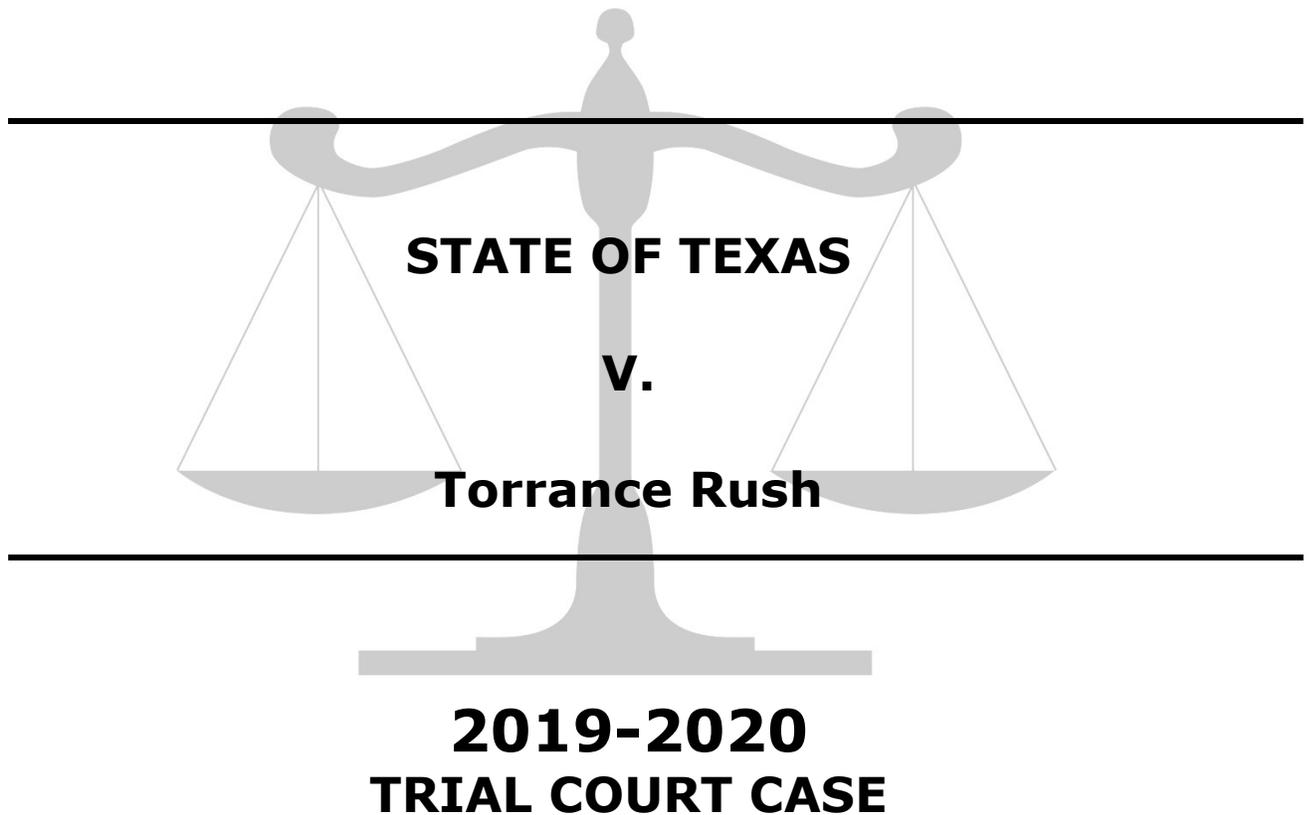




THE CASE OF
"A MINOR COLLISION"



Case Materials Written By:

Hon. C. Tyler Atkinson, Judge Fort Worth Municipal Court

Hon. Melanie Houston, Judge Fort Worth Municipal Court

Dear Judicial Delegates,

Welcome to the 2019-2020 Youth and Government Competition!!! Our case this year is being heard before the court system presides over the most cases in the judicial system – the Texas Municipal Court. Although punishment in a municipal court does not hold jail time, the Court still impacts the lives of more citizens than any other court. We have never before set a case within the Municipal Court setting and we hope you enjoy this unique look at this court system. As we learned last year, when there is a violation of our state’s traffic laws and “rules of the road,” the results can be deadly. In 2017 alone, 3,721 people lost their lives to motor vehicle traffic fatalities and another 17,546 sustained serious injuries in crashes. Shockingly, in 2017, there were no “deathless” days on our roadways. “A Minor Collision” is collaboration with the Texas Department of Transportation designed to enhance our discussion of distracted and impaired driving.

Another unique aspect of this year’s case is that the prosecution is proceeding to trial on two charges: “Driving under the Influence by a Minor” and “Failure to Yield the Right of Way to a Pedestrian.” The State must prove the allegations in the two complaints “beyond a reasonable doubt.” Generally, that the defendant while driving a vehicle (1) had some detectable amount of alcohol in their system and/or (2) did cause their vehicle to collide with a pedestrian lawfully in a crosswalk. The first charge will be a true balance of the facts on each side of the case. The second will revolve around the relationship between vehicles, bicycles and pedestrians on Texas roadways.

A few quick tips. (1) The Rules of Evidence were revised last year to mirror the Texas Rules of Evidence that you will use in law school and beyond. Take time to study these rules and think about how each one could be used in this case. (2) I urge you to pay attention to the “bifurcated trial” section of the “Guide to Municipal Courts” and study how those rules affect the admissibility of evidence and also allow you to argue sentencing this year. (3) If you have questions about the case please submit them to the State Office so we can help you before competition. (4) Have fun ...

Sincerely,
London Jones, Texas Youth Attorney General

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COMPLAINT

Cause Number: 2019 TR 0001

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF FORT WORTH

TORRANCE RUSH

§

TARRANT COUNTY, TEXAS

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

Before me, the undersigned authority, personally appeared affiant, known to me to be a credible person, who after being by me duly sworn, upon oath deposes and says affiant has good reason to believe and does believe that one Torrance Rush hereinafter called actor, on or about April 19th, 2019 and before the making and filing of this complaint, within the territorial limits of the City of Fort Worth, Texas,

Did then and there operate a motor vehicle in a public place, to wit: 200 West 9th Street, while said actor had a detectable amount of alcohol in the actor's system, and said actor being then and there a minor under the age of twenty-one (21) years of age, and

Against the peace and dignity of the State.

My belief of the foregoing is based upon written information provided to affiant by Officer Mike Sundance in a citation with the same number as referenced above, together with any written reports, filed with the court and contained herein, who reported personally observing such conduct by the defendant as set forth above.



AFFIANT

Subscribed and sworn to before me by affiant, a credible person, this **20th day of August, 2019 A.D.**



Mary Blaze
MUNICIPAL COURT CLERK
CITY OF FORT WORTH
STATE OF TEXAS

COMPLAINT

Cause Number: 2019 TR 0002

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF FORT WORTH

TORRANCE RUSH

§

TARRANT COUNTY, TEXAS

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

Before me, the undersigned authority, personally appeared affiant, known to me to be a credible person, who after being by me duly sworn, upon oath deposes and says affiant has good reason to believe and does believe that one Torrance Rush hereinafter called actor, on or about April 19th, 2019 and before the making and filing of this complaint, within the territorial limits of the City of Fort Worth, Texas,

Did then and there, while operating a non-emergency motor vehicle in the 200 block of West 9th Street, a public street, fail to yield the right-of-way to a pedestrian who had entered the cross walk while the "walk" signal was displayed, and

Against the peace and dignity of the State.

My belief of the foregoing is based upon written information provided to affiant by Officer Mike Sundance in a citation with the same number as referenced above, together with any written reports, filed with the court and contained herein, who reported having been advised by a witness referenced therein that such witness personally observed such conduct by the defendant as set forth above.



AFFIANT

Subscribed and sworn to before me by affiant, a credible person, this **20th day of August, 2019 A.D.**



MUNICIPAL COURT CLERK
CITY OF FORT WORTH
STATE OF TEXAS

APPLICABLE TEXAS STATUTES

Related to Minor DUI:

Texas Alcohol Beverage Code Sec. 106.01 DEFINITION.

In this code, "minor" means a person under 21 years of age.

Texas Alcohol Beverage Code Sec. 106.041 DRIVING OR OPERATING WATERCRAFT UNDER THE INFLUENCE OF ALCOHOL BY MINOR.

- (a) A minor commits an offense if the minor operates a motor vehicle in a public place, or a watercraft, while having any detectable amount of alcohol in the minor's system.
- (b) An offense under this section is a Class C misdemeanor.

Related to Fail to Yield Right of Way:

Texas Transportation Code Sec. 544.007(b). TRAFFIC-CONTROL SIGNALS IN GENERAL.

- (a) An operator of a vehicle facing a circular green signal may proceed straight or turn right or left unless a sign prohibits the turn. The operator shall yield the right-of-way to other vehicles and to pedestrians lawfully in the intersection or an adjacent crosswalk when the signal is exhibited.

Texas Transportation Code Sec. 551.101. RIGHTS AND DUTIES.

- (a) A person operating a bicycle has the rights and duties applicable to a driver operating a vehicle.

Texas Transportation Code Sec. 545.351. MAXIMUM SPEED REQUIREMENT.

- (b) An operator:
 - (2) shall control the speed of the vehicle as necessary to avoid colliding with another person or vehicle that is on or entering the highway in compliance with law and the duty of each person to use due care.

CASE SPECIFIC RULES AND STIPULATIONS

- (1)The defense has 4 potential witnesses but may only call three per round. If the defense chooses to call the defendant, they will be waiving his Fifth Amendment right against self-incrimination. If the defendant is not called, his affidavit cannot be used in trial.
- (2)The notes on the exhibits are "agreed upon" descriptions of the exhibit. They are not a part of the exhibit and do not become evidence if the exhibit is entered into evidence. They are designed to help identify what the exhibit is depicting.
- (3)The signatures for the complaints and the affidavits are presumed. You cannot challenge these documents because they lack a signature.
- (4)The intoxylizer machine was recently calibrated before the test mentioned in this case was performed and the readings produced by the machine are accurate.
- (5)If Austin Myers is properly qualified to testify about administering the breath test, he is also allowed to testify regarding the results of the test.

GUIDE TO TEXAS MUNICIPAL COURTS

Introduction to Texas Municipal Courts

Texas Municipal Courts were established by the Texas Constitution to give each incorporated city the ability to deal with local matters on a local level. Municipal Courts are the judicial branch of a city government. Texas Municipal Courts process over five million cases annually. More people come into contact with Municipal Courts than with all other courts combined.

Municipal courts share the authority to handle Class C misdemeanor cases with Justice Courts. A defendant found guilty of a Class C misdemeanor will have to pay a fine or complete community service but will not be given a jail sentence.

Jurisdiction

Municipal Courts have a wide variety of dockets. As municipal courts are established by cities and localities, much of their cases deal with the day to day responsibilities of living in a city. Most cases heard in municipal courts are criminal traffic citations. This includes speeding, running stop signs, red lights and various other traffic offenses. Most traffic offenses carry a fine of up to \$200.00. Municipal Courts also handle crimes such as theft of items under worth under \$100, assault (with no pain or bodily injury to the victim) and even DUI's involving minors (those under the age of twenty-one).

Municipal courts are the only courts that have the jurisdiction and legal powers to determine outcomes concerning city ordinance violations. Many Texas cities are "Home-rule" cities, which mean City governments can create and enforce additional local laws to maintain clean and safe standards within its community. Code enforcement officers are employed to patrol the City and work with citizens to abate property hazards. Many times, these code enforcement officers issue citations and thereafter, citizens are summoned to court to address property concerns.

Cities also enact ordinances regarding the care and ownership of animals within a city. Examples of animal city ordinances include laws requiring an owner to keep dogs on a leash, vaccinate against rabies, and microchip pets. City ordinances prohibit ownership of some types of animals or require adequate open land space for larger animals such as horses.

Municipal courts handle some civil violations as well such as parking tickets or the seizure of “dangerous” or abused animals.

Parties

Texas Municipal Courts employ many personnel to ensure the smooth administration of justice. Most Municipal Courts include judges, court clerks, prosecutors, and bailiffs.

Judges are responsible for presiding over trials and the general administration of their courtrooms. The judge is a neutral arbiter and must ensure that all parties are treated fairly and without bias. The judge’s role is not to help either the prosecution or defense, but to ensure all parties play by the rules of law. A municipal judge’s basic job duties include presiding over trials, making evidentiary rulings in trial, issuing subpoenas and warrants, ruling on pre and post-trial motions, and managing dockets as efficiently and effectively as justice requires.

Court clerks are responsible for assisting the court as a whole. Clerks must have basic knowledge of court functions and procedures and be able to aid in the administration of court processes. Clerks, like judges, must be unbiased and impartial to ensure fairness to all parties.

Bailiffs are responsible for maintaining order and security in the courtroom. Bailiffs typically announce “All Rise” to mark the arrival of the judge and the official beginning of a docket. Bailiffs enforce and enact court rules and procedures and are frequently used to guide the jury through the courthouse and serve as a go between the judge and jury when questions arise.

Attorneys representing the State of Texas in Municipal court are called prosecutors. Prosecutors are employed by the city to conduct bench and jury trials. Prosecutors must be attorneys licensed and in good standing with the State Bar. Prosecutors have the authority to file criminal complaints, offer plea bargain settlement offers, try cases to the bench or jury and recommend dismissal for compliance or insufficient evidence. Prosecutors abide by a special statute which requires them not to seek convictions, but to see that justice is done. Prosecutors must follow special rules designed to protect the defendants. These include turning over *Brady* material, any other information that would be helpful to the defense. In Texas, a prosecutor must comply with a timely request for discovery if the defendant asks for it. In a criminal context, discovery is the evidence the

prosecutions plans on being used against the defendant. The prosecution must permit the defendant access to the discovery or produce the requested information “as soon as practicable after receiving a timely request from the defendant.” Tex. Code Crim. Pro. Art. 39.14.

While not required, many defendants will choose to hire defense attorneys to aid them through the court process. Defense attorneys zealously advocate for their clients while following court rules and protocol to achieve the most desirable outcome for their clients.

Types of Hearings

Municipal courts hold a variety of hearings designed to manage voluminous dockets. Many Municipal courts have pretrial or plea dockets that provide defendants the opportunity to meet with judges, prosecutors, or court staff to resolve citations, review discovery, or handle pretrial matters prior to a trial setting. There are also specialty dockets for juvenile cases, code and animal cases, parking tickets, and cases involving juveniles. Since municipal courts handle criminal cases, the rules of criminal procedure and constitutional protections involving higher level criminal charges apply to municipal cases as well. Strict adherence to these rules must be followed by all parties.

In all criminal matters, defendants have certain rights as provided by the United States and Texas Constitutions. These include the right to jury trial, the right to an attorney, the right to confront witnesses, the right to call witnesses, and the right to remain silent. Additionally, there is a presumption that the defendant is innocent and the requirement of the state to prove each element of its case beyond a reasonable doubt.

Before a case can move forward to trial, the State must file a formal complaint through the prosecution. The complaint is the notice to the defendant of the offense charged, the elements of the offense, and if necessary, the manner and means of the offense. Article 45.019 of the Code of Criminal Procedure enumerates the requirements of a complaint filed in municipal court. Each offense must have its own complaint.

The defendant has a right to a trial by jury. If the defendant elects a jury, the parties will conduct *voir dire* to determine which members of the panel will be the most competent, fair, impartial and unprejudiced jurors. There are six jurors chosen in a misdemeanor trial.

Jury selection is necessary to enable counsel to intelligently exercise peremptory challenges. Each side may make three peremptory challenges to strike a venire member from sitting on the jury. Peremptory challenges are made by each side in secret, and the parties are not aware of these challenges until after they turn in their challenges to the court. Peremptory challenges can be used for any reason other than factors deemed discriminatory, such as race and gender. If it appears that a prosecutor makes an improper peremptory challenge, a defense attorney must make a "*Batson* Challenge" questioning the motives. Once a defense attorney makes a *Batson* challenge, the prosecutor must give a "bias-neutral" reason for the challenge. If a defense attorney fails to make such a request, the defendant forever loses the right to make such a challenge.

A trial begins with the prosecution making an opening statement. An opening statement should set the stage for what the parties intend to present to the judge or jury. It will highlight the evidence that is expected to be presented. The defense may present an opening statement either directly following the prosecutor's or at the end of the prosecutor's case in chief, before starting the defendant's case.

The prosecution will present their case-in-chief which will include any evidence they would like to provide to prove the elements of the case. Evidence can include testimony from witnesses as well as photos, video, audio, written documents, or other media that would be used to support the accusations against the Defendant. Upon conclusion of each witness the prosecution calls, the defense may cross exam each witness to attempt to discredit their testimony.

The defense will follow the prosecution and present its case-in-chief. The defendant is not required to present any evidence. If the defendant believes the prosecution did not meet its burden of proof the defense may choose to rest and present no evidence at all. If the defense does present any evidence, the prosecution will be allowed to present rebuttal evidence.

Upon conclusion of the evidence, the court will read a charge to the jury. The jury charge is the judge's instructions to the jurors on the law that applies in a case and definitions of the relevant legal concepts. The jury is taken to a separate room to discuss the evidence presented by the prosecution and defense as well the law provided by the judge. The jury must unanimously agree that the prosecution proved each and every

element of its case beyond a reasonable doubt before the jury can find the defendant guilty. If the jury finds a defendant guilty, they may assess a fine.

For a bench trial, the judge will be the one assessing punishment if the defendant is found guilty of the offense. The judge will first announce her decision on the question of guilt. "Mr. Rush, I have considered all of the evidence in the case and do find that the State has met their burden of proof. As such, I will find that you are guilty of the offense of Minor Driving under the Influence of Alcohol." If there are multiple offenses the Judge will address them separately, making a finding and sentence on each independently.

The judge will then move on to the sentencing phase. Most Class C Misdemeanor offenses including those in this case have a fine range from \$1 to \$200. The judge would decide based on the evidence where the fine should be set. There are also offense specific punishments for the judge to consider. See below for options related to this year's case.

- Minor Driving Under the Influence.
 - Mandatory Fine: \$1 to \$500
 - Mandatory Community Service: 20 to 40 hours
 - Discretionary Class: 6 hour Alcohol Awareness Class
- Failure to Yield Right of Way
 - Mandatory Fine: \$1 to \$200
 - Discretionary Class: 6 hour Driver's Safety Course

We have not had the judge decide sentencing in years past because higher charges usually involve bifurcated trials where the sentencing is handled after the trial. Because Municipal Courts do not have bifurcated trials, the punishment is assessed immediately upon conviction. **This year, the judge should issue a sentence if they find the defendant guilty of one or both offenses.** If the defendant is found Not Guilty, then there is no sentence.

Municipal courts play an important role in the criminal justice system and in Texas communities. Municipal courts are committed to preserving public safety and promoting the public confidence in court criminal justice court system. Although these courts handle large and burdensome dockets, these court are dedicated to ensuring individual justice to all those who appear in front of the court.

Affidavits

AFFIDAVIT OF SERGEANT MIKE SUNDANCE

STATE OF TEXAS
CITY OF FORT WORTH
COUNTY OF TARRANT

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My name is Sergeant Mike Sundance. I am over the age of 18 years and I am otherwise fully competent to testify. I can read, write and understand the English language. I am not under the influence of any drug or other substance which would prevent me from fully understanding the nature of this affidavit. All of the information in this affidavit is within my personal knowledge and is true and correct.

I have been a police officer with the great City of Fort Worth for 16 years now. I started my career in law enforcement as a corrections officer for the Tarrant County Sherriff’s Office. I then applied with Fort Worth and was accepted into the police academy. After graduating the police academy, I was assigned to work patrol in our central division which includes the downtown area. I moved around to a few other assignments until I came back to central after my promotion to sergeant. I now manage nine other officers and we handle general assignments within the central division. This involves responding to basic calls within the division ranging from traffic related issues, domestic disturbances, public intoxication issues, and theft calls.

I believe in the rule of law. Enforcement of laws by police officers and fair adjudication of cases by the courts are what keeps our communities safe. And that includes the traffic laws. Evil flourishes when we stop caring and let “minor” infractions remain unenforced. This is not just a job to me. I am not here to meet

a quota for a number of tickets issued every month and then go home. Lives are on the line. Even if I pull my grandmother over for speeding, she is getting a ticket. Sorry Nana, but you need to slow down and stop eating those weird donuts.

Let's start by first describing the downtown roads. The layout has been the same since Teddy Roosevelt was President in the early 1900s. You can find old timey pictures of cattle drives that ran right down Main Street. The streets running east to west are numbered – first through around nineteenth. The streets running north and south have names. Main Streets runs up the middle of downtown starting at the Tarrant County Courthouse. The Sundance Square Plaza interrupts Main Street between 3rd and 4th street. Then Main ends at 9th Street when it runs into the Fort Worth Convention Center. One street west from Main is Houston Street. It is here, 9th and Houston that the defendant, Torrance Rush, got himself into some trouble.

I was on duty Friday, April 19th, 2019. It was the Main Street Arts Festival in downtown. It was a normal day – weather in the mid-60s, generally sunny. The Arts Festival attracts thousands of visitors to downtown to see unique artists from around the country. We block off a large section of the downtown streets and the artists set up booths in the middle of the blocked off roads. There are also stages set up throughout the area where bands play. There are food stations everywhere. I love the food. It is one of my favorite events that we are a part of, but it does create a challenge for drivers.

I was working bike patrol downtown for the festival. I was located in Sundance Square. Around 12:20PM dispatch notified me that there was a minor

vehicle collision involving a pedestrian at the intersection of 9th and Throckmorton. Because I was on a bicycle I could navigate the blocked off streets more easily. It only took a few minutes. When I arrived there was already a Fort Worth Marshals vehicle blocking off the intersection. I took over the investigation.

There was a Nissan Leaf that had turned half way from 9th street onto Houston heading south and a red bicycle that was lying in the middle of the cross walk on Houston. Several individuals were on the North West corner of the intersection under the Flat Iron building. I spoke the marshal first. She stated that she had just arrived and had not determined what happened. She did say that there were no serious injuries needing medical attention.

Because of the already congested streets, I needed to clear the accident and allow traffic flow to resume as normal. I told the drivers of the vehicle and the bicycle to move to a nearby hotel parking lot. The Marshal came with us to assist if needed. When the driver of the vehicle got in his car I noticed a cup in the center console of the vehicle. The driver quickly and suspiciously grabbed the cup and threw it to the back seat of the car. Because of the art festival there were a several people around the intersection. I was able to get some personal information from a few folks, but did not have the luxury of interviewing everyone. Someone did come up to me and say that they spoke with the driver of the vehicle and believes he may be intoxicated.

I talked with Kieran Spokes who was visibly upset. Kieran stated that he was an artist that had a booth set up selling original paintings. He had taken a coffee break and rented a bicycle from in front of the convention center. On the way back

from getting the coffee, Kieran was traveling down 9th street approaching Houston. Because the other side of the roadway was blocked off, he decided to walk through the intersection instead of ride the bike. Kieran saw the “walk” sign light up, indicating that he was free to enter the cross walk and then was hit by the vehicle making a right hand turn. If there is a pedestrian in the crosswalk while the “walk” sign is displayed, then any vehicle turning through that crosswalk must yield to the pedestrian. There was a dark, liquid substance on Kieran’s clothing. ... I smelled it. ... It was just coffee. Kieran had no apparent injuries and was not complaining of injuries, but did have a small fabric tear on the inside left pant leg, below the knee.

I then spoke to the defendant, Torrance Rush, the driver of the black Nissan Leaf. Torrance appeared extremely nervous to speak with me. His hands were shaking slightly and he kept leaning against a concrete trash can. Although he was quiet animated – using his arms and hands to talk and explain his point. I could not tell at first whether he had some medical issue going on because of the wreck or whether he may be impaired on something. Torrance stated he was traveling down 9th street when the light at Houston turned red. He was trying to get to the ITC train station at the east side of downtown but was having difficulty due to the traffic detours. Torrance said he stopped at the red light and realized that the road was blocked off so he activated the right turn blinker to turn right down Houston Street. Torrance stated the light turned green and he checked to make sure the intersection was clear of any pedestrians and began his turn. He heard a metal clang sound and a loud scream. Torrance stopped the car and ran around the front

and found the red bicycle and Kieran lying on the roadway in front of Torrance's vehicle. Torrance states that the bicycle and its rider were not in the intersection or waiting on the sidewalk when his vehicle began moving into the intersection. It's obviously possible that the bicycle came from behind the vehicle and traveled in front of the vehicle after the vehicle had entered the crosswalk area. In this case, a bicyclist must behave like a vehicle, following all applicable traffic laws including not colliding with vehicles traveling in front of your own.

About halfway through Torrance explaining what happened, I smelled what was clearly alcohol coming from Torrance's person. As he spoke it grew stronger – leading me to believe it was coming from his breath. I focused in as best as I could on his breath and was confident that the smell was alcohol. I asked Torrance his age and he said he was 19. I explained to Torrance that he would be placed under arrest for the class C misdemeanor offenses of Minor Driving under the Influence of Alcohol and also Failure to Yield Right of Way to a Pedestrian in a crosswalk. He seemed shocked at this news but did not resist or cause any problems. This was around 12:55PM now. I secured Torrance in handcuffs and placed him in the backseat of the marshal's vehicle. His vehicle was left at the hotel because Torrance's father had stated on the phone that he was in route to retrieve the vehicle. But, I was now curious about the red cup that I saw in Torrance's vehicle. I went over to his vehicle and opened the rear door on the driver's side. The cup had fallen to the floorboard behind the passenger seat. I picked up the cup. There was no visible liquid inside. I smelled the cup and it clearly smelled like alcohol. I bagged the cup for evidence in a secure evidence

bag following all proper crime scene procedures.

The marshal transported Torrance to the Fort Worth detention facility where our intoxilyzer machine is located. This machine is designed to take a sample of the subject's breath and analyze it to determine the level of alcohol present in the subject's system. It is just around ten blocks north of the accident location and a nice day outside so I decided to ride my bike to the jail and meet them there. It took me about 20 minutes to get down there. I had to stop and help some out of town visitors with directions. I arrived before the Marshal because of the traffic issues downtown. I got some computer paperwork done related to this case.

Fort Worth has an intoxilyzer operator on duty 24/7. Austen Myers was the operator available to assist in taking a sample of Torrance's breath.

I read Torrance the standard consent form and Torrance agreed to provide a breath sample at around 1:25PM. He stated, "I didn't drink anything so I don't mind doing your test." The test came back showing a blood alcohol content of 0.00 indicating that the amount of alcohol Torrance consumed was so little that it did not absorb into his blood stream. It was just on his breath. It had been an hour since I was first called to the accident scene, so whatever was in his system at the time of the accident had been eliminated. Even if the test comes back negative, he still had alcohol on his breath which is a violation if you are a minor.

I was confident in the Minor DUI charge and had at least probable cause on that Torrance was at fault for the accident. I wrote him a citation for both offenses and released him from the jail facility.

A few weeks after the accident I went back to the intersection and took

some picture that I thought would help with this trial. I tried to capture the various viewing angles of the witnesses.

AFFIDAVIT OF KIERAN SPOKES

STATE OF TEXAS
CITY OF FORT WORTH
COUNTY OF TARRANT

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My name is Kieran Spokes. I am over the age of 18 years and I am otherwise fully competent to testify. I can read, write and understand the English language. I am not under the influence of any drug or other substance which would prevent me from fully understanding the nature of this affidavit. All of the information in this Affidavit is within my personal knowledge and is true and correct.

Let me tell you friend, TBH, I like have PTSD or something medical in my noggin' from this whole art festival fiasco. I should have stayed in bed that day. I told myself that morning; do not get out of bed. Then I learn that the reckless driver just got a ticket instead of going to jail for trying to murder me, that's too messy. My blessed life is making art and drinking my coffee, this getting run over thing is not in my top list of things experience before I'm old and gross. But, stop; let me tell you about the most beautiful thing that happened that day. I went back to my crime scene and looked at the spot on the road where my poor body hit the ground and there, looking right back at me, was the most beautiful coffee spill pattern I have seen in my whole, entire life. It inspired a whole new lineup of paintings made entirely out of coffee beans and matcha powder. Beauty. I cannot believe it just came shinning out of the scariest points of my life. Darkness all around me and then boom, pure white light.

So, yes, I am an artist. I have been since I was like 5 or something. I pull

from what I see or what inspires me, like children screaming at a store while I'm trying to get some fish, or a bluebird or the red one, or a good movie. In that moment I stop and take an emotional picture of my response to what I am seeing. When it is time to create, I close my eyes, pull up that picture and then place it gently on the canvas in front of me. Ah, sorry about that flex. I just love me some art and like being an inspirational creative.

Ok, so yeah. At the 2019 Fort Worth Arts Festival, all of my paintings were Jackson Pollock style interpretations of Game of Thrones characters at the height of their characters development. Go big or go home. Am I right? I was selling both the canvases and prints. The day was going great, selling tons, fame points through the roof. Insta game on point. But then a customer came by drinking the most amazing smelling coffee and I needed my own, stat. I shut down my booth, rented a bicycle from a nearby stand and rode to Sons of Liberty coffee. It was a little far away but it was going to be so worth it. Niche coffee places are my jam.

That end of town is so extra. There is a whole block that has like concrete mountains and huge water fountain sculptures. Emotional Picture, click. I'm totally working on a canvas line using only water. Pulled up to SOL coffee, the place was packed but no line to see the barista. Jesus loves me. Got a simple quad mocha with almond milk. Nothing too boujee. It was literally the greatest espresso of all time.

Got back on the road – world travel like. There was this little basket thing, like a fanny pack for bikes. That's where I put my coffee. Rode past this old Catholic church, towering spires, stained glass, perfectly preserved. Next to it is a

modern skyscraper hotel, with a colored glass sculpture façade, clearly paying homage to the church. Amazing. Turned right on 9th street. Oh here it comes. The black car had just pulled up to the red light. I passed it on the right and then jumped off my bike to walk across the crosswalk. The road on the other side of the intersection was blocked off so there was no point in staying behind the vehicle and driving the bike until I crashed into the barricades. Stupid idea. So I hopped off my bike and paused with my feet firmly planted right on the first white crosswalk bar. The little white guy appeared on the signal saying it was fully safe for me to walk across. Ya'll, he lied. Before I know it breaks were squealing and I was on the ground. I swear there was a tunnel and a white light. Angels were singing, my momma was crying but I wasn't ready to go. Ugh, got me shook. My coffee went flying all over. That might have been worse than being hit by a car. But then everyone ran over and like made me the center of attention. You know, cameras flashing and stuff. Shouting, "You should sue. He clearly ran you over on purpose." So that 113% made up for my loss of caffeine.

The police officer did the whole Law and Order thing. The other guy got hauled away in hand cuffs, obviously. I spoke to him and could tell instantly he was like doomed to be an alcoholic for life. Sorry. Run someone over then smell of cheap booze and my grandma's living room. Not ok.

I went back to my booth. I had a change of clothes just in case. I listened to Enya for a cool 15 minutes and then jumped back into the game. I knew I had a reservation at TDB, Texas De Brasil for dinner so I would be fine. All you can eat cheese, right off the wheel, and delectable meats that are brought right to your

table. Just give me second please. Don't throw shade about farting cows and the environment. I do not want to hear it. Texans by birthright get to eat Whataburger taquitos for breakfast and a good ole steak for dinner. I rode a bike to get coffee, so gets me extra points in the Paris agreement.

In the end, I decided not to sue or anything. That's just too salty for me. Turn the other cheek and move on down the road.

AFFIDAVIT OF SATOSHI UMBREON

STATE OF TEXAS
CITY OF FORT WORTH
COUNTY OF TARRANT

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My name is Satoshi Umbreon. I am over the age of 18 years and I am otherwise fully competent to testify. I can read, write and understand the English language. I am not under the influence of any drug or other substance which would prevent me from fully understanding the nature of this affidavit. All of the information in this Affidavit is within my personal knowledge and is true and correct.

With my shiny Mewtwo and Snorlax by my side I set out into the world ready to battle any challenge I may find in my path. Any inferior trainer must bow in the shadow of my advanced combat skills. In the event my power is bested, a quick cry for help and moments later my raid party would arrive on scene and squash any threat. PoGo is life. In all actuality though, I'm only level 24. Hopefully by the time this case goes to trial I will be higher and have even more battle stories to tell.

I have spent hours in downtown Fort Worth hunting elusive Pokémon and conquering raids. And although I spend my time in the Pokémon world, I have come to know the downtown streets very well. It takes a brave trainer to tackle the challenges that come with hunting around so many pedestrians and vehicles. I've seen my fair share of accidents in downtown. Cars with cars, cars with pedestrians, even pedestrians running into other pedestrians. But I'm always aware of my surroundings. I see everything. I hear everything. I know everything.

I remember Friday, April 19th, 2019 well. I am a college student at Texas Wesleyan University and I had no classes scheduled on Friday for the whole spring semester. I knew there would be a lot of trainers in downtown because of the Arts Festival so I had to get down there. I parked in a garage and got my ticket validated at Starbucks. It's a tradition I have to get two single espresso shots. I drink one and then pour the other into a nearby plant to so my Pokémon have energy for the day ahead. I actually headed north first. There is a hidden brick walkway on a hill that overlooks the Trinity River that was laid by some of the first settlers of Fort Worth. It is a nice spot to find a Pikachu nest every once in a while. Normally electric type Pokémon spawn more heavily at college campuses, but I find more Pikachu along the Trinity than at my school. At the end of this trail there are five Pokestops, allowing you to load up on Pokeballs for the day. I headed south from there through downtown. It turned out not to be an exceptional day. I took down some gyms along the way but did not have any successful raids. I was in Sundance Square and what I thought was a Dragonite appeared on my map. It was at the Flat Iron building next to the convention center. I headed that way at a brisk pace. When I closer, the Pokémon fled. Sad day.

I was going to continue heading south and cross over 9th street but the walk signal indicator had just turned to the solid orange hand indicating "do not cross." There were barricades up along 9th so it would have been safe to cross. But, I try to follow the law all the time. My phone buzzed indicating a Pokémon spawned nearby so I glanced down and saw an Abra. I do this weird thing where I check the IRL location of a Pokémon I'm hunting just in case they would spawn IRL for

reals. You know – an actual Pikachu running around the city. So I did look across the street at the flatiron building. Sadly, no real Pokémon. I took a few steps back to I was away from the curb – you know for safety.

Across the intersection, there was a red bicycle that was stationary at the crosswalk – trying to cross over Houston headed east. Then their signal turned white and they started across. It was a matter of milliseconds. Orange hand for me, Abra spawns, I glance up, white signal for them, then movement across. I went ahead and caught the Abra real quick. My head registered the bicycle as not having a rider on it when I saw it for that slit second. Which was strange because bikes don't normally appear in a crosswalk, upright without a rider. I now know that Kieran Spokes was just on the other side of the bike, walking it across the intersection. I took a snap shot on my phone of my Pokemap. My view of the whole intersection was slightly blocked by a tree and the signal light pole. I've reviewed the picture taken by Officer Sundance and it pretty accurately reflects my vantage point when the accident happened.

I heard the accident and looked back up to see that the bike was hit by a black car. There were already some people running to help at the accident. I glanced to make sure everyone was alright. It did not seem to be that big of a deal so continued my hunt.

While I was leaving I did hear the driver of the vehicle say something to the pedestrian like "Hey dude, are you alright? Ah, your coffee spilled. There is a Starbucks right there. I'll give you some money if you need to see a doctor."

AFFIDAVIT OF TORRANCE RUSH

STATE OF TEXAS
CITY OF FORT WORTH
COUNTY OF TARRANT

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My name is Torrance Rush. I am over the age of 18 years and I am otherwise fully competent to testify. I can read, write and understand the English language. I am not under the influence of any drug or other substance which would prevent me from fully understanding the nature of this affidavit. All of the information in this affidavit is within my personal knowledge and is true and correct.

Right up front I want you to know that I am a safe driver. I'm 19 now and have been driving for almost 3 years. I don't go around running over grandmas for fun. I try to follow all the rules. The police officer just blamed me for this ticket because he didn't know who was at fault. He even said that. Something like, "if you don't like it then let the court figure it out." If you don't know who was at fault then don't call someone a criminal. I have had to take off work a couple times just to come to court for this ticket.

Also, I wasn't on my phone and I don't drink alcohol. That is dangerous. People die from distracted driving. But people also die my riding their bikes in front of cars that are moving on the roadway. You can't expect every car to see you coming and then magically have enough time to stop. Bicyclists don't have a protective bubble around them that allows them to bounce off of cars. As soon as I saw something red coming from the right I slammed on the breaks as hard as I could. Everything in the car flew around me like I was in the matrix. My heart

stopped, because I heard my car hit something in front of me.

So it was April 19, 2019, I had a friend that had flown in from California and had taken the train from the airport to the ITC train station in downtown Fort Worth. I was attempting to pick them up before Mr. Spokes jumped in front of my car. I honestly for a second thought that it could have been a suicide, you know "jump in front of a bus" type thing. I'm not super comfortable driving downtown. I go down there occasionally to eat but never got the hang of the one-way streets. I try to be super careful because I know how dangerous it can be if you turn down the wrong street. I always triple check for the one-way signs or something telling me which way is allowed. Right as I got into the downtown area I pulled over and started my GPS. I think it was confused by the blocked off streets though. I may have updated twitter as well while I was stopped.

I was hoping I could drive down 9th Street and get to the rail station but it was blocked off at Houston. The traffic light in front of me had just turned yellow so I decided to stop so I could decide which way to go. The sign said "No Left Turn" and in front of me was blocked off so my only option was to turn right. I put my blinker on. There were a lot of cars so I couldn't make a "right on red" turn. The light turned green and I turned right. There were no people waiting at the cross walk when my car started to move. Then all the sudden I saw something red and heard a crash and a loud scream. I stopped immediately, got out and saw Kieran Spokes and the bicycle. Kieran didn't appear to be hurt, but was highly upset about spilled coffee. I helped him up and thought I smelled a little alcohol mixed in with the spilled coffee. Some of it got on my hands as I was helping

Kieran. It was sort of sticky.

The police showed up and I tried my hardest to explain what happened and be super helpful. However, the officer just wrote me a ticket because I was the driver. He also accused me of drinking alcohol. I did go to a party this night before. My parents don't know about it though. I guess they will now. I really just had one or two drinks that night. The police showed up because of the loud music but they didn't come inside the house. No one got a ticket or anything. The party ended like at 2:00AM. When I was driving downtown, I'm positive there was no alcohol in my system.

I heard that the prosecutor pulled three of my tweets. That's just not cool. I've seen them but they don't prove anything.

AFFIDAVIT OF AUSTIN MYERS

STATE OF TEXAS
CITY OF FORT WORTH
COUNTY OF TARRANT

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My name is Austin Myers. I am over the age of 18 years and I am otherwise fully competent to testify. I can read, write and understand the English language. I am not under the influence of any drug or other substance which would prevent me from fully understanding the nature of this affidavit. All of the information in this Affidavit is within my personal knowledge and is true and correct.

I grew up in a small town in East Texas. My old man owned the local "watering hole." I grew up serving the regulars their nightly libations. We didn't get too many tourists in my town so as long as everyone got served no one was going to complain too much when it was by a twelve year old. Pa up and sold the place when Walmart came to town. He sent me to college at TCU and he took off to a cabin in Alaska. We talk once a year when he gets to Anchorage for supplies. Other than that, he is off the grid.

I majored in Entrepreneurship and Innovation and minored in Classical Studies. I figured I would buy a bar somewhere and follow in Pa's footsteps. I met my best buddy, Sandy Easter, at Billy Bobs my senior year. Easter was working with the police department and told me about this position. The schedule was great while I finished my degree. Turns out, I am great at my job. Guess all those years in the bar paid off. Now Easter and I share the responsibilities. We even get to work together on Tuesday night. You'll catch us at the Taco truck down by the hospital Tuesday night. Best Tacos in Fort Worth.

When I was first hired by the police department, they sent me to St. Louis for training. I spent one week learning the ropes of the machine. Then we spent one week in wet labs actually testing people who are known to be intoxicated. When I made it to that stage I spent two weeks in field training with a certified intox operator. Most people have to do more than two weeks, but I picked it up really quickly. Every year we get recertified. In odd years, like this one, I have to take a written test. It takes all day, but this year they are sending me to South Padre Island. Worth it!

I remember conducting a breath test on Mr. Rush. He seemed like a nice guy. Mike Sundance brought him in during the arts festival. Sundance and I don't always see eye to eye. He and I have very different interpretations of what my job is. I've told him- my job isn't to make your case. I'm a neutral party. I just do the test, I don't pass judgment.

Sundance came in as I was finishing testing a young woman who imbibed a bit too much at the festival. It's our busy time of year. Rush seemed eager to complete the test. I had to tell him to slow down a couple of times. I tell all my subjects how the test will work. It seems like I had to explain the test two or three times to Rush. They have to blow two separate times into the machine to conduct the test. The breaths have to be steady. There is a tone that sounds when the breath is being properly blown into the machine. There is a bar that tracks progress and lets me know when the machine has collected enough data.

Easter and I take our jobs very seriously. No way are we giving up Taco Tuesday due to any mistakes. We make sure to calibrate the machine before and

after each test. The machine automatically conducts an electronic check of the instrument's operating system called the Operational System Check. The Operational System Check is done again at the conclusion of the testing. If there is an error during the check, the instrument will stop the test. At various points during the testing sequence, the instrument will conduct an air blank. The machine draws air from the room. The result of the air blank analysis must be 0.000 or the instrument will stop the test. We have the tester blow two separate times in the three minute period. The two results must not differ by more than 0.020 g/210 L.

I'm not really required to know the science of why the tests work. My job is to make sure to do the tests correctly to get an accurate reading. When it slows down around here I like to read stuff on the internet. We use the Intox 9000. It works on an infrared spectrum. The DA's tell us this is the most widely accepted type of breath test. The intox machine uses infrared light (IR) absorption to detect the presence and concentration of ethanol. When IR light with no alcohol passes through the chamber it creates a base voltage- X. When alcohol is introduced into the chamber, some of the IR light is absorbed. The more alcohol introduced into the chamber the less light is able to pass through the chamber, thus creating a different voltage- Y. The difference between X and Y represents the concentration of alcohol in the breath sample.

Anyway, Rush and I chatted for a bit while I prepped the machine and ran my systems check. He seemed really nervous. Kept fidgeting and listing from side to side. He was very energetic. He kept chewing on his fingers like he was nervous. When he stood next to me I could smell the alcoholic beverage

emanating from him. I ran the test by the book. No errors on my part. Rush blew all zeros. Sundance didn't believe me when I told him the results. Clearly we could both smell alcohol coming from Rush. Like I said, my job isn't to judge or make the DA's case. I just do the test.

AFFIDAVIT OF SAWYER STEELE

STATE OF TEXAS
CITY OF FORT WORTH
COUNTY OF TARRANT

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My name is Sawyer Steele. I am over the age of 18 years and I am otherwise fully competent to testify. I can read, write and understand the English language. I am not under the influence of any drug or other substance which would prevent me from fully understanding the nature of this affidavit. All of the information in this Affidavit is within my personal knowledge and is true and correct.

I am an on staff maintenance person for Downtown Fort Worth, Inc (DFWI). We are a non-profit organization comprised of the leaders of downtown businesses. We assist with planning the major downtown events and also the day-to-day concerns such as parking, landscape maintenance, and our relatively new ambassador program. The ambassadors wear bright green shirts and walk around downtown assisting citizens and visitors with any questions they may have.

DFWI is the host company for the Fort Worth Arts Festival. It is my second favorite event that we host. My favorite event of the year is our Christmas Parade of Lights. This year the Arts Fest lasted from April 16-19th. Although non-event weeks are less stressful and less work, I really enjoy event weeks when people from all over the world come to enjoy downtown. But it does cause some traffic concerns. In addition to on-street paid parking, we have two public parking lots that are free to use with validation at a local restaurant or business. We can get the cars parked but it is up to the drivers to make sure they are careful when

navigating the roads. I've seen many accidents in my years working downtown. This is my first case to be called in as a witness though.

We work with diligence the week before an event week to make sure downtown is shining. We scare away any birds that don't belong, replant the flower beds, power wash all the sidewalks and artwork, etc. However, toward the end of the event, on April 19th, we got a report that the Wild Bunch statue needed a little TLC.

The Wild Bunch was a group of outlaws from the early 1900s who frequented the Fort Worth salons and hotels in what was once called Hells Half Acre. Butch Cassidy was the most famous and the leader. His group was the most successful train robbers and bank robbers in all of history. While they were staying in Fort Worth, they had a photographer take their picture as a group. The photographer thought so highly of the picture that he framed it and hung it up in a sidewalk-facing window at his shop. Well, a detective with the Pinkerton Detective Agency happened to be walking by the shop, saw the picture and instantly recognized the group as wanted outlaws. Butch Cassidy, the Sundance Kid and his girlfriend Etta Place fled to Argentina where they are believed to have died in a shootout with police. They now can't hide from anyone as their 3D, life-size, bronze statue can be seen from the roadway along Houston Street.

I arrived at the statute mid-morning and parked along the west side Houston Street. There was not much to clean. I'm not sure why I was called there. Just some leaves, dust and some bird waste. My truck has a water tank so I can pressure wash sidewalks and clean artwork. I stretched my water hose from the

truck, across the sidewalk and to the statute. I put up some caution signs so folks would be careful walking on the sidewalk. There was one Pokémon player who almost stepped in a bucket of cleaning solution I had set out near the statue. We are flooded with those guys in downtown. They are never paying attention and always walking into traffic. I'm pretty sure it was the same guy who stopped after the accident and tried to blame the car driver. I'm telling you for sure he wasn't paying attention.

So at the point of the accident I had finished spraying down the statue for the first time and was using a sponge to apply a mild soap. I had a clear line of sight straight down the Flat Iron building to the intersection. The officer got an accurate picture of where I was standing and what I could see. So, I had placed the sponge back into the bucket and looked north toward the intersection – just to admire the Arts Fest. I noticed a bicycle being ridden very quickly came out from behind the building, on the roadway, and entered the intersection. It caught my attention because it was like a streak of red coming out of the side of the building. He had to have been riding it because of how fast he was going. I quickly stood up straight and saw the black car turn right and hit the bicycle. It was a matter of milliseconds.

I immediately dropped my sponge and ran over to the bicyclist. The position of the bike confirmed my suspicion that he was riding it. His right leg under the bike and the bike was slightly under the front, passenger side of the car. His left leg was kind of behind him, like he was doing a lunge while lying on the roadway. He was fine, just shaken up from the fall. I waved at the driver to make sure he

was ok. He waved back as if to indicate that he was fine. I helped the bicyclist get to the sidewalk and then let the police take over. I went back to cleaning the statue.

The rest of the day was uneventful. I'm glad the poor fellow wasn't hurt. I found out he was an artist and went by his booth later that day to check on him. He seemed to be doing alright.

AFFIDAVIT OF ROBIN RUSH

STATE OF TEXAS
CITY OF FORT WORTH
COUNTY OF TARRANT

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My name is Robin Rush I am over the age of 18 years and I am otherwise fully competent to testify. I can read, write and understand the English language. I am not under the influence of any drug or other substance which would prevent me from fully understanding the nature of this affidavit. All of the information in this Affidavit is within my personal knowledge and is true and correct.

I'm Torrance Rush's dad. Torrance is a perfect kiddo. Never gets into trouble. He always makes good grades at school, mostly A's. He doesn't get straight A's though because he doesn't use a ruler. Ha. After I found out he got this charge I told him "you better watch your tone of voice walking down stairs people might call you a condescending, con descending." Ha. You gotta love stair jokes they work on so many levels. I would use the butter on a roll joke, most people think that one is too cheesy, but I think it's gouda.

In all seriousness, my kids a good kid. I've driven with him tons of time and he follows the traffic laws. If you ask me he drives a bit too much like his great-grandma – slow as a sloth. I think it all started when he was 10 years old. A police officer came to career day at his school and really made a good impression on Torrance. He came home talking about how he wanted to grow up to be a police officer so he could help people who were in trouble. From that day on he would always open doors for the old ladies at the grocery store and help us out more with the house chores. Solid kid.

So, I do have something to confess to you. As a lifelong member of the First Baptist Church this is a little hard to confess in a court setting. I can hear my Sunday school teacher screaming from her grave, God rest her little soul. Sorry, Ms. Bertha. That red cup with a tad bit of communion juice in it that the officer found in Torrance's car belonged to me. The night before Torrance had the accident, I snuck out to his car just to get out of the house. I was drinking some white grape juice with a little bit of vodka mixed in. Torrance's car has the best audio system. I love to listen to music in his car. I was listening to some Miles Davis and Louis Armstrong. I guess I accidentally left the cup in Torrance's car when I went back inside. Torrance has never touched alcohol. He is a good kid. I guess my cup had some left in it and it splashed on Torrance during the wreck. When we picked up his car there was a general smell of alcohol in the car. Also, everything was all thrown around. He keeps change in the center console and because of the wreck there were quarters all over the place.

A few days after, Torrance and I spoke about the wreck and his trip to the jail for the breath test. It was sure a hands-on experience for him into the criminal justice system. He told me that there was a lady in there who took her test right before him who was super drunk. She was giving the jailers a hard time and kept throwing up in the trashcan. At one point she told him, "You're not drunk. Why are you in jail?" He tried to explain to her what was going on but then she passed out. I guess she was tired.

Evidence

IMAGE PULLED FROM GOOGLE ARIAL VIEW



(No information provided about who pulled this image off google).

PHOTO TAKEN BY SERGEANT MIKE SUNDANCE (ONE)



(Shows traffic control signal and cross walk)

PHOTO TAKEN BY SERGEANT MIKE SUNDANCE (TWO)



(From middle of 9th street looking east. Photo was torn in bottom corner.)

PHOTO TAKEN BY SERGEANT MIKE SUNDANCE (THREE)



(View near Satoshi Umbreon)

PHOTO TAKEN BY SERGEANT MIKE SUNDANCE (FOUR)



(View near Sawyer Steel)

PHOTO TAKEN BY SERGEANT MIKE SUNDANCE (FIVE)



(Statue Sawyer Steele was cleaning)

PHOTO TAKEN BY SERGEANT MIKE SUNDANCE (SIX)

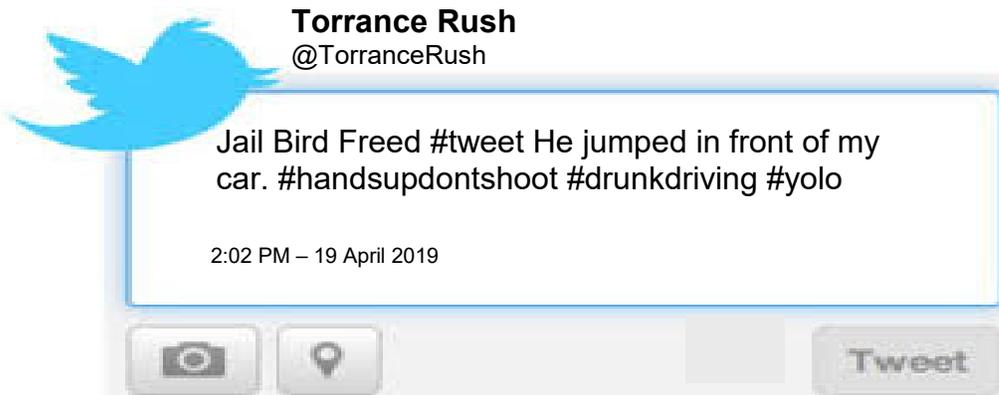
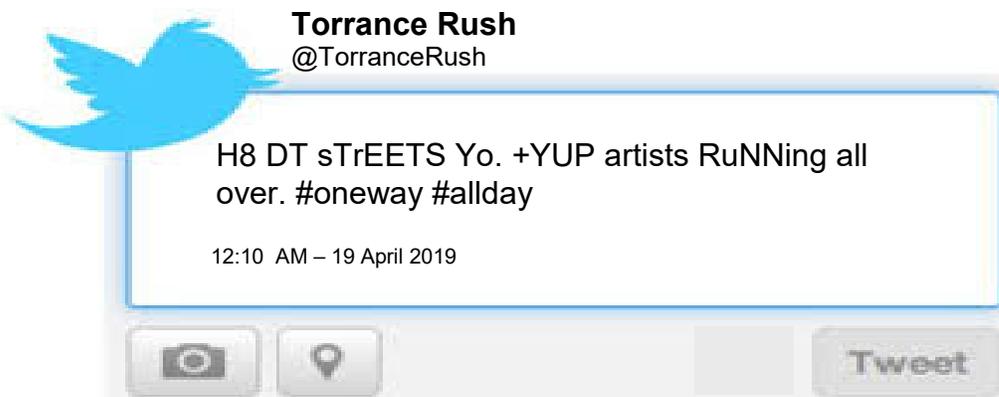


(Style and color of bike rented by Kieran Spokes)

SATOSHI'S POKEMON MAP



TORRANCE RUSH TWEETS



BUSINESS RECORDS AFFIDAVIT

BUSINESS RECORDS AFFIDAVIT

Before me, the undersigned authority, personally appeared, Larry North, who being by me duly sworn, deposed as follows:

My name is Larry North, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records of Twitter Inc. Attached hereto is 1 page of records from the Twitter Account of Torrance Rush, DOB April 10, 2000 handle @TorranceRush. This said 1 page of records are kept by Twitter, Inc. in the regular course of business, and it was the regular practice of said entity for an employee or representative with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

Larry North

Affiant's Signature

SWORN TO AND SUBSCRIBED before me on the 3rd day of June, 2019



W. Smith

Notary Public, State of Texas

INTOXILYZER REPORT

**Intoxilyzer Test Record and Checklist
City of Fort Worth Jail, Fort Worth, Texas**

Operator: A. Myers; Intox Operator No. 4066
Subject Name: Torrance Rush
Subject DOB: April 10, 2000
Test- DUI Minor- requested by M. Sundance.
Weight: 152
Lot No. 16512080A7
Cycle No. 59

TEST	AC	TIME
01 Diagnostic	OK	13:25
02 Room Air Test 1	0.00	13:25
03 Subject Test 1	0.00	13:26
04 Room Air Test 2	0.00	13:29
05 Room Air Test 3	0.00	13:31
06 Subject Texas 2	0.00	13:33
07 Room Air Test 4	0.00	13:34
08 Reported AC	0.00	13:35

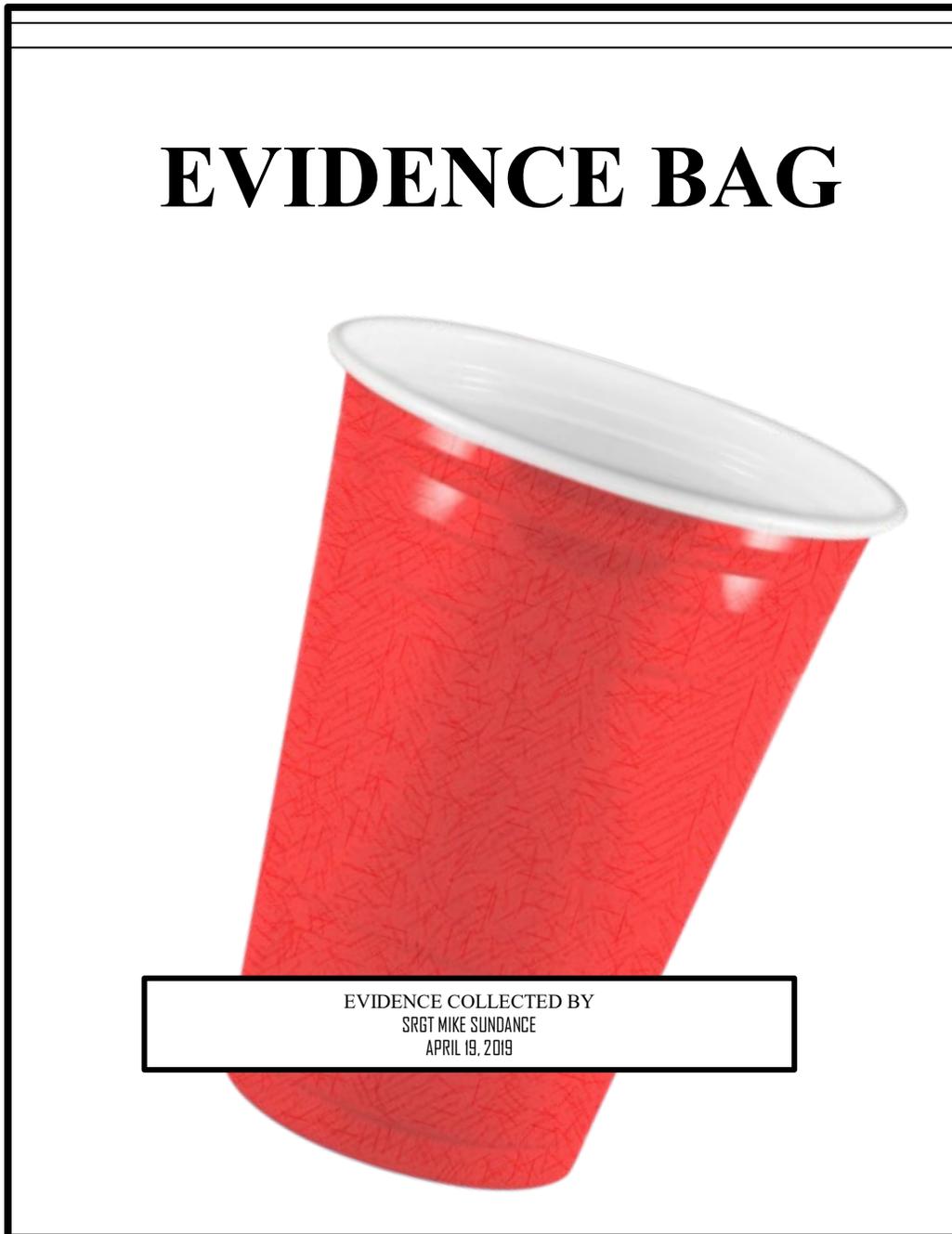
15 min waiting period observed? Y
Clean Mouthpiece used and disposed? Y
Clean Mouthpiece used and disposed? Y

I hereby swear or affirm followed the Approved Method and the instructions displaced by the Intoxilyzer in conducting this test.



Austin Myers

RED SOLO CUP TAKEN FROM TORRANCE'S VEHICLE



(When this evidence bag is opened, you can slightly smell alcohol in the bag)