

IN THE HALL COUNTY NEBRASKA DISTRICT COURT

STATE OF NEBRASKA,)
)
)
)
)
)
Plaintiff,)
)
vs.)
)
)
CORY MITCHELL,)
)
)
)
Defendant.)

Case ID: CR00-002

Fact Situation

A gentle spring rain fell on the city of Grand Island in the early morning hours of April 29, 2000. Pat Weber, a delivery person for Cicero’s All-Night Pizza Shoppe, stopped and got out of his two-door, forest green, 1987 Ford escort at 2:20 a.m. Pat was dressed in a blue windbreaker and jeans. He looked at his order pad and realized that his next delivery was only a few houses to the east. Pat began to walk along the highway. Before Pat reached the house, a red automobile hit him. Pat landed on the lawn of Robin Young’s house. Pat was bleeding from the face and lay in a contorted position. Pat regained consciousness briefly in the ambulance and again at the hospital. He has since lapsed into a coma.

With the information Robin Young gave the police department, an investigation of the hit-and-run began. The police dispatcher traced the ten possible matching Nebraska license numbers: RED121, RED122, etc. Only one belonged to a car registered in the Grand Island area. The owner’s name was Kelly Mitchell and the car was a 1997 Mustang. After some investigation, Grand Island police officer Tony Sindell arrested Cory Mitchell, who was then charged with hit and run and with causing serious bodily injury from an accident caused while the driver was under the influence of alcohol or drugs.

In 1999, Nebraska suffered 255 fatal traffic accidents; 105 of these involved alcohol. Of the 19,032 injury accidents in Nebraska, 1,136 involved alcohol. Both statistics are slightly down from 1998 numbers. More importantly, according to the State of Nebraska, 1998 Annual Report of Traffic Accident Facts as “accident severity increased, so did alcohol involvement.” Age is also a significant factor. In 1998, drivers aged 21-34 were in 52.8% of alcohol involved accidents. Also, note “that drivers between the ages of 15 and 20 are in 23.4% of alcohol related accidents, despite the fact that the legal drinking age in Nebraska is 21.” Id.

IN THE HALL COUNTY NEBRASKA DISTRICT COURT

STATE OF NEBRASKA,)	Case ID: CR00-002
)	
Plaintiff,)	
)	Exhibit List,
vs.)	Witness List,
)	Stipulations,
CORY MITCHELL,)	Charges and
)	Applicable Law
Defendant.)	

Physical Evidence:

A map of the city of Grand Island, Nebraska (only a faithful reproduction, no larger than 8 1/2 x 11 inches.)

A state mandated Emergency Medical Technician’s NARSIS form. The following abbreviations have been used in this form:

(L) – Left; ® - Right; ABD – Abdomen; c – with; Conx – conscious; FX – Fracture; LSB – Long Spine Board; MSC – Motor, Sensory, Circulation; PT – Patient; TRX - Transfer

A cash register receipt for coffee

Witnesses for the Prosecution:

Jo Hernandez
Officer Tony Sindell
Robin Young

Witnesses for the Defense:

Cory Mitchell, Defendant
Lynn Green
Terry Sanderson

Stipulations

Both sides stipulate to the following facts:

1. The breathalyzer machine was recently calibrated, and the readings are accurate and reliable.
2. At the time of the trial, according to the medical experts working with Pat Weber, he has suffered significant physical injuries including a massive head injury. It is unclear how long he will be in a coma.

3. Officer Sindell is qualified to render an opinion regarding the identification of fingerprints lifted from the Mustang steering wheel and matched by the police lab. Officer Sindell is also properly licensed and holds a current certificate from the Nebraska Department of Health to administer a breathalyzer test.
4. All events in this mock trial problem happened in Hall County, Nebraska, where the trial is occurring.
5. All exhibits are authentic.

Charges and Applicable Law

The prosecution is charging Cory Mitchell with hit and run under Neb. Rev. Stat. § 60-697. This statute requires that the driver of any vehicle involved in an accident or resulting in injury or death to any person shall immediately stop the vehicle at the scene of the accident, provide identification and render aid. A violation of this subsection shall be punished as a Class I misdemeanor, under § 60-698.

The Defendant is also charged with a violation of Neb. Rev. Stat. § 60-6,198, which provides that any person who, while operating a motor vehicle, in violation of Neb. Rev. Stat. § 60-6,196 [operating a motor vehicle while impaired], proximately causes serious bodily injury to another person shall be guilty of a Class IV felony.

Cory pled no contest to impaired driving under Neb. Rev. Stat. § 60-6,196 which provides that a person commits the offense of impaired driving if s/he drives any vehicle upon any highway, a street, or any public vehicular area within this state 1) while under the influence of an impairing substance; or 2) after having consumed sufficient alcohol that s/he has, at any relevant time after the driving, an alcohol concentration of .10 or more.

A class IV felony carries a possible penalty of not more than five years in an institution under the jurisdiction of the Nebraska Department of Correctional Services, a fine of not more than \$10,000 or both such fine and imprisonment. There is no mandatory minimum sentence required. A class I misdemeanor carries a maximum penalty of up to one year in jail or prison, up to a \$1,000 fine or both such fine and imprisonment. There is no mandatory minimum sentence required. For either offense, the sentencing judge can order a defendant to pay restitution for any harm s/he caused.

The breath test results are not conclusive of guilt, but the results are admissible in evidence and can support a determination of intoxication by the trier of fact.

Witness Statements

Prosecution Witness: Jo Hernandez

1. My name is Jo Hernandez and I am 18 years old and I live at 233 Barkwood
2. Lane in Grand Island. This is a couple of blocks from Cory Mitchell's house. I am a
3. student at Grand Island High School. My family and I came to the United States from El
4. Salvador two years ago. We are not citizens yet, but we expect to get our permanent
5. residency papers soon. I do not have any prior contacts with the police. I know that
6. conviction for a crime of violence might cause me to lose my chance at becoming an
7. American citizen. I am very happy at Grand Island High School, where I am a senior
8. this year. I am on the Honor Roll because I have maintained a B+ average over the last
9. two years.

10.

11. Until recently, one of my closest friends was Cory Mitchell. We have a number of
12. classes together at school. We even run cross-country together. We used to hang
13. around after school and go to a few parties together.

14.

15. On April 28, 2000, Cory and I went to Lee Hester's house for a party. Hester's
16. folks have a ranch-style house located in the Island Canyon area, which is west of town
17. near highway 30. Lee's parents were out of town, and everybody got pretty rowdy. The
18. music was loud, and everyone was having a good time.

19.

20. Cory and I had talked about the party that day at school. I was still grounded
21. from driving privileges, so Cory had to drive. I came home late one night and my
22. parents thought I had been drinking so they suspended my driving privileges. Besides,
23. Cory and I both live near the university, so it is easier to just take one car. I wanted to
24. make sure one of us would be able to drive home so Cory and I discussed who would
25. be the designated driver. Cory agreed not to drink any alcohol so s/he could drive
26. home.

27.

28. Anyway, around 2:00 a.m., Cory and I got into a big argument, because Cory
29. wouldn't drive. It was obvious to me that Cory was really drunk, and I got angry
30. because the only reason I felt comfortable drinking at the party that night was because I
31. thought Cory would be the designated driver. Cory told me not to worry about driving
32. since I wasn't drunk. S/he said everything would be okay. I wasn't sure what to do, but
33. I thought that if I had any problems driving, I could pull over and let Cory drive. So I got
34. into the driver's seat of Cory's mom's car. Like I said, we left the party around 2:00 a.m.

35.

36. I started to drive. Once we were down to Highway 30, I pulled over at the Gas N
37. Shop. Cory got out of the car and walked over to my side. Cory motioned for me to roll
38. down the window, which I did after a while. Cory said that I would have to continue to
39. drive because s/he was too drunk. We started arguing again because I knew I shouldn't
40. drive anymore. I told Cory that we would have to wait until one of us sobered up. Cory
41. was really angry and said, "Never mind! I'll drive us home. I can make it." I tried to
42. calmly explain that it was not worth it since we were both drunk. I said that I really did
43. not mind waiting. Cory wouldn't listen and just blew me off.

44.

45. Then Cory went into the Gas N Shop for a few minutes. S/he came out of the

46. store and offered me a cup of coffee. I refused to drink it because I knew I couldn't
47. drive anymore anyway, and I didn't think a little cup of coffee would change things
48. much. I didn't want Cory to drive, and I knew that I shouldn't either. We kept arguing
49. for a little while. Cory demanded that I give up the keys to the car, which I did
50. reluctantly. I realized that my only option was to walk the rest of the way home. I wish I
51. had taken the keys with me. It was raining and I forgot my ball cap in the car. So I
52. wasn't happy about that either.

53.

54. After leaving the Gas N Shop, I tried thumbing for a ride. I thought maybe
55. someone from the party would drive by. I had no such luck, so I cut over to the bike
56. path that leads to the university and walked most of the way home. I jogged a little too,
57. because I just wanted to get home. After reaching the university, I started walking along
58. the street to my house. Lynn Green, a friend of my parents, drove by me on the street,
59. and I was afraid that Lynn would telephone my parents. After spotting me, Lynn honked
60. a few times to get my attention. When I looked over and saw his/her old Pontiac, I was
61. tempted to take a ride, but I knew if I got in the car, Lynn would smell alcohol on my
62. breath and tell my parents that I had been drinking. I just wanted to be left alone after
63. the night I had with Cory going back on his/her promise to be the designated driver for
64. the night. I jogged a little faster and prayed that Lynn would just drive on. It took me a
65. while, and it was chilly out. I finally got home at 3:05 a.m.

66.

67. I took a shower and hung up my wet clothes. Just after 4:00 a.m., a cop came by
68. and asked me about the party and Cory. The cop said that Cory was accusing me of
69. hitting some pizza guy and then leaving the scene of the accident. I immediately told
70. the officer that I had been at the party and had even driven part of the way home. And I
71. clearly explained to the officer that I left the car and Cory at the Gas N Shop and that I
72. had nothing to do with any accident. S/he asked if I had been drinking and I admitted
73. that I had been drinking. S/he issued me a citation for impaired driving under Neb. Rev.
74. Stat. § 60-6,196, to which I pled guilty, even though no one, except Cory, had actually
75. seen me driving.

76.

77. I should never have been driving but I never hit anyone while I was driving.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

Jo Hernandez

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2000-2001 Nebraska State High School Mock Trial Competition.

Kerry Smith, Notary Public
My Commission Expires: December 31, 2000

REPORT AND SWORN STATEMENT OF OFFICER TONY SINDELL
GRAND ISLAND POLICE DEPARTMENT

Case No. CR042900-048

Persons mentioned in this Report:

Jo Hernandez, Witness, DOB: April 1, 1982
233 Barkwood Lane
Grand Island, NE
(308) 385-2338

Robin Young, Witness, DOB: August 8, 1962
111 N. Court
Grand Island, NE
(308) 385-6838

Pat Weber, Victim, DOB: January 6, 1979
1414 E. Street
Grand Island, NE
(308) 385-1414

Cory Mitchell, Suspect, DOB: April 1, 1982
444 N. Wolf Dr.
Grand Island, NE
(308) 385-2201

1. Synopsis:

2.

3. On April 29, 2000, at 02:23, a red 1997 Mustang, being driven by Cory Mitchell
4. hit Pat Weber causing serious head injuries to Weber. The Mustang left the scene
5. without rendering aid to Weber or providing information about the driver. Mitchell was
6. contacted but denied being the driver at the time of impact. Mitchell was arrested and
7. lodged. Weber remains in a coma.

8.

9. Body of Report:

10.

11. On Saturday, April 29, 2000, at approximately 02:28, this officer saw the
12. defendant driving westbound on Highway 30. The defendant appeared to be pretty
13. young to be driving that late at night. S/he was driving a sports car at approximately 50
14. miles per hour, although the posted speed limit is 55 mph. The vehicle had a Hall
15. County license plate, RED 123. Dispatch reported the vehicle was registered to Kelly
16. Mitchell, with a date of birth of November 27, 1959. The driver did not match this age
17. range. This officer followed the Mustang until it made a right turn without displaying a
18. turn signal. This officer then made a traffic stop of the vehicle. As this officer walked up
19. to the suspect's vehicle, the driver, Cory Mitchell removed a baseball type cap and
20. placed it on the passenger's seat. S/he then voluntarily said, "I've been driving under
21. the speed limit." This statement was volunteered by the defendant and was not made in

22. response to any question made by this officer. This officer did not threaten the
23. defendant or offer her/him any inducement in order to obtain this statement. This officer
24. explained that s/he had made a right turn without using her/his turn signal. This officer
25. then asked the defendant for his/her driver's license and registration.

26.

27. The defendant was alone in the vehicle. This officer detected a moderate odor of
28. an alcoholic beverage on the defendant's person and breath. The defendant's eyes
29. were bloodshot, red and watery. His/Her speech was slow and deliberate. This officer
30. asked the defendant if s/he had been drinking. The defendant confirmed consuming
31. alcohol, but claimed that s/he only had "two beers," several hours earlier. This officer did
32. not threaten the defendant or offer her/him any inducement in order to obtain this
33. statement.

34.

35. This officer removed the defendant from her/his vehicle to the shoulder area of
36. the highway away from traffic between defendant's vehicle and this officer's police
37. cruiser. This officer directed the defendant to perform field sobriety tests. This officer
38. instructed the defendant in how to perform the hand-nose coordination test, which
39. requires a driver to close his/her eyes and to touch his/her nose with an index finger.
40. The defendant failed the hand-nose coordination test by missing her/his nose
41. completely and touching his/her upper lip instead. Then this officer instructed the
42. defendant to walk along the solid white shoulder line for ten steps forward, to turn and to
43. take nine steps back. The defendant stepped off the line, raised his/her arm from
44. her/his side and walked back ten steps rather than nine steps. S/he did not stagger or
45. fall, although this officer noted some swaying from side to side. This officer directed the
46. defendant to recite the alphabet from "F" to "R." Although the defendant did pause
47. several times, Mitchell recited the alphabet correctly. This officer formed the opinion
48. that the defendant was operating a motor vehicle while under the influence of alcohol.
49. This officer placed Cory Mitchell under arrest for operating a motor vehicle while under
50. the influence of alcohol. This officer explained to the defendant that s/he would need to
51. accompany me to the Grand Island Police Department to take a breath test. Then this
52. officer placed the defendant inside my police cruiser.

53.

54. While this officer was administering the field sobriety tests, dispatch notified me
55. that the defendant's vehicle might have been involved in a hit and run personal injury
56. accident. Dispatch indicated a report of a hit-and-run personal injury accident on
57. Highway 30 at approximately 02:23. Dispatch provided a description of a red Mustang,
58. partial license plate number, RED12, possibly 1997 or 1998 model that matched the
59. vehicle Cory Mitchell had been driving. This officer examined the exterior of Cory
60. Mitchell's Mustang. This officer examined the right front fender of the car, finding
61. evidence of a recent dent. This officer found a small piece of denim cloth caught in the
62. right headlight housing. Defendant's vehicle was towed to the impound lot. Defendant
63. was transported to the Grand Island Police Department for further investigation and
64. testing.

65.

66. At the station, this officer explained the implied consent procedures. The
67. defendant voluntarily said, "You cannot give me the test without my consent." This
68. statement was made voluntarily and not in response to any question by this officer.
69. This officer did not threaten the defendant or offer her/him any inducement in order to

70. obtain this statement. This officer explained to the defendant that, as a driver on
71. Nebraska roads, s/he had already voluntarily consented to testing for alcohol when
72. lawfully stopped by an officer. This officer administered two breathalyzer tests, 17
73. minutes apart at 02:54 and 03:11. The result of the first test was .101 and the result of
74. the second test was .100, which is the legal limit.

75.
76. The defendant asked, "When can I go home?" This officer administered Miranda
77. rights and warnings, which the defendant freely, voluntarily, knowingly and intelligently
78. waived. The defendant agreed to answer my questions without the presence of an
79. attorney. The defendant asked, "What is this about?" This officer informed the
80. defendant that s/he was also investigating a personal injury hit and run accident, and "it
81. seems that you were involved." The defendant became visibly upset and then
82. voluntarily blurted out that his/her friend, Jo Hernandez was the one who had been
83. driving and that Jo must be the one who hit the victim. The defendant provided this
84. officer with the address and telephone number for Jo Hernandez. This officer did not
85. threaten the defendant or offer her/him any inducement in order to obtain these
86. statements. This officer booked the defendant into the jail and returned to service at
87. 03:25.

88.
89. This officer then proceeded to the Grand Island Regional Hospital. This officer
90. obtained permission from the attending physician, who remained in the emergency
91. room while this officer attempted to interview Pat Weber, the victim in this case. The
92. victim temporarily regained consciousness in the Grand Island Regional Hospital
93. emergency room at 03:35. The victim had suffered a severe head injury and was not
94. very alert. The victim appeared to be sedated but briefly was responsive to this officer's
95. questions. The victim was somewhat disoriented. Before asking any questions I said,
96. "Pat, can you hear me? You have been hit by a car and have been gravely injured. I
97. am going to ask you a few questions, okay?" Pat weakly said, "Okay, I feel better now;
98. am I going to make it?" I asked, "Do you remember what the driver looked like?" The
99. victim said something, but I could not hear what it was. I leaned close but could barely
100. hear the words: "The kid . . . there was a hat." I asked Pat if there were any other
101. details about the driver, such as height, hair color, or body type. But the victim did not
102. answer and seemed rather dazed. The victim lapsed into a coma and has not regained
103. consciousness. At the time of this trial, according to medical opinion, it is impossible to
104. predict the future of Pat Weber's condition. The emergency room physician indicated
105. that Mr. Weber suffered serious bodily injuries in the accident.

106.
107. This officer drove to Jo Hernandez's house. At 03:55, a Hispanic fe/male
108. answered the door wearing a bathrobe. This Hispanic fe/male was later determined to
109. be Jo Hernandez. This officer was invited to come inside. Ms./Mr. Hernandez listened
110. to this officer's explanation of the evening's events and nodded affirmatively when
111. asked if s/he would answer a few questions. Hernandez denied knowing anything
112. about an accident. Hernandez confirmed having attended the party, but denied the
113. defendant's version of the story. Originally Hernandez claimed to have walked home
114. and showed the officer the damp jacket, shirt, and jeans hanging in the shower. When
115. pressed, Ms./Mr. Hernandez admitted to driving the Mustang from the party to the Gas
116. N Shop. Hernandez claimed to have left the vehicle at that point and then
117. jogged/walked the rest of the way home. S/he said s/he used a local bike/walking trail.

118. Hernandez told me that s/he had arrived home just before 3 a.m. Hernandez was
119. informed that further information might be needed at a later date; and before leaving,
120. this officer thanked Hernandez for finally truthfully answering this officer's questions.
121.

122. This officer drove to the Grand Island Police Department's Vehicle Impound Lot.
123. This officer seized the baseball cap and a time/dated receipt from the Gas N Shop,
124. which is located on Highway 30. Both items were logged into property. This officer
125. dusted the steering wheel of Mitchell's car for fingerprints. Three sets of prints were
126. found. One set matched the index and middle fingers of defendant's left hand and the
127. index finger and thumb of the defendant right hand. The second set matched the index
128. and middle finger of the right hand of Jo Hernandez. The third set did not produce a
129. match in the Grand Island Police Department's fingerprint database.
130.

131. This report has been prepared by Officer Tony Sindell. I am a certified peace
132. officer in the State of Nebraska. I have an associates degree from UN-GI in criminal
133. justice which I earned in 1997 and I graduated from the Nebraska Law Enforcement
134. Academy here in Grand Island in 1996. I attended the FBI fingerprint academy's two-
135. week workshop in 1998. I have been working full time in the Grand Island Police
136. Department for over four years. My normal work schedule is 2300 to 0700 Monday
137. through Saturday.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

Tony Sindell

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2000-2001 Nebraska State High School Mock Trial Competition.

Kerry Smith, Notary Public
My Commission Expires: December 31, 2001

Prosecution Witness: Robin Young

1. My name is Robin Young. I am 38 years old. After high school, I joined the Navy
2. where I was a boiler technician. Then I attended South Dakota State University, where I
3. earned a B.A. in sociology, in 1990. I obtained double masters degrees in 1995 from
4. Oklahoma State University, with degrees in cultural geography and archaeology. I am a
5. professor of Native American Studies at the University of Nebraska at Grand Island. I
6. live at 111 N. Court, in a sub-division called Oak Ridge, in Grand Island, Nebraska.
7. Oak Ridge is a small, somewhat isolated community on Highway 30 about 4 miles from
8. the University. Oak Ridge provides housing that the University built for the faculty about
9. four years ago. Since the faculty housing is just off the highway, it is very convenient to
10. commute to the university. My house is along the first row of houses and my front door
11. faces west along the highway.

12.
13. I had been working late that Friday on an article for the Southwest Journal of
14. Archaeology. I ordered a pizza from Cicero's, which is in the University Village. It was
15. 1:50 a.m. I remember looking at the clock when I ordered, because I was not sure
16. Cicero's would deliver that late. I was told that it would take over half an hour, so I was
17. surprised when I heard the delivery person's car door slam at around 2:20 a.m. I went
18. outside to meet the delivery person. I saw the delivery guy walking up the highway,
19. approaching the house, from his car, which was parked a few houses down. Later, I
20. learned that his name is Pat. At almost the same time, I heard a loud car engine noise
21. and saw a red Mustang speeding down the highway. I noticed that the driver was
22. swerving between the centerline and the shoulder of the highway. The car was going
23. really fast. Pat turned around and looked at the car but then turned back to his order
24. book—checking the address, I suppose. Pat saw me standing outside and put the
25. order book away in his pocket. I noticed that the car was approaching at a very high
26. speed. The car started to swerve toward Pat, and I yelled, "Watch out!" But it was too
27. late. Pat was struck by the right side of the car and landed on my lawn with a thump.

28.
29. I ran out to Pat and felt for a pulse. I was relieved when I found one. I looked
30. toward the top of the hill and saw that the car had stopped. I thought that the driver
31. might get out of the car to check the condition of the victim. I could only see one person
32. in the car. When the driver turned around to look at the victim, I could see the driver
33. was wearing a baseball style hat, turned backwards, like all of the kids nowadays do.
34. After a few seconds, I realized the driver was not going to get out, and I looked quickly
35. at the license plate. My vision is not very good without my glasses at that distance, so I
36. only caught five of the six numbers before the driver sped off over the crest of the hill.

37.
38. I called 911 and explained what had happened. I knew it would take the
39. ambulance a while to get to my house, so I covered Pat with a blanket. Pat was
40. unconscious, and there was blood coming from the side of Pat's head. I knew things
41. were very bad and so I waited with Pat until the ambulance and the police finally came.
42. I gave all the details I had to the police officer.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

Robin Young

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2000-2001 Nebraska State High School Mock Trial Competition.

Kerry Smith, Notary Public

My commission expires: December 31, 2001

Defense Witness: Cory Mitchell

1. My name is Cory Mitchell. I am 18 years old. I am a senior at Grand Island High
2. School. I have lived in Grand Island at 444 North Wolf Drive all my life. I am a student
3. senator at school.
4.

5. Lee Hester had a party on Friday night, April 28, 2000. I went with Jo
6. Hernandez. We have some of the same classes and run cross-country together. Since
7. we live very close to each other, we decided to drive together to Lee's house. At about
8. 2:00 a.m., Jo came up to me, said that it was getting late, and asked if I was ready to
9. leave yet. I was nervous about driving because I was a little tipsy. I had had about two
10. beers that night. I told Jo that I was a little drunk and that maybe we should wait a while
11. longer. But Jo became really angry. I know I was supposed to be the "d dude"
12. (designated driver) that night. I should not have had anything to drink. I felt bad that I
13. let Jo down. I thought maybe s/he could drive home all right when s/he insisted that we
14. leave. But I also told Jo that if we had any problems driving that s/he was going to have
15. to pull over. Jo was still angry when we left.
16.

17. It was about 2:05 a.m. when we got into my car. In fact, we were almost the last
18. folks to leave the party. We drove down Grand Island Canyon toward Highway 30.
19. That road has a lot of curves, and Jo was having difficulty controlling my mother's car. I
20. just did not feel safe. S/he pulled over at the Gas N Shop when we reached the bottom
21. of the hill. I got out of the car and walked over to the driver's side. I motioned to Jo to
22. roll down the window. Jo refused, but after a short while Jo finally did roll the window
23. down. Jo asked me what I was doing. I told him/her we would have to stop. Jo got
24. angry again. I could not believe his/her reaction. I thought that maybe we needed to
25. cool off for a while. I said to Jo: "I'm going to get you some coffee and then maybe you
26. can drive some more." I grabbed the hat Jo had been wearing all-night and carried it
27. into the store underneath my arm. I figured if I had the keys and the hat, Jo would not
28. leave. When I came out of the store Jo was standing next to the car on the passenger
29. side. I handed the coffee to Jo. I was really tired, but I did not have any coffee. After a
30. few minutes, it seemed that Jo had settled down a little bit. I suggested that we hang
31. around for awhile until one of us had sobered up. Jo seemed willing to wait at least until
32. s/he finished the coffee. I gave him/her back the keys and the hat and lay down in the
33. passenger seat. After s/he finished the coffee, Jo opened the driver's door and pulled
34. the car out on the highway—I didn't want to fight anymore so I let him/her drive. I was
35. so tired, I could not keep my eyes open any longer. I fell asleep almost immediately.
36.

37. It seemed like I was asleep for awhile when I heard a loud screech and then I felt
38. a thump. The car slowed down and sat motionless for a minute. I was startled. I asked
39. Jo what happened, and s/he shouted, "Shut up!" I was really frightened. I began to sit
40. up; but Jo punched the gas to the floorboard, and I was thrown back down. I felt the car
41. speed up over the crest of the hill. The car stopped abruptly. We are near the
42. intersection of 14th Ave and Highway 30. Jo scrambled to open the door and jumped
43. out. I finally got my balance and sat up. I screamed at Jo to come back. I had no idea
44. what had just happened. I sat there for a minute. Jo never even looked back but just
45. kept running. I slid over in the driver's seat and closed the door. I wasn't sure what to

46. do. I figured that since I had not had any alcohol for a while I would probably be okay to
47. drive. Besides, I had slept for a little bit, and I thought that the alcohol had worn off. I
48. thought I would be okay to drive the rest of the way home. I just thought I would chance
49. it.

50.

51. As I began to drive I noticed that Jo' baseball cap had fallen on the floor. I
52. decided that night would be the last time we ever went out together. I drove on
53. Highway 30. As I drove, I watched the speedometer to make sure I was within the
54. speed limit of 55. Then I saw a police car behind me. I just could not believe the night I
55. was having. I prayed that I would not be stopped. How wrong I was. I checked my
56. speedometer and saw that I was only going 50 miles per hour. But right after I made a
57. turn, the cop turned on his/her flashing lights, so I pulled over. The officer asked me if I
58. had been drinking. I told the officer that I had two beers several hours ago.

59.

60. The officer told me to get out of the car. I was told that I would have to perform
61. some tests for intoxication. I had to touch my finger to my nose, walk a straight line,
62. and recite the alphabet. The officer asked me how old I was, and I told him my age.
63. Then before I knew it, I was being read my rights and put in the back seat of the officer's
64. car. The cop explained that I was also in trouble for a hit-and-run, which I knew nothing
65. about. I told the officer that the accident had to have happened while Jo was driving,
66. but I did not have a chance to explain myself. I was told that I was being arrested for
67. driving under the influence of alcohol and leaving the scene of an accident. I was taken
68. to the station where the officer gave me two breath tests to determine my blood alcohol
69. level, which after only two beers still came out as .10. I was placed in a holding cell for
70. a while, without even having a chance to call my parents. The officer told me to wait
71. until my attorney could be present. It really turned out to be more of a night than I
72. expected.

73.

74. I pleaded guilty to driving while intoxicated before a judge in the Hall County
75. Court. This experience has really taught me a lesson. I know I made a lot of bad
76. decisions that night. I was the designated driver, and I drank. I know that I was wrong.
77. I'm just glad I didn't injure anyone. And I am sorry I let Jo drive and that s/he hurt that
78. guy.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

Cory Mitchell

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2000-2001 Nebraska State High School Mock Trial Competition.

Kerry Smith, Notary Public
My Commission Expires: December 31, 2001

Defense Witness: Lynn Green

1. My name is Lynn Green. I am 46 years old and I live in northeast Grand Island,
2. at 657 N. 3rd Ave. I am the manager at the Grand Island Dairy. I have known Jo
3. Hernandez' family for about a year.

4.

5. On April 29th, I was coming back from the dairy that is along Highway 30. We
6. had an emergency there earlier in the evening, but resolving the problem took all night.
7. I did not get out of there until after 2 a.m. sometime. As I was driving home, I saw an
8. ambulance and police car on Highway 30. I couldn't really see what was going on.

9.

10. I drove past the University which is near my home. It was somewhere between
11. 2:45 and 3 in the morning, when I saw a kid out jogging. I thought it was rather strange
12. that someone would be out at that time of the night, especially in the rain. I looked over
13. at the kid and I was shocked to see who I thought was Jo Hernandez. I really wasn't
14. sure, so I slowed down and looked over. Sure enough, it was Jo. I honked my horn
15. and rolled down the window. I shouted out his/her name, and Jo looked over. I couldn't
16. believe this kid. When Jo looked over at me, I thought for sure Jo recognized who I
17. was. I honked again, but Jo ran faster. I had no idea what was going on with this kid. I
18. thought perhaps Jo did not recognize me and that's why s/he didn't stop. I considered
19. pulling over and getting out of the car to show Jo who I was and to let Jo know that I
20. was just offering a ride. Then it occurred to me that maybe Jo was afraid I would tell
21. his/her parents about what s/he was doing. We weren't far from the neighborhood, and
22. I figured Jo would get home all right, so I decided to go ahead.

23.

24. Hey, I know what it is like to make a mistake. Gosh, it must be almost 30 years
25. ago now, but I got into a spot of trouble myself. I ended up holding some stuff for
26. someone who I thought was a friend. Turns out, the stuff was stolen. I pled guilty,
27. avoided prison, and did probation for a year and a half. I have been keeping my nose
28. clean ever since. I cannot remember if it was a felony or a misdemeanor. I just know I
29. learned my lesson.

30.

31. Anyway, the day after I saw Jo jogging late at night, I saw a news broadcast on
32. TV about the hit-and-run on Highway 30. They gave a number for anyone with
33. information to call. I thought about seeing Jo out on the highway and his/her strange
34. behavior. I knew from my acquaintance with the family that Jo has had some drinking
35. episodes that have upset Jo' parents. I kind of put 2 and 2 together. I didn't want to
36. call, but I thought I should.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

Lynn Green

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2000-2001 Nebraska State High School Mock Trial Competition.

Kerry Smith, Notary Public

My Commission Expires: December 31, 2001

Defense Witness: Terry Sanderson

1. My name is Terry Sanderson. I am 17 years old and I live at 4539 NW 10th
2. Street. My family and I live on the University campus. My mother is a professor of
3. English Literature. I am a junior at Grand Island High School and am in the honors
4. program with Jo Hernandez.

5.
6. Jo, Cory, and I were talking at school the day of the party. Cory and Jo had been
7. invited to Lee Hester's house for a party, and they asked me if I wanted to go. I told
8. Cory I wasn't sure because I had a lot of homework that weekend and didn't want to
9. stay out late. Cory told me not to worry, that I didn't have to stay out late if I didn't want
10. to. I told Cory that I wouldn't mind going for a little while and asked for directions to
11. Lee's house. Jo then asked Cory which one of them should drive. But before Cory
12. could answer, Jo said Cory would have to drive since his/her parents had taken away
13. his/her driving privileges. Jo also mentioned that if Cory were going to drive, that would
14. mean s/he couldn't drink. Jo said, "Cory, you're going to be the designated driver for
15. the evening. No drinking. Okay?" Cory said it would be no problem, that Jo shouldn't
16. worry. I was really impressed. Lots of people think it isn't a big deal to drink and drive.
17. Since I live at the University, I saw the pain the people at the University felt last year
18. when a drunk driver killed four students. One of those students was in my mother's
19. class, so I remembered the incident very well.

20.
21. I saw Jo and Cory at the party that night. I talked to Cory at the party and tried to
22. get him to have a beer with me. But s/he reminded me that s/he was the designated
23. driver and said s/he was only going to have one or two. So I drank several beers,
24. maybe even 4 or 5, with Jo instead. Jo and I had a lot more to drink than Cory did.

25.
26. When I wanted to leave, about 2:00 a.m., the person I came with wanted to stay
27. longer. I went up to Cory to see if I could get a ride. Cory and I were standing around
28. talking when Jo came up. Jo looked really funny because the baseball cap s/he had
29. been wearing was on sideways. We all started laughing, and then Jo asked Cory if they
30. could leave. Cory said, "Sure, but only if you're safe to drive because I'm a little tipsy."
31. Jo got really upset and told Cory that s/he had been drinking too much even though
32. s/he had said s/he would drive home. Cory told Jo that they would have to hang out at
33. Lee's house until one of them could drive. Cory suggested that they get some coffee.
34. Jo became really upset and told Cory that there was no way Jo was going to get home
35. late and get in more trouble. Jo told Cory they had to leave then. Cory was reluctant;
36. but after seeing how upset Jo was, Cory agreed to let Jo drive so that s/he wouldn't
37. make a scene. Before leaving Cory also said, "If you're too drunk to drive, we're pulling
38. over." Then they left.

39.
40. I can't believe that Cory would ever let a person lie on the road without helping or
41. calling the police. Cory and I knew one of the victim's of a drunk driving accident from a
42. year ago. Cory was very depressed for a few weeks after that accident. Cory just
43. couldn't understand why anyone would drink and drive, especially since the roads in
44. Grand Island are so hilly and windy. In the past, Cory and I have talked about starting a
45. chapter of Students Against Drunken Driving on our campus. Since Cory and I are

46. involved in Student Government, we thought about planning an assembly to talk about
47. the alternatives to drinking and driving. During the whole time we've known each other,
48. I have seen nothing but an altruistic and caring person who surely could not do what
49. Cory is being charged with—I just can't believe Cory hurt someone. When Cory's
50. lawyer called me to ask if I had information about that night, I told the attorney
51. everything I remembered.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

Terry Sanderson

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2000-2001 Nebraska State High School Mock Trial Competition.

Kerry Smith, Notary Public

My Commission Expires: December 31, 2001

IN THE HALL COUNTY NEBRASKA DISTRICT COURT

STATE OF NEBRASKA,)	Case ID: CR00-002
)	
Plaintiff,)	
)	
vs.)	JURY INSTRUCTIONS
)	
CORY MITCHELL,)	
)	
Defendant.)	

(Note: This material is provided for information and education of the participants. It will not be read in court or submitted to a jury. Attorneys may rely upon these instructions in their arguments to the presiding judge and during closing arguments.)

Instruction No. 1: Function of Judge, Jury, and Counsel

Members of the jury, now that you have heard all of the evidence and the arguments of counsel, it is my duty to instruct you in the law.

A. The law does not permit me to comment on the evidence, and I have not intentionally done so. If it appears to you that I have commented on the evidence, during either the trial or the giving of these instructions, you must disregard such comment entirely. You must not interpret any of my statements, actions, or rulings nor any of the inflections of my voice as reflecting an opinion as to how this case should be decided.

B. It is my duty to tell you what the law is. It is your duty to decide what the facts are and to apply the law to those facts. In determining what the facts are you must rely solely upon the evidence in this trial and the general knowledge that everyone has. You must disregard your personal knowledge of any other specific fact.

C. You must apply the law in these instructions, even if you believe that the law is or should be different. No one of these instructions contains all of the law applicable to this case. You must consider each instruction in light of all the others. The law demands of you a just verdict. You must not indulge in any speculation, guess, or conjecture. You must not allow sympathy or prejudice to influence your verdict.

D. The attorneys have a duty to represent their clients. In arguing their clients' case, attorneys may draw legitimate deductions and inferences from the evidence. The attorneys have a duty to make all objections they deem proper. Do not be influenced by any objection.

E. During this trial I have ruled on objections to certain evidence. You must not concern yourselves with the reasons for such rulings, since they are controlled by rules of law. You must not speculate as to possible answers to questions I did not permit to be answered; you must not consider the fact that objections to evidence were overruled. You must disregard all evidence ordered stricken.

Instruction No. 2: The Charges and the Pleas

This is a criminal action prosecuted by the State of Nebraska against the defendant upon an information filed by the Hall County Attorney, pursuant to law. The complaint charges, in substance that:

Count I: On or about the 29th day of April, 2000, in Hall County, Nebraska, the defendant did operate or be in actual physical control of a motor vehicle on or over the streets or highways of Hall County, Nebraska, in such a manner as to become involved in an accident resulting in injury or death to any person and did fail to immediately stop at the scene of the accident and to provide identification and to render aid. Neb. Rev. Stat. § 60-697.

Count II: On or about the 29th day of April, 2000, in Hall County, Nebraska, the defendant did, operate or be in actual physical control of a motor vehicle on or over the streets or highways of Hall County, Nebraska, while under the influence alcohol or drugs, and did thereby proximately cause serious bodily injury to another person. Neb. Rev. Stat. § 60-6,198.

To these charges, the defendant has entered pleas of not guilty. The charges and the defendant's pleas make up the issues which you are to determine by your verdicts. The information, or the fact that the county attorney has filed the information is not to be considered by you as evidence.

Instruction No. 3: The elements

Count I: The material elements which the state must prove by evidence beyond a reasonable doubt in order to convict the defendant of the crime of leaving the scene of an accident are:

1. On or about the 29th day of April, 2000, in Hall County, Nebraska, the defendant did operate or be in actual physical control of a motor vehicle on or over the streets or highways of Hall County, Nebraska,
2. in such a manner as to become involved in an accident resulting in injury or death to any person
3. and defendant did fail to immediately stop at the scene of the accident
4. and defendant did fail to provide identification; and
5. defendant did fail to render aid.

The state has the burden of proving beyond a reasonable doubt each and every one of the foregoing material elements necessary for conviction. If you find from the evidence beyond a reasonable doubt that each and every one of the foregoing material elements are true, it is your duty to find the defendant guilty. If you find that the state has failed to prove beyond a reasonable doubt any one or more of the foregoing material elements, it is your duty to find the defendant not guilty.

Count II: The material elements which the state must prove by evidence beyond a reasonable doubt in order to convict the defendant of the crime of are:

1. On or about the 29th day of April, 2000, in Hall County, Nebraska, the defendant did, operate or be in actual physical control of a motor vehicle on or over the streets or highways of Hall County, Nebraska,
2. while under the influence of alcoholic liquor or drugs, and
3. did thereby proximately cause serious bodily injury to another person.

The state has the burden of proving beyond a reasonable doubt each and every one of the foregoing material elements necessary for conviction. If you find from the evidence beyond a reasonable doubt that each and every one of the foregoing material elements are true, it is your duty to find the defendant guilty. If you find that the state has failed to prove beyond a reasonable doubt any one or more of the foregoing material elements, it is your duty to find the defendant not guilty.

Instruction No. 4: Definitions

You are instructed that the meaning of the term “under the influence of alcoholic liquor,” as applied to a person operating a motor vehicle is, if the alcoholic liquor has so far affected the nerves, brain and muscles of the operator of a motor vehicle so as to impair to any appreciable degree their ability to operate their motor vehicle in the manner that an ordinary, prudent, and cautious person, in full possession of their faculties would operate the same, then the operator of said motor vehicle is under the influence of alcoholic liquor.

A reasonable doubt is defined to mean one based upon reason and common sense after careful and impartial consideration of all the evidence. Proof beyond a reasonable doubt is proof so convincing that you would rely and act upon it without hesitation in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

Instruction No. 5. Presumption of Innocence

The defendant is presumed innocent. This presumption of innocence is evidence in favor of the defendant and continues throughout the trial unless and until the state shall have proven the defendant guilty beyond a reasonable doubt, if it can do so.

Instruction No. 6: The Evidence

The evidence from which you are to find the facts consists of the following:

1. The testimony of the witnesses;
2. Documents and other things received as exhibits; and
3. Any facts that have been stipulated to--that is, formally agreed to by the parties.

The following things are not evidence:

1. Statements, arguments, and questions of the lawyers for the parties in this case;
2. Objections to questions;
3. Any testimony I have told you to disregard; and
4. Anything you may have seen or heard about this case outside the courtroom.

C. There are two kinds of evidence, direct and circumstantial.

Direct evidence is either physical evidence of a fact or testimony by someone who has first-hand knowledge of a fact by means of his or her senses. Circumstantial evidence is evidence of one or more facts from which another fact can logically be inferred.

The law makes no distinction between these two kinds of evidence. A fact may be proved by either direct evidence, circumstantial evidence or both.

Instruction No. 7: Credibility

You are the sole judge of the credibility of the witnesses and the weight to be given to their testimony. In determining this, you may consider the following:

1. The conduct and demeanor of the witness while testifying;
2. The sources of information, including the opportunity for seeing or knowing the things about which the witness testified;
3. The ability of the witness to remember and to communicate accurately;
4. The reasonableness or unreasonableness of the testimony of the witness;
5. The self-interest or lack of self-interest of the witness in the result of this case;
6. The apparent fairness or bias of the witness, or the witness's relationship to the parties;
7. Any previous statement or conduct of the witness that is consistent or inconsistent with testimony of the witness at this trial; and
8. Any other evidence that affects the credibility of the witness or that tends to support or contradict the testimony of the witness.

Instruction No. 8: Expert Witness

A witness who has special knowledge, skill, experience, training, or education in a particular area may testify as an expert in that area. You determine what weight, if any, to give to an expert's testimony just as you do with the testimony of any other witness. You should consider the expert's credibility as a witness, the expert's qualifications as an expert, the sources of the expert's information, and the reasons given for any opinions expressed by the expert.

Instruction No. 9: Submission to the Jury

This case is now ready to be submitted to you for your consideration. It is your duty to determine what the facts are. You must approach this task with open minds – consulting with one another, freely and honestly exchanging your views concerning this case, and respectfully considering the views of the other jurors. Remember, you are not partisans or advocates. Do not hesitate to reexamine your own views and to change your mind if reason and logic so dictate.

When you get to the jury room, the first thing you must do is to select one of you to be the foreperson, the person who will preside over your deliberations. It is the foreperson's job to see that a verdict is fairly reached and that each juror has a chance to speak fully and freely on the issues in this case.

Your verdict must be unanimous and will be signed by the foreperson only.

BY THE COURT:

District Judge

IN THE HALL COUNTY NEBRASKA DISTRICT COURT

STATE OF NEBRASKA,

)

Case ID: CR00-002

)

Plaintiff,

)

)

vs.

)

JURY VERDICT FORMS

)

CORY MITCHELL,

)

)

Defendant.

)

Count I.

We the jury, being duly sworn, in the above captioned matter, do hereby find the defendant, Cory Mitchell, ___ not guilty, ___ guilty of the offense of leaving the scene of an accident, this _____ day of _____, 2000.

Jury Foreperson

Count I.

We the jury, being duly sworn, in the above captioned matter, do hereby find the defendant, Cory Mitchell, ___ not guilty, ___ guilty of the offense of causing serious bodily injury operating a motor vehicle while intoxicated, this _____ day of _____, 2000.

Jury Foreperson