

PART V

**SUPREME COURT OF THE
STATE OF NEW YORK**

Civil Division

MORGAN AND JAN CREWSHANK,)
)
Plaintiffs)
)
versus)
)
JODY, MICKEY AND RUDI RAMIREZ,)
)
Defendants)
)

No. MT-96

STATEMENT OF STIPULATED FACTS*

Seventeen-year-old Jody Ramirez, a recent graduate of Central High School in Centerville, New York, and the best basketball player ever to come out of Central High, hosted a graduation party on June 24, 1995 at 112 McDonald Drive, the home of the teen's parents, Mr. and Mrs. Ramirez. Jody had previously asked Mr. and Mrs. Ramirez for permission to have the party at the family home. As Jody had done very well in school, was responsible and obedient, Jody's parents consented. Without the knowledge of Mr. and Mrs. Ramirez, 21 year old Tracy Ramirez, Jody's older sibling, arranged for the purchase of three kegs of beer from Morris Wine and Liquor located on 215 Main Street. At 2:00 p.m. on June 24th, Jody and Tracy drove to the liquor store. Jody waited in the car while Tracy went to purchase the kegs of beer. When Tracy went to pay for the kegs, the store owner, Lynn Morris asked Tracy for identification. After verifying Tracy's stated age of 21, Lynn completed the sale. While making small talk, Lynn asked Tracy if the beer was for a party to which Tracy answered "Yes, my parents are having a party." Due to the bulkiness and the weight of the kegs, Lynn assisted Tracy in getting the kegs to the car. While Lynn was loading the kegs into the car, Lynn noticed Jody sitting in the front seat of the vehicle. Lynn recognized that Jody looked underage, at which point Lynn asked Tracy if the beer was in fact, for Jody. Tracy answered, stating, "We will both be at the party, but the beer is for our parents."

Approximately eighty people attended the party. People began arriving at the Ramirez home around 4:00 p.m. Mr. and Mrs. Ramirez gave strict instructions to Jody that there was to be no alcohol consumed at the party. Mr. and Mrs. Ramirez told Jody about a recent news story about

parents who were found responsible in criminal and civil courts for allowing a keg party to be held at their home by their teenager. They both stated that no alcohol was to be served and anyone bringing and using alcohol was to leave the party.

In order to feel comfortable that the party was off to a good start and everyone was acting responsibly, Mr. and Mrs. Ramirez stayed at home for the first few hours of the party. They left about 8:00 p.m. to go out to dinner with their friends, the Rhodes, at which point they left Tracy in charge. Upon their return at about 10:00 p.m. they discovered the party attendees, all of whom were underage, drinking beer. They stopped the party immediately and made sure that everyone had a sober driver to take them home.

Around 10:15 p.m., as people were leaving, Jody asked to borrow the family car to take a date home. Nicky lived about two miles away. Rudi Ramirez asked if Jody had been drinking and, if so, how much. Jody answered, "One beer before 9:00." Rudi believed Jody, but still angry over the kegs, instructed Jody to take Nicky home and return immediately.

At approximately the same time that Jody was preparing to take Nicky home, 16 year old Pat Crewshank and 17 year old René Gaulle were leaving a baby-sitting job at 360 West Elm Street and began walking the four blocks to Pat's home. Pat called home before leaving the baby-sitting job to tell them that they were leaving and that they should arrive in about ten minutes. As the two began to walk, a severe thunderstorm hit the area, with torrential rains, 40 mph winds and lightning. The two began to run home as fast as they could.

At approximately 10:30 p.m., Pat and René neared the intersection of Chestnut and Spruce Streets. There is a four-way stop and a marked crosswalk at the intersection. After they had slowed to look for oncoming cars, they proceeded to run diagonally through the center of the intersection. Just as they got into the intersection and a split second before disaster, the pair saw a car speeding towards them. René saw the car first and tried to push Pat out of the way but René slipped and fell on the roadway. Unable to get out of the way fast enough, René's right leg was crushed under the wheel of the car. Hit head on, Pat was thrown through the air.

At 10:45 p.m., rescue vehicles arrived on the scene, about seven minutes after the police car had arrived on the scene. Pat lay semi-conscious in the middle of the street. René Gaulle lay immobile about 15 feet from Pat. Jody and passenger Nicky Adams were extremely shaken but appeared uninjured. Pat's more serious injuries were attended to first. Pat and René were rushed to City General Hospital. Jody and Nicky were also

taken by ambulance to the hospital to be examined for possible internal injuries.

After arriving at the hospital, waiting in the emergency room, and being examined by physicians, the police began to question Jody about the details of the accident. The sergeant asked if Jody had been drinking, how fast Jody had been driving and what direction the two pedestrians had come from. Jody told the officer that they had been coming from a graduation party and they couldn't have been going any faster than 25 mph because of the severe weather conditions. Jody said that because of the rain, no stop sign could be seen. "And I only had one beer over two hours ago."

Based on the circumstances surrounding the accident, Jody was asked to submit to a Breathalyzer test. Jody was advised that a refusal to take a test for the presence of alcohol would result in loss of driving privileges. The police officer hearing Jody's statement immediately invoked the Implied Consent Law which requires a motorist to submit to a test for the presence of alcohol by using breath or blood as the test medium. Failure to submit to the test would result in suspension of a motorist's driving privileges. Jody consented. The test registered a Blood Alcohol Level (BAC) of .05, 75 minutes after the accident (11:45 p.m.). The police, who are expert in extrapolating blood alcohol content using charts and graphs, determined that over the 75 minute period from the time of the accident until the time that the Breathalyzer was administered, Jody had metabolized some of the alcohol previously taken. The chart used by the police revealed that Jody's blood alcohol content was a .069, or .001 less than the legal limit for establishing prima facie evidence that a motorist is Driving While Ability Impaired. However, based on the officer's interrogation and observation of Jody's behavior both at the scene of the accident and at the hospital, Jody was placed under arrest for Driving While Ability Impaired and Reckless Driving.

Pat suffered multiple internal injuries and lapsed into a coma immediately following the accident. Pat has remained in a coma and has not yet made any noticeable recovery. Doctors have informed the parents that, as with many similar comatose cases, it is simply impossible to know what the future will hold. René Gaulle suffered a fractured tibia but has recovered fully.

The parents of the victim, on behalf of their child Pat, are suing Jody and Jody's parents, Mickey and Rudi Ramirez, for negligence which resulted in the injury of their child. The suit seeks damages in the amount of \$2,000,000.00 for future medical care of Pat, the medical injury sustained by Pat, and Pat's pain and suffering.

STIPULATIONS

- 1) The numbers provided for the BAC (blood alcohol level) level of Jody Ramirez **cannot** be challenged as inaccurate or incorrectly figured in any way.
- 2) Sergeant Jett Miller is qualified as an expert with respect to figuring BAC levels and in reading a BAC Level Chart.
- 3) Determination of criminal charges are pending; for the purposes of this mock trial, Jody Ramirez can not invoke 5th Amendment privileges in this case.
- 4) For the purposes of this mock trial all witnesses may be represented by either sex. Irrespective of Jody Ramirez' gender in court, Jody's gender has no bearing on the stipulated BAC levels.
- 5) Jody Ramirez' sex, race, eye and hair color is intentionally left blank on the police report. However, for the purposes of this mock trial, this information shall be considered to match the physical characteristics of the witness identified as Jody Ramirez. Regardless of Jody's appearance in court, Jody's height and weight in the police report can not be challenged.
- 6) The police report, including the map of the accident scene, is eligible for use as evidence at trial, following proper procedure for identification and submission.
- 7) The map of the accident scene provides an accurate representation of the following: 1) the direction which Pat and René were running, southbound along Spruce Street until the intersection with Chestnut, as delineated by the directional arrows; 2) the direction of Jody's car on Chestnut, eastbound, as delineated by the directional arrows; 3) the final position of Jody's car following the accident, as marked by "car" at the southeast corner of the intersection; 4) the location of Pat and René following the accident; 5) the black rectangular symbols adjacent to each crosswalk are stop lines; and 6) the location of four stop signs.
- 8) Witness statements are sworn and notarized.

WITNESSES

FOR THE PLAINTIFFS

Jan Crewshank
Parent of Pat Crewshank

René Gaulle
Friend of Pat Crewshank

Sergeant Jett Miller
Centerville Police Department

FOR THE DEFENDANTS

Abbie Rhodes
Family Friend of the Crewshank's
and the Ramirez'

Rudi Ramirez
Parent of Jody Ramirez

Jody Ramirez
Driver of Car

* This case is hypothetical. Any resemblance between the fictitious persons, facts and circumstances described in this mock trial and real persons, facts and circumstances is coincidental.

All witnesses may be portrayed by either sex. All names are meant to be gender non-specific. It is stipulated that any enactment of this case is conducted after the named dates in the fact pattern and witness statements.

Affidavit of Jan Crewshank
Witness for the Plaintiff

My name is Jan Crewshank. I reside at 413 Spruce Street in Centerville, New York. I have lived at that address for twenty years. I am the parent of Pat M. Crewshank, who was a sophomore at Central High School. I am a Registered Nurse and work on a medical/surgical floor at St. Anne's Hospital in Centerville. I am a leader of our county's Mothers Against Drunk Driving chapter and Pat is a member of the high school's chapter of Students Against Drunk Driving.

On the evening of June 24, 1995, Pat and a friend, René Gaulle, were baby-sitting from 5:00 to 10:00 p.m. at 360 West Elm Street. As has been our practice since Pat started baby-sitting, I had asked Pat to call home before leaving the baby-sitting job. Pat called about 10:20 p.m. to let me know that they were leaving to walk home. Twenty minutes passed and I began to worry because I had expected them home by then. It had started to storm heavily right after Pat called and I thought the kids might have been delayed in leaving. I heard sirens down the street from our house at about 10:35 p.m. and again a few minutes later. When I then called the home where Pat was baby-sitting, and found out that Pat and René had left over 20 minutes before, I was suddenly gripped by fear—and I ran out of the house towards where I heard the sirens. By the time I got to the corner of Spruce and Chestnut, an ambulance was pulling away. Things were very confusing, but I saw someone who looked like René Gaulle being attended to and I eventually reached a police officer to ask who had been injured. The officer asked who I was and why I needed to know the names of the injured people. When I explained that Pat and René were late getting home, the officer immediately went to check on the names. I think I was shaking even before I was told that Pat had just been taken to the hospital—and I started running home to get the car as soon as the words were out of the officer's mouth. I was only at the scene for eight to ten minutes, but saw where the car finally stopped more than halfway through the intersection.

Pat was severely injured in the accident, suffering multiple internal injuries, internal bleeding and a terrible concussion from the impact of the collision and from being thrown in the air, landing head first on the pavement. The internal injuries were treated and stabilized. However, Pat lapsed into a coma after the accident and the doctors do not know if Pat will recover. At best, we know it will be a long and difficult ordeal. At worst, I may have already lost my child.

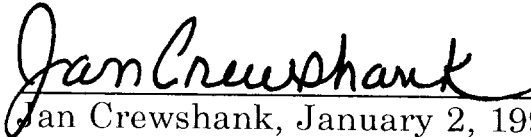
I can't believe that this has happened to Pat. My family has seen other families who have been devastated by the needless death of loved ones due to their own or someone else's drinking and driving. That's why I became involved in MADD and Pat became involved in SADD—we just

thought that maybe we could help people realize how dangerous the improper use of alcohol has been and how much damage it has caused. For Pat to be run down like this—I can't tell you how terribly angry it makes me.

To compound the pain, there was even a front page story the day before graduation about other unfortunate kids who were killed and injured at surrounding high schools because of alcohol and drugs at proms and graduation parties.

I know how difficult it is to be the parent of a teenager. In some ways, I can sympathize with Jody's parents. I think they did try to keep alcohol away from that party. But it was their kids who bought the beer and brought it to their home. They permitted Jody to drive after knowing everyone at the party had been drinking. Our mutual friends, the Rhodes, arrived at the Ramirez house that night well after the party had started. Our family has known the Rhodes family for a long time. They live about four blocks from us and our children have grown up together. Abbie told me that when they got to the Ramirez house before dinner they were told by Rudi that the party appeared to be under control and all the kids were well behaved. When I told Abbie I'm always concerned about large parties with teens and the possibility that alcohol might be used by underage partiers, Abbie agreed. However, Abbie's fears were lessened because everything looked like it was well supervised and the kids looked like they were having a good time. However, Abbie said when they got back from dinner a couple of hours later, a total change had occurred. She said it looked to her like a lot of the kids were drunk. Many of the kids' eyes were bloodshot and their speech seemed affected. I can't imagine if so many of the kids had to get rides home from their parents how the Ramirez' could have possibly thought their own child, who had already directly disobeyed them by bringing alcohol to the party, was in any condition to drive a date home.

My child is now struggling for life because of the Ramirez' failure to take action and properly supervise their kids. For six months, I haven't heard my child's voice, I haven't had a hug, I haven't had my child. The Ramirez' should be held responsible. I don't know what will happen with Pat, but something good has to come out of this tragedy. Parents and kids must learn that there is a very steep price to be paid when you mix alcohol and automobiles—it's no longer just the innocent victim who's going to get stuck with the tab. It's as simple as this: the Ramirez' never should have allowed Jody to drive their car knowing Jody had been drinking.


Jan Crewshank, January 2, 1996

Affidavit of René Gaulle
Witness for the Plaintiff

My name is René Gaulle. I reside at 418 Spruce Street. I have known Pat Crewshank for three years and we've dated for the past six months. I attend school at Central High and I am a sophomore.

On the evening of June 24th I had taken a baby-sitting job with Pat at 360 West Elm Street. We were supposed to baby-sit four kids from 5:00 to 10:00 p.m. Pat's parents always required a call home before Pat left anywhere to go someplace else. So, Pat called home around 10:25 p.m., before we started to walk home. We left the house right after Pat got off the telephone.

Right after we left the house, it began to storm, raining heavily, thundering and lightning with strong winds which were causing the trees to bend. Even though we were both wearing summer jackets and blue jeans, we knew we were going to get soaked to the bone. Naturally, we decided to run home. We were cruising. We were both on the track team and our season had ended a couple of weeks before the accident. We both earned letters and had been given jackets with our school colors, navy blue and gold, which we were wearing. I was running with my head down to keep the wind and rain out of my face. I think Pat was doing the same thing. As we reached the intersection of Chestnut and Spruce Streets, I quickly looked for oncoming cars and didn't see any. We began to run through the center of the intersection. As we got halfway across the street this car came out of nowhere. I hadn't even seen headlights nor had I heard the car coming until it was right there—and then I realized the car was not stopping. I tried to push Pat out of the way but I slipped and fell on the wet pavement. The car hit Pat head on. Pat was thrown into the air and landed on the ground about 15 feet away, off to the side of the road. The car ran over my right leg after I fell down. While it was hard to judge, I would say that the car was going pretty fast, maybe 40 or 50 mph.

Chestnut and Spruce are small neighborhood streets and the speed limit is 25-30 mph. The police arrived on the scene pretty quickly but the paramedics took a little longer. It was real confusing, what with the pain in my leg, the rain and water running a couple of inches deep in the street. I think the cops had their hands full until well after the ambulances arrived. They knew that Pat was hurt worse than I—I could hear Pat moaning loudly even from a distance—and I heard someone in the car yelling and crying hysterically.

This whole accident is unbelievable. I never thought something like this could happen to someone I know. Pat and I were doing what we were supposed to do, and we get hit by this hot shot who has been drinking and speeding. It's just not right.

Rene Gaulle

René Gaulle, June 26, 1995

Affidavit of Jett Miller
Witness for the Plaintiff

My name is Sergeant Jett L. Miller. I have been on active duty with the Centerville Police for ten years. I have lived in Centerville all of my life.

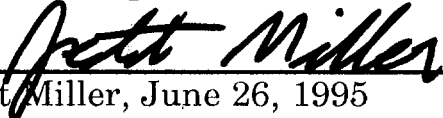
On June 24, 1995, I received a call from the dispatcher at 2232 hours or 10:32 p.m. There was a report of a motor vehicle accident involving two pedestrians, which allegedly occurred at the intersection of Chestnut and Spruce Streets. Since there had been two other accidents during the storm and I was the closest patrol car to the scene, I responded. Due to the poor weather conditions that evening I was delayed in arriving at the accident scene. It took me about six minutes to respond. Normally, it would have taken me about two or three minutes to respond. I arrived at approximately 10:38 p.m.

When I arrived on the scene there was the normal confusion you find at an accident. I observed two bodies lying in the road. One appeared to be unconscious, but was moaning; the other was conscious but was in severe pain. The driver of the car and the passenger in the car seemed to be extremely shaken but uninjured. I recognized the driver of the car as Jody Ramirez, the star forward of the high school basketball team. I attended to the more serious of the two victims first. I checked to see that the young person was still breathing but I did not move them. Then I checked on the second victim. I asked if they knew their name and where they were. The victim's name was René Gaille. René told me that the other victim's name was Pat Crewshank and that they had been running home from a baby-sitting job. I then went over to check on the driver of the car. By this time the rescue vehicles had begun to arrive.

After the paramedics had begun to attend to Pat and René, I began to question the driver, Jody, about the details of the accident. Jody was fully conscious but appeared disoriented. Jody's face seemed pale. Jody's eyes were not bloodshot but the pupils were dilated. Jody was very quiet and tried to answer my questions even though the questions seemed to perplex Jody a lot. When Jody did speak, Jody's speech was slow and halting, like the kid was concentrating on saying the right thing. I did detect a faint odor of alcohol on Jody's breath but no alcoholic beverages were evident in the vehicle.

Pat and René were rushed to the hospital immediately. Soon after the paramedics examined Jody and the passenger, Nicky, and decided to bring them to the hospital as well. After Jody had been examined at the hospital and was released, which took over 35 minutes, I took Jody aside to ask further questions. When I asked Jody how the accident occurred, Jody told me that because of the bad weather conditions "I couldn't have been going

faster than 25 mph." When I asked if Jody had been drinking at all that evening, the answer was, "I only had one beer and that was over two hours ago." Jody told me they had been coming from a graduation party. Based on the circumstances surrounding the accident, I asked Jody to submit to a Breathalyzer test. Jody consented. The test registered a BAC of .05, 75 minutes after the accident (11:45 p.m.). In order to account for time elapsed since the accident, I used the general figures for Blood Alcohol Content (BAC) regression and extrapolated that Jody's blood alcohol content at the time of the accident was approximately .069. The subsequent chemical test confirmed the earlier BAC result. Therefore, I placed Jody under arrest for Driving While Ability Impaired and Reckless Driving.



Jett Miller, June 26, 1995

Affidavit of Abbie Rhodes
Witness for the Defense

My name is Abbie Rhodes. Both Dusty and I have been friends of the Crewshank's since grade school and the Ramirez' for over ten years. We live at 215 Penney Lane in Centerville, New York. I am 45 years of age and Dusty is 44 years old.

On June 24, 1995, we went out to dinner with the Ramirez'. Dusty and I went to their house to pick them up so that we could ride together. We only live ten minutes away.

When we got to the Ramirez home, I couldn't believe how many kids were there. I am a worrier. While I hate to admit it, I am always skeptical with that many kids at a graduation party. I didn't know why the Ramirez' were inclined to go out and leave the kids but they said they trusted Jody and Tracy. The kids appeared to be under control when we left. However, when we got back, it was a whole different story. There were three kegs and beer was everywhere. Most kids had a cup in their hand. Rudi and Mickey were outraged and demanded that all the beer in the kegs and in people's cups be emptied immediately.

I saw Jody and it appeared to me that Jody was generally all right. Jody was involved in a discussion with Rudi and Mickey about the beer and the fact that the kids had been drinking for quite a while—at least it appeared that way from the number of cups and trash I saw Jody's parents asked how much beer Jody had drunk. Jody said one beer approximately one hour before we arrived. From the looks of Jody, I couldn't tell that Jody had had even one, but I was still concerned when Jody asked to drive Nicky home. Jody's eyes weren't red, Jody's coloring was normal, and even Jody's speech was normal—maybe a bit slower than usual. Jody was talking quietly, probably because Jody was being chastised by Rudi and Mickey. I wasn't too surprised then, that Rudi let Jody drive the car. I wouldn't have done the same if Jody were my child, but I can't say that Rudi made the wrong decision.

The whole thing is so sad. The Crewshanks and the Ramirez' are both friends of ours. I don't want to get in the middle of friends, but I feel an obligation to report the facts as I saw them.



Abbie Rhodes, January 11, 1996

Affidavit of Rudi Ramirez
Witness for the Defense

My name is Rudi Ramirez. I reside at 112 McDonald Drive with my spouse, Mickey, and our two children, Tracy and Jody. I have been employed as personnel director by the local power plant for 20 years. We have been residents of Centerville for 45 years.

In mid June, Jody came to us and asked if Jody and Tracy could have a graduation party. Mickey and I consented to having the party at the house. We trusted both of our children enough to feel comfortable with leaving them for two hours during the evening while we went out to dinner with our friends Dusty and Abbie Rhodes. I left Tracy, my 21 year old, in charge. We knew nothing of the kegs of beer that had been purchased. We had specifically forbidden the kids from serving any alcohol or even having attendees drinking in our home. When we returned, we found three kegs of beer tapped and sitting in our backyard. We immediately broke up the party and asked everyone to leave. We made sure all the young people had a safe ride home, insisting that the kids who looked like they had too much to drink wait for their parents to arrive and drive them home. After everyone had gone, Jody asked for my car keys to drive a date home. I asked if Jody had been drinking. Jody said one beer, over an hour ago. Jody was acting completely normal so I gave the keys to Jody. I have seen people who were drunk, including workers on the job, and feel like I can tell when someone has had too much to drink. Jody looked and spoke normally. Even though we were really angry and disappointed in Jody, we let Jody take the car.

At 11:00 p.m., we received a phone call from City General Hospital. Jody had an accident and had been taken there. It was long after we arrived at the hospital that we found out that Jody was being placed under arrest for DWAI and Reckless Driving.

Mickey and I believe we acted responsibly. Jody did not seem intoxicated at all, so we let Jody drive. We had been adamant about an alcohol-free party and had stayed for the first four hours of the party to make sure kids didn't bring anything with them. When I returned at 10:00 p.m. and saw the kegs, I was furious and immediately ended the party.

While what Jody and Tracy did in providing the beer was wrong, I really don't think Jody was suffering any ill affects from the alcohol upon leaving our house. That was a whopper of a storm that came through and I read in the newspaper the next day that there were several storm-related accidents within a few minutes of each other. My kid had a tragic accident, and two kids got hurt because of it but I don't think that Jody or alcohol caused the accident. We are responsible people and expect our kids to act

responsibly too. I don't think we or Jody were negligent in causing this situation.

Rudi Ramirez
Rudi Ramirez, January 9, 1996

Affidavit of Jody Ramirez
Witness for the Defense

My name is Jody A. Ramirez. My address is 112 McDonald Drive. I recently graduated from Central High School where I played as a forward on the basketball team. I have lived here all my life.

Shortly before graduation, I asked my parents about the possibility of having a party at our home. My folks were initially concerned about having a lot of kids at the house and the possibility that some of the kids might get a little wild with school all finished and summer coming. I told them that I had always respected our house and that I wouldn't take any chances with their home. On June 24, 1995, my parents threw the graduation party for me. Approximately 80 people attended. That afternoon, my sibling, Tracy and I went to Morris Wine and Liquor to purchase three kegs of beer. We had an idea that our parents would leave to go out to dinner and we were going to wait until then before opening them. We just wanted to liven the party up.

Around 8:00 p.m. that evening my parents left and we brought out the beer. The kegs were on ice in a basement closet. I'm positive my parents had no idea that we had the beer. Things got a little rowdy. I had one maybe two beers, but I did not think I was drunk. My parents came back around 10:00 p.m., a couple of hours sooner than we thought and the party was broken up. My parents were really mad, which I kind of expected.

I needed to take my date, Nicky, home. I don't think I was affected at all by the beer. I had been running around and had been real active so I figured I burned off all of the alcohol. Besides I had been snacking the whole night. I asked my parents for the car keys. They asked me what I had to drink and I said that I had one beer, so they let me take the car. I left to drive the two miles to Nicky's house.

As we drove, it started to rain heavily. A big thunderstorm was hitting the area, with lots of rain. I was going down Chestnut Street, being careful, when suddenly I saw two kids crossing right in front of me. I didn't see them until the last second so I didn't have time to react. I couldn't stop fast enough, the road was too wet. The accident just couldn't have been avoided. It was only after I got out of the car that I even realized that it was an intersection. I was looking ahead, through the windshield, but couldn't see anything out the side windows. I never saw the stop sign. I am not sure, but I think that with the wind blowing the trees so ferociously that a branch may have been whipping in front of the sign as I came down the road.

When I hit those kids, I already had my foot on the brake. I've never gone from feeling fine to feeling horrible so fast in my life. I felt woozy, my

palms were sweaty and I started crying. I couldn't believe this had happened. I felt even worse when I got out of the car and saw the two people who had run in front of me. Later, when I was talking to the police officer at the hospital, I was even more upset. It felt like I was in a slow motion movie and none of this could be real.

I feel terrible about the accident, but that's exactly what it was, an accident. It wasn't the beer I had that caused me to hit those kids, it was that horrible thunderstorm. I didn't see them, but they didn't see me either before they crossed the street. That tells you how bad the storm was. If I could change anything about that night, I would take away that storm. Even without the beer, that storm would have broken up my party and I would have been taking Nicky home and I still wouldn't have been able to see those two kids.

I am sorry for them, but I am also sorry for my parents. They didn't do anything wrong, but the little beer I drank may cost them big time. I don't think any of this is fair and there is nothing I can do to make any of it better.



Jody Ramirez, January 9, 1996

Police Report

Metropolitan Police Department Defendant's True Name (I.D. only) Complaint No.
 Centerville, New York 01556
 Prosecution Report for Persons Driving Defendant's Name (Last, Middle, First) I.D. No.
Under the Influence of Alcohol or Drugs Ramirez, A., Jody
Prosecutor's Charges Nickname or Alias Phone No. Arrest No.
 Driving While Ability Impaired 901
 Negligent Driving Address Birthplace
 112 McDonald Drive NY
Prosecutor's Name Date Sex Race DOS HT WT Hair Eyes Soc. Sec. No.
 -----6/24/95 5'10" 160 lbs. 321-654-0987
Permit No. and State Occupation Film No.
 C-698 719 057 Student
Charge(s)-Include TVC Numbers Accident[*]
 Driving While Ability Impaired and Negligent Driving
Location of Offense Date Time
 Chestnut and Spruce Streets 6/24/95 10:30 PM
Location of Arrest Date Time
 City General Hospital 6/24/95 12:00 midnight
Arresting Officer Badge ORG EL Assisting Officer Badge ORG EL
 Jett Miller 2345534 N/A
Auto Used: Make Model Tag Number State No. Of Passengers in Defendant's Auto
 Chrysler Concorde LYC675 NY One

Owner's Name Street Address-City-State-Zip Code Phone No.
 Rudy Ramirez 112 McDonald Drive Centerville NY
Witness's Name Age Phone No.
 René Gaille 15
 Nicky Adams 17
Street Address-City-State-Zip Code Office Phone
 forthcoming
Observations Pertaining to the Defendant
 Defendant Was: Defendant's Clothes Were: Unusual Actions of Defendant
 [*] Conscious [Unconscious [Disarranged [*] Orderly [Cursing [Fighting
 [Partly Dresse [Vomiting [*] Crying
 Defendant's Eyes Were: Defendant's Pupils Were: Defendant's Face Was:
 [Normal [Bloodshot [*] Dilated [Contracted [Normal [Red [*] Pale
 [Blank Stare [*] Watery [Flushed [Bloated
 Defendant's Mood Was: Defendant's Balance Was:
 [*] Cooperative [Talkative [Silent [*] Sad [Staggering [*] Slightly Unsteady [Wavering
 [Sarcastic [Excited [*] Polite [Unable to Stand Alone
 Odor of Alcohol Was: Defendant's Speech Was:
 [None [Normal [Did Not Hear Him Talk [Incoherent
 [Strong [*] Faint [Not Close Enough to Know [*] Confused [Mumbled [Certain [Loud
 Did You See Any Alcoholic Beverage Containers
 1. In the Defendant's Vehicle? [*] No [Yes Type: Location:
 2. On the Defendant's Person? [*] No [Yes Type: Location:
Ask the Defendant the Following Questions
 Are You a Diabetic? Are You Using Insulin? Used a Mouthwash Recently? If Yes, When?
 [*] No [Yes [*] No [Yes [*] No [Yes
 Are You Under the Care of a Doctor or Dentist? If Yes, Why?
 [*] No [Yes Are You Using Medicine? No If Yes, What Kind? When Was It Last Used?

Advise the Defendant of His Rights Before Asking the Following Questions
Date Advised Time Location Advising Officer Badge ORG EL
 6/24/95 11:45 p.m. City General Hospital Jett Miller 2345534 -----

Do You Admit To Drinking Any Alcoholic Beverages Recently? If Yes, What? Beer How Much? One Time Started 8:00 PM Time Stopped 9:00 PM

No Yes

Where Did You Drink the Alcoholic Beverages? 112 McDonald Drive Had Anything to Drink Since the Accident? If Yes, What? How Much?

No Yes

Specimen Information

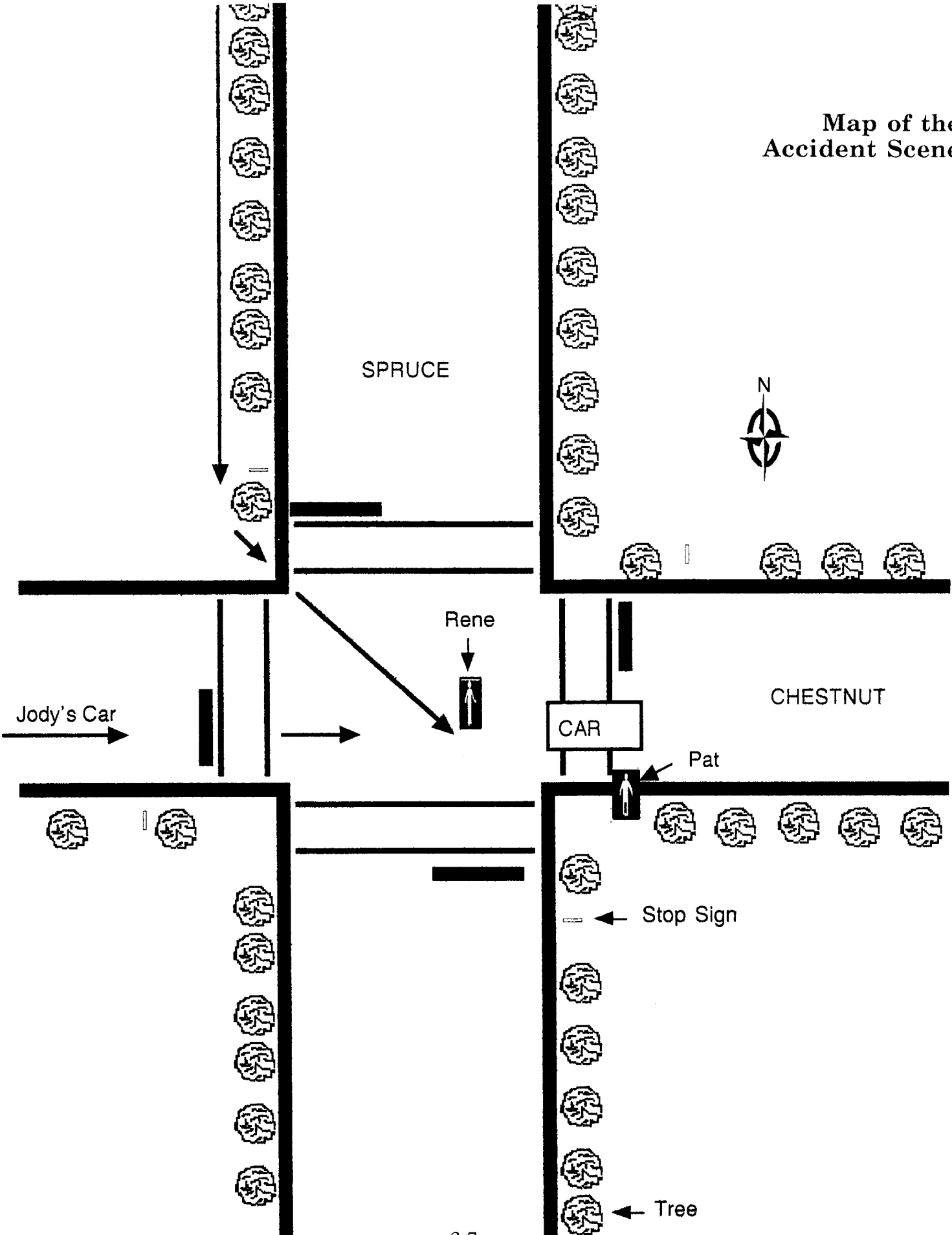
Test Results (Breathalyzer) Tests Under Implied Consent Act Officer Administering Tests

Positive Negative Consented Refused

Results

0.05 BAC one hour and fifteen minutes after the accident. Using regression analysis, BAC was 0.069 at time of accident. BAC level confirmed by second chemical test.

Map of the Accident Scene



Blood Alcohol Level Chart

Blood Alcohol Content by Body Weight and Number of Drinks

<u>WEIGHT</u> <u>IN</u> <u>POUNDS</u>	<u>NUMBER OF DRINKS</u>											
	1	2	3	4	5	6	7	8	9	10	11	12
100	.038	.075	.113	.150	.188	.225	.263	.300	.338	.375	.413	.450
110	.034	.066	.103	.137	.172	.207	.241	.275	.309	.344	.379	.412
120	.031	.063	.094	.125	.156	.188	.219	.250	.281	.313	.344	.375
130	.029	.058	.087	.116	.145	.174	.203	.232	.261	.290	.320	.348
140	.027	.054	.080	.107	.134	.161	.181	.214	.241	.268	.295	.321
150	.025	.050	.075	.100	.125	.151	.176	.201	.226	.251	.276	.301
160	.023	.047	.070	.094	.117	.141	.164	.188	.211	.234	.258	.281
170	.022	.045	.066	.088	.110	.132	.155	.178	.200	.221	.244	.265
180	.021	.042	.063	.083	.104	.125	.146	.167	.188	.208	.229	.250
190	.020	.040	.059	.079	.099	.119	.138	.158	.179	.198	.217	.237
200	.019	.038	.056	.075	.094	.113	.131	.150	.169	.188	.206	.225
210	.018	.036	.053	.071	.090	.107	.125	.143	.161	.179	.197	.215
220	.017	.034	.051	.068	.085	.102	.119	.136	.153	.170	.188	.205
230	.016	.032	.049	.065	.081	.098	.115	.130	.147	.163	.180	.196
240	.016	.031	.047	.063	.078	.094	.109	.125	.141	.156	.172	.188

PART VI

Pertinent Law and Information

NEGLIGENCE:

In order to meet the requirements for negligence in a civil suit, Plaintiffs must show or prove that the four elements of negligence were met by the Defendants. The four elements are:

1) the existence of a duty or obligation on the part of the defendant as to the plaintiff;

2) a breach of that duty—which is either an act or the failure to act—that a reasonable person would or should have done in that circumstance;

3) causation, that the defendant’s negligence was the proximate cause of the injury;

4) an injury to the plaintiff as a result of the breach of duty.

Commentary:

Negligence is lack of ordinary care. It is a failure to exercise that degree of care which a reasonably prudent person would have exercised under the same circumstances. It may arise from doing an act which a reasonably prudent person would not have done under the same circumstances, or on the other hand, from failing to do an act which a reasonably prudent person would have done under the same circumstances. Ordinary care means that caution, attention or skill a reasonable person would use under similar circumstances.

Negligence requires both a foreseeable danger of injury to another and conduct unreasonable in proportion to the danger. A person is not responsible for the consequences of his conduct unless the risk of injury was reasonably foreseeable. The exact occurrence or precise injury need not have been foreseeable; but injury as a result of negligent conduct must have been not merely possible but probable.

If a reasonably prudent person could not foresee any injury as a result of his conduct, or if his conduct was reasonable in the light of what he could foresee, there is no negligence. Conversely, there is negligence if a reasonably prudent person could foresee injury as a result of his conduct, and his conduct was unreasonable in the light of what he could foresee.

In order for the plaintiff to be awarded damages, the plaintiff must prove that the injuries and damages sustained were proximately caused by the defendant's negligence. That is, the threshold question for proximate cause determinations is whether the negligence alleged in fact caused the claimed injuries.

Please note: Prior to 1975, New York applied a rule of "contributory negligence" in tort cases. Under this rule, if a plaintiff was *at all* responsible for his injuries, then the plaintiff could recover nothing from the defendant. Under the Comparative Negligence Rule of CPLR Article 14-A, enacted in 1975, a plaintiff can still recover even if plaintiff did contribute to the injuries, but the award is reduced by whatever percentage the fact finder determines to be the fault of the plaintiff. This is called comparative negligence. Thus in New York, a jury would be asked to first decide whether a defendant was negligent and whether that negligence contributed to causing the injury in question. Next they would need to determine if the plaintiff's conduct contributed to causing the injury in question. The burden falls on the defendant to prove that the plaintiff was negligent and that that negligence contributed to causing the injury in question. If the jury determines that the plaintiff also contributed to causing the injury in question, they would then need to apportion the fault between the plaintiff and defendant, deciding what percentage of fault is chargeable to each.

General Definitions:

Foreseeable Circumstances

A reasonable person changes conduct according to the circumstances and the danger that is known or should be known. Therefore, if the foreseeable danger increases, a reasonable person acts more carefully.

Violation Of Statute

The violation of a statute, which is a cause of plaintiff's injuries or damages, is evidence of negligence.

Assumption Of Risk

A person who, with full knowledge and understanding of an existing danger, voluntarily chooses to expose himself or herself to that danger, cannot recover for injury resulting from that danger.

Standard Of Care

The driver of a motor vehicle must use reasonable care. Reasonable care is that degree of caution and attention which a person of ordinary skill

and judgment would use under similar circumstances. What constitutes reasonable care depends upon the circumstances of a particular case. The law does not attempt to define in detail what constitutes reasonable care under all possible circumstances.

Acts In Emergencies

When the driver of a motor vehicle is faced with a sudden and real emergency, which was not created by the driver's own conduct, the driver must exercise reasonable care for his or her own safety and for the safety of others. The reasonableness of the driver's actions must be measured by the standard of the acts of other drivers of ordinary skill and judgment faced with the same situation. The driver is not to be held to the same coolness or accuracy of judgment which is required of a person who has an ample opportunity fully to exercise personal judgment.

Duty To Pedestrians—Generally

The law imposes upon the operators of vehicles and pedestrians using a public street or highway the same duty, each to exercise ordinary care. These duties are reciprocal. The vehicle operators must exercise ordinary care so as to avoid injuring others and the pedestrians must exercise ordinary care so as to protect the pedestrians' safety. When persons are using, or are about to use a public street or highway either as the operators of vehicles or as pedestrians, they have a duty to keep a proper lookout and make reasonable observations as to the traffic and other conditions which confront them in order to protect themselves and others while using the streets and highways. What observations they should make and what they should do for their own safety and the safety of others are matters which the law does not attempt to regulate in detail, except that it does place on these people the continuing duty to exercise ordinary care to avoid an accident.

RELEVANT PORTIONS OF NEW YORK STATE VEHICLE AND TRAFFIC LAW

§ 1142. Vehicle entering stop or yield intersection

(a) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop as required by section eleven hundred seventy-two and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

(b) The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for existing conditions, or shall stop if necessary as

provided in section eleven hundred seventy-two, and shall yield the right of way to any pedestrian legally crossing the roadway on which he is driving, and to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection. Provided, however, that if such driver is involved in a collision with a pedestrian in a crosswalk or a vehicle in the intersection after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield the right of way.

§ 1146. Drivers to exercise due care

Notwithstanding the provisions of any other law to the contrary, every driver of a vehicle shall exercise due care to avoid colliding with any bicyclist, pedestrian or domestic animal upon any roadway and shall give warning by sounding the horn when necessary. For the purposes of this section, the term "domestic animal" shall mean domesticated sheep, cattle and goats which are under the supervision and control of a pedestrian.

§ 1150. Pedestrians subject to traffic regulations

Pedestrians shall be subject to traffic-control signals as provided in section eleven hundred eleven of this title, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article.

§ 1151. Pedestrians' Right of way in crosswalks

(a) When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, except that any pedestrian crossing a roadway at a point where a pedestrian tunnel or overpass has been provided shall yield the right of way to all vehicles.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impractical for the driver to yield.

(c) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle shall not overtake and pass such stopped vehicle.

§ 1152. Crossing at other than crosswalks

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

(c) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

§ 1156. Pedestrians on roadways

(a) Where sidewalks are provided and they may be used with safety it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(b) Where sidewalks are not provided any pedestrian walking along and upon a highway shall when practicable walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction. Upon the approach of any vehicle from the opposite direction, such pedestrian shall move as far to the left as is practicable.

§ 1172. Stop signs and yield signs

(a) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of section eleven hundred forty-two.

(b) The driver of a vehicle approaching a yield sign if required for safety to stop shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of section eleven hundred forty-two.

§ 1180. Basic rule and maximum limits

(a) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. . . .

(d) ... whenever maximum speed limits, other than school speed limits, have been established, ... no person shall drive in excess of such maximum speed limits at any time.

(e) The driver of every vehicle shall, consistent with the requirements of subdivision (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when any special hazard exists with respect to pedestrians, or other traffic by reason of weather or highway conditions, including, but not limited to a highway construction or maintenance work area. . . .

§ 1192. Operating a motor vehicle while under the influence of alcohol or drugs

1. Driving while ability impaired. No person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol.

2. Driving while intoxicated; per se. No person shall operate a motor vehicle while such person has .10 of one per centum or more by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article.

3. Driving while intoxicated. No person shall operate a motor vehicle while in an intoxicated condition.

4. Driving while ability impaired by drugs. No person shall operate a motor vehicle while the person's ability to operate such a motor vehicle is impaired by the use of a drug as defined in this chapter. [...]

7. Where applicable. The provisions of this section shall apply upon public highways, private roads open to motor vehicle traffic and any other parking lot. For the purposes of this section "parking lot" shall mean any area or areas of private property, including a driveway, near or contiguous to and provided in connection with premises and used as a means of access to and egress from a public highway to such premises and having a capacity for the parking of four or more motor vehicles. The provisions of this section shall not apply to any area or areas of private property comprising all or part of property on which is situated a one or two family residence.

8. Effect of prior out-of-state conviction. A prior out-of-state conviction for operating a motor vehicle while under the influence of alcohol or drugs shall be deemed to be a prior conviction of a violation of subdivision one of this section for purposes of determining penalties imposed under this section or for purposes of any administrative action required to be taken pursuant to subdivision two of section eleven hundred ninety-three of this article; provided, however, that such conduct, had it occurred in this state, would have constituted a violation of any of the provisions of this section. This subdivision shall only apply to convictions occurring on or after November twenty-ninth, nineteen hundred eighty-five.

9. Conviction of a different charge. A driver may be convicted of a violation of subdivision one, two or three of this section, notwithstanding that the charge laid before the court alleged a violation of subdivision two or three of this section, and regardless of whether or not such conviction is based on a plea of guilty.

10. Plea bargain limitations. (a) In any case wherein the charge laid before the court alleges a violation of subdivision two, three or four of this section, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of one of the subdivisions of this section, other than subdivision five or six, and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney upon reviewing the available evidence determines that the charge of a violation of this section is not warranted, such district attorney may consent, and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge; provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition.

(b) In any case wherein the charge laid before the court alleges a violation of subdivision one or six of this section while operating a commercial motor vehicle, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of one of the subdivisions of this section and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney upon reviewing the available evidence determines that the charge of a violation of this section is not warranted, he may consent, and the court may allow, a disposition by plea of guilty to another charge is [in] satisfaction of such charge.

11. No person other than an operator of a commercial motor vehicle may be charged with or convicted of a violation of subdivision five or six of this section.

12. Driving while intoxicated or while ability impaired by drugs—serious physical injury or death. In every case where a person is charged with a violation of subdivision two, three or four of this section, the law enforcement officer alleging such charge shall make a clear notation in the “Description of Violation” section of a simplified traffic information if, arising out of the same incident, someone other than the person charged was killed or suffered serious physical injury as defined in section 10.00 of the penal law; such notation shall be in the form of a “D” if someone other than the person charged was killed and such notation shall be in the form of a “S.P.I.” if someone other than the person charged suffered serious physical injury; provided, however, that the failure to make such notation shall in no way affect a charge for a violation of subdivision two, three or four of this section.

§ 1194. Arrest and testing

1. Arrest and field testing. (a) Arrest. Notwithstanding the provisions of section 140.10 of the criminal procedure law, a police officer may, without a warrant, arrest a person, in case of a violation of subdivision one of section eleven hundred ninety-two of this article, if such violation is coupled with an accident or collision in which such person is involved, which in fact has been committed, though not in the police

officer's presence, when the officer has reasonable cause to believe that the violation was committed by such person.

(b) Field testing. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision two of this section.

2. Chemical tests. (a) When authorized. Any person who operates a motor vehicle in this state shall be deemed to have given consent to a chemical test of one or more of the following: breath, blood, urine, or saliva, for the purpose of determining the alcoholic and/or drug content of the blood provided that such test is administered by or at the direction of a police officer with respect to a chemical test of breath, urine or saliva or, with respect to a chemical test of blood, at the direction of a police officer:

(1) having reasonable grounds to believe such person to have been operating in violation of any subdivision of section eleven hundred ninety-two of this article and within two hours after such person has been placed under arrest for any such violation, or

(2) within two hours after a breath test, as provided in paragraph (b) of subdivision one of this section, indicates that alcohol has been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member. [...]

§ 1195. **Chemical test evidence**

1. Admissibility. Upon the trial of any action or proceeding arising out of actions alleged to have been committed by any person arrested for a violation of any subdivision of section eleven hundred ninety-two of this article, the court shall admit evidence of the amount of alcohol or drugs in the defendant's blood as shown by a test administered pursuant to the provisions of section eleven hundred ninety-four of this article.

2. Probative value. The following effect shall be given to evidence of blood-alcohol content, as determined by such tests, of a person arrested for violation of section eleven hundred ninety-two of this article:

(a) Evidence that there was .05 of one per centum or less by weight of alcohol in such person's blood shall be prima facie evidence that the ability of such person to operate a motor vehicle was not impaired by the consumption of alcohol, and that such person was not in an intoxicated condition;

(b) Evidence that there was more than .05 of one per centum but not more than .07 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence

shall be relevant evidence, but shall not be given prima facie effect, in determining whether the ability of such person to operate a motor vehicle was impaired by the consumption of alcohol; and

(c) Evidence that there was more than .07 of one per centum but less than .10 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be given prima facie effect in determining whether the ability of such person to operate a motor vehicle was impaired by the consumption of alcohol. [...]

§ 1212. **Reckless driving**

Reckless driving shall mean driving or using any motor vehicle, motorcycle or any other vehicle propelled by any power other than muscular power or any appliance or accessory thereof in a manner which unreasonably interferes with the free and proper use of the public highway, or unreasonably endangers users of the public highway. Reckless driving is prohibited. Every person violating this provision shall be guilty of a misdemeanor.

