approached Kansas Avenue it hit the dip and a hump in the road causing it to go air borne. The driver lost control causing the vehicle to roll twice, landing on its wheels and slide head on into a tree. The driver was pinned behind the steering wheel with facial injuries. The front seat passenger was a female who was ejected from the car when it rolled. She was lying on the road with a broken neck and couldn't move. One of the two back seat passengers was partially ejected, hanging out of the window. The vehicle had rolled over him killing him instantly. The other rear seat passenger had a broken arm. All the occupants of the vehicle were students of the local high school. They all had been drinking.

### Actors

Defense Attorney- Ashley Brown

Prosecutor- Haley Baker

Judge- Mike Foster

Bailiff- Josh Hughes

Corner- Sarah Edwards

Police Officer- Sam Harris

Johnny Smith- Male, Driver, suffered face injuries, pinned in the car

Kyle Johnson- Dead male passenger, back seat partial ejection, vehicle rolled over him

Bailey Williams- Injured female passenger now in a wheel chair sat in the front seat, ejected

Jake Miller- rear seat male passenger with broken arm

## Scenario Description

### I. Opening Section

-- jurors should fill jury box and other actors should be seated in the appropriate spots throughout the courtroom.

**A. call the court to order as judge takes the Bench**

All rise.

*[everyone in courtroom stands up]*

This is the District Court of Wabaunsee County now in session. The Honorable Blaine Carter presiding assisted by **Student Judge** Mike Foster. *[Judge and Student Judge take seats on bench]*

Courtroom Deputy: Please be seated and come to order.

*[everyone sits down]*

**\*\*\*Comments: Judge** will explain the purpose of the mock trial and the nature of the charges (See Scenario Description Below)

On the morning of April 1, 2014 a 1997 Honda Prelude driven by Johnny Smith hit a dip at the intersection of Fifth and Kansas in Alma causing the driver to lose control of the vehicle resulting in a roll-over accident. Kyle Johnson a passenger, was killed in the crash. Others in the vehicle sustained injuries. According to Jake Miller, the driver, 17-year-old Johnny Smith, was driving fast on Fifth Street after consuming beer at a nearby party and texting on a phone. Mr. Smith has been charged with involuntary manslaughter, vehicular homicide, and some traffic offenses.

**\*\*\*Comments:** *The Judge may wish to discuss possible civil liability that also exists and how that would be addressed in a separate trial and could include liability for the defendant's family]*

## **B. JURY SELECTION AND OATH**

Comments about Jury Selection **Judge:** We are now ready to begin our trial.

**Student Judge:** Will Parties state their appearances for the record? *[Each attorney will rise and say their true name. First, the prosecution team, then Defendant's team.]*

Prosecutor: The State appears through Wabaunsee County Norbert Marek and Wabaunsee County Attorney Haley Baker

A. Defense Attorney: Your Honor, Keen Umbehr appears for the defendant *Johnny Smith*. Your Honor, I am Ashley Brown for the defendant *Johnny Smith*.

**Student Judge:** The Courtroom Deputy will give the jury the oath.

**Courtroom Deputy:** Members of the jury, please rise and raise your right hands.

*[jury stands up and each person raises their right hand]*

Members of the jury, do you each solemnly swear that you will fairly try the case now before the court, and that you will render a true verdict according to the evidence?

Jurors *(in unison)*: Yes

**\*\*\*Comments: Judge w/ explain oath and jury instructions**

## **II. Presentation of Evidence**

### **A. Preliminary Jury Instructions**

**Student Judge:** Members of the jury, now that you have promised to be fair to the participants, I will give you some instructions. The job of being a juror is an important one. You must listen carefully to what **each** witness says. If the witnesses tell different stories, it is **your job to decide what really happened**. You must decide who to believe or not to believe. Do not form an opinion until you have heard **all** of the evidence. The defendant is presumed to be innocent. If you were to vote right now, you would have to find the defendant "not guilty" because we have not yet heard any evidence against him. You can only convict if you find that the government has proven its case "beyond a reasonable doubt"

**\*\*\*Comments: Judge w/ explain opening statements & testimony.**

**Student Judge:** Counsel, you may now proceed with your opening statements.

**State:** Ladies and gentlemen of the jury, drinking while driving has become a national epidemic along with distracted driving. Every year, nearly 500,000 people are injured and 6,000 people are killed because drivers are talking, texting and e-mailing behind the wheel. Every 53 minutes on average, someone is killed in a drunk driving crash. Every 90 seconds, someone is injured because of this entirely preventable situation. The evidence will show that this is exactly what happened on April 1, 2014 when Johnny Smith was driving a car on a bright sunny morning. Witnesses will testify that he was sending a text message to his sister while he was driving having consumed beer at a local party. That crash caused the death of 17-year-old Kyle Johnson. It also resulted in serious injuries to another passenger, Bailey Williams. You will hear Ms. Williams describe the lasting impact Mr. Smith's gross negligence and that resulting injuries have had on her quality of life.

**Student Judge:** Thank you. Does the dense wish to make an opening statement?

**Defense Attorney:** Yes. Your Honor. Ladies and Gentlemen of the jury, the evidence will show that while my client may have been texting his sister prior to the crash, he was NOT distracted at the time of the crash (and his alcohol level was below the legal limit). He had already thrown the phone to his passenger's lap and was focused on the road.

This was an unfortunate accident, pure and simple, not the result of inattentiveness or negligence by Mr. Smith.

\*\*\***Comments: Judge** will explain demeanor and keeping an open mind and impartiality.

## **B. THE GOVERNMENTS CASE**

### **1. Direct examination of Witness, Jake Miller)**

**Student Judge:** The government may call its first witness.

**WB:** Your Honor, we call our first witness is Jake Miller.

**Student Judge:** Mr. Miller, please come up to the witness stand and raise your right hand.

**CRD:** Please remain standing. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**Miller:** Yes.

**WB:** Please state your name and age for the record.

**Miller:** My name is Jake Miller. I'm 16 years old now.

**WB:** Tell us what happened on the morning of April 1, 2014.

**Miller:** Well, it was a Tuesday morning and I was riding to with Johnny Smith. My car had broken down and Johnny had given me a ride after seeing my car broke down at the party we attended. Both of us had a few beers before leaving. I got in the rear seat of Johnny's car.

**WB:** What happened then?

**Miller:** Well, Johnny was cruising along Old K-18 East bound at about 50 mph when his cell phone rang. He looked at it and must have seen a text message because he said something like, "Lindsey is driving me crazy." He then started texting – didn't slow down or anything, by this time we were in \_\_\_\_\_ nearing Kansas and the sun was so low it was shining right into the car, which was definitely not cool – made me edgy. He later tossed the phone into my lap – or dropped it –right before the car crashed.

**WB:** Tell us what you remember about the crash.

**Miller:** It's kind of a fuzzy blur, but I remember we hit a dip in the road and then went airborne and rolled the car. The paramedics had to pry me out of the car. They couldn't save the passenger which turned out to be Kyle Johnson.

**WB:** describe your injuries from the crash.

**Miller:** Well, my injuries were a broken arm in which the bone broke the skin. I made weekly visits to the doctor for eight weeks af the crash. The whole thing has been extremely painful.

**WB:** Any long-term injuries consequences from the crash?

**Defense counsel** (standing): Objection, Irrelevant, Your Honor.

**Comments: Judge:** will explain objections and explain that only relevant evidence is admissible.

**Student Judge:** Objection overruled. You may answer the question.

**Miller:** The worst thing is that I can't get the images of the crash out of my head. The crash, Kyle's body on the road and hearing the screams from Bailey keep coming back to me. I'm 16, and things are messed up for me because of this. Johnny had been drinking and then let his sister get under his skin instead of paying attention to the road and he almost cost me my life.

**WB:** Thank you, Jake. Nothing Further.

**Student Judge:** (to defense attorney): Does the defense have any questions for this witness?

<p><b>Comments: Judge</b> will explain cross examination</p>
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## **2. Cross Examination of Witness, Jake Miller**

**Defense counsel :** We do, Your Honor. Mr. Miller, have you ever used a cell phone while operating a vehicle?

**WB** (standing, outraged): Objection! Irrelevant, Your Honor.

**Defense Counsel:** Question withdrawn. Mr. Miller, was there bright sun in your eyes just before the crash?

**Miller:** Yes, that's true.

**Defense counsel:** Isn't it true that you passed two other cars on Old K-18 that morning?

**Miller:** Yes, which is why Johnny should have been driving ever more carefully.

**Defense counsel:** You testified that Mr. Smith tossed the phone, or dropped it, into your lap. Did he say anything to you when he did that?

**Miller:** Other than burping, Not that I remember.

**Defense counsel:** Couldn't your memory of these events have been influenced by your own consumption of alcohol at that party?

**Miller:** No, I just had two beers.

**Defense counsel:** Thank you, Mr. Miller. No further questions

**Student Judge:** Will explain re-direct pointing out it is intended to cover only those items covered on cross-examination and not new matters

**WB:** Yes, very briefly. Mr. Miller within how many seconds of the collision was Mr. Smith texting?

**Miller:** I don't know. Like I said before, it's all kind of fuzzy. But it was right before—like, just a few seconds.

**WB:** Did you ever tell Mr. Smith to stop texting?

**Miller:** I did, but he played it off. I didn't want to press the point because I didn't want to distract him even more with the sun shining and the speed of the vehicle.

**WB:** Nothing further.

**Student Judge:** Mr. Miller, you may step down.... Next witness, counsel?

## **3. Direct Examination of Witness Bailey Williams (by, WB)**

**WB:** Next, we would like to call Ms. Bailey Williams.

**Student Judge:** Mrs. Williams, would you come up?

**Courtroom Deputy:** Remain seated and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**Williams:** I do.

**WB:** Please state your name and age for the record.

**Williams:** Bailey Williams. I'm 18.

**WB:** Could you tell us what happened on the morning of April 1, 2014?

**Williams:** I was riding to \_\_\_\_\_ with my friends Kyle Johnson, Johnny Smith, and Jake Miller to get home before school started.

**WB:** How did you know Kyle?

**Williams:** He was my friend.

**WB:** What happened next?

**Williams:** Well, we were Eastbound in Johnny's car on 5<sup>th</sup> street when we hit the dip at Kansas and the car rolled. I remember that Johnny was not looking straight ahead, but downward just before the crash.

**WB:** Tell me about the road conditions that morning.

**Williams:** It was very sunny, but the road was dry and straight.

**WB:** Then what happened?

**Williams:** Like I said the car went airborne and rolled and the next thing I knew everything was crazy. I was ejected from the car and could not move but I think I saw Kyle was ejected and he was not moving. It was immediately obvious that he was not going to make it (said with much emotion....)

**WB:** Describe your injuries from the crash.

**Williams:** Well, I couldn't feel anything. At the ER, I was in so much pain I could barely answer the doctors' questions. The doctors told me I had a broken neck and back. That must have been why every breath hurt so much. I couldn't move my toes. They did surgery on me that night to put metal rods and pins in my body, which will have to be replaced later. The whole thing has been extremely painful.

**WB:** Any long term consequences from the crash?

**Defense counsel** (standing): Objection, Irrelevant, Your Honor.

**Comments: Judge** will explain objections and explain that only relevant evidence is admissible.

**Student Judge:** Objection overruled. You may answer the question.

**Williams:** The worst thing is not being able to walk again. I can't sit through a class period – so college is out. I can't take a desk job, let alone go to a movie or a game. Standing is impossible. My hand goes numb now when I'm texting, working on a computer, or playing video games. I had planned to be a Nurse, but all that is out the window now. I'm 17, and my entire life is messed up because of that.

**WB:** Thank you Mrs. Williams. No further questions.

#### **4. Cross examination of Witness, Bailey Williams**

**Judge:** Any questions on cross-examination?

**Defense counsel:** Yes, Your honor. Mrs. Williams, what was your relationship to Mr. Johnson?

**Williams:** We were friends.

**Defense counsel:** Tell us, isn't it true that just before the crash being eastbound the driver would have encountered bright sun in his eyes? Couldn't this be the reason you thought you saw Johnny looking down before the crash?

**Williams:** That is possible, but if so it's all the more reason Johnny should have been paying more attention – with both hands on the wheel – keeping the car under control.

**Defense counsel:** Ms. Turner did you hear the testimony of Mr. Miller earlier that Johnny had already stopped texting, and actually threw the phone on the passenger seat, before the crash occurred?

**Williams:** I did hear that.

**Defense counsel:** Did you drink beer at the party.

**Williams:** Yes I did.

**Defense counsel:** Wouldn't that effect you r memory of these events.

**Williams:** Maybe.

**Defense counsel:** Thank you, Mrs. Williams. No Further questions.

**Judge:** Redirect?

**WB:** No, Your Honor.

**Judge:** Mrs. Williams, You may step down. Next Witness, counsel?

**WB:** Yes, Your Honor. The government calls Officer Hamilton

**7. Direct Examination of Witness, Officer Hamilton (By, WB)**

**Student Judge:** Officer, Please come to the witness stand.

**Courtroom Deputy:** Remain standing and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**Officer Hamilton:** I do.

**WB:** Please state your name and occupation for the record.

**Officer Hamilton:** Sam Hamilton. I am a \_\_\_\_\_ County Sheriff's Officer.

**WB:** And how long have you been employed with the sheriff?

**Officer Hamilton:** 5 years.

**WB:** How many traffic crashes have you been called to in that period of time?

**Officer Hamilton:** Well, including everything from fender benders to major collisions involving deaths, probably 150.

**WB:** and approximately what percentage of those crashes involved distracted drivers?

**Officer Hamilton:** Distraction is a major cause of crashes. Probably half of all crashes can be traced back to distraction in a variety of forms, such as kids screaming in the backseat, or changing the radio station, or dropping French fries in your lap, consumption of alcohol or talking on the phone.

**WB:** What percentage of the crashes involving teenagers have you been called to that were result of distraction cause by texting while driving?

**Officer Hamilton:** Probably about 10%.

**Defense counsel:** Objection Your Honor. This witness is guessing.

**Student Judge:** Officer Hamilton, on what are you basing your estimate?

**Officer Hamilton:** Well, I know that statistically 21% of fatal car crashes involving teenagers are the result of cell phone usage. That coupled with my recollection of the actual crash scenes I have been to leads me to estimate that ½ of those were caused by some impairment or distraction.

**Defense counsel:** Objection your Honor. There is no evidence that this witness is qualified to provide statistical evidence.

**Student Judge:** All right. I'm going to ask the jury to disregard the reference to statistics but allow Officer Hamilton's estimate of the percent of crashers he personally has witnessed that were the result of drinking. (to **WB**) Please continue.

**WB:** Can you tell the Court what you remember about the morning in question?

**Officer Hamilton:** I remember the morning well. It was bright with the sun low in the sky. Just after 8:00 am a call came over the radio that there was an injury crash at 5<sup>th</sup> and Kansas. I was in the vicinity and so responded immediately. I was the first officer to arrive on the scene.

**WB:** Can you describe the scene you discovered Officer Hamilton.

**Officer Hamilton:** The first thing that crossed my mind when I approached was that this did not look good. It was a one car crash involving a black prelude. I knew that if someone was in the Prelude, he or was going to be in bad shape. I saw People in the car and on the ground and I called for an ambulance and paramedics before getting out of my squad car.

**WB:** And then what did you do?

**Officer Hamilton:** I approached the Prelude to ascertain if there was anyone still in the car and if so, what their medical conditions were.

**WB:** And what did you discover?

**Officer Hamilton:** There was the driver trapped in the car. That person was conscious. I also observed the body of a young lady who had been ejected from the car. She was not moving. One passenger was in the back seat and another person was outside on the ground.

**WB:** So, what did you do next?

**Officer Hamilton:** about that time, the paramedics and ambulances arrived along with several other squad cars. We were unable to get the passenger out the doors of the car and had to use the jaws of life to pry the car open.

**WB:** And then what happened?

**Officer Hamilton:** The medical teams took over and rushed the front seat passenger to the hospital. The man that was ejected was pronounced dead.

**WB:** And did you then question the other 2 people who were in the Prelude?

**Officer Hamilton:** I did. I determined that Johnny Smith had been driving the vehicle. I tested him to confirm that he had been drinking and driving.

**WB:** And did you determine anything else at that time?

**Officer Hamilton:** The one passenger of the Prelude indicated that Mr. Smith had been texting on his cell phone just prior to the crash. Mr. Smith admitted to this. We placed him under arrest.

**WB:** Was alcohol involved in this crash?

**Officer Hamilton:** Yes, the person interviewed including Mr. Smith indicated they had all been drinking at a party and there were beer cans at the scene of the crash.

**WB:** No further questions.

**Student Judge: Defense counsel,** any questions for this witness?

**8. Cross examination of Witness, Officer Sam Hamilton (by Defense Attorney)**

**DA:** Yes, Your Honor Officer Hamilton, how many crashes occurred on April 1, 2014 between the hours of 5 a.m. and 8 a.m.?

**Officer Hamilton:** There were probably four other crashes.

**DA:** And was anyone arrested as a cause of those crashes?

**WB:** Objection Your Honor.. Relevance.

**DA:** Your Honor, I'm trying to show that crashes happen, including the one that is the subject of this prosecution.

**Student Judge:** I'm going to allow it. Officer Hamilton, answer the question to the best of your knowledge.

**Officer Hamilton:** I personally did not have a cause to arrest anyone else that morning, but I know one other driver was arrested by my co-worker for suspicion of drunk driving.

**DA:** So, there were four injury crashes the morning of April 1, 2014 and only 2 drivers were arrested, my client and someone suspected of driving under the influence, is that correct?

**Officer Hamilton:** To the best of my knowledge.

**DA:** Do you know what was determined to be the cause of the other crashes as indicated on the accident reports?

**Officer Hamilton:** Not all of them.

**DA:** And the ones you do have first-hand knowledge of? What was listed as the cause of the crash?

**Officer Hamilton:** Unsafe road conditions caused in part by the bright sun.

**DA:** No further questions.

**Student Judge:** Redirect?

**WB:** Just briefly, Your Honor. Officer Hamilton, in your personal experience as an officer, Does a driver need to be texting at the exact moment of a collision for it to be the primary cause of distraction leading to the accident?

**DA:** Objection! Counsel is calling for a hypothetical.

**Student Judge:** Sustained.

**WB:** No further questions, Your Honor.

**Student Judge:** You may step down, Officer Hamilton. Counsel, any other witnesses?

**WB:** Yes, Your Honor. The government calls Dr. Evans

### **9. Direct Examination of Witness, Dr. Evans (by WB)**

**Student Judge:** Doctor, please come to the witness stand.

**Courtroom Deputy:** remain standing and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**Doctor:** I do.

**WB:** Please state your name and occupation for the record.

**Doctor:** Stephanie Evans, I am a medical Doctor who also functions as a Coroner.

**WB:** Did you respond to an crash on April 1, 2014.

**Doctor:** Yes.

**WB:** What did you do there?

**Doctor:** I had the unfortunate task of pronouncing Kyle Johnson dead.

**WB:** What was the cause of death?

**Doctor:** Mr. Johnson was partially ejected from the car and then crushed under it resulting in severe bodily injuries and immediate death. His failure to wear a seat belt also would have contributed to the injuries.

**Student Judge: Defense counsel:** any questions for the witness?

**10. Cross Examination of Witness, Doctor Evans (by DA)**

**DA:** When you examined Kyle Johnson's body could you detect the smell of alcohol?

**Doctor:** Yes.

**DA:** No more questions.

**Student Judge:** Redirect?

**WB:** No further questions, Your Honor.

**Student Judge:** You may step down, Doctor Evans. Counsel, any other witnesses?

**WB:** At this time the State rests its case.

**C. DEFENDANT'S CASE**

**1. Direct Examination of Johnny Smith (by Defense Counsel)**

**Student Judge (to Defense counsel):** You may call your first witness.

<b>Comments by Judge</b> will explain a defendant's right not to testify
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**Defense counsel:** We call Mr. Johnny Smith.

**Student Judge:** Mr. Smith, Please come up to the witness stand.

**CRD:** Raise your right. Do you swear to tell the truth, the whole truth, and nothing but the truth?

**Johnny Smith:** Yes, sir.

**Defense Counsel:** Please state your name and age for the record.

**Johnny Smith:** My name is Johnny Smith. I'm 18.

**Defense Counsel:** Could you tell us about yourself and your family?

**Johnny Smith:** ...

**Defense Counsel:** Tell us what happened on the morning of April 1, 2014.

**Johnny Smith:** Well, I was getting ready to drive some friends home from a party. I saw a car broke down so I ended up giving Jake Miller a ride because it was his car that broke down at the same party I was at.

**Defense Counsel:** What happened while you stopped to help Jake?

**Johnny Smith:** my cell rang with a text from Lindsey. It said "AND... CB NOW."

**Defense Counsel:** And what did you understand that to mean?

**Johnny Smith:** That meant "Any day now...! Call back now!" all caps means the message is serious – it's like yelling. She was driving me crazy. She knew I needed some space to go somewhere without her.

**Defense Counsel:** What happened after that?

**Johnny Smith:** Next thing I know, the car is entering the intersection of 5<sup>th</sup> and Kansas where the crash occurred. I'm very sorry about Kyle. And also that Bailey got hurt. I know their parents will always blame me for everything, but I don't think it really was my fault. It was just an accident. The road was bright that day making it hard to see.

**Defense Counsel:** How much time passed between when you tossed the phone to Mr. Miller and when the car started crossing the road?

**Johnny Smith:** I don't know exactly, but maybe a couple of minutes.

**Defense Counsel:** Had you consumed alcohol at the party you attended?

**Johnny Smith:** Yes but I was fine to drive.

**Defense Counsel:** Thank you. Nothing further, Your Honor.

**Student Judge (to WBs):** Counsel?

## **2. Cross Examination of Johnny Smith (by WB)**

**WB:** You estimate it was a couple of minutes between the time you tossed your phone to Mr. Miller and when the car started to cross the road. But wasn't it merely seconds later?

**Johnny Smith:** No – It definitely didn't happen right away.

**WB:** Mr. Smith, how many times in your life would you estimate that you have sent text messages while operating a motor vehicle?

**Johnny Smith:** I have no idea.

**WB:** Would it be fair to say that you've sent at least 100 text messages while operating a motor vehicle?

**Johnny Smith:** I don't keep count, but year, that's probably true. I've got a lot going on. It's not a big deal, 'cause I can text without looking down at the cell.

**WB:** Isn't it true, Mr. Smith, that texting requires glances at the keyboard and screen – even for the most proficient users?

**Johnny Smith:** Well, yeah, but I can glance down and back up real quick.

**WB:** What about reading text messages – you have to look at the screen to read it, right?

**Johnny Smith:** Of course, but again I can just look down really fast.

**WB:** You said you asked Mr. Miller to text your friend “ntwd” – did he sent that message?

**Johnny Smith:** I don't think so.

**WB:** Mr. Smith, you've admitted that you've probably sent more than 100 text messages while driving. I would remind you that you are under oath. Do you expect us to believe that, right before the accident in question, you asked Jake Miller ,whom you'd just picked up, to intervene in an argument with your sister and text message her “n-t-w-d” – “no texting while driving”?

**Defense Counsel** (standing, outraged): Objection, Your Honor!

**WB:** I withdraw the question.

**WB:** No further questions.

**Student Judge:** Counsel do you have any redirect?

**Defense Counsel:** Yes, Your Honor. Mr. Smith, were you sending a text message at the time the vehicle hit the dip?

**Johnny Smith:** No, I was not. By then, I had already tossed Jake the phone.

**WB:** Could alcohol have impaired your judgment that morning?

**Johnny Smith:** Two beers doesn't cause any problems for me.

**WB:** Do you understand that underage drinking is illegal?

**Johnny Smith:** Yes

**Defense Counsel:** Thank you. No more questions.

**Student Judge:** Mr. Smith, you may step down. Defense Counsel, your next witness?

**Defense Counsel:** None, Your Honor. The defense rests.

**Student Judge:** Okay. The witness may step down. Ladies and gentlemen of the jury, we will now hear the parties' closing arguments. I will then provide you with some instructions on the relevant law and how you should conduct your deliberations.

<b>*** <u>Comments: Judge:</u> Will explain closing arguments</b>
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### **III. Closing Arguments**

**Student Judge:** Members of the jury, an attorney for each party will now making a closing argument. The attorneys' arguments are not evidence; they are only a possible interpretation of the evidence presented during the trial. It is up to you to decide what happened.

The prosecutor may now address the jury.

#### **A. For Prosecution**

**(By WB)**

*[at podium]* Thank you, Your Honor. Ladies and gentlemen, we have proven beyond a reasonable doubt that Mr. Smith was texting his sister at the time of the accident and he had been drinking alcohol. His actions were grossly negligent, and directly resulted in the death of Kyle Johnson and serious injuries to two other people. As you heard, Mr. Smith was distracted while communicating with his sister and not focused on the hazardous road conditions brought on by the bright sun. (and this was not the first time he had sent a text messages while driving – he admitted that he often text while driving.) His comments also suggest past instances of driving after consuming alcohol. This accident could have been avoided had Mr. Smith left his cell phone where it belonged while he was driving... in his pocket. His conduct was grossly negligent and you should convict him of the charge of involuntary manslaughter and texting while driving. Thank you.

**Student Judge:** Thank you Counsel. The attorney for Mr. Smith may now address the jury.

#### **B. For the Defense**

**(By DA)**

*[at podium]* Thank you, Your Honor. Ladies and gentlemen, the government has proved nothing beyond the fact that my client was driving on a sunny day and involved in a car wreck

similar to many others that morning. (He admitted that he had responded to a couple of texts from his sister, but) at the time of the crash, his cell phone was not even on his person. He had tossed it to a passenger. There is no evidence that Johnny was over the legal limit for alcohol consumption. The road conditions were not ideal and you heard testimony that my client asked Mr. Miller to let his sister know she couldn't text while driving in those conditions. It is terrible and unfortunate that Mr. Johnson was killed, and two others injured, in this crash. However, Johnny was not negligent. He was just a kid giving some friends a ride on a sunny morning. He was being as careful as he could be, which is why he tossed his phone to his passenger.. to avoid being distracted. Driving is dangerous and accidents happen. Also keep in mind the other person in the car had been drinking and here judgment may have been impaired. You should find him not guilty of the charges in this case. Thank you.

**Student Judge:** Thank you Counsel. Counsel for the government may make a rebuttal argument at this time.

### **C. For Prosecution**

**(by WB)**

*[at podium]* Thank you, Your Honor. Ladies and gentlemen, this is not just an unfortunate accident. This accident ended one person's life and caused serious permanent injury to others. Were it not for Johnny Smith's gross negligence behind the wheel on that morning, Kyle Johnson would still be alive and Bailey Williams would still be pursuing her dream of becoming a nurse. Johnny Smith should be punished for his negligence which caused this deadly accident. Thank you.

### **A. Jury Instructions**

\*\*\* **Comments: Judge:** Will explain the purpose and importance of jury instructions and explain how they should be used during deliberations.

**Student Judge:** *[Read packet of attached jury instructions]*

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**Student Judge:** The jury may now retire to consider its verdict. You will be provided with copies of exhibits that both sides have stipulated to. You have 20 to decide the case. Courtroom Deputy, please show the jury into the jury room.

*[courtroom deputy walks across, and opens door to jury room for jurors]*

*[At the end of the allotted time or when the jury opens the door with a verdict]*

**Student Judge:** The Courtroom Deputy will knock on the door and instruct the jury to take their seats.

**Courtroom Deputy:** *[knocks on jury room door]* The jury will return to the courtroom.

**Student Judge:** Has the jury reach a verdict?

**Foreperson:** We have. *[hands verdict form to the Courtroom Deputy]*

**Courtroom Deputy:** *[read the verdict aloud]* Ladies and gentlemen of the jury, is this your verdict as presented and read, the verdict of each of you so say you all?

**Jury [in unison]:** Yes.

**Student Judge:** Thank you. That will be all.

Sentencing if needed:

IN THE DISTRICT COURT OF WABAUNSEE COUNTY, KANSAS

STATE OF KANSAS – Plaintiff

VS.

Case No. 2014 CR

JOHNNY SMITH – Defendant

PROPOSED INSTRUCTIONS

Plaintiff proposes the attached instructions for use in the trial of this matter.

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CERTIFICATE OF SERVICE

I hereby certify that on this 26<sup>th</sup> day of March, 2014, I delivered one copy of the foregoing in the United States mail, First Class, Postage Prepaid, addressed to the following person:

Keen Umbehr

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

Instruction No. 1.

It is my duty to instruct you in the law that applies to this case, and it is your duty to consider and follow all of the instructions. You should decide the case by applying these instructions to the facts as you find them.

(PIK 3d 51.02)

At times during the trial, I have ruled upon the admissibility of evidence. You must not concern yourself with the reasons for these rulings. I have not meant to indicate any opinion as to what your verdict should be by any ruling that I have made or anything that I have said or done.

(PIK 3d 51.05)

Statements, arguments, and remarks of counsel are intended to help you in understanding the evidence and in applying the law, but they are not evidence. If any statements are made that are not supported by evidence, they should be disregarded.

(PIK 3d 51.06)

It is for you to determine the weight and credit to be given the testimony of each witness. You have the right to use common knowledge and experience in regard to the matter about which a witness has testified.

(PIK 3d 52.09)

Instruction No. 2

The defendant is charged with the crimes of Involuntary Manslaughter, the lesser included offense of Vehicular Homicide, Reckless driving, and Texting while driving. The defendant pleads not guilty.

Instruction No. 3

The defendant is charged with the crime of reckless driving. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant was driving a vehicle;
2. That the defendant was driving in a reckless manner; and
3. That this act occurred on or about the 1<sup>st</sup> day of April 2014, in \_\_\_\_\_ County, Kansas

Reckless (for the purpose of reckless driving) means driving a vehicle under circumstances that show a realization of the imminence of danger to another person or the property of another where there is a conscious and unjustifiable disregard of that danger.

Instruction No. 4

The defendant is charged with involuntary manslaughter. The defendant pleads not guilty. To establish this charge, each of the following claims must be proved:

1. The defendant killed Kyle Johnson.
2. It was done recklessly
3. That this act occurred on or about the 1<sup>st</sup> day of April 2014, in \_\_\_\_\_ County,

Kansas

A defendant acts recklessly (for the purpose of involuntary manslaughter) when the defendant consciously disregards a substantial and unjustifiable risk that a result of the defendant's actions will follow. This act by the defendant disregarding the risk must be a gross deviation from the standard of care a reasonable person would use in the same situation.

Instruction No. 5

If you do not agree that the defendant is guilty of involuntary manslaughter, you should then consider the charge of vehicle homicide. To establish this charge, each of the following claims must be proved:

1. The defendant killed Kyle Johnson.
2. The defendant operated the vehicle in a manner which created an unreasonable risk of injury to the person or property of another.
3. The defendant operated the vehicle in a manner which constituted a material deviation from the standard of care which a reasonable person would observe under the same circumstances.
4. That this act occurred on or about the 1<sup>st</sup> day of April 2014, in \_\_\_\_\_ County, Kansas.

The term "material deviation" means conduct amounting to more than simple or ordinary negligence but not amounting to gross negligence.

Gross negligence is something more than ordinary negligence, and yet it is something less than willful injury; to constitute wantonness, the act must indicate a realization of imminence of danger and reckless disregard and complete indifference and unconcern for the probable consequences of wrongful act. It is sufficient if it indicates a reckless disregard for the rights of others with a total indifference to consequences although a catastrophe might be the natural result.

Instruction No. 6

The defendant is charged with the crime of operating a motor vehicle on a public road or highway while using a wireless communications device. The defendant pleads not guilty. To establish this charge, each of the following claims must be proved:

1. That the defendant was driving a vehicle;
2. The defendant had a restricted driver's license
3. The defendant operated a wireless communication device while driving a motor vehicle;  
and
4. That this act occurred on or about the 1<sup>st</sup> day of April 2014, in \_\_\_\_\_ County, Kansas.

Instruction No. 7

The State has the burden to prove the defendant is guilty. The defendant is not required to prove she is not guilty. You must presume that he is not guilty unless you are convinced from the evidence that he is guilty.

The test you must use in determining whether the defendant is guilty or not guilty is this: If you have a reasonable doubt as to the truth of any of the claims made by the State, you must find the defendant not guilty; if you have no reasonable doubt as to the truth of each of the claims made by the Stat, you should find the defendant guilty.

(PIK 3d 52.02)

Instruction No. 8

Ordinarily, a person intends all of the usual consequences of his voluntary acts. This inference may be considered by you along with all the other evidence in the case. You may accept or reject it in determining whether the state has met its burden to prove the required criminal intent of the defendant. This burden never shifts to the defendant.

(PIK 3d 54.01)

Instruction No 9.

When you retire to the jury rom you will first select one of your members as Presiding Juror. The person selected will preside over your deliberations, will speak for the jury in Court, and will sign the verdict upon which you agree.

Your verdict must be founded entirely upon the evidence admitted and the law as given in these instructions.

Your agreement upon a verdict must be unanimous.

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District Judge

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(PIK 3d 68.01)

We, the jury find the defendant guilty of Reckless Driving.

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Presiding Juror

OR

We, the jury find the defendant not guilty of Reckless Driving.

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Presiding Juror

OR

We, the jury find the defendant guilty of Involuntary Manslaughter.

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Presiding Juror

OR

We, the jury find the defendant not guilty of Involuntary Manslaughter.

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Presiding Juror

OR

We, the jury find the defendant guilty of Vehicular Homicide.

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Presiding Juror

OR

We, the jury find the defendant guilty of operating a motor vehicle on a public road or highway while using a wireless communications device.

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Presiding Juror

OR

We, the jury find the defendant not guilty of operating a motor vehicle on a public road or highway while using a wireless communications device.

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Presiding Juror