Florida High School Moot Court Official Issue Packet

Jordan Brooks

v.

State of Florida

A collaborative court education project of:
Civic MindED, Inc.
Center for Law Education
The Florida Bar Appellate Practice Section.

Special thanks to

Supreme Court of Florida
District Courts of Appeal

Case Author:
Brandon K. Breslow, Kynes Markman & Felman, P.A.

Funded with assistance from
The Florida Bar Appellate Practice Section

THE APPELLATE PRACTICE SECTION OF THE FLORIDA BAR

TABLE OF CONTENTS

Registration Form 3

Introduction/Rules and Guidelines 4

Sources of Legal Research.....9

Relevant Legal Authority.....10

Format of the Brief.....11

Sections of the Brief.....13

Submitting the Brief.....15

Brief Writing Primer.....16

Record on Appeal 20

Sixth District Court of Appeal Opinion 20

Supreme Court Order 28

Appendices (Available for download at www.flrea.org)

1. How a Case Progresses Through Court
2. Citation Format
3. Primary and Secondary Research Sources
4. Sample of a Brief for Format Purposes
5. Score sheets

FLORIDA HIGH SCHOOL APPELLATE COMPETITION
2019 REGISTRATION FORM

_____ Yes, we would like to submit a brief for the Appellate Competition. Teams are limited to two students per brief. Briefs must be received in Tallahassee by **March 25, 2019**.

I. Student's Name: _____
School: _____
Address: _____
City: _____ State: _____ Zip: _____ County: _____
E-mail: _____ Phone: _____
☐ Team Captain
I attest that the brief I have submitted is the sole work of my partner and myself.
Signature of student: _____

II. Student's Name: _____
School: _____
Address: _____
City: _____ State: _____ Zip: _____ County: _____
E-mail: _____ Phone: _____
☐ Team Captain
I attest that the brief I have submitted is the sole work of my partner and myself.
Signature of student: _____

III. Teacher's Name: _____
School: _____
Address: _____
City: _____ State: _____ Zip: _____ County: _____
E-mail: _____ Phone: _____

IV. Attorney Coach's Name: _____
Address: _____
City: _____ State: _____ Zip: _____ County: _____
Firm Name: _____
E-mail: _____ Phone: _____

Brief submitted on behalf of: (Circle One)

Petitioner or Respondent

Return 3 copies of this form and 3 copies of the brief to the address listed below.
Email one copy in digital form to staff@flrea.org on or before the due date.

Center for Law Education- The Alliance Building
113 South Monroe Street – First Floor
Tallahassee, FL 32301

RULES AND GUIDELINES

Introduction

An appeal from a trial court to an appellate court normally involves two components: a written brief and an oral argument. **In this exercise, you will prepare a brief to the Supreme Court of Florida which will serve as the basis of an oral argument.** The top brief writers in each Appellate District will have the opportunity to present oral arguments in District Courts of Appeal competitions. **Each student who authors a brief should be prepared to present oral arguments at a district competition should their brief be selected.** Selected teams will advance in the competition to the State level, with the top statewide finalists having the opportunity to present oral arguments in the Florida Supreme Court in Tallahassee. District competitions will be held in mid-April 2019 and the State Finals will be held on May 6-7, 2019 in Tallahassee.

Rule 1: Teams

1. Each team must consist of two students from the same school. One student should be designated as the team captain.

2. **Each team is permitted to submit a maximum of two briefs – one for the petitioner and one for the respondent.**

3. **Each teacher/sponsor may only submit two briefs per side of the case for a total of four briefs. All students are encouraged to write briefs, but teachers should exercise their discretion in selecting the top two briefs for each side of the case to submit.**

4. **Teams will need to <u>prepare oral arguments for the party they wrote a brief supporting</u>. Students will need to be prepared to present oral argument should their brief be selected to advance to the district competition.**

5. Teams may use attorney coaches and teachers as advisors to guide them through the process of preparing the brief and oral arguments; however, the writing of the briefs must be the sole work of the students. Attorneys and teachers are strictly prohibited from writing any portion of the brief.

6. Team Registration Form: Team registrations should be completed and submitted with the briefs on or before the due date. At competition, teams will be identified only by code.

7. Roll Call: Students will announce their names and team codes at the beginning of every round to the judging panel. No information identifying the team, beyond the students' names and team code, should be provided to the judges.

Rule 2: The Packet

1. Students should assume the moot court packet is complete and factual. Briefs which challenge the validity of issues beyond the scope of the issues questioned in the moot court packet will not be entertained. **Students should not reference information contained in the mock trial materials unless so stated in the moot court packet. The moot court and mock trial packets are not interchangeable.**

2. Students may only utilize the case law referenced in the moot court packet. **It is only acceptable to cite cases that are contained within provided case law.** Any deviation is a rules violation.

3. Students may not construct additional facts not found in the moot court packet specifically. Any information utilized that cannot be fairly inferred from the moot court information packet will be considered beyond the scope, and therefore, a rules violation. Students cannot cite information from the mock trial materials if not explicitly found in the moot court packet.

Rule 3: Competition Format

1. This competition is composed of two phases: (1) the brief writing phase; and (2) the oral argument phase.

Rule 4: The Brief

1. Three copies of the students' briefs must be received in Tallahassee by no later than March 25, 2019. Additionally, a digital copy should be emailed to staff@flrea.org by the due date.

2. Each brief should follow the format of the enclosed brief outline. Failure to adhere to the format may lead to disqualification. **The entire brief must be no longer than 20 pages inclusive of cover page and table of contents**. The pages must be letter-sized 8 ½" x 11." Format the text by allowing one-inch margins. All briefs must be typed and double-spaced. The type style should be Times New Roman 12-point font and each paragraph should be indented. Page numbers should appear centered at the bottom of each page. **A cover page should clearly identify "Brief for Petitioner" or "Brief for Respondent"** and list the participants' names, school, address, telephone numbers, and email addresses.

3. Pursuant to Rule 2, briefs may not include any case law beyond what is presented in the packet and may not include any manufactured or researched facts beyond what is found in the moot court packet specifically. **It is only acceptable to cite cases that are contained within provided case law.**

4. Legal citation is not required, but is encouraged. Information on legal citations can be found in the appendices of the packet.

Rule 5: The Oral Argument

1. Two students must participate for a team per round. Both students must speak and address one of the two questions in each round. Only one student may present rebuttal for petitioner.

2. Each team is given 20 minutes to present their case, as outlined below:

Speaker	**Time Limit**
Petitioner	*18 minutes*
Attorney - Question 1	9 minutes
Attorney - Question 2	9 minutes
Respondent	*20 minutes*
Attorney - Question 1	10 minutes
Attorney - Question 2	10 minutes
Petitioner - Rebuttal	*2 minutes*

3. Rounds will start on time. Teams should identify an alternate in the event that a team member cannot participate. In the event that a team, or a portion of the team, fails to appear within ten minutes of the time indicated, the team will compete with an incomplete team. Advancement will be at the discretion of the State Director.

4. Two students will present during any one round of competition. Each student will address one of the two questions presented in the brief. Both students must speak during the oral argument.

5. No communication should occur between students participating in the round and other team members, coaches, or anyone else in the audience outside the bar. Any communication with anyone outside of the partner student during that round will constitute a rules violation.

6. Students should display dignity and respect to the judges, staff, and other competition personnel. Additionally, teams should respect each other.

7. Dress should be professional, courtroom attire.

8. During oral arguments, students will be scored based on the criteria found on the score sheet in the packet.

9. Scores and winners will not be disclosed after a round, but verbal critiques will be given.

Rule 6: Videotaping/Photography

1. Cameras and recording devices are permitted in certain courtrooms; however, the use of such equipment may not be disruptive **and must be approved in advance** of the competition by the Center for Law Education.

2. When one team requests to videotape during a trial, the opposing team must be consulted, and their permission granted prior to taping.

Rule 7: Viewing an Argument

1. Team members, alternates, attorney coaches, teacher coaches, and any other persons directly associated with a team, except those authorized by the State Director, are not allowed to view other teams in competition so long as their team remains in the competition.

2. Judges should maintain order in the courtroom. If observers are disorderly, they will be asked to vacate the premises.

Rule 8: Decisions

1. All decisions of the judges are final.

Rule 9: Team Advancement

1. Teams will be scored first on their written briefs to determine if they advance to the oral argument presentations at the district level. Students who author the briefs need to be able and prepared to present oral arguments at a district competition should their brief be selected.

2. During the scoring of the written briefs, the panel of evaluators will give each brief a numerical score consistent with the score sheet located on the website. The scores from each of the judges in the panel will be added together to determine the top two to four briefs. The top two to four teams in each district may be given the opportunity to compete in the district competition.

3. During the oral argument competition, a panel of judges will score student performances in each round. The team that receives the higher score from each judge will be awarded that judge's ballot. The team with highest number of ballots wins the round.

4. At the end of the competition, the judges will consult to recommend the team or teams from the district to advance to the state competition.

5. Teachers may use their discretion in identifying an alternate student to participate in the state competition, if needed, upon approval of the State Director. Briefs will be

scored, and a Best Brief award presented at the state competition consistent with the practices outlined herein.

6. The state finals will incorporate one preliminary round and one final round of competition. The top two teams will be determined by the panel of DCA judges evaluating the preliminary rounds. These top two teams will meet in the final round of competition. The team receiving the most ballots in the final round will win the competition.

Rule 10: Eligibility

1. All students on a team must be enrolled in the same public or private school in the district for which they are competing.

2. Florida public and private high school students, as well as homeschool students, are eligible to participate.

All questions should be submitted in writing to staff@flrea.org.

NOTE: We strongly encourages the use of an appellate attorney during the coaching process. The website contains valuable resources to assist you in preparing your brief, as well as your oral argument. All teams should view the final round of the state competition prior to participating in the oral hearing.

SOURCES OF LEGAL RESEARCH

The legal authorities you will be using as your source of research and for purposes of citing to the Court are included or referenced in the case materials.

You may also read articles and legal authorities from other sources and jurisdictions to get ideas and arguments for your brief, but these materials may only be used to get ideas or to enhance your understanding of the legal issues. They may not be cited as authority in this contest. Your Attorney Coach may wish to suggest reading material. While you are encouraged to explore other sources, there is no requirement that you do so.

Information on research using primary and secondary sources is enclosed in the Appendices for your review.

Additionally, you can utilize on-line research through a variety of sources. You should be able to find most of the cited cases at **www.caselaw.findlaw.com**, under Cases and Codes. From the Findlaw "Cases and Codes" page, scroll down and click on the U.S. Supreme Court link, and enter the citation of the case (i.e. 123 U.S. 456). For all Federal Circuit Court cases, click on the link for the applicable court, identified by the abbreviated circuit number inside the parentheses (i.e. F.2d, F.3d or F.Supp.) and enter the full citation. For example, *Doe v. Dept. of Pub. Safety*, 271 F.3d 38, 60 (2d Cir. 2001) would be found under the **Second Circuit**.

Remember that in preparing your brief, you can only use the legal authorities included or referenced in these materials. You can research other authorities, but you should only use authorities cited in the case packet and within the case law provided.

RELEVANT LEGAL AUTHORITY

In developing briefs and oral arguments, student competitors may utilize any authority cited in the mock appellate opinion included in the case materials, including federal and state case law (and various authorities cited therein), federal and state constitutional provisions, and federal and state statutes. Students should be careful to explore the authorities independently as opposed to relying solely on the context in which they are presented in the mock appellate opinion.

*** Note: Case law mentioned in the materials may be utilized by students in the development of briefs and oral argument. Additional cases may be added by the state committee.

Regarding the facts of the underlying case, the students do not need any facts other than what is provided in the mock appellate opinion.

Students are not allowed to use facts from the mock trial case unless specifically mentioned in the moot court packet.

Case Law

Any of the cases listed in the provided Sixth DCA opinion or any case mentioned within the cases cited in the moot court appellate case materials may be utilized in the briefs and oral arguments.

FORMAT OF THE BRIEF

Each brief should follow the format of the enclosed brief outline. Failure to adhere to the format may lead to disqualification. The entire brief must be no longer than 20 pages, letter-sized 8 ½" x 11." Format the text by allowing one-inch margins. All briefs must be typed and double-spaced. The type style should be Times New Roman 12-point font and each paragraph should be indented. Page numbers should appear centered at the bottom of each page. A cover page should identify "Brief for Petitioner" or "Brief for Respondent" and list the participants' names, school, addresses, telephone numbers, and email addresses.

When first citing a U.S. Supreme Court case, you should cite to the U.S. Reporter. For example, on page 6 of the sample brief, the petitioner cites to "*Jones v. United States*, 463 U.S. 354, 364 (1983)." The number 463 is the volume number, "U.S." stands for the U.S. Reporter, the books in which the Supreme Court cases are published, 354 is the first page of the cited case, and 364 is the exact page in the case upon which either the quoted language or the referenced portion of the case appears. *All subsequent cites* to the same case, immediately following that full cite, should be "*See id*." cites. However, if the referenced portion of the case is on a different page, your citation should include the specific page on which the quote or reference is located (i.e. "*See id*. at _____.").

If a case has been previously cited but not immediately previously cited, then a shortened cite form should be used. For example, in the sample brief, *Jones v. United States*, is cited on page 6, followed by a "*See id*." cite. Then on page 7, the *United States v. Ward* case is cited in its entirety. The petitioner then must again cite to *Jones v. United States*. If the petition were to use a "*See id*." cite there would be confusion because the reader would assume that the petitioner was referring to the *Ward* case, the immediately preceding case. Therefore, the petitioner abbreviated the case name and simply lists the volume number of the U.S. Reporter, 463 and only the specific page in the case on which the reference appears after the word "at." If the petitioner went on to cite to the *Jones* case again, he or she could once again use a simple "*See id*. at _____" cite.

Again, it is not necessary that you follow the exact legal citation form used in the sample brief. Do the best you can. We are more concerned with the arguments you choose to make.

You will note that on the cover page of the sample brief, in the lower right-hand corner, the petitioner's attorney has only identified himself or herself as counsel for petitioner. **You should include your full name, followed by the names and address of your high school, telephone numbers, and email addresses where you can be reached both at school and home.**

Briefs should conform to the following outline:

I. Cover Page

II. Table of Authorities

III. Opinion Below

IV. Constitutional and Policy Provisions Involved

V. Questions Presented

VI. Statement of the Case

VII. Summary of the Arguments

VIII. Argument

- a. Question I
- b. Question II

IX. Conclusion

SECTIONS OF THE BRIEF

Cover Page

Follow the guidelines and see sample cover page.

Table of Authorities

- List cases you used in your arguments to support your position.
- List relevant constitutional and policy provisions.

Opinion Below

Include a short statement of the proceedings in the lower court/court below and the ruling or judgment of the trial court which is being appealed from.

Constitutional and Policy Provisions Involved

Spell out the relevant provisions in the U.S. Constitution and policy provisions involved in the case from either the perspective of the petitioner or respondent.

Questions Presented

Recite the two constitutional questions or issues on appeal before this Court.

Statement of the Case

This will encompass a statement of the important issues and facts before the Court from either Petitioner's or Respondent's perspective. This section should incorporate (1) a concise (one or two sentences if possible) introductory explanation of the general nature of the case as a lead-in to the brief; (2) a short statement of the proceedings in the court below and the ruling or judgment of the trial court which is being appealed from; (3) a concise statement of the issues before the Court on appeal from the Petitioner's or Respondent's perspective; and (4) a concise statement of the important facts. This section should be presented in a light favorable to your side and contentions in your case.

Summary of Argument

Include three or four paragraphs highlighting a summary of your arguments supporting either the Petitioner's or Respondent's position. Essentially this is a short synopsis of your arguments which will follow. See below.

Arguments

This portion of the brief should discuss your position on the facts, arguments, and legal authorities (statutes and case law) which support your position on the questions presented. If the case law is favorable to your side, show how the prior cases are applicable to the facts or analysis of that case from the present case. You may wish to select the cases which most strongly support your arguments.

Conclusion

This part is a short summary of your answers to the issues on appeal (the questions presented) and should consist of only a few sentences. It is a very concise statement of why you want the appellate court to agree with you. **The conclusion should also state what specific relief is being requested:**

General example of the final sentence in the brief and during oral arguments:

"*In conclusion, for these reasons, we ask the court to reverse the decision of the Sixth District Court of Appeals and find the statute unconstitutional."*

SUBMITTING THE BRIEF

Briefs should be submitted in the required format to the Center for Law Education and should be **received by March 25, 2019**. The winning brief writers will be notified with information on dates of the local oral arguments.

Submit three copies of all briefs to the following address:

Center for Law Education
The Alliance Building
113 South Monroe Street – First Floor
Tallahassee, FL 32301

Additionally, one electronic version must be submitted by the due date to staff@flrea.org**.**

For any questions, submit in writing to staff@flrea.org**.**

BRIEF WRITING PRIMER

There are two main ways to argue your position to the appellate court: through the appellate brief and through the appellate oral argument. They serve different functions and, to an extent, courts look for different things from each function.

Of the two functions, the brief is the more important. It succinctly reviews for the court what the case is about (what the relevant facts and legal issues are), what the law is (for each issue raised by the appeal), and what relief you are seeking. It really does not matter which side of the case you are on or which issue you are addressing. Your job is to persuade the court that your position is correct – that is, that the facts and relevant law support the relief you seek and that the outcome you want makes sense.

The brief is your chance to shine. It is your chance to show the court that you understand your issue, that you have done the necessary research into it, and that you can communicate the argument in a scholarly way. The court looks to you for guidance, and it is your responsibility to convince the court that you can be trusted.

Let us go over some of the more important factors that judges look to when reading/grading an appellate brief.

Effective Organization of the Facts/Procedural History

Judges are busy and they look to you to narrow down the facts to those that are most important to deciding the issue. Have you summarized for the court all the facts that are relevant to your issue and that the court needs to know about in order to decide the case? Most cases have a lot of facts, but not all of those facts are relevant to the issue being raised on appeal.

For example, suppose your client was convicted of running a red traffic light and you are appealing that conviction. Does it make a difference how large the tires on his car were? Probably not (it might be relevant to a speeding ticket, but not running a red light). On the other hand, is it important to know what the weather and traffic conditions were at the time, or whether the police officers were in a position to see the intersection at the time that you client drove through it? Probably. Your ability to recognize a relevant or essential fact and to communicate it in an easy-to-understand way is very important to your ability to persuade the court.

Persuasive Use of Pertinent Facts/Diffusing Damaging Facts

Do not ignore bad facts. If they are important to the case (and, of course, relevant to the issues on appeal), someone will find them. Probably your opposing counsel. It will make you look less than honest with the court if you do not disclose bad facts. Your job is to find a way to be candid, but to emphasize the facts that support your position. Finally, do not merely list the essential facts. Weave them into a story. Make the brief interesting to read.

Issue Recognition

The way that you frame your issue will direct the court to the specific question it must decide in the case. Once you have identified the issues to be raised on appeal, state them clearly in the brief. Be direct and forceful, without being wordy. Use active verbs. Remember that judges are very busy. They do not often have the time to wade through wordy, vague, or repetitive briefs.

The way you phrase the issue for the judges sets the stage for everything to follow in the brief. The issue also determines what your analysis will be. You have to make sure that your legal analysis and the conclusion that you reach parallel the issue that you raise.

Legal Analysis

Now that you have framed the issue that you want the appellate court to address, you have to lay out an analysis that is direct, logical, and persuasive. Your reader should be able to follow the analysis and, at the end of it, reach the same conclusion that you did.

Remember that your analysis revolves around the law. What is the law on the subject of your argument/on your issue? You either want the appellate court to apply the existing law (and perhaps extend it to a new set of facts and application) or to explain why, based on the distinct facts in your case, the existing law does not apply.

You must be clear in your thinking and direct in your writing.

Persuasive Use of Authority

Courts are guided by the law, and it is your job to tell them what the law is, how the facts of the cases that you cite are either substantially similar to your facts or are so different (in important ways) that the legal conclusion in those cases should not apply to your case. Your materials identify the leading cases for the issue you have raised. Your job is to explain to the court why the conclusions in those cases do or do not control the outcome in your case.

To do this, you may need to discuss the facts of the more relevant cases. Discussing the facts of those cases may help the court in your case to determine whether the holding in the prior cases apply to your circumstances.

Be candid, thorough, respectful, and forceful.

Clarity, Conciseness and "Readability"

In writing, let the first sentence of each section be your thesis sentence. State what your proposition is and let subsequent sentences support your thesis statement. End your paragraph with a conclusion that repeats your thesis statement.

Once you have completed your brief, be prepared to review and edit it. Revision means "to see again." You can revise your writing most effectively if you can figure out a way to see it again.

When we review something we have written, however, it is often difficult. Not only do we have what we have written on paper, but we also have what is still in our mind.

To distance ourselves from what we have put on the printed page from what is in our mind, we need to see what we have written in a different way. For example, instead of looking at our complete message, we need to review what we have written differently, i.e. sentence by sentence. As we review each sentence individually, we can ask ourselves the following questions: 1) did the sentence say what I wanted it to say?; 2) did I say it in a clear manner?; 3) could I have said what I wanted to say in fewer words?; and 4) could I have said it better? When we look at what we have written sentence by sentence, we will often find that we wrote many things that were unnecessary.

Organization, Headings and Subheadings

No one likes to read a brief that is nothing more than a blob of words (imagine this Help Guide without any headings). Your readers are human and like to be able to focus on certain ideas at a time. As you take notes regarding the issues you are treating, therefore, you should note what the different issues are and organize your writing around each issue. To alert your reader that one issue is ending and another beginning, you should use headings and subheadings. Headings and subheadings not only help you telegraph to your reader that a change in issues or the treatment of a sub-issue is coming up, but help you frame your brief around the issues that will aid the logical organization of your full brief.

Compliance with Rules

Let's be honest. Following your appellate brief writing rules can be less intellectually challenging than writing other school papers and you might even find it boring. Following the rules, however, is vital to practicing attorneys. Attorneys are required to follow different sets of rules to ensure a certain standard is followed that will be fair to everyone. For example, a Florida attorney writing a brief in state court has to follow the Florida Rules of Appellate Procedure (in federal court, the Federal Rules of Appellate Procedure apply). Because attorneys have to learn and follow court (and their Bar Association) rules, you too are being judged on your willingness to learn and follow "quasi-court" rules for your moot court competition.

Spelling and Grammar

Spelling and grammar are important to clarity and presentation. Errors in spelling or grammar have a negative effect on your reader. A reader who sports spelling and grammar errors may believe that the writer lacks credibility. The reader may question, therefore, the soundness of that writer's legal arguments. In this day of spell-check and automated grammar-check tools, there is no excuse (other than competition rules) not to use them, and using those tools will enhance your credibility with the reader. Remember, though, to still proofread: spell-check cannot substitute for careful review of your final brief. The appearance of your document will also affect your credibility and opportunity to persuade. People do see the small stuff.

Citation Style

Are the citations sloppy? Are your citations proper (do they follow the rules provided)? Did you pay attention to detail? Again, people see the small stuff and are affected by anything that might affect your credibility. Remember when doing your citations (as well as other portions of your brief) that you should base your decisions on the rules, not your own preferences.

Good luck!

Sixth District Court of Appeal

State of Florida

Opinion Filed January 15, 2019

Appeal No. 6D18-4008
Lower Tribunal No.
18-54818-H

JORDAN BROOKS,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

Appeal from the Circuit Court for the Twenty-First Judicial Circuit, Palmetto County; Steve Rogers, Judge; L.T. Case No. 18-54818-H.

Rhodes, C.J.

A jury found Jordan Brooks guilty of vehicular homicide, in violation of section 782.071, Florida Statutes (2018). On appeal from his judgment and sentence, Mr. Brooks challenges his conviction on the grounds that (1) the trial court erroneously denied his motion to suppress evidence derived from the warrantless search of the event data recorder (or "black box") in his vehicle; and (2) the trial court deprived him of his constitutional right to testify in his own defense because he declined to swear or affirm the oath provided in section 90.605, Florida Statutes (2018), for religious reasons. After thorough review and with the benefit of oral argument, we affirm.

I) Factual and Procedural Background.

The evidence at trial established the following facts. On Friday, August 31, 2018, Mr. Brooks, then a 17-year-old student at Summer Creek High School, was driving home from a high school football game with his friend Riley Gordon in Mr. Brooks' 2010 ARC Conquest. Following a detour to a friend's house for a social gathering, the two continued home at approximately 11:00 p.m. in Mr. Brooks' vehicle.

While Mr. Brooks maintained control of the vehicle at an estimated fifteen miles per hour, Ms. Gordon proceeded to climb out of the passenger window onto the roof of the car to

perform a popular dance challenge set to the song "Heart in My Hand." It bears mentioning that Mr. Brooks and Ms. Gordon were known by their classmates as "social media influencers" who maintained popular accounts on the social media website, VideoLab. During the relevant time period, thousands of videos documenting the "Heart in My Hand" dance challenge were trending on VideoLab.

Parker Moore, a classmate, testified at trial that she was driving behind Mr. Brooks and Ms. Gordon. Ms. Moore stated that she witnessed Ms. Gordon standing on the roof of the vehicle for a few minutes before Mr. Brooks suddenly "jerked the wheel to the right." Ms. Gordon launched from the roof and fell onto the roadway. Mr. Brooks' vehicle "jumped the curb" and hit a nearby light pole. Ms. Moore further testified that she did not see any obstacles in the roadway – such as an animal, shredded tire, or debris – that would have caused Mr. Brooks to swerve, nor did she witness Mr. Brooks attempt to apply his brakes.

Harper Davis testified that he was also in the vehicle with Ms. Moore and observed Ms. Gordon climb onto the roof of the vehicle. Mr. Davis estimated Mr. Brooks to be traveling at about five miles per hour while Ms. Gordon was on the roof and when Mr. Brooks' vehicle swerved to the right. Mr. Davis testified that he immediately saw an ibis fly into the street and, "a few seconds later," Mr. Brooks applied his brakes.

Notwithstanding the emergency efforts of law enforcement and witnesses to the incident, Ms. Gordon's injuries were fatal. Ocean City Police Department ("OCPD") Sergeant Val Mickelson conducted a thorough investigation. Sergeant Mickelson has been employed with OCPD for fourteen years. After five years with the department, Sergeant Mickelson was selected to serve on the traffic unit. After three years in the unit, she was promoted to Sergeant and became a traffic homicide investigator. Her training included basic and advanced homicide investigation courses. In her role as a traffic homicide investigator, Sergeant Mickelson investigates all traffic-related fatalities by processing the scene of the crash including, but not limited to, the following factors: mitigating and aggravating factors by all drivers involved, the actions of all involved prior to the incident, sobriety of all drivers involved, and other facts that she deems necessary for a complete investigation to determine whether any criminal charges should be filed. Sergeant Mickelson has testified in more than twenty trials as a traffic homicide investigator.

As part of her investigation, Sergeant Mickelson sought consent from Mr. Brooks' mother, Emily Brooks, to search Mr. Brooks' 2010 Arc Conquest, which was impounded in the department's secured vehicle yard. Mrs. Brooks consented to the physical search of the vehicle. Sergeant Mickelson personally conducted the search, including downloading data from the vehicle's event data recorder ("EDR"). That data indicated there was an acceleration immediately prior to the deployment of the airbags, and served as an independent basis for Sergeant Mickelson's reconstruction of the incident involving Ms. Gordon:

EVENT DATA RECORDER

Pre-Crash Data -5.0 to 0.0 sec (Event Record)

Time Stamp (sec)	Speed, Vehicle Indicated (MPH)	Engine RPM	Service Brake (On, Off)
-5.0	13	1800	Off
-4.0	12	1600	Off
-3.0	13	1700	Off
-2.0	15	2400	Off
-1.0	17	3200	Off
0.0	0	750	Off

Mr. Brooks was arrested and charged with vehicular homicide and manslaughter by culpable negligence. Prior to trial, Mr. Brooks filed a motion to suppress evidence obtained from Sergeant Mickelson's warrantless search of the EDR pursuant to the Fourth Amendment to the United States Constitution, Article 1, section 12 of the Florida Constitution, and the exclusionary rule set forth in Article 1, section 12 and Tims v. State, 204 So. 3d 536, 538–39 (Fla. 1st DCA 2016). The State did not contest that its extraction of data from the EDR constituted a search subject to the constraints of the Fourth Amendment, see Katz v. United States, 389 U.S. 347 (1967), nor did it challenge Mr. Brooks' standing to assert a Fourth Amendment challenge. Instead, the State argued that it was not required to obtain a warrant supported by probable cause for the EDR because Mrs. Brooks consented to the search of the entire 2010 Arc Conquest.

The trial court held a pretrial evidentiary hearing on Mr. Brooks' motion to suppress, at which Sergeant Mickelson and Mrs. Brooks testified. Sergeant Mickelson testified that she approached Mrs. Brooks at her home on September 7, 2018, to ask for her consent to search Mr. Brooks' vehicle. Sergeant Mickelson stated that she specifically asked Mrs. Brooks for her consent "to a search of the vehicle in accordance with the incident being investigated." Sergeant Mickelson admitted that she intended at that time for the search to include any extraction of data from the EDR, but did not explicitly mention that process to Mrs. Brooks. Sergeant Mickelson then proceeded to explain to the trial court how the data was extracted from the EDR, which was in a manner identical to the description provided by our sister circuit in State v. Worsham, 227 So. 3d 602 (Fla. 4th DCA 2017).

Mrs. Brooks corroborated Sergeant Mickelson's broad request for her consent. Mrs. Brooks testified, however, that she has "an average understanding of automobiles," and she did not know there was an EDR that could be accessed. Mrs. Brooks unequivocally stated that she would not have consented to the search of Mr. Brooks' vehicle if she knew it included a search of the EDR.

The trial court denied Mr. Brooks' motion to suppress at the conclusion of the evidentiary hearing:

Court: My understanding is that the relevant analysis boils down to objectivity and reasonableness. To me, it is unreasonable that anyone allowing his or her car to be searched would not allow for anything, and I mean anything, inside the car to also be searched, particularly something as important as what is tantamount to a computer connected to the car's

engine. In any event, Mrs. Brooks' consent was objectively understood as consent to search the EDR. I also don't think Sergeant Mickelson was hiding the ball when she refused to acknowledge her intent to search the EDR at the time she asked for consent. The motion is therefore denied.

Mr. Brooks proceeded to trial in this matter. The State presented testimony from three witnesses: Ms. Moore, Sergeant Mickelson, and Ms. Gordon's father. The defense presented testimony from Mr. Davis and engineer Dr. Alex Martin. On the third and final day of trial, Mr. Brooks was called as a witness in his own defense. Mr. Brooks, however, refused to take the oath or affirmation provided in section 90.605, Florida Statutes, for religious reasons:

Clerk:	Will you raise your right hand and repeat after me?
Mr. Brooks:	No.
Court:	Son, I will need you to swear to the oath or affirm it if you wish to testify in this courtroom.
Mr. Brooks:	Sir, I don't mean to cause a problem, but the Bible says that I can't swear on anything.
Court:	But you can affirm. That's all I need you to do.
Mr. Brooks:	I cannot, sir. I can only say, "My 'yes' will be my 'yes' and 'no' my 'no.'" Anything else will come from evil. The book of Matthew. I can say that.
State:	We object. He has to take the oath.
Defense counsel:	Your Honor, that should be sufficient. The law only requires him to state in some way that he understands the weight of his decision to testify.
Court:	I am not going to let him testify after saying that.
Defense counsel:	That would violate his constitutional right to testify in his own defense. The right outweighs any procedural or statutory requirement.
Court:	Your argument is noted for the record, but I am going to follow the law as I see it on this one. He won't be testifying unless he takes the oath.

The defense rested without calling Mr. Brooks as a witness. The jury returned a verdict of guilty as to the charge of vehicular homicide, and Mr. Brooks was sentenced to ten years imprisonment.

II) Mr. Brooks' Motion to Suppress.

We begin with Mr. Brooks' motion to suppress the data recovered from the EDR in his 2010 ARC Conquest. A motion to suppress "frequently presents mixed questions of law and fact for consideration by the reviewing court." State v. Thomas, 109 So. 3d 814, 817 (Fla. 5th DCA 2013). "Findings of fact made by the trial court are subject to the substantial competent evidence standard [,]" but "[t]he application of the law by the trial court…is reviewed de novo." Id.

Whether a person's consent to a warrantless search extends to a separate search of a particular object is also a mixed question of law and fact. J.J.V. v. State, 17 So. 3d 881, 884 (Fla. 4th DCA 2009). "We review application of the law to the historical facts de novo." Id.

Our task here is straightforward: "The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness – what would the typical reasonable person have understood by the exchange between the officer and the suspect?" Florida v. Jimeno, 500 U.S. 248, 251 (1991). The question before us, then, is whether it is reasonable for an officer to consider a person's general consent to search a vehicle to include the extraction of data from that vehicle's EDR?

We believe it is. An EDR is indistinguishable from a closed container in a vehicle. See Thomas, 109 So. 3d at 818 ("If a defendant gives a general consent to search his or her person, a law enforcement officer may seize objects found in that person's pockets and, if the objects consist of closed containers, the officer may open them."); State v. McCutcheon, 932 So. 2d 225, 227–28 (Fla. 4th DCA 2005) (holding that a defendant's general consent to search a vehicle included permission to search a "hide a key" box found on the vehicle's floorboard). If an officer can reasonably interpret a person's general consent to search a vehicle as extending to a trunk, see Oliver v. State, 642 So. 2d 840, 841 (Fla. 4th DCA 1994), there is no compelling reason why it would not extend to the engine.
The dissent, and our sister court in Worsham, 227 So.3d at 602, emphasize the trivial details of searching an EDR to stress its significance, even going so far as to compare an EDR to a cell phone. For the reasons stated above, we do not believe this discussion shifts the focus of any analysis regarding whether Sergeant Mickelson was objectively reasonable in her understanding of Mrs. Brooks' blanket consent.

We therefore hold that that a person's general consent to search a vehicle necessarily includes the extraction of data from the vehicle's EDR. The data from the EDR was properly admitted at Mr. Brooks' trial.

III) Mr. Brooks' Constitutional Right to Testify.

We turn next to Mr. Brooks' claim regarding his constitutional right to testify. The right to testify on one's own behalf at a criminal trial has sources in several provisions of the Constitution." Rock v. Arkansas, 483 U.S. 44, 51 (1987). First, "[i]t is one of the rights that 'are essential to due process of law in a fair adversary process.'" Id. (quoting Faretta v. California, 422 U.S. 806, 819 n. 15 (1975)); see also Ferguson v. Georgia, 365 U.S. 570, 602 (1961) (Clark,

J., concurring) ("[T]he right of a criminal defendant to choose between silence and testifying in his own behalf" is secured by the Due Process Clause of the Fourteenth Amendment). Further, the right is inherent in the Compulsory Process Clause of the Sixth Amendment because "the most important witness for the defense in many criminal cases is the defendant himself." Rock, 483 U.S. at 52. Finally, the right to testify is "a necessary corollary to the Fifth Amendment's guarantee against compelled testimony." Id.

Additionally, the right to testify is safeguarded in Article 1, section 16 of the Florida Constitution, which "provides in pertinent part that in all criminal prosecutions the defendant shall have the right 'to be heard in person, by counsel or both.'" State v. Raydo, 713 So. 2d 996, 998 (Fla. 1998) (quoting Art. I, sec. 16(a), Fla. Const.).

A defendant who elects to testify is generally subject to the same rules of evidence as any other witness, but "restrictions of a defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve." Rock, 483 U.S. at 55–56. "In applying its evidentiary rules, a State must evaluate whether the interests served by a rule justify the limitation imposed on the defendant's constitutional right to testify." Id. at 56.

The legislature codified a specific mandate in section 90.605:

Before testifying, each witness shall declare that he or she will testify truthfully, by taking an oath or affirmation in substantially the following form: "Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?"

Fla. Stat. § 90.605 (2018). "An unsworn witness is not competent to testify." Houck v. State, 421 So. 2d 1113, 1115 (Fla. 1st DCA 1982). There is no exception for the defendant in section 90.605, and its plain language indicates the contrary. See S.R. v. State, 346 So. 2d 1018, 1019 (Fla. 1977) ("Although there is no fixed construction of the word 'shall,' it is normally meant to be mandatory in nature."). Indeed, at least one sister circuit has held that a party to a civil injunction proceeding cannot evade the oath requirement based upon his sincerely held religious belief. Willis v. Romano, 972 So. 2d 294, 295 (Fla. 5th DCA 2008).

Moreover, an oath requirement is hardly the type of restriction on a defendant's right to testify that the Supreme Court would hold is arbitrary or disproportionate so as to be unconstitutional. The oath requirement in section 90.605 serves the legitimate purpose of ensuring that a defendant not commit perjury in his pursuit of "justice," or at least that he be held accountable should such knowingly false testimony come to light.

We therefore hold that the trial court's enforcement of the oath requirement in section 90.605 did not deprive Mr. Brooks of his constitutional right to testify. Without oath or affirmation, Mr. Brooks was incompetent to testify in his own defense.

Affirmed.

Lang, J., concurs without opinion.
Danvers, J., dissents with opinion.

Danvers, J, dissenting.

Due to the majority's failure to acknowledge the realities of the modern world, I respectfully dissent.

Although case law pertaining to the narrow subject of warrantless EDR searches is rather scarce, we are not without guidance. Looking first to the United States Supreme Court's opinion in Riley, and then to its progeny across the county, it is of the utmost importance to acknowledge the changing technological landscape and its impact on the constitutional protections of our citizens. "The ultimate touchstone of the Fourth Amendment is reasonableness." Brigham City v. Stuart, 547 U.S. 398, 403 (2006). The inquiry of reasonableness, however, must take into consideration the climate of the era in which the circumstances exist.

In Chief Justice Roberts' majority opinion, the Supreme Court addressed the Fourth Amendment considerations as applied to modern cell phones:

This case requires us to decide how the search incident to arrest doctrine applies to modern cell phones, which are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy. A smart phone of the sort taken from Riley was unheard of ten years ago; a significant majority of American adults now own such phones.

Riley v. California, 134 S. Ct. 2473, 2484 (2014). The Florida Supreme Court has also distinguished personal technology from the inanimate objects to which Fourth Amendment exceptions have typically applied. See Smallwood v. State, 113 So. 3d 724, 732 (Fla. 2013).

A vehicle's EDR is not exempt from this concern. As Sergeant Mickelson testified below, an EDR is programmed to activate during a triggering event (such as an accident) or to record data in a continuous loop. An EDR records 15 specific data inputs, including braking, stability control engagement, ignition cycle, engine rpm, steering, and the severity and duration of a crash. An EDR may also record a vehicle's location or perform diagnostic examinations of the engine. "The emerging trend is to require a warrant to search these devices." State v. Worsham, 227 So. 3d 602, 604 (Fla. 4th DCA 2017).

Sergeant Mickelson further explained that the recovery of data from an EDR is no small task. The data retrieval kit is expensive and unique to each manufacturer's data recorder. The downloaded data must then be interpreted by a specialist. If the majority wishes to analogize an EDR to an inanimate object, a comparison to a – constitutionally protected – locked briefcase is not off the mark. See United States v. Mendoza-Gonzalez, 318 F.3d 663, 670 (5th Cir. 2003).

Sergeant Mickelson's interpretation of Mrs. Brooks' blanket consent to search a vehicle as consent to complete a forensic search of a computer within that vehicle was not objectively reasonable.

Moreover, the oath requirement in section 90.605, Florida Statutes (2018), was an arbitrary and disproportionate impediment to Mr. Brooks' constitutional right to testify. See Gordon v. State of Idaho, 778 F.2d 1397 (9th Cir. 1985); United States v. Looper, 419 F.2d 1405, 1406 (4th Cir. 1969). Mr. Brooks' statement to the trial court provided assurance that he understood the consequence of any subsequent perjury, and that was sufficient. Instead, the jury was left without this critical testimony. See Wilson v. State, 12 So. 3d 292, 296–97 (Fla. 4th DCA 2009) ("While a defendant who decides to testify may actually decrease his change of acquittal, nevertheless, the wisdom or unwisdom of the defendant's choice does not diminish his right to make it." (internal quotation marks omitted)). I would separately reverse Mr. Brooks' conviction on this ground.

I respectfully dissent.

Supreme Court of Florida

No. SC19-1516

JORDAN BROOKS, Petitioner,
v.
STATE OF FLORIDA., Respondent.

ORDER INVOKING DISCRETIONARY JURISDICTION

The Court accepts jurisdiction of this case for briefing and oral argument on the following two issues:

1. Whether a law enforcement officer's warrantless search of a vehicle's event data recorder violates the Fourth Amendment to the United States Constitution or Article I, section 12 of the Florida Constitution where that officer has general consent to search the vehicle without a warrant?

2. Whether the trial court's strict application of the oath requirement in section 90.605, Florida Statutes, violated the defendant's constitutional right to testify?

A schedule for the submission of briefs and oral argument by the parties on the merits of this case will be entered by separate order of this Court.

Dated: February 11, 2019

John A. Tomasino
John A. Tomasino
Clerk, Supreme Court