

**SECONDARY SCHOOL - #3**

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, :

Plaintiff, :

vs. :

JACK SMITH, :

Defendant. :

:  
:  
:  
: Case No. 04-233  
: **Felony** (DUI with Death and  
: injury, 2 counts)  
: **Felony** (Possession with  
: Intent to Deliver)  
: **Misdemeanor** (Contributing)  
:  
:

**FACTUAL BACKGROUND**

The names used in the following factual background are completely fictitious, and are not meant to represent any person that may be known by any students whose names may be the same or similar.

Jack Smith is eighteen years old. His friend, Nicole Jones, is 16, and Nicole’s friend, Mary Thomas, is 15. Jack heard that there was going to be a “rave” at a empty warehouse in Centre Wheeling for young people over 18, and so he talked to Nicole and Mary about going with him, urging the girls to “lie about their age,” so they could get past security. While Nicole was pretty smart and felt like it was a bad idea, Jack and Mary kept telling her she wouldn’t be “cool,” if she refused to go, and she finally agreed. When they got to the rave, Jack went off to talk to some other friends, leaving Nicole and Mary alone. Nicole became very uncomfortable when she realized that some young people seemed to be taking drugs, and when she found Jack and told him she wanted to leave, Jack had a baby pacifier in his mouth and was carrying several glow items. He seemed high, acting very talkative, almost euphoric. Jack told her to stay, that he had “loads’ of “ecstasy,” in his pocket, and that it would be the best experience of her life. When she refused, Jack kept after Mary to try it, and Mary agreed, telling Nicole that she wasn’t going to pass up an opportunity like that. Nichole, angry at her friend and Jack, left the party and took a taxi home.

Soon after taking the ecstasy, Mary became sick, and lightheaded, and it was not a good feeling. She asked Jack to drive her home. Jack was still high when he started to drive, and while he was talking non-stop to her about what all he did at the “rave,” he failed to notice an intersection light turn red, and plowed into the side of another car, killing the driver of the other car, a young woman named Susan Styx. The accident also caused serious physical injury to Mary Thomas. Jack was not hurt, except for a few bruises to the chest when he hit the steering wheel.

Jack has been charged with DUI with Death and Serious Physical Injury; Possession of a controlled substance with intent to deliver; and Contributing to the delinquency of a minor. All told, Jack is facing up to 26 years in prison for his conduct on December 31, 2006.

### TRANSCRIPT OF TRIAL

BAILIFF: All rise. This Court is now in session.

JUDGE: Please be seated. Ladies, and Gentlemen, this is an indictment alleging that Mr. Smith is guilty of three felonies and one misdemeanor, which include: two felony counts alleging that he was guilty of violating the DUI laws for driving under the influence of a mind altering drug, and violating a duty imposed on him by the laws of West Virginia in the operation of that motor vehicle, and further alleging that the violation was reckless, and caused the death of Sue Styx, and serious physical injury to Mary Thomas; one felony count for possession of a controlled substance, ecstasy, with intent to deliver; and one misdemeanor count of contributing to the delinquency of a minor.

Remember, an indictment is just a charge of wrongful conduct. It is not proof of wrongful conduct. A person in the United States is presumed to be innocent unless proven guilty beyond a reasonable doubt, and the fact that a person is indicted is not to be considered by you as any evidence of wrongdoing. Do you understand?

JURORS: Yes Judge.

JUDGE: The first part of the case is VOIR DIRE, which means to “speak the truth”. It is the process by which we pick a jury. We have to find an impartial jury that swears to make their decision not on any prejudices, or preconceived notions, but solely on the evidence as it comes in the case. Do you think you, as prospective jurors, can do that?

JURORS: Yes Judge.

JUDGE: Now, in any criminal trial, the State has the burden of proving the defendant guilty beyond a reasonable doubt. A GUILTY VERDICT is a finding by the jury that the defendant is guilty as charged. The Court will give you a VERDICT FORM upon which you can write your decision at the end of the trial. In any criminal trial, because the State has to prove the defendant guilty, the State will go first. You will first hear the OPENING STATEMENT of the Prosecuting Attorney. You will then hear the opening statement of the defendant’s attorney. Then the State will call its WITNESSES. Then the defendant will call its witnesses. Then you will hear CLOSING ARGUMENTS from the State and from the defense, and then, and only then, will the Court instruct you on the LAW of the case, and you will be asked then and only then to deliberate together to determine if the defendant is guilty as charged in the indictment. Is the Prosecution ready to proceed?

PROSECUTING ATTORNEY: Yes, Your Honor.

JUDGE: Is the Defense ready to proceed?

SMITH’S LAWYER: Yes, Your Honor.

JUDGE: Okay, Prosecuting Attorney, you may proceed.

PROSECUTING ATTORNEY: Ladies and Gentlemen of the Jury, I am Attorney \_\_\_\_\_ and in the opening statement, it is my duty to tell you what the

evidence will be. I'll tell you what we will prove. We will prove that Mr. Smith is an adult. He is 18 years old. He, Nicole Jones, and Mary Thomas attended a rave party on New Year's Eve, December 31, 2006, where illegal drugs were being consumed by some in attendance, including crystal meth, and ecstasy. Jack used both meth and ecstasy that night, gave some ecstasy to Mary Thomas, and had several ecstasy pills in his pocket when he was arrested that night. You will hear from Nicole Jones. She went out with Jack and Mary, but she did not take drugs that night, and left the party when she realized the others were. She will be a witness in this trial, probably the best witness, because she was sober at the time of the party when she made her observations.

What Nicole saw was that when she met up with Jack at the party after he had been with some other party goers, he had a baby's pacifier in his mouth, and said he had taken meth and ecstasy, and tried to get Nicole Jones and Mary Thomas to take some. She will tell you that because of Jack's conduct, and her discomfort at the party, she left for home in a taxi, but not before she heard Mary tell Jack that she would try some ecstasy.

Mary Thomas will also be a witness against Jack. Although she can't remember much, she will tell you how she became sick after trying the ecstasy, how she asked Jack to take her home, and that Jack was still pretty high when he got behind the drivers wheel of his car. She will also tell you he was agitated, just kept talking and talking about the night while he drove, and that the last thing she remembered was him driving right through a red light, just before a crash,--a crash which caused serious physical injury to Mary, and a crash that caused the death of another young woman, Ms. Sue Styx, who was only 18 years old herself, and was on her way home from college when she unfortunately came into contact with Mr. Smith.

We will show that Mr. Smith was at the intersection when the light was red, that Ms. Styx had the right of way, and that Mr. Smith failed to stop at the red light, which is a duty required by law. And he was reckless in failing to do so. His passenger, Mary Thomas also suffered serious physical injury in the crash,

including serious lacerations to the head and face, which required substantial plastic surgery. She will be scarred for life.

A toxicology screen at the hospital showed a significant amount of Methamphetamine and Ecstasy in Jack's blood. The police recovered a number of ecstasy pills from Jack's pocket after the accident. He had enough of the drug with him that he must have intended to deliver it to others, as he did with Mary Thomas. So he has also been charged with possession with intent to deliver. He also contributed to the delinquency of a minor, Mary Thomas, by giving her ecstasy in the first place, and then putting her in a situation of neglect by his driving.

At the end, we will be asking you to find Mr. Smith guilty of possession of illegal drugs, two counts of felony DUI with death and serious injury, and one count of contributing to the delinquency of a minor.

SMITH'S  
LAWYER:

Now, ladies and gentlemen, I am Attorney \_\_\_\_\_. The State says it will prove that Mr. Smith is guilty, but I want to tell you that it's not enough for the State to say my client is guilty, it must prove he is guilty beyond a reasonable doubt, and although there were some drugs in his body after the wreck, the State still has to prove that he failed to stop at a red light, and that when he failed to stop at the light, he was acting "recklessly." Negligence is not enough for a felony conviction. He had to have been reckless in his violation of any duty imposed upon him in the operation of a motor vehicle. And ladies, and gentlemen of the jury, Jack did not mean to kill anyone. He had never tried crystal meth or ecstasy before this night. He only took them to impress his girlfriend Nicole, and the ecstasy pills he had on him when he was arrested that night were not to be delivered to anyone, but only for his own use, so he should not be found guilty of a felony charge of possession with intent to deliver. Finally, on the contributing count, he didn't even know that Mary Thomas was only 15. He thought she was at least as old as his girlfriend, Nicole. And he didn't intend to harm anyone. We will demonstrate that he is not guilty.

JUDGE: Prosecuting Attorney, call your first witness.

PROSECUTING  
ATTORNEY: I call Nicole Jones.

CLERK: Do you swear to tell the truth, the whole truth, and nothing but  
the truth?

NICOLE: I do.

PROSECUTING  
ATTORNEY: Can you tell us what you did the evening of December 31<sup>st</sup>,  
2006?

NICOLE: I went to a rave with Jack and Mary. Jack kept telling me I  
wouldn't be cool if I didn't go to the rave, so even though I  
thought it was a bad idea, I went.

PROSECUTING  
ATTORNEY: Can you tell us what you observed of Jack that night?

NICOLE: Well, after we got to the party, Jack went to be with other  
friends and I became uncomfortable, so I went to find him. He  
seemed different, he seemed "high" and just kept talking. He  
was using this silly glowing pacifier and I knew the glow toys  
were used at times to enhance the use of ecstasy.

PROSECUTING  
ATTORNEY: Now, Ms. Jones, do you recognize these items?

NICOLE: Yes, Sir. That's the pacifier Jack had and the  
glow items he was carrying on December 31<sup>st</sup>, 2006 at the rave.

PROSECUTING  
ATTORNEY: What did he say to you?

NICOLE: Jack begged me to stay, telling me he did have loads of ecstasy  
in his pocket and it would be the best experience of my life if I  
tried some.

PROSECUTING  
ATTORNEY:

What did he say to Mary?

NICOLE:

He kept asking Mary to try the ecstasy and finally she agreed by telling me she wasn't going to pass up an opportunity like that, so I got angry about it and took a taxi home.

PROSECUTING  
ATTORNEY:

What did you observe about the condition of Jack Smith when you last saw him?

NICOLE:

Jack seemed happy that Mary had tried the drug and just kept talking and acting very "high."

PROSECUTING  
ATTORNEY:

No further questions.

JUDGE:

Do you have questions, counsel for the defense?

JACK'S  
LAWYER:

Didn't a lot of people have baby pacifiers in their mouth at the RAVE? You can't tell us if all those people who had pacifiers in their mouth were taking drugs?

NICOLE:

No, I didn't see them up close, but I know that one of the reasons you use a pacifier is to control your teeth from grinding and the glow "toys" make a lightshow when you are using Ecstasy.

JACK'S  
LAWYER:

And just because Mr. Smith was talking fast doesn't mean you knew he was necessarily under the influence of drugs?

NICOLE:

I put two and two together, and besides, Jack told me he was taking drugs.

JACK'S  
LAWYER:

No further questions.

JUDGE:

Call your next witness.

PROSECUTING

ATTORNEY: I call Officer Paul Bunyan.

CLERK: Do you swear to tell the truth, the whole truth, and nothing but the truth?

BUNYAN: I do.

PROSECUTING

ATTORNEY: Please state your name.

BUNYAN: My name is Paul Bunyan.

PROSECUTING

ATTORNEY: What is your occupation?

BUNYAN: I am a police officer for the City of Wheeling, West Virginia, and have been for the last 15 years.

PROSECTUING

ATTORNEY: Now, Officer Bunyan, I understand you were called to the scene of an accident at the intersection of National Road and Washington Avenue on December 31<sup>st</sup>, 2006?

BUNYAN: Yes, sir I was.

PROSECUTING

ATTORNEY: Can you tell us what you observed when you got there?

BUNYAN: I noticed there were two people in one vehicle and one person in the other. The way the cars were situated shows Jack's car struck the Styx vehicle right in the middle of the intersection.

PROSECUTING

ATTORNEY: What did you do next?

BUNYAN: I first called an ambulance for Ms. Styx and Ms. Thomas. I am sorry to say it was obvious that Ms. Styx was already dead, but I wanted to get treatment for Ms. Thomas, who was



unconscious, but seemed to be alive, and bleeding profusely from her head wounds. Mr. Smith told me he was not injured, but I had him taken to the hospital as well, at which time he was checked for injuries and also had a blood test run. We also obtained a warrant to do a check of his personal clothes, and found several ecstasy pills in the pocket of the trousers he was wearing.

PROSECUTING  
ATTORNEY:

Based on your experience, can you describe how the accident appeared to have occurred?

BUNYAN:

Because the Styx vehicle was hit directly on the drivers side, and Ms. Thomas gave a statement that she remembered the light was red right before the impact, it was my conclusion that the accident occurred as a result of Jack running the red light.

PROSECUTING  
ATTORNEY:

No further Questions. (Looking at Smith's lawyer) You may inquire.

SMITH'S  
LAWYER:

You didn't know those pills were ecstasy when you searched his pocket, Officer?

BUNYAN:

No, Dr. Willobee did those tests.

SMITH'S  
LAWYER:

And Mr. Smith never told you he ran a red light?

BUNYAN:

That's true. He was so upset, he didn't say anything at the accident scene.

SMITH'S  
LAWYER:

No further questions.

JUDGE:

Call your next witness.

PROSECUTING  
ATTORNEY:

Mary Thomas.

CLERK: Do you swear to tell the truth, the whole truth, and nothing but the truth?

MARY: I do.

PROSECUTING  
ATTORNEY: Can you please state your name?

MARY: My name is Mary Thomas.

PROSECUTING  
ATTORNEY: Mary, were you out with the defendant on the night of December 31<sup>st</sup>, 2006?

MARY: Yes, he and his girlfriend Nicole and I went to a RAVE at a warehouse in Centre Wheeling.

PROSECUTING  
ATTORNEY: Did you know Jack was using crystal meth and ecstasy the night of December 31, 2006?

MARY: Yes, I mean, I didn't see him use it. He seemed high. He talked me into trying some ecstasy. It made me sick. I asked him to take me home. I should have left with Nicole.

PROSECUTING  
ATTORNEY: How was Jack acting in the car, driving you home?

MARY: He seemed like he was really in a good mood. Like overly confident. Jack is not usually like that, he's usually kind of quiet, and withdrawn. Not that night, he was acting like he was smarter than everyone, more confident than anyone, and even arguing with his girlfriend, Nichole. Not in a mean way, he wasn't nasty, just talkative, like non-stop. He told Nichole she was missing an opportunity of a life time, that she would thank him later, that she was old enough to experiment and that she was a "coward." He did get a little angry when Nichole decided to leave on her own. He really wasn't acting like himself that night.

PROSECUTING

ATTORNEY: How was his driving?

MARY: Well, at first, I didn't notice anything, but I was sick. All I know is he kept talking. About the Rave. About the music. About the drugs. Talking Talking, like he wouldn't shut up, and I kept thinking I wish he would just be quiet. I felt so sick, and then I saw we were approaching a red light, and that's the last thing I remembered until I woke up in the hospital.

PROSECUTING

ATTORNEY: Did you sustain injuries in the crash?

MARY: Yes, I was knocked unconscious, and had severe lacerations of the head and face. I had to have plastic surgery. A lot of it. As you can see, I still have the bandages on.

PROSECUTING

ATTORNEY: Have you been told that you will have permanent injuries?

DEFENSE

ATTORNEY: Objection, Hearsay!

JUDGE: It involves a medical diagnosis, I'm going to allow it.

PROSECUTING

ATTORNEY: You may answer.

MARY: My doctor told me my face will never be the same, and I don't know how I will look when all the bandages come off.

PROSECUTING

ATTORNEY: No further questions.

JUDGE: Does the defense have any questions?

SMITH'S

LAWYER: Yes, I do, Your Honor. The only thing you noticed before the accident was that Mr. Smith was very talkative, is that what you said?

MARY: Yes sir, that's right.

SMITH'S  
LAWYER: And you said you noticed the light was red, and that was the last thing you remember?

MARY: That's correct.

SMITH'S  
LAWYER: So you really can't say that he was driving recklessly when he approached the intersection or whether or not the light turned green before the crash?

MARY: The light was red when we crashed. I know that. And taking drugs, and driving, and acting the way he was, yes, I think that's reckless.

SMITH'S  
LAWYER: Well you never objected to the way he was driving before the accident did you?

PROSECUTING  
ATTORNEY: Objection, irrelevant.

JUDGE: Overruled, you may answer.

MARY: No, I just remember thinking I'm so sick. I wish he would quit talking. Just quit talking. And I saw the light, and that was it.

SMITH'S  
LAWYER: And isn't it true you told Jack you were Nicole's age?

MARY: No, I never did. He knew that I was a minor, because he asked Nicole and I to lie about our age to get in the Rave.

SMITH'S  
LAWYER: No further questions.

JUDGE: Call your next witness, Prosecutor.

PROSECUTING  
ATTORNEY: Dr. Marcus Willobee.

CLERK: Do you swear to tell the truth, the whole truth and nothing but  
the truth?

DR.  
WILLOBEE: I do.

PROSECUTING  
ATTORNEY: Please state your name.

DR.  
WILLOBEE: My name is Marcus Willobee

PROSECUTING  
ATTORNEY: And can you tell the jury your occupation?

DR.  
WILLOBEE: Yes, I am a physician and toxicologist, licensed to practice  
medicine in the State of West Virginia, and I work at City  
Hospital. I did the toxicology screen on Jack Smith the night of  
the accident, and tested the substance of the pills found in his  
pocket.

PROSECUTING  
ATTORNEY: Your Honor, I would ask that this witness be qualified as an  
expert toxicologist and to give opinions touching on his  
expertise.

JUDGE: He may be qualified because Dr. Willobee has been in this court  
several times and I know of his background and education. (In a  
real trial the Dr. would be asked to state his experience and  
education before he is qualified.)

PROSECUTING

ATTORNEY: What is a toxicology screen?

DR.

WILLOBEE: We take a sample of blood from the person to be tested, in this case, from Jack Smith, the night in question, and we run it through certain specialized equipment to determine if there is any alcohol or other controlled substances in his system.

PROSECUTING

ATTORNEY: And what did you find with respect to Mr. Smith's blood?

DR.

WILLOBEE: He was positive for methamphetamine, sometimes called Meth, or crystal meth, a Schedule II controlled substance; and ecstasy, a Schedule I controlled substance.

PROSECUTING

ATTORNEY: Doctor, can you tell us a little bit about crystal Meth and ecstasy?

DR.

WILLOBEE: Crystal meth is a powerful, highly addictive central nervous system stimulant that is toxic to humans. Ecstasy is known as a MDMA drug, a club drug that is synthetic, psychoactive and mind-altering.

PROSECUTING

ATTORNEY: What are they made of?

DR.

WILLOBEE: Some of the main ingredients of meth are cold tablets, battery acid, drain cleaner, antifreeze, kitty litter and lithium batteries. Ecstasy's main ingredients are caffeine and cold meds but research shows that uncertainties about the sources, chemicals, and possible contaminants used to manufacture it make it extremely difficult to determine toxicity and resulting medical consequences.

PROSECUTING

ATTORNEY: How do they affect the body and mind?

DR.

WILLOBEE: They affect both the body and the mind. In this case, meth could be used to boost high energy, allowing these young people to dance all night while the ecstasy gives them a feeling of euphoria and well being. However, they also raise your blood pressure level, causing dehydration in many cases. Meth use is associated with serious health consequences, including memory loss, aggression, violence, psychotic behavior and organ and brain damage. Ecstasy causes increased heart rate, kidney failure, depression and brain damage.

PROSECUTING  
ATTORNEY:

Can they impair someone's driving ability?

DR.

WILLOBEE: Most definitely, there have been many vehicular accidents attributed to Meth highs. These drugs cause confusion, dizziness, drowsiness, blurred vision, and anxiety that could make you drive more aggressive than normally, giving you the feeling of a "super person" while on them.

PROSECUTING  
ATTORNEY:

Now, sir, do you have an opinion, to a reasonable degree of certainty that Jack Smith, at the time of the accident in this case, was under the influence of drugs?

DR.

WILLOBEE: Most definitely. The level of Meth and ecstasy in his blood were significant enough each on their own to cause the short term effects that I have explained. With both, the influence would have been even greater.

PROSECUTING  
ATTORNEY:

Thank you doctor. (Looking at the other attorney ) Your witness.

CROSS EXAMINATION

SMITH'S  
LAWYER: Now Doctor, not having been in the car at the time of the accident, you are not telling this jury that you have an opinion that Jack Smith was being "reckless" in his driving just before the accident are you?

DR.  
WILLOBEE: As a doctor, I am not able to say one way or the other.

SMITH'S  
LAWYER: No further questions.

PROSECUTING  
ATTORNEY: Your Honor, the State rests.

JUDGE: Counsel for Mr. Smith, are you ready to proceed?

SMITH'S  
LAWYER: Yes, Your Honor.

JUDGE: Call your first witness.

SMITH'S  
LAWYER: I call Jack Smith.

CLERK: Do you swear to tell the truth, the whole truth and nothing but the truth?

JACK SMITH: I do.

SMITH'S  
LAWYER: Please state your name.

JACK SMITH: Jack Smith.

SMITH'S  
LAWYER: Jack, did you take crystal meth and ecstasy on the night in question?



JACK SMITH: Yes, but I only took one tablet of each. And although it may have caused me to be real talkative, I don't think it was causing me to be reckless. I mean, I didn't mean to hurt or to kill anyone, we were just having fun. I just didn't notice the red light. It was just an accident. That's all.

SMITH'S  
ATTORNEY: No further questions, Your Honor.

JUDGE: Prosecutor, do you have any questions?

PROSECUTING  
ATTORNEY: Yes, Your Honor. Mr. Smith, you were high on two drugs, And you still had some ecstasy on you at the time of the accident?

JACK SMITH: Yes, sir.

PROSECUTING  
ATTORNEY: And you decided to take a 15 year old girl home with you, knowing you were high on two drugs?

JACK SMITH: Yes, sir.

PROSECUTING  
ATTORNEY: And you don't think you were acting recklessly?

JACK SMITH: No, I'm always careful.

PROSECUTING  
ATTORNEY: Except for the evening of December 31, 2006?

JACK SMITH: Well, I didn't notice the light.

PROSECUTING  
ATTORNEY: And you don't think that was reckless?

JACK SMITH: I didn't mean to kill anyone. I didn't mean to hurt anyone. I was just having fun, and not really thinking about it.

JUDGE: Thank you Mr. Smith. You may step down.  
Any further witnesses?

SMITH'S  
LAWYER: Nothing further, Judge.

JUDGE: Ladies, and gentlemen of the jury, you will now hear CLOSING  
ARGUMENTS, first from the Prosecuting Attorney.

PROSECUTING  
ATTORNEY: Ladies and gentlemen of the jury, the State has proven beyond a  
reasonable doubt that the defendant, Jack Smith, is guilty of  
two counts of felony DUI with death and serious injury, one  
count of a felony, possession with intent to deliver and one  
count of a misdemeanor of contributing.

We have proven Jack took the drugs. Dr. Willobee testified that  
the toxicology report showed both crystal meth and ecstasy in  
Jack's blood after the accident. Jack made the conscious  
decision to take these drugs on December 31, 2006 and also  
talked Mary Thomas into taking them, knowing full well she  
was underage. Mary Thomas who is only 15 years old told us  
that Jack knew the age of both girls and wanted them to lie  
about their age. He should be proved guilty of contributing  
because he knew they were underage. Mary also told us she saw  
Jack take the drugs. Mary told you that Jack was acting very  
high when he left to drive them home, thus acting reckless in  
his actions. Right before the crash, Mary remembered that the  
traffic light was red. Because of Jack's actions, one young  
innocent young lady is dead and another possibly disfigured for  
life.

Jack's conduct was not negligent. He was reckless in his  
actions. He knew drugs could cause harmful effects, he knew  
Mary and Nicole were underage and he knew better than to get  
behind a wheel of a car when inducing these drugs, putting his  
life and the life of others in danger. The evidence is beyond a  
reasonable doubt, beyond any doubt, so you should return a  
verdict of guilty on all counts.

SMITH'S  
LAWYER:

Ladies and Gentlemen, the State has not proven that Mr. Smith was guilty of any felonies beyond a reasonable doubt. Jack did not mean to hurt anyone. He did not mean to kill anyone. He may have not seen the red light, and so maybe he was being negligent, but that isn't necessarily recklessness. You heard Jack say this was the first time he took the drugs and that he didn't intend to give those in his pocket to anyone. He was just trying to impress his girlfriend.

The State in this case has not proven beyond a reasonable doubt that Jack should be found guilty of any of these charges. Therefore, we ask that you find the defendant not guilty.

JUDGE:

Now it's time for the Charge to the Jury: the Jury is instructed on the law of West Virginia as follows:

**INSTRUCTIONS ON THE LAW**  
**DUI (Driving Under the Influence)**

- (a) Any person who operates a vehicle while under the influence of alcohol or any other intoxicating or mind altering drugs shall be guilty of a misdemeanor for the first offense, and shall be confined to the county jail for not less than one nor more than 30 days, and fined not more than \$1,000; Any person who operates a vehicle while under the influence of alcohol or any other intoxicating or mind altering drugs shall be guilty of a misdemeanor for the second offense, and shall be confined to the county jail for not less than four months nor more than one year, and be fined not more than \$5,000; Any person who operates a vehicle while under the influence of alcohol or any other intoxicating or mind altering drugs shall be guilty of a felony for the third offense, and shall be confined to the West Virginia Penitentiary for not less than one year, nor more than five years, and fined not more than \$10,000.  
17C-5-2 (a) (1) (a)

- (b) Any person who, while under the influence of alcohol or any other intoxicating or mind altering drugs, violates any duty imposed by law for the driving of a motor vehicle, which violation causes serious physical injury or death to any person, shall be guilty of a misdemeanor, and shall be confined to the West Virginia penitentiary for a period of not less than one, nor more than five years.

17C-5-2 (a) (1) (E) (2)

- (c) Any person who, while under the influence of alcohol or any other intoxicating or mind altering drugs, recklessly violates any duty imposed by law for the driving of a motor vehicle, which violation causes serious physical injury or death to any person, shall be guilty of a felony, and shall be confined to the West Virginia penitentiary for a period of not less than two, nor more than ten years.

17C-5-2 (a) (1) (E) (3)

**Possession of a Controlled Substance**

It is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance.

Any person who violates this subsection with respect to any controlled substance classified in Schedule I (Ecstasy) or Schedule II (Methamphetamine) is guilty of a felony, and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both.

**Contributing to the Delinquency of a Minor**

A person who by any act or omission contributes to, encourages, or tends to cause the delinquency or neglect of any child shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars, or imprisoned in the county jail for a period not exceeding one year, or both fined and imprisoned.

JUDGE: It is the state’s duty to prove Mr. Smith guilty of a crime BEYOND A REASONABLE DOUBT. [Lawyer/Judge may amplify on instructions, time permitting]

It is now time for you, the jury, to deliberate on the guilt or innocence of Jack Smith. You shall first pick a FOREPERSON and when you have reached a VERDICT please advise the Bailiff. Bailiff, please lead the jury out to the “jury room” and give the jury five minutes to deliberate.

BAILIFF: Yes, Judge.

***AFTER THE JURY DELIBERATES AND COMES BACK TO THEIR SEATS:***

JUDGE: Will the foreperson of the jury please stand. Have you reached a verdict?

FOREMAN: We have, Your Honor.

JUDGE: Will the defendant please stand. You may read the verdict.

FOREPERSON: *As to the charges against Mr. Smith, Your Honor, we find the Defendant:*

\_\_\_\_\_ *GUILTY of Felony (DUI with Death) (RECKLESS)*  
\_\_\_\_\_ *NOT GUILTY of Felony (DUI with Death)*

OR

\_\_\_\_\_ *GUILTY of Misdemeanor (DUI with Death)*  
*(NOT RECKLESS)*  
\_\_\_\_\_ *NOT GUILTY of Misdemeanor (DUI with Death)*

AND

\_\_\_\_\_ *GUILTY of POSSESSION of a controlled substance*  
\_\_\_\_\_ *NOT GUILTY of POSSESSION of a controlled substance*

AND

\_\_\_\_\_ *GUILTY of Contributing to the Delinquency of a Minor*  
\_\_\_\_\_ *NOT GUILTY of Contributing to the Delinquency of a Minor*

JUDGE: So say you all?

JURY: Yes, Your Honor.

1. We hope you have enjoyed learning about the CRIMINAL JUSTICE SYSTEM, and now we'll have a short summary and question and answer period.

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*Script written by Patrick S. Cassidy, President  
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